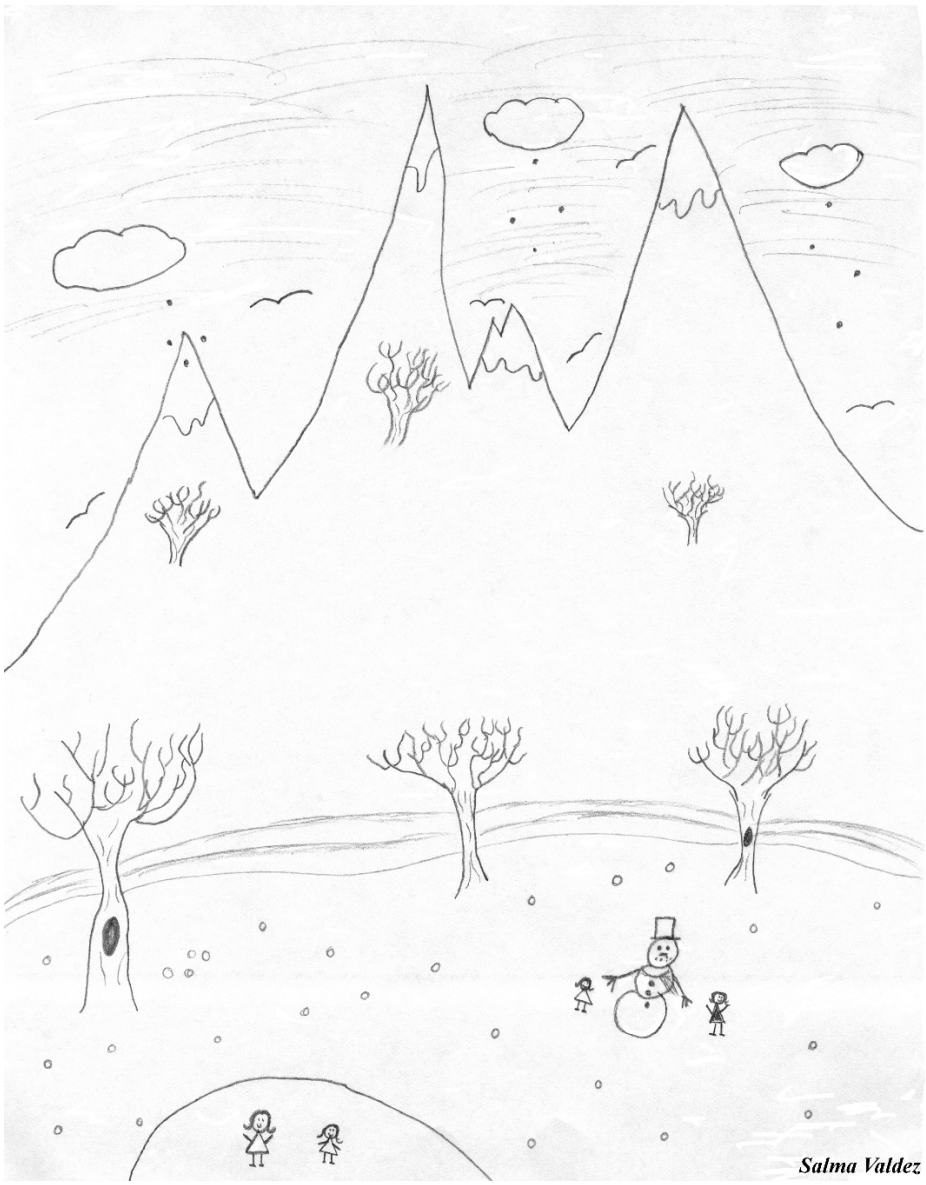
TEXAS REGISTER

Volume 41 Number 52 *December 23, 2016* *Pages 10019 - 10486*



Salma Valdez

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*.

Texas Register, **(ISSN 0362-4781, USPS 12-0090),** is published weekly (52 times per year) for $297.00 ($438.00 for first class mail delivery) by Matthew Bender & Co., Inc., 3 Lear Jet Lane Suite 104, P O Box 1710, Latham, NY 12110.

The *Texas Register* is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Albany, N.Y. and at additional mailing offices.

POSTMASTER: Send address changes to the *Texas Register,* 136 Carlin Rd., Conklin, N.Y. 13748-1531.

a section of the
Office of the Secretary of State
P.O. Box 12887
Austin, TX 78711
(512) 463-5561
FAX (512) 463-5569

http://www.sos.state.tx.us
register@sos.texas.gov

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THE GOVERNOR

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

Appointments

Appointments for November 29, 2016

Appointed to the Texas State Board of Acupuncture Examiners for a term to expire January 31, 2021, Jeremy D. Wiseman, M.D. of Austin (replacing Daniel M. "Dan" Brudnak of Gorman who resigned).

Appointments for December 1, 2016

Appointed as Deputy Adjutant General for Army, Brigadier General Tracy R. Norris of Austin for a term to expire at the pleasure of the Governor (replacing Major General William L. "Len" Smith of Austin who retired).

Appointments for December 6, 2016

Appointed to the Texas Military Preparedness Commission as Presiding Officer for a term to expire at the pleasure of the Governor, Major General Kevin E. Potting (Ret.) of Keller (replacing Paul E. Paine of Fort Worth).

Appointments for December 7, 2016

Appointed to the Texas Emergency Services Retirement System for a term to expire September 1, 2021, Courtney G. Bechtol of Rockport (replacing Graciela G. Flores of Corpus Christi whose term expired).

Appointed to the Texas Emergency Services Retirement System for a term to expire September 1, 2021, Virginia K. "Jenny" Moore of Lake Jackson (Ms. Moore is being reappointed).

Appointed to the Texas Emergency Services Retirement System for a term to expire September 1, 2021, Pilar Rodriguez of Edinburg (replacing Dennis R. Rice of Canyon whose term expired).

Appointed to the Real Estate Research Advisory Committee for a term to expire January 31, 2021, Elizabeth "Besa" Robison Martin of Boerne (replacing Kimberly Shambley of Dallas whose term expired).

Greg Abbott, Governor

TRD-201606397

♦ ♦ ♦

Appointments

Appointments for December 8, 2016

Appointed to the Brazos River Authority Board of Directors for a term to expire February 1, 2019, James P. "Jim" Lattimore of Graford (replacing William Arthur "Bill" Masterson of Guthrie who is deceased).

Appointed to the Nueces River Authority Board of Directors for a term to expire February 1, 2021, Allan P. Bloxsom, III of Kendalia (replacing Fernando Camarillo of Boerne whose term expired).

Appointed to the Nueces River Authority Board of Directors for a term to expire February 1, 2021, Eric L. Burnett of Portland (Mr. Burnett is being reappointed).

Appointed to the Nueces River Authority Board of Directors for a term to expire February 1, 2021, Amy M. Clark of Three Rivers (replacing W. Scott Bledsoe, III of Oakville whose term expired).

Appointed to the Nueces River Authority Board of Directors for a term to expire February 1, 2021, Gary W. Moore, Sr. of Portland (replacing Thomas Reding, Jr. of Portland whose term expired).

Appointed to the Nueces River Authority Board of Directors for a term to expire February 1, 2021, Travis W. Pruski of Floresville (replacing Curt William Raabe of Poth whose term expired).

Appointed to the Nueces River Authority Board of Directors for a term to expire February 1, 2021, Tomas "Tommy" Ramirez, III of Moore (Mr. Ramirez is being reappointed).

Appointments for December 12, 2016

Appointed to the Specialty Courts Advisory Council for a term to expire February 1, 2019, Amy R. Granberry of Portland (replacing Patrick Freeman McCann of Richmond who resigned).

Appointed to the Specialty Courts Advisory Council for a term to expire February 1, 2021, The Honorable Brent A. Carr of Fort Worth (replacing The Honorable Leon F. Pesek, Jr. of Texarkana whose term expired).

Appointed to the Specialty Courts Advisory Council for a term to expire February 1, 2021, The Honorable Rebecca E. DePew of Holland (replacing Sabrina Bentley Benkendorfer of Georgetown whose term expired.

Appointed to the Specialty Courts Advisory Council for a term to expire February 1, 2021, The Honorable Alicia F. York of Houston (replacing Amy R. Granberry of Portland whose term expired).

Greg Abbott, Governor

TRD-201606557

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Sergio Ledesma

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.)

Opinions

Opinion No. KP-0121

Ms. Jennifer D. Robison

Brown County Auditor

200 South Broadway

Brownwood, Texas 76801

The Honorable Shane Britton

Brown County Attorney

Brown County Courthouse

200 South Broadway

Brownwood, Texas 76801

Re: Authority of county attorneys regarding payments made in conjunction with pretrial diversion agreements (RQ-0111-KP)

S U M M A R Y

Section 45.125 of the Government Code authorizes the Brown County Attorney to receive gifts and grants limited to the purpose of financing or assisting the operation of the attorney's office. A court would likely conclude that section 45.125 does not authorize the Brown County Attorney's office to require an accused to pay an amount to that office as a condition of a pretrial intervention agreement in addition to or in excess of the fee authorized by article 102.0121 of the Code of Criminal Procedure. No statute authorizes a criminal court to order a defendant to pay a gift or grant under section 45.125 of the Government Code.

Gifts or grants received under section 45.125 of the Government Code are limited to financing or assisting the operation of the Brown County Attorney's office. The fee authorized by article 102.0121 of the Code of Criminal Procedure may be used only for the expenses of a prosecuting attorney's office related to a defendant's participation in a pretrial intervention program offered in that county.

The county commissioners court has ultimate authority over the disposition of funds received under section 45.125 of the Government Code. Funds received under that statute may not be commingled with or transferred to the hot-check fund established under article 102.007 of the Code of Criminal Procedure.

Opinion No. KP-0122

The Honorable Rebecca R. Walton

Hardin County Attorney

Courthouse, Second Floor

Post Office Box 516

Kountze, Texas 77625

Re: Simultaneous service as a municipal police chief and a constable (RQ-0112-KP)

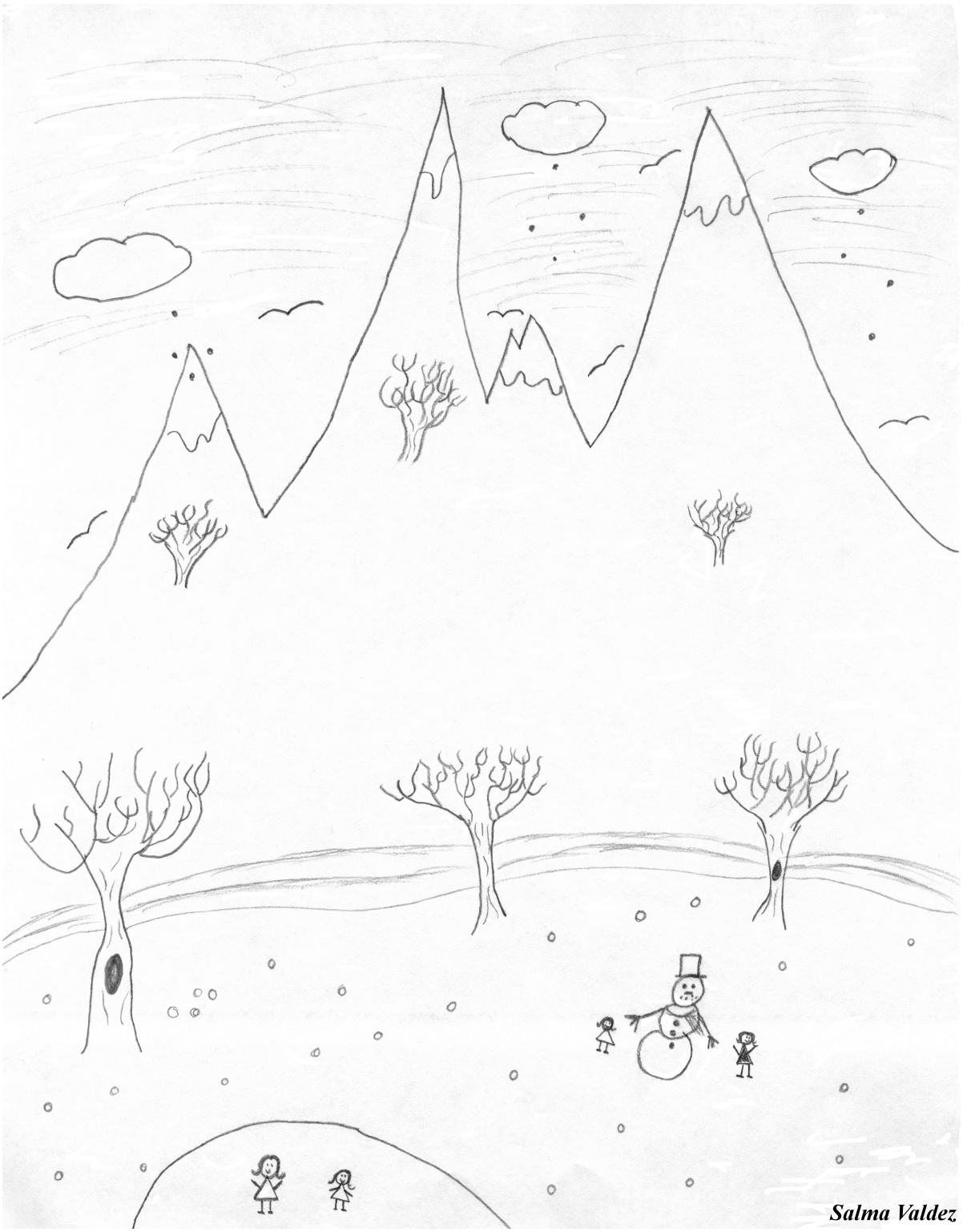
S U M M A R Y

Neither article XVI, section 40 of the Texas Constitution nor the common-law doctrine of incompatibility bars the City of Lumberton police chief from simultaneously holding the position of constable in the same precinct where the city is located.

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

TRD-201606581
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: December 14, 2016

♦ ♦ ♦


Salma Valdez

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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

The Texas Health and Human Services Commission (HHSC) proposes amendments to §354.1069, concerning Sign Language Interpreter Services; §354.1382, concerning Conditions for Participation; and §354.1401, concerning In-home Respiratory Therapy Services for Ventilator-Dependent Persons.

BACKGROUND AND JUSTIFICATION

The proposed amendments correct terminology, correct cross references to other sections of the Texas Administrative Code, correct cross references to statute, and make other non-substantive changes.

SECTION-BY-SECTION SUMMARY

Proposed §354.1069 corrects a cross reference to another rule in subsection (c)(3).

Proposed §354.1382 updates language in the rule and corrects cross references to statute. Subsection (d)(3) is removed, as the rule cross-referenced has been repealed.

Proposed §354.1401 changes subsection (a) to active voice, removes unnecessary language in subsection (d), and updates the respiratory therapy certification information in subsection (e)(2).

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years the amended rules are in effect, there is no anticipated fiscal impact to costs and revenues of state and local government.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

HHSC has determined that there will be no adverse economic effect on small businesses or micro-businesses to comply with the amended rules, as there is no requirement for any small businesses or micro businesses to alter current business practices as a result of the amended rules.

PUBLIC BENEFIT AND COST

Gary Jessee, State Medicaid Director, has determined that for each year of the first five years the rules are in effect, the public will benefit from the adoption of the rules. The anticipated public benefit will be rules that provide more accurate, updated information and cross references.

Ms. Rymal has also determined that there are no probable economic costs to persons required to comply with the amended rules.

HHSC has determined that the amended rules will not affect a local economy. There is no anticipated negative impact on local employment.

REGULATORY ANALYSIS

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Amy Chandler, Program Specialist, by mail to P.O. Box 13247, MC H600, Austin, TX, 78711; or by e-mail to amy.chandler@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

DIVISION 5. PHYSICIAN AND PHYSICIAN ASSISTANT SERVICES

1 TAC §354.1069

STATUTORY AUTHORITY

The amendment is proposed 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.

The proposed amendment implements Texas Human Resources Code, Chapter 32, and Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§354.1069. Sign Language Interpreter Services.

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

(1) Deaf--The term "deaf" is defined in the Human Resources Code, Title 4, Services for the Deaf, Chapter 81, Texas Commission for the Deaf and Hard of Hearing, §81.001, Definitions.

(2) Hard of Hearing--The term "hard of hearing" is defined in the Human Resources Code, Title 4, Services for the Deaf, Chapter 81, Texas Commission for the Deaf and Hard of Hearing, §81.001, Definitions.

(3) Interpreter--An interpreter is an individual who possesses one of the following certification levels (i.e., levels A - H) issued by either the Department of Assistive and Rehabilitative Services, Office for Deaf and Hard of Hearing Services, Board for Evaluation of Interpreters (BEI) or the National Registry of Interpreters for the Deaf (RID):

(A) Certification Level A:

(i) Level I/Ii; and

(ii) OC:B (Oral Certificate: Basic).

(B) Certification Level B:

(i) BEI Basic; and

(ii) RID NIC (National Interpreter Certificate) Certified.

(C) Certification Level C:

(i) BEI Level II/IIi;

(ii) RID CI (Certificate of Interpretation);

(iii) RID CT (Certificate of Transliteration);

(iv) RID IC, (Interpretation Certificate); and

(v) RID TC (Transliteration Certificate).

(D) Certification Level D:

(i) BEI Level III/IIIi;

(ii) BEI OC: C (Oral Certificate: Comprehensive);

(iii) BEI OC: V (Oral Certificate: Visible);

(iv) RID CSC (Comprehensive Skills Certificate);

(v) RID IC/TC (Interpretation Certificate/Transliteration Certificate);

(vi) RID CI/CT (Certificate of Interpretation/Certificate of Transliteration);

(vii) RID RSC (Reverse Skills Certificate); and

(viii) RID CDI (Certified Deaf Interpreter).

(E) Certification Level E:

(i) BEI Advanced; and

(ii) RID NIC Advanced.

(F) Certification Level F:

(i) BEI IV/IVi;

(ii) RID MCSC (Master Comprehensive Skills Certificate); and

(iii) RID SC: L (Specialist Certificate: Legal).

(G) Certification Level G is BEI V/VI.

(H) Certification Level H:

(i) BEI Master; and

(ii) RID NIC Master.

(4) Interpreting Services--The provision of voice-to-sign, sign-to-voice, gestural-to-sign, sign-to-gestural, voice-to-visual, visual-to-voice, sign-to-visual, or visual-to-sign services for communication access provided by a certified interpreter.

(b) Benefit and Limitations. Sign language interpreting services are a health care benefit of the State Medical Assistance (Medicaid) Program.

(1) Sign language interpreting services must be requested by a physician and provided by a qualified interpreter to facilitate communication between:

(A) A client who is deaf or hard of hearing and a physician during the course of a medically necessary medical examination or other medical services; or,

(B) A client's parent or guardian who is deaf or hard of hearing and a physician during the course of the client's medically necessary medical examination or other medical services.

(2) A physician's determination of the need for sign language interpreting services shall give primary consideration to the needs of the individual who is deaf or hard of hearing.

(3) The physician requesting interpreting services must maintain documentation verifying the provision of interpreting services.

(A) Documentation of the service must be included in the patient's medical record and must include the name of the sign language interpreter and the interpreter's certification level.

(B) Documentation must be made available if requested by the Commission or its designee.

(c) Physician requirements for billing of and reimbursement for sign language interpreting services.

(1) Physicians must be enrolled in the Texas Medicaid Program to be considered for reimbursement.

(2) Reimbursement for sign language interpreting services is limited to physicians or physician groups employing fewer than fifteen employees.

(3) Providers seeking reimbursement for sign language interpreting services must provide and bill for the service in the manner prescribed by the Texas Medicaid Program and in accordance with §355.8085 of this title (relating to Reimbursement Methodology for Physicians and Other Practitioners [~~Texas Medicaid Reimbursement Methodology (TMRM) for Physician and Certain Other Practitioners~~]).

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606483

Carey Smith
Senior Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 487-3419

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DIVISION 29. LICENSED PROFESSIONAL COUNSELORS, LICENSED CLINICAL SOCIAL WORKERS, AND LICENSED MARRIAGE AND FAMILY THERAPISTS

1 TAC §354.1382

STATUTORY AUTHORITY

The amendment is proposed 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.

The proposed amendment implements Texas Human Resources Code, Chapter 32, and Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§354.1382. Conditions for Participation.

(a) To participate in the Texas Medical Assistance Program, licensed professional counselors (LPCs) must be licensed by the Texas State Board of Examiners of Professional Counselors in accordance with Chapter 503 of the Texas Occupations Code [~~the Texas Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g~~].

(b) To participate in the Texas Medical Assistance Program, licensed clinical social workers (LCSWs) [~~licensed master social worker-advanced clinical practitioners (LMSW-ACPs)~~] must be licensed [~~as a master social worker and be recognized as being qualified~~] for the practice of clinical social work by the Texas State Board of Social Worker Examiners in accordance with Chapter 505 of the Texas Occupations Code [~~the Human Resources Code, Subtitle E, Chapter 50~~].

(c) To participate in the Texas Medical Assistance Program, licensed marriage and family therapists (LMFTs) must be licensed by the Texas State Board of Examiners of Marriage and Family Therapists in accordance with Chapter 502 of the Texas Occupations Code [~~the Licensed Marriage and Family Therapist Act, Texas Civil Statutes, Article 4512c-1~~].

(d) These providers must:

(1) meet the appropriate licensing requirements as required in subsections (a), (b) or (c) of this section;

(2) comply with all applicable federal and state laws and regulations governing the services provided; [~~(~~]

[~~(3) be enrolled and participating in Medicare (this applies to LMSW-ACPs only), unless the provider satisfies criteria for exemption described in §354.1173(b);~~]

(3) [~~(4)~~] be enrolled and approved for participation in the Texas Medical Assistance Program;

(4) [~~(5)~~] sign a written provider agreement with the Commission or its designee;

(5) [~~(6)~~] comply with the terms of the provider agreement and all requirements of the Texas Medical Assistance Program, including regulations, rules, handbooks, standards, and guidelines published by the Commission or its designee; and

(6) [~~(7)~~] bill for services covered by the Texas Medical Assistance Program in the manner and format prescribed by the Commission or its designee.

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606486
Carey Smith
Senior Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 462-6271

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DIVISION 31. IN-HOME RESPIRATORY THERAPY SERVICES FOR VENTILATOR-DEPENDENT PERSONS

1 TAC §354.1401

STATUTORY AUTHORITY

The amendment is proposed 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.

The proposed amendment implements Texas Human Resources Code, Chapter 32, and Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§354.1401. In-home Respiratory Therapy Services for Ventilator-Dependent Persons.

(a) Subject to the specifications, conditions, limitations, and requirements established by HHSC or its designee, in-home respiratory therapy services are [~~shall be made~~] available to eligible recipients who:

(1) are ventilator-dependent for life support at least six hours per day;

(2) have been so dependent for at least 30 consecutive days as an inpatient in one or more hospitals, skilled nursing facilities (SNF), or intermediate care facilities (ICF);

(3) but for the availability of these respiratory care services at home, would require respiratory care as an inpatient in a hospital, SNF, or ICF;

(4) would be eligible to have payment made for such inpatient care under the state Medicaid plan;

(5) have adequate social support services to be cared for at home; and

(6) wish to be cared for at home.

(b) Covered respiratory therapy services must be reasonable, medically necessary, and prescribed by the recipient's physician (MD or DO). The physician must be licensed in the state in which the physician practices.

(c) HHSC or its designee must authorize the services prior to their delivery. Prior authorization requests must include all pertinent medical records and other information as required by HHSC or its designee to justify the medical necessity of and/or dependency on the ventilator support and therapy services and to ensure that the requirements in subsection (a) of this section are met. Prior authorization is a requirement for payment. HHSC or its designee may extend the prior authorization based upon an interim report from the physician documenting the medical necessity and appropriateness of continued in-home respiratory therapy services.

(d) Covered services include[~~, but are not necessarily limited to, the following~~]:

(1) respiratory therapy services and treatments prescribed by the recipient's physician; and

(2) education of the recipient and/or appropriate family members/support persons regarding the in-home respiratory care. Education must include the use and maintenance of required supplies, equipment, and techniques appropriate to the situation.

(e) Providers of respiratory therapy services must meet the following requirements:

(1) comply with all applicable federal, state, and local laws and regulations;

(2) be certified by the Texas Medical Board [~~Department of Health~~] to practice under Chapter 604 of the Texas Occupations Code [~~Texas Civil Statutes, Article 4512L~~];

(3) be enrolled and approved for participation in the Texas Medical Assistance Program;

(4) sign a written provider agreement with HHSC or its designee. By signing the agreement, the provider agrees to comply with the terms of the agreement and all requirements of the Texas Medical Assistance Program including regulations, rules, handbooks, standards, and guidelines published by HHSC or its designee; and

(5) bill for covered services in the manner and format prescribed by HHSC or its designee.

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606488
Carey Smith
Senior Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 462-6271

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DIVISION 33. ADVANCED TELECOMMUNICATIONS SERVICES

1 TAC §354.1432

The Texas Health and Human Services Commission (HHSC) proposes amendments to §354.1432, concerning Telemedicine and Telehealth Benefits and Limitations.

BACKGROUND AND JUSTIFICATION

The proposed rule amendments clarify that a patient must receive an initial evaluation by a physician or other qualified healthcare professional prior to receiving telehealth services, with the exception of services to treat a mental health diagnosis or condition. The proposed rule amendments further require that a patient receive an annual follow-up evaluation by a physician or other qualified healthcare professional for continued receipt of telehealth services, again with the exception of services to treat a mental health diagnosis or condition. The proposed amendments permit the evaluating physician or other qualified healthcare professional to conduct the evaluation in person or through a telemedicine visit that conforms to Texas Medical Board rules in 22 TAC Chapter 174, concerning Telemedicine.

SECTION-BY-SECTION SUMMARY

Proposed §354.1432(2)(E) clarifies that a physician or other qualified healthcare professional must conduct an initial evaluation of patient either through an in-person visit or a telemedicine visit before the patient can receive telehealth services. A patient who is receiving telehealth services for a mental health diagnosis or condition is not required to receive an initial evaluation by a physician or other qualified healthcare professional.

Proposed §354.1432(2)(F) clarifies that a physician or other qualified healthcare professional must conduct an evaluation every 12 months either through an in-person visit or a telemedicine visit for a patient to continue receiving telehealth services. A patient who is receiving telehealth services for a mental health diagnosis or condition is not required to receive follow-up evaluations by a physician or other qualified healthcare professional.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the amended rule is in effect, there is no anticipated impact to costs and revenues of state and local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

HHSC has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the amended rule, as the proposal serves only to provide clarification of current Texas Medicaid policy and practice.

PUBLIC BENEFIT AND COST

Jami Snyder, State Medicaid Director, has determined that for each year of the first five years the amended rule is in effect, the public will benefit from the adoption of the rule. The anticipated public benefit is increased clarity for providers in Medicaid operational requirements for telehealth services, as well as better continuity of care for clients receiving telehealth services as part of their physician-directed care package.

Ms. Rymal has also determined that there are no probable economic costs to persons who are required to comply with the amended rule.

HHSC has determined that the amended rule will not affect a local economy. There is no anticipated negative impact on local employment.

REGULATORY ANALYSIS

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Erin McManus, Policy Analyst, Texas Health and Human Services Commission, P.O. Box 149030, Mail Code H370, Austin, Texas 78714-9030; by fax to (512) 730-7475; or by e-mail to Erin.McManus@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

STATUTORY AUTHORITY

The amendment is proposed 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.

The proposed amendment implements Texas Human Resources Code, Chapter 32, and Texas Government Code, Chapter 531.

§354.1432. Telemedicine and Telehealth Benefits and Limitations.

Telemedicine medical services and telehealth services are a benefit under the Texas Medicaid program as provided in this section and are subject to the specifications, conditions, limitations, and requirements established by the Texas Health and Human Services Commission or its designee (HHSC).

(1) Conditions for reimbursement applicable to telemedicine medical services.

(A) The telemedicine medical services must be designated for reimbursement by HHSC. Telemedicine medical services designated for reimbursement include:

(i) consultations;

(ii) office or other outpatient visits;

(iii) psychiatric diagnostic interviews;

(iv) pharmacologic management;

(v) psychotherapy; and

(vi) data transmission.

(B) The services must be provided in compliance with 22 TAC Chapter 174 (relating to Telemedicine).

(C) The patient site must be:

(i) an established medical site;

(ii) a state mental health facility; or

(iii) a state supported living center.

(D) For a child receiving telemedicine medical services in a primary or secondary school-based setting, advance parent or legal guardian consent for a telemedicine medical service must be obtained.

(E) The patient's primary care physician or provider must be notified of a telemedicine medical service, unless the patient does not have a primary care physician or provider.

(i) The patient receiving the telemedicine medical service, or the patient's parent or legal guardian, must consent to the notification.

(ii) For a telemedicine medical service provided to a child in a primary or secondary school-based setting, the notification must include a summary of the service, including:

(I) exam findings;

(II) prescribed or administered medications; and

(III) patient instructions.

(F) If a child receiving a telemedicine medical service in a primary or secondary school-based setting does not have a primary care physician or provider, the child's parent or legal guardian must be offered:

(i) the information in subparagraph (E)(ii) of this paragraph; and

(ii) a list of primary care physicians or providers from which to select the child's primary care physician or provider.

(G) Telemedicine medical services provided in a school-based setting by a physician, even if the physician is not the patient's primary care physician or provider, are reimbursed if:

(i) the physician is enrolled as a Medicaid provider;

(ii) the patient is a child who receives the service in a primary or secondary school-based setting;

(iii) the parent or legal guardian of the patient provides consent before the service is provided; and

(iv) a health professional as defined by Texas Government Code §531.0217(a)(1) is present with the patient during the treatment.

(2) Conditions for reimbursement applicable to telehealth services.

(A) The telehealth services must be designated for reimbursement by HHSC. Designated telehealth services will be listed in the Texas Medicaid Provider Procedures Manual.

(B) The services must be provided in compliance with standards established by the respective licensing or certifying board of the professional providing the services.

(C) The patient site must be:

(i) an established health site;

(ii) a state mental health facility; or

(iii) a state supported living center.

(D) The patient site presenter must be readily available for telehealth services. However, if the telehealth services relate only to mental health, a patient site presenter does not have to be readily available except when the patient may be a danger to himself or to others.

(E) Before receiving a telehealth service, the patient must receive an initial [~~in-person~~] evaluation for the same diagnosis or condition by a physician or other qualified healthcare professional licensed in Texas.

(i) A required initial evaluation must be performed in-person or as a telemedicine visit that conforms to 22 TAC Chapter 174 (relating to Telemedicine).

(ii) If the patient is receiving the telehealth services to treat a mental health diagnosis or condition, the patient is not required to receive an initial evaluation. [~~, with the exception of a mental health diagnosis or condition. For a mental health diagnosis or condition, the patient may receive a telehealth service without an in-person evaluation provided the purpose of the initial telehealth appointment is to screen and refer the patient for additional services and the referral is documented in the medical record.~~]

(F) A patient receiving telehealth services must be evaluated at least annually by a physician or other healthcare professional licensed in Texas and qualified to determine if the patient has a continued need for services.

(i) The evaluation must be performed in-person or as a telemedicine visit that conforms to 22 TAC Chapter 174.

(ii) This evaluation requirement does not apply to a patient receiving telehealth services for the treatment of a mental health diagnosis or condition from a qualified behavioral health provider licensed in Texas.

[~~(F) For the continued receipt of a telehealth service, the patient must receive an in-person evaluation at least once during the previous 12 months by a person qualified to determine a need for services.~~]

(G) Both the distant site provider and the patient site presenter must maintain the records created at each site unless the distant site provider maintains the records in an electronic health record format.

(H) Written telehealth policies and procedures must be maintained and evaluated at least annually by both the distant site provider and the patient site presenter and must address:

(i) patient privacy to assure confidentiality and integrity of patient telehealth services;

(ii) archival and retrieval of patient service records; and

(iii) quality oversight mechanisms.

(3) Conditions for reimbursement applicable to both telemedicine medical services and telehealth services.

(A) Preventive health visits under Texas Health Steps (THSteps), also known as Early and Periodic Screening, Diagnosis and Treatment program, are not reimbursed if performed using telemedicine medical services or telehealth services. Health care or treatment provided using telemedicine medical services or telehealth services after a THSteps preventive health visit for conditions identified during a THSteps preventive health visit may be reimbursed.

(B) Documentation in the patient's medical record for a telemedicine medical service or a telehealth service must be the same as for a comparable in-person evaluation.

(C) Providers of telemedicine medical services and telehealth services must maintain confidentiality of protected health information (PHI) as required by 42 CFR Part 2, 45 CFR Parts 160 and 164, chapters 111 and 159 of the Occupations Code, and other applicable federal and state law.

(D) Providers of telemedicine medical services and telehealth services must comply with the requirements for authorized disclosure of PHI relating to patients in state mental health facilities and residents in state supported living centers, which are included in, but not limited to, 42 CFR Part 2, 45 CFR Parts 160 and 164, Health and Safety Code §611.004, and other applicable federal and state law.

(E) Telemedicine medical services and telehealth services are reimbursed in accordance with Chapter 355 of this title (relating to Reimbursement Rates).

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606480
Carey Smith
Senior Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 462-6271

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SUBCHAPTER J. MEDICAID THIRD PARTY RECOVERY
DIVISION 7. HEALTH INSURANCE PREMIUM PAYMENT GUIDELINES

1 TAC §354.2361

The Texas Health and Human Services Commission (HHSC) proposes new §354.2361, concerning Medicaid Health Insurance Premium Payment Program.

BACKGROUND AND JUSTIFICATION

The new rule is proposed to comply with §1906 of the Social Security Act (42 U.S.C. 1396e), enacted in the Omnibus Budget Reconciliation Act (OBRA) of 1990, to reimburse eligible individuals for their share of an employer-sponsored health insurance (ESI) premium payment when cost effective. Until Senate Bill 207, 84th Legislature, Regular Session, 2015, repealed the prohibition of Health Insurance Premium Payment Program (HIPP) participation in Medicaid managed care, the HIPP program only included fee-for-service Medicaid.

The HIPP program generates cost savings to the State by reimbursing individuals eligible for the HIPP program for their ESI premiums, if it is determined that reimbursing the premium is cost effective. Medicaid-eligible individuals in the HIPP program may have access to additional services not covered by Medicaid, or have access to Medicaid services not covered by private insurance. Family members of the individual may have access to services through private health insurance, because the State is paying the private health insurance premiums.

The new rule establishes requirements applicable to individuals with ESI who are Medicaid eligible, or have a family member who is Medicaid eligible, applying for and participating in the HIPP

program. Additionally, the rule defines the HIPP program processes for individuals and their employers providing ESI.

SECTION-BY-SECTION SUMMARY

Proposed §354.2361(a) sets out the purpose for the HIPP program.

Proposed §354.2361(b) defines key terms used in §354.2361.

Proposed §354.2361(c) sets out eligibility and requirements for individuals enrolling, or re-enrolling, in the HIPP program.

Proposed §354.2361(d) lists requirements applicable to employers that have employees applying for, or enrolled in the HIPP program.

Proposed §354.2361(e) sets out requirements and the timeline related to health insurance premium payment reimbursements for the HIPP program.

Proposed §354.2361(f) describes the types of written notifications that HHSC will send to HIPP program applicants and enrollees.

Proposed §354.2361(g) sets out requirements for HIPP program enrollees related to overpayments of health insurance premium payment reimbursements and describes the processes HHSC will follow related to recoupment of overpayments.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years the proposed rule is in effect, there is no expected impact to costs or revenues of state or local governments to implement and enforce the rule as proposed.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

HHSC has determined that there will be no adverse economic effect on small businesses or micro businesses to comply with the proposed rule, as they will not be required to alter their business practices as a result of the proposed rule.

Employers that offer a group health benefit plan are encouraged, but not required, to notify their employees about participation in the HIPP program. Employers may benefit from employee participation in the HIPP program through an opportunity to receive a tax credit offered by the Texas Workforce Commission, if eligible.

PUBLIC BENEFIT AND COST

Jami Snyder, State Medicaid Director, has determined that for each year of the first five years the rule is in effect, the public will benefit from the adoption of the rule. The anticipated public benefit will be assistance to help families pay for private health insurance.

Ms. Rymal has also determined that there are no probable economic costs to persons who are required to comply with the proposed rule.

HHSC has determined that the proposed rule will not affect a local economy. There is no anticipated negative impact on local employment.

REGULATORY ANALYSIS

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Deborah Keyser, HIPP program Manager, Medicaid/CHIP Division, Health and Human Services Commission at 4900 N. Lamar Blvd., Austin, Texas 78751; by fax to (512)-487-3454; or, by e-mail to deborah.keyser@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

STATUTORY AUTHORITY

The new rule is proposed 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.

This rule is proposed to effectuate Human Resources Code §32.0422, which requires HHSC to identify and enroll an individual eligible for medical assistance and a group health benefit plan offered by an employer if it is more cost-effective for the State to pay for the individual's share of the health plan premiums than to pay for the individual's Medicaid costs.

The proposed new rule affects Texas Human Resources Code, Chapter 32, and Texas Government Code, Chapter 531.

§354.2361. Medicaid Health Insurance Premium Payment Program.

(a) Purpose. The Medicaid Health Insurance Premium Payment (HIPP) program is established under §1906 of the Social Security Act (42 U.S.C. §1396e) to reimburse an eligible individual's portion of employer-sponsored health insurance premium payments, when cost-effective.

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

(1) Cost-effective--In accordance with §1906 of the Social Security Act (42 U.S.C. §1396e(e)(2)), the amount paid for premiums, coinsurance, deductibles, other cost sharing obligations under a group health plan, and additional administrative costs is less than the amount paid for an equivalent set of Medicaid services.

(2) Employer-sponsored insurance (ESI)--A group health plan offered to an employee through the employer.

(3) Explanation of Benefits (EOB)--A document provided by the insurance company that shows the type of medical service, the date of service, the amount paid by the insurance company, and the amount paid by the individual receiving medical services.

(4) Family member--Any member of a family for which the employer-sponsored insurance plan will allow coverage, such as a spouse or child.

(5) Group health plan--In accordance with Title 26, Internal Revenue Code, §5000(b)(1), a plan (including a self-insured plan) of, or contributed to by, an employer (including a self-employed person) or employee organization to provide health care (directly or otherwise) to the employees, former employees, the employer, others associated or formerly associated with the employer in a business relationship, or their families.

(6) Health and Human Services Commission (HHSC)--The single state agency charged with administration and oversight of the Texas Medicaid program, or its designee.

(7) Open enrollment--The time period established by an employer during which an employee is eligible to sign up for ESI or make changes to an existing ESI benefit plan.

(8) Qualifying event--An event which allows for an individual to enroll in or dis-enroll from a group health plan at any time, within or outside the plan's open enrollment period.

(9) Rate sheet--A document provided by an employer or an insurance company that shows the insurance premium amount the employee is responsible for paying each month.

(10) Summary of benefits--A document provided by an employer or an insurance company that shows the amount the insurance company pays for medical services provided under the benefit plan.

(c) Employee eligibility and requirements.

(1) To qualify for the HIPP program, an employee must be enrolled in:

(A) Medicaid or have a family member that is enrolled in Medicaid;

(B) ESI; and

(C) an ESI plan that allows enrollment of a family member that is enrolled in Medicaid.

(2) The following plans or programs are not eligible for the HIPP program:

(A) Children's Health Insurance Program (CHIP); and

(B) STAR Health Managed Care Program.

(3) Premium payment reimbursement may be available for eligible individuals and their family members who get ESI benefits when it is determined that the cost of insurance premiums, coinsurance, deductibles, and other cost sharing obligations is less than the cost of projected or actual Medicaid expenditures for the family member(s) eligible to receive Medicaid services.

(4) Individuals enrolled in Medicaid and eligible for the HIPP program can receive Medicaid-covered services that are not covered by ESI; Medicaid services not covered by ESI must be provided by a Medicaid-enrolled provider.

(5) Individuals enrolled in Medicaid and eligible for the HIPP program must obtain medical services through their ESI before seeking those services through Medicaid. Medicaid is a payor of last resort and, as such, can be used only for those services not available through their ESI.

(6) Each HIPP program case is subject to an annual re-evaluation of each new ESI benefit period to determine if the case is still cost-effective, regardless of any changes to the individual's Medicaid or ESI. On-going eligibility is approved if a case is determined cost-effective at the annual review.

(7) A determination of HIPP program eligibility is effective for the current ESI benefit period or one year from the date of acceptance into the program unless:

(A) the employer's insurance benefit plan open enrollment period occurs prior to the date of initial acceptance into the program;

(B) the employee's ESI changes and, as a result, a new case review determines the case to no longer be cost-effective;

(C) the employee's or the family member's Medicaid eligibility changes or is denied;

(D) the employee is no longer employed, or the employee's ESI is terminated prior to the employee's renewal date in the HIPP program; or

(E) the employee has not provided required documentation in accordance with HIPP program timelines.

(8) The following documentation is required to be submitted by an individual at initial enrollment and annual re-enrollment in the HIPP program, unless there are no changes to the information provided at initial enrollment or an employer has submitted the information on behalf of the individual:

(A) ESI summary of benefits;

(B) ESI rate sheet; and

(C) ESI card.

(9) HHSC may request additional documentation if needed to establish eligibility in the HIPP program, such as:

(A) ESI explanation of benefits;

(B) proof of ESI payment (paycheck stub); or

(C) a signed HIPP program authorization form for HHSC to obtain ESI information on behalf of the individual.

(10) During enrollment or re-enrollment in the HIPP program, if HHSC determines that an ESI benefit plan costs more than Medicaid, HHSC may cover fewer family members in the HIPP program, if HHSC determines that covering fewer family members is cost-effective.

(d) Employer requirements.

(1) To be eligible for participation in the HIPP program, an insurance benefit plan offered to employees by the employer must:

(A) be able to cover family members eligible for Medicaid; and

(B) pay at least 60 percent of the costs for the following:

(i) doctor's visits;

(ii) prescriptions;

(iii) out-patient care;

(iv) lab tests or x-rays; and

(v) inpatient care.

(2) Upon receiving a signed HIPP program authorization form, or in response to a request directly from an employee, an employer must provide the requested ESI insurance benefits and coverage information to HHSC, or the employee, in a timely manner to prevent delays in the employee's enrollment in the HIPP program.

(3) As established under Texas Insurance Code §§1207.001 to 1207.004, upon written notification from HHSC that

the employee is eligible for Medicaid, an employer must treat an employee's enrollment in the HIPP program as a qualifying event by allowing the employee to enroll in or dis-enroll from the employer's group health insurance plan at any time during the plan year.

(4) To prevent premium payment reimbursement delays during the HIPP program renewal period, an employer must provide to HHSC information reflecting any changes from the current year's ESI benefit plan to the new year's ESI benefit plan as soon as it is available during the open enrollment period or before an open enrollment period starts. The information must include:

(A) insurance company change;

(B) insurance rate sheet;

(C) summary of benefits; and

(D) any additional changes to the ESI benefit plan affecting employees.

(e) Premium Reimbursements.

(1) Payments made to reimburse an employee for the employee's portion of the ESI premium cannot begin until HHSC has received and validated all required and complete documentation for enrollment or re-enrollment in the HIPP program.

(2) Proof of insurance premium payment must be sent to HHSC each month before HHSC reimburses an employee for the employee's portion of the ESI premium.

(3) HHSC does not reimburse an employee for the employee's portion of the ESI premium for premium payments paid prior to the HIPP program eligibility start date.

(4) HHSC may reimburse an employee for the employee's portion of the ESI premium up to three months after the month the premium was paid for currently enrolled individuals; HHSC does not reimburse employees for proof of payments received after three months from the date the premium was paid.

(f) HHSC notifies Medicaid individuals in writing in the following circumstances:

(1) After review of a complete application, HHSC provides:

(A) eligibility approval for the HIPP program, including the premium reimbursement amount to be paid; or

(B) denial of eligibility for the HIPP program, including the reason for the denial.

(2) At yearly renewal or when the HIPP program has identified potential changes to an individual's ESI, family, or Medicaid status, HHSC provides a request for information.

(3) When HHSC has identified an overpayment, HHSC provides notice of the overpayment and repayment options.

(4) When HHSC receives notification that a HIPP program premium reimbursement was not received, HHSC provides a stop payment request which must be completed and returned to HHSC before HHSC issues a replacement check.

(g) Overpayments.

(1) HHSC recovers identified overpayments as a result of erroneous HIPP program reimbursements.

(2) HHSC notifies individuals in writing that a HIPP program overpayment has occurred.

(3) If the HIPP program overpayment is not refunded to HHSC prior to the next scheduled HIPP program reimbursement, HHSC automatically deducts the overpayment from the next scheduled HIPP program reimbursement and each month following until the overpayment has been fully refunded to HHSC.

(4) An individual enrolled in the HIPP program, or an employer with an employee enrolled in the HIPP program, must notify HHSC of any known HIPP program overpayments.

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606477
Carey Smith
Senior Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 462-6215

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CHAPTER 355. REIMBURSEMENT RATES

The Texas Health and Human Services Commission (HHSC) proposes amendments to §355.7001, concerning Reimbursement Methodology for Telemedicine, Telehealth, and Home Telemonitoring Services; §355.8085, concerning Reimbursement Methodology for Physicians and Other Practitioners; and §355.8091, concerning Reimbursement to Licensed Professional Counselors, Licensed Master Social Worker-Advanced Clinical Practitioners, and Licensed Marriage and Family Therapists.

BACKGROUND AND JUSTIFICATION

The proposed amendments correct terminology, correct cross references to other sections of the Texas Administrative Code, correct cross references to statute, and make other non-substantive changes.

SECTION-BY-SECTION SUMMARY

Proposed §355.7001 updates cross references to other rules in subsections (b) and (c), and replaces parentheses with commas in subsection (c)(1).

Proposed §355.8085 updates cross references to other rules in subsections (g) and (i) and updates terminology in subsection (g).

Proposed §355.8091 updates terminology in both the title and the section, updates a cross reference to another rule, deletes cross references to rules that no longer exist, and spells out "percent" rather than using the symbol.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years the amended rules are in effect, there is no anticipated impact to costs and revenues of state and local government.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

HHSC has determined that there will be no adverse economic effect on small businesses or micro businesses to comply with the amended rules, as there is no requirement for any small businesses or micro businesses to alter current business practices as a result of the amended rules.

PUBLIC BENEFIT AND COST

Gary Jessee, State Medicaid Director, has determined that for each year of the first five years the rules are in effect, the public will benefit from the adoption of the rules. The anticipated public benefit will be rules that provide more accurate, updated information and cross references.

Ms. Rymal has also determined that there are no probable economic costs to persons required to comply with the amended rules.

HHSC has determined that the amended rules will not affect a local economy. There is no anticipated negative impact on local employment.

REGULATORY ANALYSIS

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Amy Chandler, Program Specialist, by mail to P.O. Box 13247, MC H600, Austin, TX, 78711; or by e-mail to amy.chandler@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

SUBCHAPTER G. ADVANCED TELECOMMUNICATIONS SERVICES AND OTHER COMMUNITY-BASED SERVICES

1 TAC §355.7001

STATUTORY AUTHORITY

These amendments are proposed 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.

The proposed amendments implement Texas Human Resources Code, Chapter 32, and Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.7001. Reimbursement Methodology for Telemedicine, Telehealth, and Home Telemonitoring Services.

(a) Eligible providers performing telemedicine medical, telehealth, or home telemonitoring services are defined in §354.1430 of this title (relating to Definitions), §354.1432 of this title (relating to Telemedicine and Telehealth Benefits and Limitations), and §354.1434 of this title (relating to Home Telemonitoring Benefits and Limitations).

(b) The Health and Human Services Commission (HHSC) reimburses eligible distant site professionals providing telemedicine medical services as follows:

(1) Physicians are reimbursed for their Medicaid telemedicine medical services in the same manner as their other professional services in accordance with §355.8085 of this title (relating to Reimbursement Methodology for Physicians and Other Practitioners).

(2) Physician assistants are reimbursed for their Medicaid telemedicine medical services in the same manner as their other professional services in accordance with §355.8093 of this title (relating to Reimbursement Methodology for Physician Assistants).

(3) Advanced practice registered nurses are reimbursed for their Medicaid telemedicine medical services in the same manner as their other professional services in accordance with §355.8281 of this title (relating to Reimbursement Methodology for Nurse Practitioners and Clinical Nurse Specialists).

(4) Certified nurse midwives are reimbursed for their Medicaid telemedicine medical services in the same manner as their other professional services in accordance with §355.8161 of this title (relating to Reimbursement Methodology for Midwife Services).

(c) HHSC reimburses eligible distant site professionals providing telehealth services as follows:

(1) Licensed professional counselors, [~~(~~]including licensed marriage and family therapists,[~~)~~] and licensed clinical social workers (including Comprehensive Care Program social workers) are reimbursed for their Medicaid telehealth services in the same manner as their other professional services in accordance with §355.8091 of this title (relating to Reimbursement to Licensed Professional Counselors, Licensed Clinical Social Workers [~~Licensed Master Social Worker-Advanced Clinical Practitioners~~], and Licensed Marriage and Family Therapists).

(2) Licensed psychologists (including licensed psychological associates) and psychology groups are reimbursed for their Medicaid telehealth services in the same manner as their other professional services in accordance with §355.8085 of this title [~~(relating to Reimbursement Methodology for Physicians and Other Practitioners)~~].

(3) Durable medical equipment suppliers are reimbursed for their Medicaid telehealth services in the same manner as their other professional services in accordance with §355.8021 of this title (relating to Reimbursement Methodology for Home Health Services and Durable Medical Equipment, Prosthetics, Orthotics and Supplies).

(d) Telemedicine and telehealth patient site locations, as defined in §354.1430 and §354.1432 of this title, are reimbursed a facility fee determined by HHSC.

(e) HHSC reimburses eligible providers performing home telemonitoring services in the same manner as their other professional services described in §355.8021 of this title.

(f) Telemedicine medical services provided in a school-based setting by a physician, even if the physician is not the patient's primary care physician, will be reimbursed in accordance with the applicable methodologies described in subsection (b)(1) of this section and §355.8443 of this title (relating to Reimbursement Methodology for

School Health and Related Services (SHARS)) if the following conditions are met:

(1) the physician is an authorized health care provider under Medicaid;

(2) the patient is a child who receives the service in a primary or secondary school-based setting;

(3) the parent or legal guardian of the patient provides consent before the service is provided; and

(4) a health professional as defined by Government Code §531.0217(a)(1) is present with the patient during the treatment.

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606491
Carey Smith
Senior Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 487-3419

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SUBCHAPTER J. PURCHASED HEALTH SERVICES
DIVISION 5. GENERAL ADMINISTRATION

1 TAC §355.8085, §355.8091

STATUTORY AUTHORITY

These amendments are proposed 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.

The proposed amendments implement Texas Human Resources Code, Chapter 32, and Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.8085. Reimbursement Methodology for Physicians and Other Practitioners.

(a) Introduction. This section describes the Texas Medicaid reimbursement methodology that the Health and Human Services Commission (HHSC) uses to calculate payment for covered services provided by physicians and other practitioners. The reimbursement methodology facilitates a prospective payment system that is based on HHSC's determination of the adequacy of access to care.

(1) There is no geographical or specialty reimbursement differential for individual services.

(2) HHSC reviews the fees for individual services at least every two years based upon either:

(A) historical payments, with adjustments, to ensure adequate access to appropriate health care services; or

(B) actual resources required by an economically efficient provider to provide each individual service.

(3) The fees for individual services and adjustments to the fees must be made within available funding.

(b) Eligibility. Eligible providers include:

(1) Providers of Laboratory and X-ray Services;

(2) Providers of Radiation Therapy;

(3) Physical, Occupational, and Speech Therapists;

(4) Physicians;

(5) Podiatrists;

(6) Chiropractors;

(7) Optometrists;

(8) Dentists;

(9) Psychologists;

(10) Licensed Psychological Associates;

(11) Provisionally Licensed Psychologists;

(12) Maternity clinics; and

(13) Tuberculosis clinics.

(c) Definitions. The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise.

(1) Access-based fees (ABF)--Fees for individual services, where HHSC deems necessary, to account for deficiencies relating to the adequacy of access to health care services.

(2) Biological--A substance that is made from a living organism or its products and is used in the prevention, diagnosis, or treatment of cancer and other diseases.

(3) Conversion factor--The dollar amount by which the sum of the three cost component relative value units (RVUs) is multiplied to obtain a reimbursement fee for each individual service.

(4) Drug--Any substance, that is used to prevent, diagnose, treat or relieve symptoms of a disease or abnormal condition.

(5) HHSC--The Health or Human Services Commission or its designee.

(6) Relative value units (RVUs)--The relative value assigned to each of the three individual components that comprise the cost of providing individual Medicaid services. The three cost components of each reimbursement fee are intended to reflect the work, overhead, and professional liability expense required to provide each individual service.

(7) Resource-based fees (RBF)--Fees for individual services based upon HHSC's determination of the resources that an economically efficient provider requires to provide individual services.

(8) Vaccine--An immunogen, the administration of which is intended to stimulate the immune system to result in the prevention, amelioration or therapy of any disease or infection.

(d) Calculating the payment amounts. Subject to qualifications, limitations, and exclusions as provided in this chapter, payment to eligible providers must not exceed the lesser of the provider's billed amount or the amount derived from the methodology described in this section. The fee schedule that results from the reimbursement methodology may be composed of both the access-based fees (ABFs) and the resource-based fees (RBFs).

(1) Access-based fee (ABF) methodology allows the state to:

(A) reimburse for procedure codes not covered by Medicare;

(B) account for inadequate reimbursement rates for particularly difficult procedures;

(C) encourage participation in the Medicaid program by physicians and other practitioners; and

(D) set reimbursement to allow eligible Medicaid population to receive adequate health care services in an appropriate setting.

(2) An RBF is calculated using the following formula: RBF = (total RVU * CF), where RBF = Resource-Based Fee, total RVU = the sum of the three Relative Value Units that comprise the cost of providing individual Medicaid services, and CF = Conversion Factor.

(A) Except as otherwise specified, HHSC bases the RVUs that are employed in the Texas Medicaid reimbursement methodology upon the RVUs of the individual services as specified in the Medicare Fee Schedule. HHSC reviews any changes to, or revisions of, the various Medicare RVUs and, if applicable, adopts the changes as part of the reimbursement methodology within available funding.

(B) HHSC may develop and apply multiple conversion factors for various classes of service, such as obstetrics, pediatrics, general surgeries, and/or primary care services.

(C) If funding is available and adjustments are made to the conversion factor(s), the adjustments may be based upon inflation, access, or both.

(i) To account for general inflation, HHSC adjusts the conversion factor by the forecasted rate of change of a specific inflation factor appropriate to physician or other professional services, the Personal Consumption Expenditures (PCE) chain-type price index, or some percentage thereof. To inflate the conversion factor for the prospective period, HHSC uses the lowest feasible inflation factor forecast that is consistent with the forecasts of nationally recognized sources available to HHSC at the time of preparation of the conversion factor(s).

(ii) Adjustments to the conversion factor may also be made to ensure adequacy of access as described in paragraph (1) of this subsection.

(e) Reimbursement for physician-administered drugs, vaccines, and biologicals. In determining the reimbursement methodology for physician-administered drugs, vaccines, and biologicals, HHSC may consider information such as costs, utilization, data sufficiency, and public input. Reimbursement for physician-administered drugs, vaccines, and biologicals are based on the lesser of the billed amount, a percentage of the Medicare rate, or one of the following methodologies:

(1) If the drug or biological is considered a new drug or biological (that is, approved for marketing by the Food and Drug Administration within 12 months of implementation as a benefit of Texas Medicaid), it may be reimbursed at an amount equal to 89.5 percent of average wholesale price (AWP).

(2) If the drug or biological does not meet the definition of a new drug or biological, it may be reimbursed at an amount equal to 85 percent of AWP.

(3) Vaccines may be reimbursed at an amount equal to 89.5 percent of AWP.

(4) Infusion drugs furnished through an item of implanted Durable Medical Equipment may be reimbursed at an amount equal to 89.5 percent of AWP.

(5) Drugs, other than vaccines and infusion drugs, may be reimbursed at an amount equal to 106 percent of the average sales price (ASP).

(6) HHSC may use other data sources to determine Medicaid fees for physician-administered drugs, vaccines, and biologicals when HHSC determines that the above methodologies are unreasonable or insufficient.

(f) Reimbursement for services provided under the supervision of a licensed psychologist. Reimbursement for services provided under the supervision of a licensed psychologist by a licensed psychological associate (LPA) or a provisionally licensed psychologist (PLP) is reimbursed to the licensed psychologist at 70 percent of the fee paid to the licensed psychologist for the same service.

(g) Reimbursement for certain other providers. The descriptions for reimbursement of certain other providers are described in sections of this chapter.

(1) Reimbursement for physician assistants is described in §355.8093 of this title (relating to Reimbursement Methodology for Physician Assistants).

(2) Reimbursement for nurse practitioners and clinical nurse specialists is described in §355.8281 of this title (relating to Reimbursement Methodology for Nurse Practitioners and Clinical Nurse Specialists).

(3) Reimbursement for services provided under Early and Periodic Screening, Diagnosis and Treatment (EPSDT) is described in §355.8441 of this title (relating to Reimbursement Methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Services).

(4) Reimbursement for Licensed Professional Counselors, Licensed Clinical Social Workers [~~Licensed Master Social Worker-Advanced Clinical Practitioners~~], and Licensed Marriage and Family Therapists is described in §355.8091 of this title (relating to Reimbursement to Licensed Professional Counselors, Licensed Clinical Social Workers [~~Licensed Master Social Worker-Advanced Clinical Practitioners~~], and Licensed Marriage and Family Therapists).

(h) Temporary enhanced reimbursement for certain specialists. Notwithstanding any contrary provisions, a physician specializing in family medicine, general internal medicine, or pediatric medicine, who meets the self-attestation criteria, will receive enhanced payments for certain evaluation and management services and vaccine administration services performed from January 1, 2013, through December 31, 2014, in compliance with federal legislation enacted by the Patient Protection and Affordable Care Act.

(i) When determining payment rates for providers reimbursed at a percentage of the rate paid to a physician (M.D. or D.O.) for the evaluation and management services and vaccine administration services impacted by subsection (e) of this section, the base rate to which the percentage is applied is the applicable rate in effect on December 31, 2012. Provider types with rates governed by this subsection include physician assistants, certified nurse midwives, nurse practitioners, and clinical nurse specialists, as outlined in §§355.8093, 355.8161, and 355.8281 of this title (relating to Reimbursement Methodology for Physician Assistants; Reimbursement Methodology for Midwife Services; and Reimbursement Methodology for Nurse Practitioners and

Clinical Nurse Specialists). These provider types are eligible for the applicable percentage of the enhanced payment described in subsection (h) of this section when billing under the direct supervision of an eligible provider as specified in subsection (h) of this section.

§355.8091. Reimbursement to Licensed Professional Counselors, Licensed Clinical Social Workers [~~Licensed Master Social Worker-Advanced Clinical Practitioners~~], and Licensed Marriage and Family Therapists.

Counseling services provided by a licensed professional counselor, a licensed clinical social worker [~~licensed master social worker-advanced clinical practitioner~~], or a licensed marriage and family therapist in compliance with applicable professional licensing laws and regulations [~~under 25 TAC, §29.3001 (relating to Benefits and Limitations) and §29.3002 (relating to Conditions for Participation)~~] are reimbursed at 70 percent [~~70%~~] of the existing fee for similar services provided by psychiatrists and psychologists as described in §355.8085 of this title (relating to Reimbursement Methodology for Physicians and Other Practitioners [~~Texas Medicaid Reimbursement Methodology (TMRM)~~]).

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606493
Carey Smith
Senior Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 487-3419

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CHAPTER 377. CHILDREN'S ADVOCACY PROGRAMS

The Texas Health and Human Services Commission (HHSC) proposes new Chapter 377, concerning Children's Advocacy Programs. HHSC proposes new Subchapter A, §377.1, concerning General Provisions; Subchapter B, §§377.101, 377.103, 377.105, 377.107, 377.109, 377.111, 377.113, 377.115 and 377.117, concerning Standards of Operation for Local Court-Appointed Volunteer Advocate Programs; and Subchapter C, §§377.201, 377.203, 377.205, 377.207, 377.209, and §377.211, concerning, Standards of Operation for Local Children's Advocacy Centers.

Background and Justification

Senate Bill 354, 84th Legislature, Regular Session, 2015, amends Texas Family Code Chapter 264, Subchapters E and G, to transfer the authority to contract with statewide support organizations for child advocacy centers and volunteer advocate programs from the Office of the Attorney General to HHSC. The transfer became effective September 1, 2015.

The proposed rules provide standards and procedures regarding the function and administration of local programs; and provide procedures and guidance in the application for, awarding of, and performance standards required for contracts between the statewide organization and the local programs.

HHSC intends these rules to replace the rules currently found at 1 Texas Administrative Code, Chapter 64 (relating to Standards of Operation for Local Court-Appointed Volunteer Advocate Programs) and Chapter 65 (relating to Standards of Operation for Local Children's Advocacy Centers), which provide for the Office of Attorney General's administration of the local court-appointed volunteer advocate programs and local children's advocacy center standards.

Section-by-Section Summary

Proposed §377.1, Definitions, defines general terms used throughout the chapter.

Proposed §377.101, Purpose and Definitions, describes the purpose of proposed Subchapter B and defines terms specific to the subchapter.

Proposed §377.103, Legal Authorization, provides the relevant sections of the Texas Family Code under which Subchapter B is promulgated.

Proposed §377.105, Applicability, states that subchapter B applies to local volunteer advocate programs and contracts for services with local volunteer advocate programs as specified in Texas Family Code Chapter 264, Subchapter G.

Proposed §377.107, Contract with Statewide Volunteer Advocate Organization, describes the requirements of the statewide volunteer advocate organization with which HHSC contracts.

Proposed §377.109, Contracts with Local Volunteer Advocate Programs, describes the requirements for contracts between the local volunteer advocate programs and the statewide volunteer advocate organization.

Proposed §377.111, Scale of State Financial Support, describes the financial support HHSC provides to local volunteer advocate programs.

Proposed §377.113, Local Volunteer Advocate Program Administration, describes a variety of administrative requirements for local volunteer advocate programs.

Proposed §377.115, Local Volunteer Advocate Program Personnel, describes the personnel requirements for local volunteer advocate programs, including volunteers, employees, and members of the board of directors.

Proposed §377.117, Local Volunteer Advocate Program Personnel Background Checks, describes the background check requirements for volunteers, employees, and members of the board of directors for local volunteer advocate programs.

Proposed §377.201, Purpose and Definitions, describes the purpose of proposed Subchapter C and defines terms specific to the subchapter.

Proposed §377.203, Legal Authorization, provides the relevant sections of the Texas Family Code under which Subchapter C is promulgated.

Proposed §377.205, Applicability, states that subchapter C applies to local children's advocacy centers and contracts for services with local children's advocacy centers as specified in Texas Family Code Chapter 264, Subchapter E.

Proposed §377.207, Contract with Statewide Children's Advocacy Center Organization, describes the requirements of the statewide children's advocacy center organization with which HHSC contracts.

Proposed §377.209, Contracts with Local Children's Advocacy Centers, describes the requirements of the local children's advocacy centers with which the statewide children's advocacy center organization contracts.

Proposed §377.211, Operation of Local Children's Advocacy Center and Program, lists requirements for a local children's advocacy center.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the new rules are in effect, there will be no fiscal impact to costs and revenues of state and local governments.

Small BUSINESS and Micro-business Impact Analysis

HHSC has determined that there is no anticipated adverse economic effect for small businesses or micro-businesses to comply with the proposed rules, as there no requirements to alter current business practices as a result of the proposed rules.

Public Benefit and Costs

Gary Jessee, Deputy Executive Commissioner, has determined that for each year of the first five years the rules are in effect, the public will benefit from the adoption of the rules. The anticipated public benefit will be the support provided to children's advocacy programs for the protection of abused and neglected children throughout Texas.

Ms. Rymal has also determined there are no anticipated economic costs to persons who are required to comply with the proposed rules.

HHSC anticipates the rule will not affect a local economy and anticipates no adverse impact on local employment.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Public Comment

Written comments on the proposal may be submitted to Raman Sandhu, Contracts Administrator Texas CASA/CACTX Program, 909 W. 45th St., Bldg. 555, Austin, Texas 78751; by fax to (512) 206-5812, or by e-mail to raman.sandhu@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §377.1

STATUTORY AUTHORITY

The new rule is proposed under Texas Government Code §531.0055(e) and §531.033, which provide HHSC's Executive Commissioner with general authority to adopt rules; Texas Family Code §264.410, which requires HHSC to adopt standards for eligible local children's advocacy centers; §264.602(d), which requires HHSC to adopt, by rule, standards for local volunteer advocate programs; and §264.609, which authorizes HHSC's Executive Director to adopt rule necessary to implement Chapter 264, Subchapter G ("Court-Appointed Volunteer Advocate Programs").

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

§377.1. Definitions.

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

(1) Child--An abused or neglected individual who is under the control or supervision of the Texas Department of Family and Protective Services and who is the subject of a suit affecting the parent-child relationship filed by a governmental entity.

(2) Court--The district court, juvenile court having the same jurisdiction as a district court, or other court expressly given jurisdiction of a suit affecting the parent-child relationship.

(3) DFPS--The Texas Department of Family and Protective Services or its designee.

(4) HHSC--The Texas Health and Human Services Commission or its designee.

(5) Participating agency or entity/public agency partner--A governmental entity that:

(A) is involved in child abuse investigations or prosecutions and offers services to child abuse victims; and

(B) participates in establishing and operating a local children's advocacy center as provided in Texas Family Code §264.403.

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606552
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 424-6900

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SUBCHAPTER B. STANDARDS OF OPERATION FOR LOCAL COURT-APPOINTED VOLUNTEER ADVOCATE PROGRAMS

1 TAC §§377.101, 377.103, 377.105, 377.107, 377.109, 377.111, 377.113, 377.115, 377.117

STATUTORY AUTHORITY

The new rules are proposed under Texas Government Code §531.0055(e) and §531.033, which provide HHSC's Executive Commissioner with general authority to adopt rules; Texas Fam-

ily Code §264.410, which requires HHSC to adopt standards for eligible local children's advocacy centers; §264.602(d), which requires HHSC to adopt, by rule, standards for local volunteer advocate programs; and §264.609, which authorizes HHSC's Executive Director to adopt rule necessary to implement Chapter 264, Subchapter G ("Court-Appointed Volunteer Advocate Programs").

No other statutes articles or codes are affected by the proposal.

§377.101. Purpose and Definitions.

(a) The purpose of this subchapter is to provide:

(1) requirements regarding the function and administration of a local volunteer advocate program; and

(2) requirements for contracts between the statewide volunteer advocate organization and the local volunteer advocate programs.

(b) The following words and terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise:

(1) Local volunteer advocate program--A volunteer-based, nonprofit program that provides advocacy services to abused or neglected children with the goal of obtaining a permanent placement for a child that is in the child's best interest.

(2) Statewide volunteer advocate organization--The entity with which HHSC contracts under Texas Family Code §264.603 and §377.107 of this subchapter (relating to Contract with Statewide Volunteer Advocate Organization).

§377.103. Legal Authorization.

The provisions of this subchapter are promulgated under Texas Family Code §264.602(c) and (d) and §264.609, which authorize HHSC to adopt standards for local volunteer advocate programs, develop a scale of financial support for the local volunteer advocate programs, and adopt rules necessary to carry out the provisions of the Texas Family Code.

§377.105. Applicability.

This subchapter applies to local volunteer advocate programs and contracts for services with local volunteer advocate programs as specified in Texas Family Code Chapter 264, Subchapter G.

§377.107. Contract with Statewide Volunteer Advocate Organization.

(a) HHSC contracts with a single statewide volunteer advocate organization that satisfies subsection (b) of this section to perform the following functions for local volunteer advocate programs:

(1) training;

(2) technical assistance; and

(3) evaluation services for the benefit of the local volunteer advocate programs.

(b) HHSC may contract only with a statewide volunteer advocate organization that:

(1) is exempt from federal income taxation under Internal Revenue Code of 1986 §501(a) and (c)(3);

(2) is designated as a supporting organization under Internal Revenue Code of 1986 §509(a)(3); and

(3) is composed of individuals or groups of individuals who have expertise in the dynamics of child abuse and neglect and experience in operating local volunteer advocate programs.

(c) The contract must:

(1) include measurable goals and objectives relating to the number of:

(A) volunteer advocates in the program; and

(B) children receiving services from the program; and

(2) follow practices to ensure compliance with standards referenced in the contract.

§377.109. Contracts with Local Volunteer Advocate Programs.

(a) The statewide volunteer advocate organization with which HHSC contracts under §377.107 of this subchapter (relating to Contract with Statewide Local Volunteer Advocate Organization) contracts with local volunteer advocate programs.

(b) Eligibility Requirements for a Local Volunteer Advocate Program.

(1) To be eligible for a contract with the statewide volunteer advocate organization under Texas Family Code §264.602, a local volunteer advocate program must:

(A) operate under the auspices of state or county government or be incorporated as part of a nonprofit organization;

(B) use individuals appointed as volunteer advocates or guardians ad litem by the court to provide for the needs of abused or neglected children;

(C) demonstrate that it has provided court-appointed advocacy services for at least six months;

(D) provide court-appointed advocacy services for at least ten children each month; and

(E) demonstrate that it has local judicial support.

(2) Local judicial support may be demonstrated by a signed written agreement between the local volunteer advocate program and the court with appropriate jurisdiction that defines the working relationship.

(3) The statewide volunteer advocate organization may not contract with a person that is not eligible under this section. However, the statewide volunteer advocate organization may waive the requirement in paragraph (1)(C) of this subsection for an established program in a rural area or under other special circumstances.

(c) The statewide volunteer advocate organization must consider the following in awarding a contract to a local volunteer advocate program:

(1) the local volunteer advocate program's eligibility for, and use of, funds from local, state, or federal governmental sources, philanthropic organizations, and other sources;

(2) community support for the local volunteer advocate program as indicated by financial contributions from civic organizations, individuals, and other community resources;

(3) whether the local volunteer advocate program provides services that encourage the permanent placement of children through reunification with their families or timely placement with adoptive families; and

(4) whether the local court system endorses and cooperates with the local volunteer advocate program.

(d) Contract Requirements.

(1) A contract between the statewide volunteer advocate organization and a local volunteer advocate program must require the local volunteer advocate program to:

(A) submit quarterly and annual financial reports to the statewide volunteer advocate organization, as determined by HHSC;

(B) submit quarterly and annual reports of performance factors as identified by HHSC and submit such reports to the statewide volunteer advocate organization by the deadlines designated by the statewide volunteer advocate organization;

(C) obtain annual independent financial audits or audited financial statements as required by state or federal law and provide copies of the auditor's reports and related documents in accordance with the deadlines designated by the statewide volunteer advocate organization;

(D) cooperate with inspections and audits that HHSC makes to ensure service standards and fiscal responsibility; and

(E) provide, at a minimum:

(i) independent and factual information regarding the child in writing to the court and to counsel for the parties involved;

(ii) advocacy through the courts for permanent home placement and services for the child;

(iii) monitoring of the child to ensure the child's safety and to prevent unnecessarily moving the child to multiple temporary placements;

(iv) reports in writing to the presiding judge and to counsel for the parties involved;

(v) community education relating to child abuse and neglect;

(vi) referral services to existing community services;

(vii) procedures to assure the confidentiality of records or information relating to the child;

(viii) a volunteer recruitment and training program, including adequate screening procedures for volunteers; and

(ix) compliance with the standards adopted under Texas Family Code §264.602.

(2) A contract between the statewide volunteer advocate organization and a local volunteer advocate program is enforced through the use of the remedies and in accordance with the procedures provided in the Uniform Grant Management Standards for Texas (UGMS).

(3) A local volunteer advocate program must comply with the requirements and provisions of the contract between the statewide volunteer advocate organization and HHSC.

§377.111. Scale of State Financial Support.

(a) The statewide volunteer advocate organization must contract for services with eligible local volunteer advocate programs to expand the existing services of the local volunteer advocate programs. No contract may result in reducing the financial support that a local volunteer advocate program receives from another source.

(b) In accordance with Texas Family Code §264.602(c), the annual percentage of state financial support for a local volunteer advocate program will decline each year over a six-year period as reflected in the schedule below. The reimbursement by HHSC of expenses for a particular local volunteer advocate program incurred in any given year must not exceed the following percentage of total support needs of the local volunteer advocate program for that year, beginning on the effective date of the contract between the local volunteer advocate program and the statewide volunteer advocate organization.
Figure: 1 TAC §377.111(b)

§377.113. Local Volunteer Advocate Program Administration.

(a) Required Written Documents. A local volunteer advocate program must have in writing:

(1) a mission and purpose statement approved by the statewide volunteer advocate organization;

(2) the local volunteer advocate program's goals and objectives, with an action plan and timeline for meeting those goals and objectives;

(3) a method for evaluating the progress of accomplishing the local volunteer advocate program's goals and objectives;

(4) a funding plan based on the local volunteer advocate program's goals and objectives;

(5) personnel policies and procedures;

(6) job descriptions for employees, directors, and volunteers;

(7) procedures for volunteer recruiting, screening, training, and appointment to cases;

(8) policies for support and supervision of volunteers;

(9) a grievance procedure for employees, volunteers, and clients;

(10) a media/crisis communication plan;

(11) a fidelity bond;

(12) accounting procedures;

(13) a weapons prohibition policy approved by the statewide volunteer advocate organization; and

(14) a memorandum of understanding between DFPS and the local volunteer advocate program that defines the working relationship between the local volunteer advocate program and DFPS.

(b) Personnel.

(1) A local volunteer advocate program must have a maximum volunteer-to-supervisor ratio of 30:1 and a maximum case-to-supervisor ratio of 45:1.

(2) A local volunteer advocate program must endeavor to provide equal employment opportunity regardless of race, color, religion, national origin, age, sex (including pregnancy), disability, or other status protected by law and must comply with all applicable laws and regulations regarding employment.

(3) A local volunteer advocate program must endeavor to be an inclusive organization whose employees, volunteers, and directors reflect the diversity of the children and community it serves in terms of gender, ethnicity, and cultural and socio-economic backgrounds.

(c) Conduct.

(1) All volunteers, employees, and directors must conduct themselves in a professional manner.

(2) Volunteers, employees, and directors may not discriminate against any individual on the grounds of race, color, national ori-

gin, religion, sex (including pregnancy), age, disability, or other legally protected characteristics.

(3) A local volunteer advocate program may not retain a volunteer, employee, or director who does not conduct him- or herself in accordance with the policies of the local volunteer advocate program or who has abused or neglected a position of trust.

(d) Confidentiality.

(1) Each local program must instruct volunteers, employees, and directors on what constitutes confidential information.

(2) A volunteer, employee, or director may not communicate any confidential information about an individual being served by a local volunteer advocate program to a person who is not authorized to know the confidential information.

(e) Conflicts of Interest. Each local volunteer advocate program must have a written conflict-of-interest policy that:

(1) prohibits any personal, business, or financial interest that renders a volunteer, employee, or director unable or potentially unable to perform the duties and responsibilities assigned to that volunteer, employee, or director in an efficient and impartial manner; and

(2) prohibits a volunteer, employee, or director from using the position for private gain or acting in a manner that creates the appearance of impropriety.

(f) Liability.

(1) A person is not liable for civil damages for a recommendation made or an opinion rendered in good faith while acting in the official scope of the person's duties as a board member, staff member, or volunteer of a local volunteer advocate program.

(2) Neither HHSC nor the statewide volunteer advocate organization will be liable for the actions of local volunteer advocate program volunteers, employees, or directors. Volunteers, employees, and directors of local volunteer advocate programs must abide by the conduct, confidentiality, and conflict-of-interest requirements outlined in this section and all other laws and regulations governing their conduct and activities.

§377.115. Local Volunteer Advocate Program Personnel.

(a) Application Process.

(1) Prospective volunteers, employees, and directors must complete:

(A) a written application;

(B) personal interview(s); and

(C) consent and release forms for appropriate background investigations.

(2) Prospective employees must also complete employee handbook acknowledgment forms.

(b) Volunteers.

(1) A volunteer must be at least 21 years of age.

(2) A volunteer may:

(A) review applicable records;

(B) facilitate prompt and thorough review of a case;

(C) interview appropriate parties in order to make recommendations regarding the child's best interests;

(D) attend court hearings; and

(E) make written recommendations to the court concerning the outcome that would be in the child's best interest.

(3) A volunteer may not:

(A) take a child home for any period of time;

(B) give legal advice or therapeutic counseling;

(C) make placement arrangements for a child;

(D) give or lend money or expensive gifts to a child or family;

(E) take a child on an overnight outing; or

(F) allow a child to come into contact with someone the volunteer knows or should know has a criminal history involving violence, child abuse, neglect, drugs, or a sex-related offense.

(4) A volunteer may, on an individual case basis, get written permission from the local volunteer advocate program for an exception to an action listed under paragraph (3) of this subsection. If a request for an exception is made, a volunteer must disclose if anyone who resides with the volunteer, or that the child might come in contact with through the volunteer, does not meet the background requirements of §377.117 of this subchapter (relating to Local Volunteer Advocate Program Personnel Background Checks). The reason(s) for granting or not granting an exception must be documented in the child's case file.

(5) A volunteer must not be assigned to more than two cases simultaneously, unless the assignment is approved by the local volunteer advocate program's executive director or caseworker supervisor.

(6) A volunteer must not provide foster care to a child in the managing conservatorship of DFPS unless the volunteer is related to the child. This prohibition does not apply to:

(A) a volunteer with whom DFPS placed a child prior to June 30, 1999; or

(B) a volunteer with whom a child has been placed by an agency or person other than DFPS and the child is not in the managing conservatorship of DFPS.

(7) A volunteer may not be assigned to any case in which the volunteer is related to any party.

(c) Employees.

(1) An employee must be at least 21 years of age.

(2) If an employee also serves on the board of directors, he or she may not be a voting director.

(d) Board of Directors.

(1) The board of directors must have at least nine members, with an executive committee composed of, at a minimum, the offices of president, vice president, secretary, and treasurer.

(2) The bylaws of the local volunteer advocate program must include a rotation of directors for the board, as well as term limits for directors and executive committee officers.

(3) A director must be at least 21 years of age.

(4) At least one director from the board must attend annual training provided by the statewide volunteer advocate organization or a national association.

(e) Training.

(1) A local volunteer advocate program must plan and implement a training and development program for employees and volunteers and must inform employees and volunteers about:

(A) the background and needs of children served by the local volunteer advocate program;

(B) the operation of the court and the child welfare system; and

(C) the nature and effect of child abuse and neglect.

(2) A local volunteer advocate program must provide annual orientation for new directors and ongoing education for incumbent directors, which must include information on:

(A) the applicable goals, objectives, and methods of operation of the local volunteer advocate program;

(B) current local, statewide and national association services;

(C) the court and child welfare system; and

(D) program governance.

(3) The training program must consist of at least 30 hours of pre-service training and 12 hours of in-service training per year.

(4) The program must provide cultural diversity training for volunteers, employees, and directors on an annual basis.

(5) The statewide volunteer advocate organization may review all training and training materials for volunteers, employees, and directors.

§377.117. Local Volunteer Advocate Program Personnel Background Checks.

(a) Conducting a background check.

(1) A volunteer, employee, or director must be subject to a background check before beginning volunteer, employee, or director duties and every two years thereafter that includes a review of the individual's information from:

(A) a fingerprint-based search conducted by the Texas Department of Public Safety;

(B) a fingerprint-based search conducted by the Federal Bureau of Investigations;

(C) the Texas Public Sex Offender Registry maintained by the Texas Department of Public Safety;

(D) the National Sex Offender Public Website maintained by the United States Department of Justice; and

(E) the Child Abuse and Neglect Central Registry maintained by DFPS in accordance with federal law and Texas Family Code §261.002.

(2) If a volunteer, employee, or director has lived in a state other than Texas within the last seven years, the local volunteer advocate program must conduct a criminal background check in that state.

(3) Positions involving driving require:

(A) investigation of the individual's driving record and insurability; and

(B) documentation of a current license and satisfactory personal liability insurance.

(b) Ten-year bar for certain felony offenses.

(1) An individual whose background check produces a conviction, guilty plea, plea of no contest, or acceptance of deferred adjudication that includes any grade of felony, for which fewer than ten years have passed from the date of the offense, is barred from being a volunteer, employee, or director.

(2) An individual whose background check produces a conviction, guilty plea, plea of no contest, or acceptance of deferred adjudication that includes any grade of felony, for which ten years or more have passed from the date of the offense, and the offense is not described under subsection (c) of this section, may be reviewed by the local volunteer advocate program to determine eligibility for a volunteer, employee, or director position.

(c) Bar for certain offenses.

(1) An individual whose background check produces a conviction, guilty plea, plea of no contest, acceptance of deferred adjudication, or pending charge is barred from being a volunteer, employee, or director if the charge is any level of offense under:

(A) Texas Penal Code Chapter 19;

(B) Texas Penal Code Chapter 20;

(C) Texas Penal Code Chapter 20A;

(D) Texas Penal Code §§21.02, 21.07, 21.08, 21.11, or 21.12;

(E) Texas Penal Code §§22.011, 22.02, 22.021, 22.04, 22.041, 22.05, 22.07, or 22.11;

(F) Texas Penal Code Chapter 25;

(G) Texas Penal Code §28.02;

(H) Texas Penal Code Chapter 29;

(I) Texas Penal Code §30.02;

(J) Texas Penal Code §33.021;

(K) Texas Penal Code §42.072;

(L) Texas Penal Code Chapter 43;

(M) Texas Penal Code §§46.06, 46.09, or 46.10;

(N) Texas Penal Code §§48.02;

(O) Texas Penal Code §§49.045, 49.05, 49.07, or 49.08;

(P) Texas Penal Code Chapter 71; or

(Q) any other charge involving violence, child abuse or neglect, assault with family violence, or a sex-related offense.

(2) An individual whose background check produces a history of founded allegations of abuse with DFPS is barred from being a volunteer, employee, or director.

(d) An individual whose background check produces a conviction, guilty plea, plea of no contest, or acceptance of deferred adjudication of an offense, including a misdemeanor drug-related offense, that is not an offense described under subsections (b) or (c) of this section may be considered by the local volunteer advocate program to determine eligibility for a volunteer, employee, or director position.

(e) If an individual who has applied to be a volunteer, employee, or director has a pending charge described under subsections (b) or (c) of this section, a new review of the applicant may be made if the charge is dismissed or a finding of not guilty or other determination of innocence is entered.

(f) An individual whose background check produces information that includes a group of offenses or information that, if considered separately, would not bar an applicant may result in the disqualification of an applicant volunteer, employee, or director if it is determined that the offenses constitute a problematic pattern.

(g) A volunteer, employee, or director must be barred immediately, removed from his or her position and barred from being considered in the future as a volunteer, employee, or director if the volunteer, employee, or director knowingly or intentionally places a child, through the actions of the volunteer, employee, or director, in contact with a person whose criminal history involves an offense described under subsections (b) or (c) of this section.

(h) The refusal to execute consent and release forms necessary to conduct a criminal background check disqualifies an individual from serving as a volunteer, employee, or director.

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606553
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 424-6900

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SUBCHAPTER C. STANDARDS OF OPERATION FOR LOCAL CHILDREN'S ADVOCACY CENTERS

1 TAC §§377.201, 377.203, 377.205, 377.207, 377.209, 377.211

STATUTORY AUTHORITY

The new rules are proposed under Texas Government Code §531.0055(e) and §531.033, which provide HHSC's Executive Commissioner with general authority to adopt rules; Texas Family Code §264.410, which requires HHSC to adopt standards for eligible local children's advocacy centers; §264.602(d), which requires HHSC to adopt, by rule, standards for local volunteer advocate programs; and §264.609, which authorizes HHSC's Executive Director to adopt rule necessary to implement Chapter 264, Subchapter G ("Court-Appointed Volunteer Advocate Programs").

No other statutes articles or codes are affected by the proposal.

§377.201. Purpose and Definitions.

(a) The purpose of this subchapter is to provide:

(1) requirements regarding the function and administration of a local children's advocacy center program; and

(2) requirements for contracts between the statewide children's advocacy center organization and the local children's advocacy centers.

(b) The following words and terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise:

(1) Local children's advocacy center --An entity that is established in accordance with a memorandum of understanding executed under Texas Family Code §264.403 and that operates local children's advocacy center programs.

(2) Local children's advocacy center program--A local program that assesses victims of child abuse or neglect to determine needed services, provides the needed services, provides a facility at which a multidisciplinary team can meet to facilitate the disposition of child abuse cases, and/or coordinates the activities of governmental entities in relation to child abuse investigations and delivery of services.

(3) Multidisciplinary team--A team of individuals composed in accordance with Texas Family Code §264.406 that works within a local children's advocacy center to review new and pending child abuse cases for the purpose of coordinating the activities of entities involved in child abuse investigation, prosecution, and victim services.

(4) Statewide children's advocacy center organization--The entity with which HHSC contracts under Texas Family Code §264.409 and §377.207 of this subchapter (relating to Contract with Statewide Children's Advocacy Center Organization).

§377.203. Legal Authorization.

The provisions of this subchapter are promulgated under the Texas Family Code §264.410(c), which authorizes HHSC to adopt standards for local children's advocacy center programs and to adopt rules necessary to carry out the provisions of Texas Family Code Chapter 264, Subchapter E.

§377.205. Applicability.

This subchapter applies to local children's advocacy centers and contracts for services with local children's advocacy centers, as specified in Texas Family Code Chapter 264, Subchapter E.

§377.207. Contract with Statewide Children's Advocacy Center Organization.

(a) HHSC contracts with a single statewide children's advocacy center organization that satisfies subsection (b) of this section to perform the following functions for local children's advocacy center programs:

(1) training;

(2) technical assistance;

(3) evaluation services; and

(4) funds administration.

(b) HHSC may contract only with a statewide children's advocacy center organization that:

(1) is exempt from federal income taxation under Internal Revenue Code of 1986 §501(a) and (3);

(2) is designated as a supporting organization under Internal Revenue Code of 1986 §509(a)(3); and

(3) is composed of individuals or groups of individuals who have expertise in establishing and operating children's advocacy center programs.

(c) The contract must limit the statewide children's advocacy center organization's annual spending for the performance of duties under Texas Family Code §264.409(a) to no more than 12 percent of the annual amount appropriated to HHSC for the purposes of the local children's advocacy center programs.

§377.209. Contracts with Local Children's Advocacy Centers.

(a) The statewide children's advocacy center organization with which HHSC contracts under §377.207 of this subchapter (relating to Contract with Statewide Children's Advocacy Center Organization) contracts with local children's advocacy centers.

(b) Eligibility of a Local Children's Advocacy Center to Contract with the Statewide Organization.

(1) To be eligible to contract with the statewide organization under Texas Family Code §264.410, a local children's advocacy center must:

(A) have a signed memorandum of understanding as provided by Texas Family Code §264.403;

(B) operate under the authority of a governing board as provided by Texas Family Code §264.404;

(C) have a multidisciplinary team of persons involved in the investigation or prosecution of child abuse cases or the delivery of services as provided by Texas Family Code §264.406;

(D) hold regularly scheduled case reviews as provided by Texas Family Code §264.406;

(E) operate in a neutral and physically separate space from the day-to-day operations of any public agency partner;

(F) have developed a method of statistical information-gathering on children receiving services through the center and share such statistical information with the statewide children's advocacy center organization, DFPS, and HHSC when requested;

(G) have an in-house volunteer program;

(H) employ an executive director who is answerable to the board of directors of the local children's advocacy center and who is not the exclusive salaried employee of any public agency partner; and

(I) operate under a working protocol that includes a statement of:

(i) the local children's advocacy center's mission;

(ii) each participating agency's role and commitment to the local children's advocacy center;

(iii) the type of cases to be handled by the local children's advocacy center;

(iv) the local children's advocacy center's procedure for conducting case reviews and forensic interviews and for ensuring access to specialized medical and mental health services; and

(v) the local children's advocacy center's policies regarding confidentiality and conflict resolution.

(2) The statewide children's advocacy center organization may waive requirements specified in subsection (b)(1) of this section if it determines that the waiver will not adversely affect the local children's advocacy center's ability to carry out its duties under Texas Family Code §264.405.

(c) Requirements for Contracts Awarded to Local Children's Advocacy Centers by the Statewide Children's Advocacy Center Organization.

(1) A contract between the statewide children's advocacy center organization and a local children's advocacy center under Texas Family Code §264.410 must not result in reducing the financial support the local children's advocacy center receives from another source.

(2) A contract between the statewide children's advocacy center organization and a local children's advocacy center under Texas Family Code §264.410 must be enforced through the use of remedies and in accordance with the procedures provided in the Uniform Grant Management Standards for Texas (UGMS).

(3) A contract between the statewide children's advocacy center organization and a local children's advocacy center under Texas Family Code §264.410 must require the local children's advocacy center to comply with the requirements and provisions applicable to local children's advocacy centers in the contract between the statewide children's advocacy center organization and HHSC under Texas Family Code §264.409.

§377.211. Operation of Local Children's Advocacy Center and Program.

(a) A local children's advocacy center must:

(1) assess victims of child abuse and their families to determine their need for services relating to the investigation of child abuse;

(2) provide the services determined to be needed;

(3) provide a facility at which a multidisciplinary team appointed under Texas Family Code §264.406 can meet to facilitate the efficient and appropriate disposition of child abuse cases through the civil and criminal justice systems; and

(4) coordinate the activities of governmental entities relating to child abuse investigations and delivery of services to child abuse victims and their families.

(b) Board of Directors of a Local Children's Advocacy Center.

(1) A local children's advocacy center must be governed by a board of directors. In addition to other persons appointed or elected to serve on the board of directors, the board of directors must include an executive officer of or an employee selected by an executive officer of each of the following:

(A) a law enforcement agency that investigates child abuse in the area served by the center;

(B) DFPS's Child Protective Services division; and

(C) the county or district attorney's office involved in the prosecution of child abuse cases in the area served by the center.

(2) Service on a local children's advocacy center's board by a public officer or employee is an additional duty of the person's office or employment.

(c) Multidisciplinary Team of a Local Children's Advocacy Center.

(1) A local children's advocacy center's multidisciplinary team must include employees of the participating agencies who are professionals involved in the investigation or prosecution of child abuse cases.

(2) A local children's advocacy center's multidisciplinary team may also include professionals involved in the delivery of services, including medical and mental health services, to child abuse victims and the victims' families.

(3) A multidisciplinary team must meet at regularly scheduled intervals to:

(A) review child abuse cases determined to be appropriate for review by the multidisciplinary team; and

(B) coordinate the actions of the entities involved in the investigation and prosecution of the cases and the delivery of services to the child abuse victims and the victims' families.

(4) A multidisciplinary team may review a child abuse case in which the alleged perpetrator does not have custodial control or supervision of the child or is not responsible for the child's welfare or care.

(5) When acting in the member's official capacity, a multidisciplinary team member is authorized to receive information made confidential by Texas Human Resources Code §40.005 or Texas Family Code §261.201 or §264.408.

(d) Liability.

(1) A person is not liable for civil damages for a recommendation made or an opinion rendered in good faith while acting in the official scope of the person's duties as a member of a multidisciplinary team or as a board member, staff member, or volunteer of a local children's advocacy center.

(2) This limitation on civil liability does not apply if a person's actions constitute gross negligence.

(e) Confidentiality Requirements Placed on a Local Children's Advocacy Center.

(1) In accordance with Texas Family Code §264.408, the files, reports, records, communications, and working papers used or developed in providing services under Texas Family Code Chapter 264 are confidential. This information is not subject to public release under Texas Government Code Chapter 552 and may be disclosed only for purposes consistent with Texas Family Code Chapter 264 without losing its confidential character. Disclosure may be to:

(A) DFPS, DFPS employees, law enforcement agencies, prosecuting attorneys, medical professionals, and other state or local agencies that provide services to children and families; and

(B) the attorney for the child who is the subject of the records and a court-appointed volunteer advocate appointed for the child under Texas Family Code §107.031.

(2) Information related to the investigation of a report of abuse or neglect under Texas Family Code Chapter 261 and services provided as a result of the investigation is confidential as provided by Texas Family Code §261.201.

(3) DFPS, a law enforcement agency, and a prosecuting attorney may share with a local children's advocacy center information that is confidential under Texas Family Code §261.201 as needed to provide services under Texas Family Code Chapter 264. Confidential information shared with or provided to a local children's advocacy center remains the property of the agency that shared or provided the information to the local children's advocacy center, and the information does not lose its confidential character.

(4) A video recording of an interview of a child made by a local children's advocacy center is the property of the prosecuting attorney involved in the criminal prosecution of the case involving the child. If no criminal prosecution occurs, the video recording is the property of the attorney involved in representing DFPS in a civil action alleging child abuse or neglect. If the matter involving the child is not prosecuted, the video recording is the property of DFPS if the matter is an investigation by DFPS of abuse or neglect. If DFPS is not investigating or has not investigated the matter, the video recording is the property of the agency that referred the matter to the local children's advocacy center.

(5) DFPS must be allowed access to a local children's advocacy center's video recorded interviews of children.

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606554
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 424-6900

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 2. INFORMAL COMPLAINT PROCEDURE

16 TAC §2.1

The Railroad Commission of Texas (Commission) proposes to amend §2.1, relating to Informal Complaint Procedure, to correct a reference to the Commission's website.

Kari French, Director, Oversight and Safety Division, has determined that for each year of the first five years the proposed amendment will be in effect, there will be no fiscal effect on state or local government or persons required to comply as a result of the proposed amendment.

Ms. French has determined that for each year of the first five years that the amendment will be in effect the primary public benefit would be the correction in the rule of an outdated reference.

The Commission has determined that the proposed amendment will not have an adverse economic effect on small businesses or micro-businesses.

The Commission has also determined that the proposed amendment will not affect a local economy. Therefore, the Commission has not prepared a local employment impact statement pursuant to Texas Government Code, §2001.022.

The Commission has determined that the amendment does not meet the statutory definition of a major environmental rule as set forth in Texas Government Code, §2001.0225(a); therefore, a regulatory analysis conducted pursuant to that section is not required.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.texas.gov/legal/rules/comment-form-for-proposed-rulemakings; or by electronic mail to rulescoordinator@rrc.texas.gov. The Commission will accept comments until noon (12:00 p.m.) on Monday, January 23, 2017, which is 31 days after publication in the *Texas Register.* The Commission finds that this comment period is reasonable because the proposal and an online comment form will be available on the Commission's web site more than two weeks prior to *Texas Register* publication of the proposal, giving interested persons

additional time to review, analyze, draft, and submit comments. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. French at (512) 463-8559. The status of Commission rulemakings in progress is available at www.rrc.texas.gov/legal/rules/proposed-rules.

The Commission proposes the amendment pursuant to Texas Natural Resources Code §81.058, which authorizes the Commission to impose an administrative penalty against a purchaser, transporter, gatherer, shipper, or seller of natural gas who is a party to an informal complaint resolution proceeding and is determined by the Commission to have failed to participate in the proceeding or failed to provide information requested by the mediator in the proceeding. Section 81.058 also authorizes the Commission to impose an administrative penalty against a purchaser, transporter, or gatherer of natural gas if the Commission determines the person engaged in prohibited discrimination against a shipper or seller because the shipper or seller filed a formal or informal complaint with the Commission.

Texas Natural Resources Code §81.058 is affected by the proposed amendment.

Statutory Authority: Texas Natural Resources Code §81.058.

Cross-reference to statute: Texas Natural Resources Code §81.058.

§2.1. Informal Complaint Procedure.

(a) - (d) (No change.)

(e) Informal complaint process.

(1) An informal complaint proceeding is initiated by filing a complaint with the Commission by:

(A) (No change.)

(B) submitting a complaint in writing by:

(i) - (ii) (No change.)

(iii) internet submission by accessing the online form on the Gas Services page of the Commission's website [~~following URL: http://www.rrc.state.tx.us/divisions/gs/mos/complaints/icp.html~~].

(2) - (13) (No change.)

(f) - (h) (No change.)

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

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606325
Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 475-1295

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CHAPTER 7. GAS SERVICES DIVISION

The Railroad Commission of Texas (Commission) proposes to amend §7.315, relating to Filing of Tariffs, and §7.7101, relating to Interim Rate Adjustments, to correct references to the Commission's website.

Kari French, Director, Oversight and Safety Division, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no fiscal effect on state or local government or persons required to comply as a result of the proposed amendments.

Ms. French has determined that for each year of the first five years that the amendments will be in effect the primary public benefit would be the correction of an outdated reference.

The Commission has determined that the proposed amendments will not have an adverse economic effect on small businesses or micro-businesses.

The Commission has also determined that the proposed amendments will not affect a local economy. Therefore, the Commission has not prepared a local employment impact statement pursuant to Texas Government Code, §2001.022.

The Commission has determined that the amendments do not meet the statutory definition of a major environmental rule as set forth in Texas Government Code, §2001.0225(a); therefore, a regulatory analysis conducted pursuant to that section is not required.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.texas.gov/legal/rules/comment-form-for-proposed-rulemakings; or by electronic mail to rulescoordinator@rrc.texas.gov. The Commission will accept comments until noon (12:00 p.m.) on Monday, January 23, 2017, which is 31 days after publication in the *Texas Register.* The Commission finds that this comment period is reasonable because the proposal and an online comment form will be available on the Commission's web site more than two weeks prior to *Texas Register* publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit comments. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. French at (512) 463-8559. The status of Commission rulemakings in progress is available at www.rrc.texas.gov/legal/rules/proposed-rules.

SUBCHAPTER C. RECORDS AND REPORTS; TARIFFS; GAS UTILITY TAX

16 TAC §7.315

The Commission proposes the amendment under Texas Utilities Code, §102.001, which gives the Railroad Commission exclusive original jurisdiction over the rates and services of a gas utility distributing natural gas or synthetic natural gas in areas outside a municipality; Texas Utilities Code, §102.151, which requires gas utilities to file schedules showing all rates for a gas utility service, product, or commodity offered by the gas utility and each rule or regulation that relates to or affects a rate of the gas utility or a gas utility service, product, or commodity furnished by the gas utility; Texas Utilities Code, §104.001, which vests in the Railroad Commission all the authority and power of this state to ensure compliance with the obligations of gas utilities in Texas Utilities Code, Title 3, Subtitle A, and which authorizes

the Commission to adopt rules for determining the classification of customers and services; and Texas Utilities Code, §104.301, relating to a utility's ability to file with the Commission a tariff or rate schedule that provides for an interim adjustment in the utility's monthly customer charge or initial block rate to recover the cost of changes in the investment in capital for gas utility service.

Texas Utilities Code §§102.001, 102.151, 104.001, and 104.301 are affected by the proposed amendment.

Statutory authority: Texas Utilities Code, §§102.001, 102.151, 104.001, and 104.301.

Cross reference to statutes: Texas Utilities Code Chapters 102 and 104.

§7.315. Filing of Tariffs.

(a) Filing requirements for all tariffs. Each gas utility shall file with the Commission through the Commission's web site using an electronic format as prescribed by the Commission and the instructions contained in the Electronic Data Interchange (EDI) manual on the Commission's web site a tariff complying with minimum requirements as defined in subsections (c) and (d) of this section for all rates which are within the original or appellate jurisdiction of the Commission and which are currently in force for any gas utility service, product, or commodity. If the rate charged is based on a formula or requires a calculation to determine the unit rate to be charged, the utility shall, in the tariff filing, identify and report all components used in the calculation of the unit rate, including each component of the cost of gas. Each utility providing gas distribution system service or sales shall file, as part of the rates, copies of all rules and regulations relating to or affecting rates, utility service, products, or commodities furnished by the gas utility. Electronic filing instructions may be obtained on the Gas Services page of [~~from~~] the Commission's web site [~~at www.rrc.state.tx.us/electronic_filing/electronic_filing.html~~].

(b) - (f) (No change.)

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

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606327
Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 475-1295

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SUBCHAPTER H. INTERIM RATE ADJUSTMENTS

16 TAC §7.7101

The Commission proposes the amendment under Texas Utilities Code, §102.001, which gives the Railroad Commission exclusive original jurisdiction over the rates and services of a gas utility distributing natural gas or synthetic natural gas in areas outside a municipality; Texas Utilities Code, §102.151, which requires gas utilities to file schedules showing all rates for a gas utility service, product, or commodity offered by the gas utility and each rule or regulation that relates to or affects a rate of the gas utility or a gas utility service, product, or commodity furnished by the gas utility; Texas Utilities Code, §104.001, which vests in the Railroad Commission all the authority and power of this state to ensure compliance with the obligations of gas utilities in Texas Utilities Code, Title 3, Subtitle A, and which authorizes the Commission to adopt rules for determining the classification of customers and services; and Texas Utilities Code, §104.301, relating to a utility's ability to file with the Commission a tariff or rate schedule that provides for an interim adjustment in the utility's monthly customer charge or initial block rate to recover the cost of changes in the investment in capital for gas utility service.

Texas Utilities Code §§102.001, 102.151, 104.001, and 104.301 are affected by the proposed amendment.

Statutory authority: Texas Utilities Code, §§102.001, 102.151, 104.001, and 104.301.

Cross reference to statutes: Texas Utilities Code Chapters 102 and 104.

§7.7101. Interim Rate Adjustments.

(a) - (c) (No change.)

(d) Annual project report. A gas utility seeking to implement an interim rate adjustment shall electronically file with the Commission an annual project report as part of the application.

(1) The annual project report shall be made on a form approved by the Commission and found on the Gas Services page of [~~made available via~~] the Commission's website [~~at http://www.rrc.state.tx.us/divisions/gs/gsforms/index.html~~].

(2) - (3) (No change.)

(e) Annual earnings monitoring report. A gas utility seeking to implement an interim rate adjustment shall electronically file with the Commission an annual earnings monitoring report as part of the application.

(1) The annual earnings monitoring report shall be made on a form approved by the Commission and found on the Gas Services page of [~~made available via~~] the Commission's website [~~at http://www.rrc.state.tx.us/divisions/gs/gsforms/index.html~~].

(2) (No change.)

(f) - (m) (No change.)

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

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606328
Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 475-1295

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CHAPTER 8. PIPELINE SAFETY REGULATIONS

The Railroad Commission of Texas (Commission) proposes to amend §8.210, relating to Reports, and §8.301, relating to Re-

quired Records and Reporting, to correct references to the Commission's domain name.

Kari French, Director, Oversight and Safety Division, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no fiscal effect on state or local government or persons required to comply as a result of the proposed amendments.

Ms. French has determined that for each year of the first five years that the amendments will be in effect the primary public benefit would be the correction in the rules of an outdated reference.

The Commission has determined that the proposed amendments will not have an adverse economic effect on small businesses or micro-businesses.

The Commission has also determined that the proposed amendments will not affect a local economy. Therefore, the Commission has not prepared a local employment impact statement pursuant to Texas Government Code, §2001.022.

The Commission has determined that the amendments do not meet the statutory definition of a major environmental rule as set forth in Texas Government Code, §2001.0225(a); therefore, a regulatory analysis conducted pursuant to that section is not required.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.texas.gov/legal/rules/comment-form-for-proposed-rulemakings; or by electronic mail to rulescoordinator@rrc.texas.gov. The Commission will accept comments until noon (12:00 p.m.) on Monday, January 23, 2017, which is 31 days after publication in the *Texas Register.* The Commission finds that this comment period is reasonable because the proposal and an online comment form will be available on the Commission's web site more than two weeks prior to *Texas Register* publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit comments. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. French at (512) 463-8559. The status of Commission rulemakings in progress is available at www.rrc.texas.gov/legal/rules/proposed-rules.

SUBCHAPTER C. REQUIREMENTS FOR NATURAL GAS PIPELINES ONLY

16 TAC §8.210

The Commission proposes the amendment pursuant to Texas Natural Resources Code, §81.051 and §81.052, which give the Commission jurisdiction over all common carrier pipelines in Texas, persons owning or operating pipelines in Texas and their oil and gas wells, and authorize the Commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission as set forth in §81.051, including such rules as the Commission may consider necessary and appropriate to implement state responsibility under any federal law or rules governing such persons and their operations.

Texas Natural Resources Code, §81.051 and §81.052 are affected by the proposed amendment.

Statutory authority: Texas Natural Resources Code, §81.051 and §81.052.

Cross-reference to statutes: Texas Natural Resources Code, §81.051 and §81.052.

§8.210. Reports.

(a) Accident, leak, or incident report.

(1) - (2) (No change.)

(3) Written report.

(A) Following the initial telephonic report for accidents, leaks, or incidents described in paragraph (1) of this subsection, the operator who made the telephonic report shall submit to the Commission a written report summarizing the accident or incident. The report shall be submitted as soon as practicable within 30 calendar days after the date of the telephonic report. The written report shall be made on forms supplied by the Department of Transportation. For reports submitted electronically to the Department of Transportation, the operator shall forward a copy of the report and confirmation to the Division or electronically to safety@rrc.texas.gov [~~safety@rrc.state.tx.us~~]. For reports not submitted electronically to the Department of Transportation, the operator shall send to the Division an original signed report form.

(B) - (C) (No change.)

(b) Pipeline safety annual reports.

(1) Except as provided in paragraph (2) of this subsection, each gas company shall submit an annual report for its intrastate systems in the same manner as required by 49 CFR Part 191. The report shall be submitted to the Division on forms supplied by the Department of Transportation not later than March 15 of a year for the preceding calendar year. For reports submitted electronically to the Department of Transportation, the operator may forward a copy of the report and confirmation to the Division or electronically to safety@rrc.texas.gov [~~safety@rrc.state.tx.us~~]. For reports not submitted electronically to the Department of Transportation, the operator shall send to the Division an original signed report form.

(2) (No change.)

(c) - (d) (No change.)

(e) Leak Reporting. For purposes of this subsection, the term "leak" includes all underground leaks, all hazardous above ground leaks, and all non-hazardous above ground leaks that cannot be eliminated by lubrication, adjustment, or tightening. Each operator of a gas distribution system, of a regulated plastic gas gathering line, or of a plastic gas transmission line shall submit to the Division a list of all leaks repaired on its pipeline facilities. Each such operator shall list all leaks identified on all pipeline facilities. Each such operator shall also include the number of unrepaired leaks remaining on the operator's systems by leak grade. Each such operator shall submit leak reports using the Commission's online reporting system, Form PS-95, by July 15 and January 15 of each calendar year, in accordance with the PS-95 Semi-Annual Leak Report Electronic Filing Requirements, set out in the Figure in this subsection. The report submitted on July 15 shall include information from the previous January 1 through the previous June 30. The report submitted on January 15 shall include information from the previous July 1 through the previous December 31. The report includes:

(1) - (6) (No change.)

(7) Leak repair method.

Figure: 16 TAC §8.210(e)(7) (No change.)

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

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606330
Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 475-1295

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SUBCHAPTER D. REQUIREMENTS FOR HAZARDOUS LIQUIDS AND CARBON DIOXIDE PIPELINES ONLY

16 TAC §8.301

The Commission proposes the amendment pursuant to Texas Natural Resources Code, §81.051 and §81.052, which give the Commission jurisdiction over all common carrier pipelines in Texas, persons owning or operating pipelines in Texas and their oil and gas wells, and authorize the Commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission as set forth in §81.051, including such rules as the Commission may consider necessary and appropriate to implement state responsibility under any federal law or rules governing such persons and their operations.

Texas Natural Resources Code, §81.051 and §81.052 are affected by the proposed amendment.

Statutory authority: Texas Natural Resources Code, §81.051 and §81.052.

Cross-reference to statutes: Texas Natural Resources Code, §81.051 and §81.052.

§8.301. Required Records and Reporting.

(a) Accident reports. In the event of any failure or accident involving an intrastate pipeline facility from which any hazardous liquid or carbon dioxide is released, if the failure or accident is required to be reported by 49 CFR Part 195, the operator shall report to the Commission as follows.

(1) Incidents involving crude oil. In the event of an accident involving crude oil, the operator shall:

(A) (No change.)

(B) within 30 days of discovery of the incident, submit a completed Form H-8 to the Oil and Gas Division of the Commission. In situations specified in the 49 CFR Part 195, the operator shall also file a copy of the required Department of Transportation form with the Division. For reports submitted electronically to the Department of Transportation, the operator shall forward a copy of the report and confirmation to the Division or electronically to safety@rrc.texas.gov [~~safety@rrc.state.tx.us~~]. If an operator does not submit reports electronically to the Department of Transportation, the operator shall send the report to the Division on an original signed report form.

(2) Hazardous liquids, other than crude oil, and carbon dioxide. For incidents involving hazardous liquids, other than crude oil, and carbon dioxide, the operator shall:

(A) (No change.)

(B) within 30 days of discovery of the incident, file with the Division a written report using the appropriate Department of Transportation form (as required by 49 CFR Part 195) or a facsimile. For reports submitted electronically to the Department of Transportation, the operator shall forward a copy of the report and confirmation to the Division or electronically to safety@rrc.texas.gov [~~safety@rrc.state.tx.us~~]. If an operator does not submit reports electronically to the Department of Transportation, the operator shall send the report to the Division on an original signed report form.

(b) Annual report. Each operator shall file with the Commission an annual report for its intrastate systems located in Texas in the same manner as required by 49 CFR Part 195. The report shall be filed with the Commission on forms supplied by the Department of Transportation on or before June 15 of a year for the preceding calendar year reported. For reports submitted electronically to the Department of Transportation, the operator may forward a copy of the report and confirmation to the Division or electronically to safety@rrc.texas.gov [~~safety@rrc.state.tx.us~~]. For reports not submitted electronically to the Department of Transportation, the operator shall send to the Division an original signed report form.

(c) - (d) (No change.)

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

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606331
Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 475-1295

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CHAPTER 12. COAL MINING REGULATIONS SUBCHAPTER J. BOND AND INSURANCE REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS DIVISION 3. FORM, CONDITIONS, AND TERMS OF PERFORMANCE BOND AND LIABILITY INSURANCE

16 TAC §12.309

The Railroad Commission of Texas (Commission) proposes to amend §12.309, relating to Terms and Conditions of the Bond, concerning the requirements to qualify for self-bonding. The Commission proposes to amend subsection (j)(2)(B) to remove the restriction on self-bonding for an applicant who has been subject to a bankruptcy proceeding in the five years prior to the application. The Commission proposes the amendment because the current wording conflicts with the federal Bankruptcy

Code (11 U.S.C. §525(a)) and United States Supreme Court case law interpreting that statute.

Denny Kingsley, Director, Surface Mining and Reclamation Division, has determined that for each year of the first five years the proposed amendment will be in effect, there will be no fiscal impact on state or local governments as a result of the proposed amendment.

Mr. Kingsley has determined that for each year of the first five years the proposed amendment will be in effect there will be neither an increase nor decrease in the economic cost to the mining industry as a result of this amendment. The amendment merely conforms the Commission's rule with the federal Bankruptcy Code.

Mr. Kingsley has also determined that for each year of the first five years the amendment will be in effect, the primary public benefit will be consistency with applicable federal statutes.

In accordance with Texas Government Code, §2006.002, the Commission has determined that there will be no adverse economic effects on small businesses or micro-businesses resulting from the proposed amendment; therefore, the Commission has not prepared the economic impact statement or regulatory flexibility analysis required under §2006.002(c).

The Commission has determined that the proposed amendment will not affect a local economy; therefore, the Commission has not prepared a local employment impact statement pursuant to Texas Government Code, §2002.022.

The Commission has determined that the proposed rule does not meet the statutory definition of a major environmental rule as set forth in Texas Government Code, §2001.0225; therefore, a regulatory analysis pursuant to that section is not required.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.texas.gov/legal/rules/comment-form-for-proposed-rulemakings; or by electronic mail to rulescoordinator@rrc.texas.gov. Comments should refer to Docket No. SMRD 1-16. The Commission will accept comments until 12:00 p.m. (noon) on Monday, January 23, 2017, which is 31 days after publication in the *Texas Register.* The Commission has determined this is a reasonable opportunity for interested persons to submit data, views, or arguments, as required by Texas Government Code, §2001.029, because the proposal and an online comment form will be available on the Commission's website no later than the day after the open meeting at which the Commission approves publication of the proposal, giving interested persons additional time to review and analyze the proposal and to draft and submit comments.

The Commission encourages all interested persons to submit comments on the proposal no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Mr. Kingsley at (512) 305-8840. The status of pending Commission rulemakings is available at www.rrc.texas.gov/legal/rules/proposed-rules.

The Commission proposes the amendment under Texas Natural Resources Code, §134.013, which authorizes the Commission to promulgate rules pertaining to surface coal mining operations.

Statutory authority: Texas Natural Resources Code, §134.013.

Cross-reference to statute: Texas Natural Resources Code, §134.013.

§12.309. Terms and Conditions of the Bond.

(a) - (i) (No change.)

(j) Self-bonding.

(1) (No change.)

(2) Requirements for a business and governmental entities. The Commission may accept a self bond from an applicant that is a business or governmental entity if all of the following conditions are met by the applicant:

(A) (No change.)

(B) the applicant has been in continuous operation for a period of not less than 5 years immediately preceding the date of application [~~and has not been subject to bankruptcy proceedings during that time~~].

(i) - (ii) (No change.)

(C) - (D) (No change.)

(3) - (7) (No change.)

(k) - (l) (No change.)

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

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606320
Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 475-1295

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CHAPTER 18. UNDERGROUND PIPELINE DAMAGE PREVENTION

16 TAC §18.11

The Railroad Commission of Texas (Commission) proposes to amend §18.11, relating to Reporting Requirements, to correct a reference to the Commission's website.

Kari French, Director, Oversight and Safety Division, has determined that for each year of the first five years the proposed amendment will be in effect, there will be no fiscal effect on state or local government or persons required to comply as a result of the proposed amendment.

Ms. French has determined that for each year of the first five years that the amendment will be in effect the primary public benefit would be the correction in the rule of an outdated reference.

The Commission has determined that the proposed amendment will not have an adverse economic effect on small businesses or micro-businesses.

The Commission has also determined that the proposed amendment will not affect a local economy. Therefore, the Commission

has not prepared a local employment impact statement pursuant to Texas Government Code, §2001.022.

The Commission has determined that the amendment does not meet the statutory definition of a major environmental rule as set forth in Texas Government Code, §2001.0225(a); therefore, a regulatory analysis conducted pursuant to that section is not required.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.texas.gov/legal/rules/comment-form-for-proposed-rulemakings; or by electronic mail to rulescoordinator@rrc.texas.gov. The Commission will accept comments until noon (12:00 p.m.) on Monday, January 23, 2017, which is 31 days after publication in the *Texas Register.* The Commission finds that this comment period is reasonable because the proposal and an online comment form will be available on the Commission's web site more than two weeks prior to *Texas Register* publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit comments. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. French at (512) 463-8559. The status of Commission rulemakings in progress is available at www.rrc.texas.gov/legal/rules/proposed-rules.

The Commission proposes the amendment pursuant to Texas Natural Resources Code, §117.012, and Texas Utilities Code, §121.201, which authorize the Commission to adopt rules that include safety standards for and practices applicable to the intrastate transportation of hazardous liquids or carbon dioxide by pipeline and intrastate hazardous liquid or carbon dioxide pipeline facilities, including safety standards related to the prevention of damage to such a facility resulting from the movement of earth by a person in the vicinity of the facility, other than movement by tillage that does not exceed a depth of 16 inches. In addition, the Commission proposes the amendment pursuant to Texas Health and Safety Code, §756.106, which authorizes the Commission to adopt and enforce safety standards and best practices, including those described by 49 U.S.C. §6105 et seq., relating to the prevention of damage by a person to a facility under the jurisdiction of the Commission.

Texas Natural Resources Code §117.012, Texas Utilities Code §121.201, and Texas Health and Safety Code, §756.126, are affected by the proposed amendment.

Statutory authority: Texas Natural Resources Code §117.012, Texas Utilities Code §121.201, and Texas Health and Safety Code §756.126.

Cross-reference to statute: Texas Natural Resources Code §117.012; Texas Utilities Code §121.201, and Texas Health and Safety Code §756.126.

§18.11. Reporting Requirements.

(a) Each operator of an underground pipeline shall report to the Commission all damage to its pipelines caused by an excavator. Within 10 days of the damage incident or of the operator's actual knowledge of the damage incident, an operator shall submit the information to the Commission through TDRF, which may be accessed through the Commission's online reporting system [~~at http://www.rrc.state.tx.us/formpr/index.html~~] using its assigned operator identification code.

(b) Each excavator that damages an underground pipeline shall notify the operator of the damage through the notification center immediately but not later than two hours following the damage incident. The excavator shall also submit report of the damage incident to the Commission using TDRF, which may be accessed through the Commission's online reporting system [~~at http://www.rrc.state.tx.us/formpr/index.html~~] and the excavator sign-in, within 10 days of the incident.

(c) (No change.)

(d) An emergency response official, a member of the general public, or another person aware of damage to an underground pipeline is encouraged to submit an incident form using TDRF, which can be accessed through the Commission's online reporting system [~~at http://www.rrc.state.tx.us/formpr/index.html~~]. Entries can be made through the general public or emergency response official sign-in.

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

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606333
Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 475-1295

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CHAPTER 20. ADMINISTRATION
SUBCHAPTER A. CONTRACTS AND PURCHASES
DIVISION 3. CONTRACT MONITORING

16 TAC §20.81

The Railroad Commission of Texas (Commission) proposes new §20.81, relating to Enhanced Contract Monitoring. The Commission proposes the new rule pursuant to Texas Government Code §2261.253(c), which was added by Senate Bill 20 (84th Legislature, 2015) and requires state agencies to establish a procedure to identify each contract that requires enhanced contract monitoring and submit information on the contract to the agency's governing body. It also requires that the agency's contract management office or procurement director immediately notify the agency's governing body of any serious issue or risk that is identified with respect to a contract monitored under the statute.

The proposed new rule lists the factors that the Commission will use to assess each contract and determine whether enhanced contract monitoring is necessary. The factors include the complexity of the services, the contract amount, whether the services or vendor are new or have changed significantly, and any other factors that may impact the project. The proposed new rule also specifies what the Commission may require of a vendor if the Commission determines that a contract requires enhanced monitoring, and identifies Commission staff who are responsible for monitoring contracts.

Sandy Williams, Director, Procurement and Contracts Management, Administration Division, has determined that for each year

of the first five years the new rule will be in effect there will be no fiscal implications for state or local governments as a result of the new rule. In addition, there is no anticipated cost for persons required to comply with the proposed rule.

Ms. Williams has determined that for each year of the first five years the proposed new rule will be in effect, the anticipated public benefit will be enhanced monitoring of Commission contracts and Commission compliance with recent changes to state agency contract requirements.

The Commission has determined that the proposed new rule will not have an adverse economic effect on small businesses or micro-businesses. Therefore, the Commission has not prepared the economic impact statement or the regulatory flexibility analysis pursuant to Texas Government Code §2006.002.

The Commission has also determined that the proposed new rule will not affect a local economy. Therefore, the Commission has not prepared a local employment impact statement pursuant to Texas Government Code §2001.022.

The Commission has determined that the new rule does not meet the statutory definition of a major environmental rule as set forth in Texas Government Code, §2001.0225(a); therefore, a regulatory analysis conducted pursuant to that section is not required.

Comments on the proposed new rule may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.texas.gov/legal/rules/comment-form-for-proposed-rulemakings; or by electronic mail to rulescoordinator@rrc.texas.gov. The Commission will accept comments until noon (12:00 p.m.) on Monday, January 23, 2017, which is 31 days after publication in the *Texas Register.* The Commission finds that this comment period is reasonable because the proposal and an online comment form will be available on the Commission's website more than two weeks prior to *Texas Register* publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit comments. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Sandy Williams at (512) 463-7680. The status of Commission rulemakings in progress is available at www.rrc.texas.gov/legal/rules/proposed-rules.

The Commission proposes the new rule under Texas Government Code §2261.253, which requires the Commission to establish a procedure to identify each contract that requires enhanced contract or performance monitoring, and Texas Natural Resources Code §81.051 and §81.052, which provide the Commission with jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under Commission jurisdiction.

Texas Natural Resources Code, §81.051 and §81.052 are affected by the proposed new rule.

Statutory authority: Texas Natural Resources Code §81.051 and §81.052, and Texas Government Code §2261.253.

Cross-reference to statutes: Texas Natural Resources Code §81.051 and §81.052 and Texas Government Code §2261.253.

§20.81. Enhanced Contract Monitoring.

(a) The Commission shall use the following factors to assess each contract and determine whether enhanced contract monitoring is necessary.

(1) the complexity of the services;

(2) the contract amount;

(3) whether the services or vendor are new or have changed significantly; and

(4) any other factors that may impact the project.

(b) If the Commission determines that a contract requires enhanced monitoring, the Commission will require that the vendor provide status reports on a scheduled basis to determine whether performance measures are being met. Enhanced monitoring may also include site visits, additional meetings with the vendor, and other documentation requirements needed to assess progress toward meeting performance measures.

(c) The Director of Procurement and Contracts Management shall notify the Commissioners of contracts requiring enhanced monitoring under this section. The Director shall also immediately notify the Commissioners of any serious issue or risk that is identified in a contract monitored under this section.

(d) This section does not apply to an interagency agreement, interlocal agreement, a memorandum of understanding with another state agency, or a contract for which there is no cost to 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 December 6, 2016.

TRD-201606324
Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 475-1295

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TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 5. REGISTERED INTERIOR DESIGNERS

The Texas Board of Architectural Examiners (Board) proposes the amendment of Part 1, Title 22 §5.5, pertaining to Terms Defined Herein and the repeal of §5.34, 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 5 under Texas Government Code, §2001.039. The notice of intention to review Chapter 5 was published in the *Texas Register* on September 9, 2016 (41 TexReg 7139). The agency did not receive any comments in response to this notice.

Amendment of §5.5

The Board proposes to amend terms and definitions contained in §5.5. Under §5.5(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 Registered Interior Designer's Seal. For example, under §5.113, prior to issuing a construction document, a registered interior designer (RID) is required to affix to the document the RID'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 adopt a definition for "Architectural Barriers Act" under §5.5(5). 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. §5.180 references the Architectural Barriers Act, but does not provide a citation. Therefore, a definition for this term would be useful to promote greater understanding of the Board's rules.

The Board proposes to delete the term and definition for "authorship" under §5.5(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 adopt clarifying amendments to §5.5(16) and (39), relating to the definitions for "Consultant" and "Registrant." These definitions refer to the term "interior designer" rather than "registered interior designer." Since "registered interior designer" is the regulated term under Tex. Occ. Code 1053.151 and the term used elsewhere in the Board's rules, the Board proposes to amend these definitions to refer to "registered interior designer."

The Board proposes to delete the term and definition for "e-mail directory" under §5.5(22). The Board rules do not contain any reference to the term "e-mail directory." Therefore, it is unnecessary to define this term.

The Board proposes to amend the definition for "Interior Designers' Registration Law," which is the Board's common title for Occupations Code Chapter 1053, under §5.5(30). In defining this term, the rule refers to Chapter 1053, as well as Article 249e, Vernon's Texas Civil Statutes. Since the citation to Article 249e is obsolete following the 2003 codification of Occupations Code 1053, the Board proposes to eliminate this reference in the definition.

Due to the proposed repeal and/or addition of definitions for "Architectural Barriers Act," "Authorship," and "E-mail Directory," and the alphabetical re-ordering of the definition for "Signature," the Board proposes to renumber §5.5 accordingly.

Repeal of §5.34

The Board proposes to repeal §5.34. 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 redundant.

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 foreseeable economic implications relating to costs or revenues of the 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 amendments. 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.

CROSS REFERENCE TO STATUTE

The proposed amendments to these rules do not affect any other statutes.

PUBLIC COMMENT

Comments may be submitted to Lance Brenton, General Counsel, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337. Please submit comments before February 1, 2017.

SUBCHAPTER A. SCOPE; DEFINITIONS

22 TAC §5.5

STATUTORY AUTHORITY

The proposed amendment to §5.5 is proposed under Sections 1051.202, 1053.058 and 1053.252(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 1053.058 requires the Board to prescribe and approve the seal to be used by a registered interior designer. Pursuant to this authority, the Board has adopted rules which require an registered interior designer to seal certain documents, and to include his or her signature with the seal. For this reason, the Board proposes to adopt a definition for the term "signature."

Section 1053.252(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, a term which the Board proposes to define in this rulemaking action.

§5.5. 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 Interior Designers' 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) Architectural Barriers Act--Texas Government Code, Chapter 469.

(6) Architectural Interior Construction--A building project that involves only the inside elements of a building and, in order to be completed, necessitates the "practice of architecture" as that term is defined in 22 Texas Administrative Code §1.5.

[~~(7) Authorship--The state of having personally created something.~~]

(7) [~~(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.

(8) [~~(9)~~] Board--Texas Board of Architectural Examiners.

(9) [~~(10)~~] Cancel, Cancellation, or Cancelled--The termination of a Texas Interior Design registration certificate by operation of law two years after it expires without renewal by the certificate-holder.

(10) [~~(11)~~] Candidate--An Applicant approved by the Board to take the Interior Design registration examination.

(11) [~~(12)~~] CEPH--Continuing Education Program Hour(s).

(12) [~~(13)~~] Chair--The member of the Board who serves as the Board's presiding officer.

(13) [~~(14)~~] CIDA--The Council for Interior Design Accreditation.

(14) [~~(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.

(15) [~~(16)~~] Consultant--An individual retained by a Registered Interior Designer who prepares or assists in the preparation of technical design documents issued by the Registered Interior Designer for use in connection with the Registered Interior Designer's Construction Documents.

(16) [~~(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 hearings.

(17) [~~(18)~~] Continuing Education Program Hour (CEPH)--At least fifty (50) minutes of time spent in an activity meeting the Board's continuing education requirements.

(18) [~~(19)~~] Council for Interior Design Accreditation (CIDA)--An agency that sets standards for postsecondary Interior Design education and evaluates college and university Interior Design programs.

(19) [~~(20)~~] Delinquent--A registration status signifying that a Registered Interior Designer:

(A) has failed to remit the applicable renewal fee to the Board; and

(B) is no longer authorized to use the title "registered interior designer" in Texas.

(20) [~~(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 Interior Design services; and~~

~~(B) posted on the Internet under circumstances where the Interior Designers included in the list have control over the information included in the list.~~]

(21) [~~(23)~~] Emeritus Interior Designer (or Interior Designer Emeritus)--An honorary title that may be used by a Registered Interior Designer who has retired from the practice of Interior Design in Texas pursuant to §1053.156 of the Texas Occupations Code.

(22) [~~(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.

(23) [~~(25)~~] Feasibility Study--A report of a detailed investigation and analysis conducted to determine the advisability of a proposed Interior Design project from a technical Interior Design standpoint.

(24) [~~(26)~~] Good Standing--

(A) a registration status signifying that a Registered Interior Designer 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 Interior Design registration board that would provide a ground for the denial of the application for Interior Design registration in Texas.

(25) [~~(27)~~] Governmental Jurisdiction--A governmental authority such as a state, territory, or country beyond the boundaries of Texas.

(26) [~~(28)~~] Inactive--A registration status signifying that a Registered Interior Designer may not practice Interior Design in the State of Texas.

(27) [~~(29)~~] Interior Design--The identification, research, or development of creative solutions to problems relating to the function or quality of the interior environment; the performance of services relating to interior spaces, including programming, design analysis, space planning of non-load-bearing interior construction, and application of aesthetic principles, by using specialized knowledge of interior construction, building codes, equipment, materials, or furnishings; or the preparation of Interior Design plans, specifications, or related documents about the design of non-load-bearing interior spaces.

(28) [~~(30)~~] Interior Designers' Registration Law--[~~Article 249e, Vernon's Texas Civil Statutes, and~~] Chapter 1053, Texas Occupations Code.

(29) [~~(31)~~] Interior Design Intern--An individual participating in an internship to complete the experiential requirements for Interior Design registration by examination in Texas.

(30) [~~(32)~~] Licensed--Registered.

(31) [~~(33)~~] Member Board--An Interior Design registration board that is part of NCIDQ.

(32) [~~(34)~~] National Council for Interior Design Qualification (NCIDQ)--A nonprofit organization of state and provincial interior design regulatory agencies and national organizations whose membership is made up in total or in part of interior designers.

(33) [~~(35)~~] NCIDQ--National Council for Interior Design Qualification.

(34) [~~(36)~~] Nonregistrant--An individual who is not a Registered Interior Designer.

(35) [~~(37)~~] Principal--A Registered Interior Designer who is responsible, either alone or with other Registered Interior Designers, for an organization's practice of Interior Design.

(36) [~~(38)~~] Registered Interior Designer--An individual who holds a valid Texas Interior Design registration granted by the Board.

(37) [~~(39)~~] Registrant--Registered Interior Designer.

(38) [~~(40)~~] Regulatory Approval--The approval of Construction Documents by a Governmental Entity after a review of the Interior Design content of the Construction Documents as a prerequisite to construction or occupation of a building of facility.

(39) [~~(41)~~] Reinstatement--The procedure through which a Surrendered or revoked Texas Interior Design registration certificate is restored.

(40) [~~(42)~~] Renewal--The procedure through which a Registered Interior Designer pays a periodic fee so that his or her registration certificate will continue to be effective.

(41) [~~(43)~~] 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 Interior Designers applying the applicable Interior Design standard of care.

(42) [~~(44)~~] Revocation or Revoked--The termination of a Texas Interior Design registration certificate by the Board.

(43) [~~(45)~~] Rules and Regulations of the Board--22 Texas Administrative Code §§5.1 et seq.

(44) [~~(46)~~] Rules of Procedure of SOAH--1 Texas Administrative Code §§155.1 et seq.

(45) [~~(47)~~] Secretary-Treasurer--The member of the Board responsible for signing the official copy of the minutes from each Board meeting and maintaining the record of Board members' attendance at Board meetings.

(46) Signature--A personal signature of the individual whose name is signed or an authorized copy of such signature.

(47) [~~(48)~~] SOAH--State Office of Administrative Hearings.

(48) [~~(49)~~] Sole Practitioner--A Registered Interior Designer who is the only design professional to offer or render interior design services on behalf of a business entity.

(49) [~~(50)~~] 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.

(50) [~~(51)~~] Supervision and Control--The amount of oversight by a Registered Interior Designer overseeing the work of another whereby:

(A) the Registered Interior Designer and the individual performing the work can document frequent and detailed communication with one another and the Registered Interior Designer has both control over and detailed professional knowledge of the work; or

(B) the Registered Interior Designer is in Responsible Charge of the work and the individual performing the work is employed by the Registered Interior Designer or by the Registered Interior Designer's employer.

(51) [~~(52)~~] Supplemental Document--A document that modifies or adds to the technical Interior Design content of an existing Construction Document.

(52) [~~(53)~~] Surrender--The act of relinquishing a Texas Interior Design registration certificate along with all privileges associated with the certificate.

(53) [~~(54)~~] 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.

(54) [~~(55)~~] Table of Equivalents for Education and Experience in Interior Design--22 Texas Administrative Code §§5.201 et. seq. (§§5.201 - 5.203 of this chapter).

(55) [~~(56)~~] TBAE--Texas Board of Architectural Examiners.

(56) [~~(57)~~] TDLR--Texas Department of Licensing and Regulation.

(57) [~~(58)~~] Texas Department of Licensing and Regulations (TDLR)--A Texas state agency responsible for the implementation and enforcement of the Texas Architectural Barriers Act.

(58) [~~(59)~~] Texas Guaranteed Student Loan Corporation (TGSLC)--A public, nonprofit corporation that administers the Federal Family Education Loan Program.

(59) [~~(60)~~] TGSLC--Texas Guaranteed Student Loan Corporation.

(60) [~~(61)~~] 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 December 12, 2016.

TRD-201606510
Lance Brenton
General Counsel
Texas Board of Architectural Examiners
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 305-8519

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SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

22 TAC §5.34

STATUTORY AUTHORITY

The repeal of §5.34 is proposed under Sections 1051.202, 1051.305, 1051.355, 1051.357, 1053.052, and 1053.156 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 1053.052 requires the Board to set certain fees, in amounts that are reasonable and necessary to cover the costs of administering Chapter 1053 (Interior Designers), including a registration application fee, an annual registration renewal fee, a reciprocal registration fee and an examination fee. Furthermore, Section 1053.052 authorizes the Board to set fees for other services, in amounts that are reasonable and necessary to cover the costs of administering Chapter 1053, including providing a duplicate certificate of registration, providing a roster of interior designers, reinstating a revoked or suspended certificate of registration, and performing any other board action involving an administrative expense. Additionally, Section 1053.052 authorizes the Board to accept payment of a fee by electronic means, and to charge a fee for such collection in an amount that is reasonably related to the expense incurred by the board in processing the payment.

Section 1053.156 requires the Board to set a renewal fee for interior designer registrants on emeritus status in an amount reasonable and necessary to recover the costs to administer such registrations.

§5.34. 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 December 12, 2016.

TRD-201606512
Lance Brenton
General Counsel
Texas Board of Architectural Examiners
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 305-8519

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 98. TEXAS HIV MEDICATION PROGRAM

SUBCHAPTER A. TEXAS HIV STATE PHARMACY ASSISTANCE PROGRAM

25 TAC §§98.2, 98.6, 98.10

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§98.2, 98.6, and 98.10, concerning the Texas HIV State Pharmacy Assistance Program (SPAP).

BACKGROUND AND PURPOSE

The SPAP is a part of the Texas HIV Medication Program (THMP), which provides medications for the treatment of HIV and its related complication for low-income Texans. SPAP provides medication copayments on behalf of eligible clients with Medicare Part D prescription drug coverage. The amendments are proposed to align the rules with new federal funding guidance. Rebates are available to the THMP as a result of changes in federal law in 2011 that allowed Ryan White Part B participants (states) to invoice drug manufacturers for rebates on medication copayments paid on behalf of clients with prescription drug coverage, either through Medicare Part D or an insurance plan. The proposed amendments will add language to allow the SPAP to pay prescription drug coverage insurance premiums in addition to copayments and coinsurance in order to be eligible to claim a rebate. The proposed amendments, if enacted, will have an added public health benefit by adding a new method to allow the THMP to assist HIV infected individuals with their prescription medications.

SECTION-BY-SECTION SUMMARY

Amendments to §98.2, Definitions, would add "premium" to the definition of "Out-of-Pocket Costs" to clarify that this expense would be allowed.

Amendments to §98.6, Denial, Non-Renewal, and Termination of Benefits, would delete paragraph "(7) failure to continue premium payments under Medicare" as a reason for terminating enrollment in the program. This language would no longer be needed if the program is paying premiums. As a result, the remaining paragraphs are renumbered.

Amendments to §98.10, Limitations and Benefits Provided, would add "Medicare Part D premium payments" as a benefit that the program is allowed to pay for those clients enrolled in the program.

FISCAL NOTE

Ms. Imelda Garcia, Director, Infectious Disease Prevention Section, has determined that for each year of the first five years that the sections will be in effect, there will be fiscal implications to state government as a result of enforcing and administering the sections as proposed. The SPAP program currently serves approximately 2,200 clients; with an average monthly premium cost of $18.80, expanding SPAP to cover the cost of premiums would cost the State approximately $500,000 per year. However, this

cost will be recouped via the rebates garnered from medication copayments. Rebate projections for Fiscal Year 2017 are in excess of $30 million. This revenue would be from drug manufacturer rebates that have ranged in previous years from $19.1 to $34.6 million. Ms. Garcia, has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal implications to local governments as a result of enforcing and administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Garcia has also determined that there will be no adverse impact on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Garcia has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated will be the improvement of public health programs for HIV infected individuals by adding a new method to allow the program to pay for prescription medications. In addition there will be improved efficiency that comes from improving the clarity and readability of these rules.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Juanita Salinas, Department of State Health Services, TB/HIV/STD/VH Unit, Mail Code 7909, P.O. Box 149347, Austin, Texas 78714-9347, or by email to juanita.salinas@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The amendments are authorized by Texas Health and Safety Code, §85.003, which requires the department to act as lead agency and primary resource for AIDS and HIV policy; Health and Safety Code, §85.016, which allows for the adoption of rules; Health and Safety Code, §85.061, which establishes the Texas HIV Medication Program; Health and Safety Code, §85.063, which requires the department to establish procedures and eligibility guidelines for the HIV Medication Program; and Government Code, §531.0055, and Health and Safety Code, §1001.075, 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.

The amendments affect the Health and Safety Code, Chapters 85 and 1001; and Government Code, Chapter 531.

§98.2. Definitions.

The terms, when used in this subchapter, are defined as follows:

(1) - (9) (No change.)

(10) Out-of-pocket costs--The premium, co-pay, coinsurance and deductible amounts that an individual would be expected to pay when enrolled in a Medicare prescription drug plan.

(11) - (12) (No change.)

§98.6. Denial, Non-Renewal, and Termination of Benefits.

A person may be denied enrollment in the program, be denied renewal in the program, and/or have enrollment in the program terminated for any of the following reasons:

(1) - (6) (No change.)

~~[(7) failure to continue premium payments under Medicare;]~~

(7) [~~(8)~~] failure to enroll in Medicare prescription drug plan and apply for the Low Income Subsidy under the Medicare Prescription Drug Improvement and Modernization Act of 2003 (information on Medicare enrollment and applying for the Low Income Subsidy can be found at http://www.medicare.gov);

(8) [~~(9)~~] failure to notify the program of changes to permanent home address or insurance coverage;

(9) [~~(10)~~] the recipient notifies the program in writing that they no longer want to receive program benefits;

(10) [~~(11)~~] the recipient has not requested or used services during any period of six consecutive months; and/or

(11) [~~(12)~~] program funds are exhausted.

§98.10. Limitations and Benefits Provided.

(a) Benefits payable by the program to recipients are as follows:

(1) - (2) (No change.)

(3) Medicare Part D premium payments.

(b) - (c) (No change.)

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606536
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 776-6972

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PART 11. CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS

CHAPTER 703. GRANTS FOR CANCER PREVENTION AND RESEARCH

25 TAC §703.13, §703.25

The Cancer Prevention and Research Institute of Texas (Institute) proposes an amendment to §703.13, regarding guidance for government auditing standards and to §703.25, regarding approval of a grantee's request to carry forward unspent project year funds into the following project year.

Background and Justification

The proposed amendment to §703.13(e)(4) replaces a reference to OMB Circular A-133 that has been superseded. The change clarifies guidance for government auditing standards. The proposed amendment to §703.25 clarifies that a request to carry forward unspent grant funds from one project year to the next requires Institute approval if the amount of the unexpended budget line item balance is 25% or more of the line item amount for the year. Section 703.25 already allows grantees to request a carry forward of unspent funds. This change aligns §703.25 with the Institute's current practice. All other requirements regarding carry forward requests remain the same in §703.25.

Fiscal Note

Kristen Pauling Doyle, General Counsel for the Cancer Prevention and Research Institute of Texas, has determined that for the first five-year period the rule changes are in effect there will be no foreseeable implications relating to costs or revenues for state or local government as a result of enforcing or administering the rules.

Public Benefit and Costs

Ms. Doyle has determined that for each year of the first five years the rule changes are in effect the public benefit anticipated as a result of enforcing the rules will be clarification of policies and procedures the Institute will follow to implement its statutory duties.

Small Business and Micro-business Impact Analysis

Ms. Doyle has determined that the rule changes shall not have an effect on small businesses or on micro businesses.

Written comments on the proposed rule changes may be submitted to Ms. Kristen Pauling Doyle, General Counsel, Cancer Prevention and Research Institute of Texas, P.O. Box 12097, Austin, Texas 78711 no later than January 23, 2017. Parties filing comments are asked to indicate whether or not they support the rule revisions proposed by the Institute and, if a change is requested, to provide specific text proposed to be included in the rule. Comments may be submitted electronically to kdoyle@cprit.texas.gov. Comments may be submitted by facsimile transmission to (512) 475-2563.

Statutory Authority

The amendments are proposed under the authority of the Texas Health and Safety Code Annotated, §102.108 and §102.251, which provide the Institute with broad rule-making authority to administer the chapter and to issue rules regarding the procedures for awarding grants. Kristen Pauling Doyle, the Institute's General Counsel, has reviewed the proposed amendments and certifies the proposal to be within the Institute's authority to adopt.

There is no other statute, article or code that is affected by these rules.

§703.13. Audits and Investigations.

(a) Upon request and with reasonable notice, an entity receiving Grant Award funds directly under the Grant Contract or indirectly through a subcontract under the Grant Contract shall allow, or shall cause the entity that is maintaining such items to allow the Institute, or auditors or investigators working on behalf of the Institute, including the State Auditor and/or the Comptroller of Public Accounts for the State of Texas, to review, inspect, audit, copy or abstract its records pertaining to the specific Grant Contract during the term of the Grant Contract and for the three year period following the end of the Grant Recipient's fiscal year during which the Grant Contract was terminated.

(b) Notwithstanding the foregoing, the Grant Recipient shall submit a single audit determination form within 60 days of the anniversary date of the Grant Contract effective date. The Grant Recipient shall report whether the Grant Recipient has expended $750,000 or more in state awards during the Grant Recipient's fiscal year. If the Grant Recipient has expended $750,000 or more in state awards in its fiscal year, the Grant Recipient shall obtain either an annual single independent audit, a program specific independent audit, or an agreed upon procedures engagement as defined by the American Institute of Certified Public Accountants and pursuant to guidance provided in subsection (e).

(1) The audited time period is the Grant Recipient's fiscal year.

(2) The audit must be submitted to the Institute within 30 days of receipt by the Grant Recipient but no later than 270 days following the close of the Grant Recipient's fiscal year and shall include a corrective action plan that addresses any weaknesses, deficiencies, wrongdoings, or other concerns raised by the audit report and a summary of the action taken by the Grant Recipient to address the concerns, if any, raised by the audit report.

(A) The Grant Recipient may seek additional time to submit the required audit and corrective action plan by providing a written explanation for its failure to timely comply and providing an expected time for the submission.

(B) The Grant Recipient's request for additional time must be submitted on or before the due date of the required audit and corrective action plan. For purposes of this rule, the "due date of the required audit" is no later than the 270th day following the close of the Grant Recipient's fiscal year.

(C) Approval of the Grant Recipient's request for additional time is at the discretion of the Institute. Such approval must be granted by the Chief Executive Officer.

(c) No reimbursements or advances of Grant Award funds shall be made to the Grant Recipient if the Grant Recipient is delinquent in filing the required audit and corrective action plan. A Grant Recipient that has received approval from the Institute for additional time to file the required audit and corrective action plan may receive reimbursements or advances of Grant Award funds during the pendency of the delinquency unless the Institute's approval declines to permit reimbursements or advances of Grant Award funds until the delinquency is addressed.

(d) A Grant Recipient that is delinquent in submitting to the Institute the audit and corrective action plan required by this section is not eligible to be awarded a new Grant Award or a continuation Grant Award until the required audit and corrective action plan are submitted. A Grant Recipient that has received approval from the Institute for additional time to file the required audit and corrective action plan may remain eligible to be awarded a new Grant Award or a continuation Grant Award unless the Institute's approval declines to continue eligibility during the pendency of the delinquency.

(e) For purposes of this rule, an agreed upon procedures engagement is one in which an independent certified public accountant is hired by the Grant Recipient to issue a report of findings based on specific procedures to be performed on a subject matter.

(1) The option to perform an agreed upon procedures engagement is intended for a non-profit or for-profit Grant Recipient that is not subject to Generally Accepted Government Audit Standards (also known as the Yellow Book) published by the U.S. Government Accountability Office.

(2) The agreed upon procedures engagement will be conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants.

(3) The certified public accountant is to perform procedures prescribed by the Institute and to report his or her findings attesting to whether the Grant Recipient records is in agreement with stated criteria.

(4) The agreed upon procedures apply to all current year expenditures for Grant Awards received by the Grant Recipient. Nothing herein prohibits the use of a statistical sample consistent with the American Institute of Certified Public Accountants' guidance regarding government auditing standards and 2 CFR Part 200, Subpart F, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards." [~~Circular A-133 audits~~]

(5) At a minimum, the agreed upon procedures report should address:

(A) Processes and controls;

(B) The Grant Contract;

(C) Indirect Costs;

(D) Matching Funds, if appropriate;

(E) Grant Award expenditures (payroll and non-payroll related transactions);

(F) Equipment;

(G) Revenue Sharing and Program Income;

(H) Reporting; and

(I) Grant Award closeout.

(6) The certified public accountant should consider the specific Grant Mechanism and update or modify the procedures accordingly to meet the requirements of each Grant Award and the Grant Contract reviewed.

§703.25. Grant Award Budget.

(a) The Grant Contract shall include an Approved Budget that reflects the amount of the Grant Award funds to be spent for each Project Year.

(b) All expenses charged to a Grant Award must be budgeted and reported in the appropriate budget category.

(c) Actual expenditures under each category should not exceed budgeted amounts authorized by the Grant Contract as reflected on the Approved Budget for each Grant Award.

(d) Recipients may make transfers between or among lines within budget categories listed on the Approved Budget so long as the transfer fits within the scope of the Grant Contract and the total Approved Budget; is beneficial to the achievement of project objectives; and is an efficient, effective use of Grant Award funds.

(e) All budget changes or transfers require Institute approval, except that the Grant Recipient may make budget changes or transfers without prior approval from the Institute for expenses not specified in the equipment category if:

(1) The total dollar amount of all changes of any single line item (individually and in the aggregate) within budget categories other than equipment is not more than 10% of the amount in that line item;

(2) The transfer will not increase or decrease the total grant budget; and

(3) The transfer will not materially change the nature, performance level, or scope of the project.

(f) A Grant Recipient awarded a Grant Award for a multiyear project that fails to expend the total Project Year budget may carry forward the unexpended budget balance to the next Project Year.

(1) If the amount of the unexpended [~~budget~~] balance for a budget line item in a Project Year exceeds twenty-five [~~ten~~] percent (25%) or more [~~(10%)~~] of the total budget line item [~~Grant Award~~] amount for that year, [~~the~~] Institute approval is required before the Grant Recipient may [~~must approve the~~] carry forward the unexpended balance to the next Project Year.

(2) For a budget carry forward requiring Institute approval, the Grant Recipient must provide justification for why the total Grant Award amount should not be reduced by the unexpended balance.

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

Filed with the Office of the Secretary of State on December 8, 2016.

TRD-201606407
Heidi McConnell
Chief Operating Officer
Cancer Prevention and Research Institute of Texas
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 463-3190

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 53. FINANCE

The Texas Parks and Wildlife Department proposes amendments to §§53.2, 53.14, 53.60, and 53.91, concerning Finance. The proposed amendments are a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires a state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

The proposed amendment to §53.2, concerning License Issuance Procedures, Fees, and Exemption Rules, would correct statutory and regulatory cross-references in subsection (a)(3)(B)(iii) and (iv). Current §53.2(a)(3) provides that a person who has acquired a hunting license electronically may hunt prior to obtaining the physical license so long as the person has a valid confirmation number. However, the current provisions in subparagraph (B)(iii) and (iv) regarding hunting on certain public lands and or department-leased land contain inaccurate references to provisions authorizing those public hunting activities. The proposed amendment corrects the inaccuracy.

The proposed amendment to §53.14, concerning Deer Management and Removal Permits would delete the reference to the "antlerless and spike buck control permit application processing fee" since these permits are no longer being issued. The regulations providing for the issuance of antlerless and spike buck control permits were repealed by action of the Parks and Wildlife Commission in March 2016, and published in the August 12, 2016, issue of the *Texas Register* (14 TexReg 6052). The elimination of the antlerless and spike buck control permit obviates the need for the associated permit application fee.

The proposed amendment to §53.60, concerning Stamps, would modify the references to stamp form, design, and issuance to reflect current practice, and eliminate provisions regarding nongame and endangered species stamps and collector's edition stamps. The department no longer issues collector's edition stamps. Currently, a "stamp" is issued as an endorsement on the appropriate license issued through the department's electronic license sales system. The proposed amendment is necessary to reflect current practice.

The proposed amendment to §53.91, concerning Documented Vessels, would clarify various provisions. The proposed amendment would add the term "certificate of number" in subsection (a) and "participating Tax assessor-Collector office" in subsections (a) - (c) to more accurately describe the locations where vessels may be registered. The proposed amendment also would delete the reference to the tax for vessels greater than 65 feet in length in subsection (c)(3) since the tax on these vessels is not collected by the department. In addition, a reference is to Parks and Wildlife Code, §31.026 would be added to subsection (c)(4) to more completely describe the authority for collection of the appropriate registration fee.

Ann Bright, General Counsel, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rules.

Ms. Bright also has determined that for each of the first five years that the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the proposed rules will be clearer, better organized, and more accurate regulations governing the processes and entities administered under the provisions of Chapter 53.

There will be no adverse economic effect on persons required to comply with the rules as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. The department has determined that the rules will not directly affect small businesses and/or micro-businesses. Therefore, the department has not prepared the economic impact statement or regulatory flexibility analysis described in Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may be submitted to Robert Macdonald, Regulations Coordinator, e-mail: robert.macdonald@tpwd.texas.gov. Comments also may be submitted via the department's website at http://www.tpwd.texas.gov/business/feedback/public_comment/.

SUBCHAPTER A. FEES

DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

31 TAC §53.2, §53.14

The amendment is proposed under the authority of Parks and Wildlife Code, §42.006 which authorizes the commission to prescribe by rule requirements relating to the possessing a license issued under Parks and Wildlife Code, Chapter 42; §42.010, which allows the department to issue tags for deer during each year or season; §61.054, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and

the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed; and §61.057, which authorizes the commission to determine when conditions warrant the issuance of antlerless permits.

The proposed amendments affect Parks and Wildlife Code, Chapters 42 and 61.

§53.2. License Issuance Procedures, Fees, Possession, and Exemptions Rules.

(a) Hunting license possession.

(1) - (2) (No change.)

(3) A person may hunt deer in this state without having a valid hunting license in immediate possession only if that person:

(A) has acquired a license electronically (including by telephone) and has a valid confirmation number in his possession; and

(B) is lawfully hunting:

(i) - (ii) (No change.)

(iii) by special permit under the provisions of Chapter 65, Subchapter H of this title [~~chapter~~] (relating to Public Lands Proclamation);

(iv) on department-leased lands under the provisions of Parks and Wildlife Code, §11.0271 [~~§11.0272~~]; or

(v) (No change.)

(4) (No change.)

(b) - (f) (No change.)

§53.14. Deer Management and Removal Permits.

(a) - (c) (No change.)

[~~(d) Antlerless and spike buck deer control permit application processing fee--$378.~~]

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

Filed with the Office of the Secretary of State on December 9, 2016.

TRD-201606446
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 389-4775

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SUBCHAPTER B. STAMPS

31 TAC §53.60

The amendment is proposed under the authority of Parks and Wildlife Code, §11.055 and §11.056, which authorize, but do not require, the department to issue art decal or stamps; §12.701, which allows the department to authorize the issuance of a license, stamp, permit, or tag by a license deputy; Parks and Wildlife Code, §12.702, which authorizes the commission to set collection and issuance fees by rule for a license, stamp, tag, permit, or other similar item issued under any chapter of the code; §42.010 which requires the department to prescribe the form of and issue the license and tags authorized by Chapter 42.

The proposed amendment affects Parks and Wildlife Code, Chapters 11, 12, and 42.

§53.60. Stamps

(a) Stamp Form, Design and Manner of Issuance. A required stamp shall be issued as an endorsement noted on the license issued through the department's automated system. [~~Stamp form. Stamp sizes and formats shall be prescribed by the executive director.~~]

[~~(b) Stamp Design. An artist's original rendition will be the basic design. Stamps issued by an automated system may be an alternate design as prescribed by the executive director.~~]

[~~(c) Stamp Manner of Issuance. The stamp will be issued upon payment of the prescribed fee in a manner determined by the executive director.~~]

(b) [~~(d)~~] Stamp Purchase Identification and Possession Requirements.

(1) A person may hunt without a required state hunting stamp in immediate possession if the person has acquired a stamp electronically (including by telephone) and has a valid authorization number in possession. Authorization numbers shall only be valid for 20 days from purchase date.

(2) A person may fish without a required fishing stamp in immediate possession if the person has acquired a stamp electronically (including by telephone) and has a valid authorization number in possession. Authorization numbers shall only be valid for 20 days from purchase date.

[~~(3) A state hunting or fishing stamp issued in an automated manner to a person using the stamp is valid for hunting or fishing purposes without the user's signature on its face.~~]

(c) [~~(e)~~] Stamp Exemptions.

(1) The commission grants the executive director authority to exempt persons participating in any event organized for the primary purpose of promoting participation in fishing or hunting activities from the requirement to purchase or possess the following stamps:

(A) migratory game bird stamp;

(B) archery hunting stamp;

(C) upland game bird stamp;

(D) saltwater sportfishing stamp; and

(E) freshwater fishing stamp.

(2) All nonresident spring turkey hunting license holders are exempt from requirements for acquisition and possession of the upland game bird stamp.

(3) Youth license holders and lifetime resident hunting license holders are exempt from requirements for acquisition and possession of the following stamps:

(A) migratory game bird stamp;

(B) upland game bird stamp; and

(C) archery hunting stamp.

(4) All lifetime resident combination hunting and fishing license holders are exempt from requirements for acquisition and possession of the following stamps:

(A) migratory game bird stamp;

(B) upland game bird stamp;

(C) archery hunting stamp;

(D) saltwater sportfishing stamp; and

(E) freshwater fishing stamp.

(5) All lifetime resident fishing license holders are exempt from requirements for acquisition and possession of the following stamps;

(A) saltwater sportfishing stamp;

(B) freshwater fishing stamp.

(6) All persons meeting the definition of a qualified disabled veteran under the provisions of Parks and Wildlife Code, §42.012(c), are exempt from the fees for the following stamps:

(A) migratory game bird stamp;

(B) upland game bird stamp;

(C) archery;

(D) saltwater sportfishing; and

(E) freshwater fishing.

(7) All Texas residents on active duty in the armed forces of the United States (including members of the Reserves and National Guard on active duty) are exempt from the fees for the following stamps:

(A) migratory game bird stamp;

(B) upland game bird stamp;

(C) archery;

(D) saltwater sportfishing; and

(E) freshwater fishing.

(8) Special fishing license holders are exempt from the requirements for acquisition and possession of the following stamps:

(A) saltwater sportfishing stamp; and

(B) freshwater fishing stamp.

(9) All one-day all-water fishing license holders are exempt from requirements for acquisition and possession of the following stamps:

(A) saltwater sportfishing stamp; and

(B) freshwater fishing stamp.

(d) [~~(f)~~] Obsolete Stamps and Decals.

(1) An obsolete stamp is a stamp that is not valid.

(2) [~~(1)~~] Obsolete stamps and decals shall be sold for informational purposes, [~~either~~] at an established fee for collector's edition stamp package, [~~or at face value for individual stamps,~~] plus a processing charge sufficient to recover shipment, postage, and sales tax.

[~~(2) Stamps and decals shall remain on sale for a maximum of one fiscal year after expiration. During the second year, obsolete stamps and decals shall be sold only by book.~~]

[~~(3) Previous issues of Nongame and Endangered Species stamps may be made available for sale at $10 for individual stamps or decals, and $75 or less for a complete set of the 11 stamps issued from 1985 through 1995. The department may sell a limited number of collector's sets of the 11 stamps issued from 1985 through 1995, framed and mounted, for $300 or less per set. The department may add to this price a processing charge sufficient to recover shipment, postage, and sales tax. The Department may give away earlier issues of decals and use previously issued stamps in merchandise items that are offered for sale or as promotional items.~~]

[~~(g) Nongame and Endangered Species stamps issued during and after 1996 are one of seven stamps issued as collectors series set and are subject to the same rules as other obsolete stamps.~~]

[~~(1) The executive director may maintain a limited number of stamps and decals of each type and year.~~]

[~~(2) All other obsolete stamps and decals shall be destroyed.~~]

(e) [~~(h)~~] Collector's edition stamp package.

(1) A collector's edition stamp package shall consist of one each of the following stamps:

(A) migratory game bird stamp;

(B) upland game bird stamp;

(C) nongame stamp;

(D) archery stamp;

(E) saltwater sportfishing stamp; and

(F) freshwater fishing stamp.

(2) Stamps in the package are not valid for hunting or fishing.

(3) Fee for the package shall be $10 wholesale price and $20 retail price plus applicable sales tax.

(f) [~~(i)~~] In addition to the freshwater fishing stamp, the department may make available a collectible freshwater habitat stamp for a fee of $5.

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

Filed with the Office of the Secretary of State on December 9, 2016.

TRD-201606447
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 389-4775

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SUBCHAPTER E. DISPLAY OF BOAT REGISTRATION

31 TAC §53.91

The amendment is proposed under the authority of Parks and Wildlife Code, §§31.024, 31.025, and 31.0341 which provide for the submission of an application to and issuance by the county tax assessor-collector of certificates of number and certificate of title for vessels; Parks and Wildlife Code, §31.026 concerning the establishment of fees by the commission for an original or renewal certificate of number for a vessel; Parks and Wildlife Code,

§§31.003(1) and Tax Code, Chapter 160 which does not include vessels greater than 65 feet in length from the provisions regarding the collection of taxes in Parks and Wildlife Code, Chapter 31, and Tax Code, Chapter 160.

The proposed amendments affect Parks and Wildlife Code, Chapter 31 and Tax Code, Chapter 160.

§53.91. Documented Vessels.

(a) A certificate of number and registration decal for a new or newly documented vessel may be obtained at any TPWD boat registration office or participating Tax Assessor-Collector office. At the time of application, applicants must present:

(1) - (4) (No change.)

(b) A certificate of number and registration decal for a used or previously documented vessel may be obtained at any TPWD boat registration office or participating Tax Assessor-Collector office. At the time of application, applicants must present:

(1) - (4) (No change.)

(c) Renewal of certificate of number and registration decal for a documented vessel may be obtained at any TPWD boat registration office. At the time of application, applicants must present:

(1) (No change.)

(2) a copy of the current documentation from the U.S. Coast Guard National Vessel Documentation Center (USCGNVDC) or their website in the current owner's name; and

~~[(3) for vessels greater than 65 feet in length for the first registration renewal, verification of payment under Tax Code, Chapter 151, or verification from the TPWD boat system; and]~~

(3) [~~(4)~~] payment of the appropriate registration fee as required by Parks and Wildlife Code, §31.026 and §53.16 of this title.

(d) (No change.)

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

Filed with the Office of the Secretary of State on December 9, 2016.

TRD-201606448
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 389-4775

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SUBCHAPTER A. FEES
DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

31 TAC §53.12

The Texas Parks and Wildlife Department proposes an amendment to §53.12, concerning Commercial Fishing Licenses and Tags. The proposed amendment would alter the name of a permit, adding the word "possess" to the permit to sell nongame fish in order to reflect the effect of proposed new §57.385, published elsewhere in this issue of the *Texas Register,* which if adopted would require persons who collect or possess shad in excess of certain limits to obtain a permit.

Ken Kurzawski, Regulations and Information Programs Director, Inland Fisheries Division, has determined that for each of the first five years that the rule as proposed is in effect, there will be fiscal implications to state government as a result of enforcing or administering the rule, consisting of increased revenue to the department resulting from permit fees from persons who would be required to obtain a permit, if proposed new §57.385 is adopted. The department estimates that there are 10 or less persons who would be required to obtain a permit if proposed new §57.385 is adopted. Therefore, the revenue increase to the department as a result of proposed new §57.385 is estimated to be $600 or less per year (the current permit cost is $60 per year). Existing personnel will administer and enforce the rules as part of existing job duties; thus, there will be no costs associated with administering and enforcing the proposed rule.

Mr. Kurzawski also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be accurate fee regulations.

The proposed rule itself does not require anyone to obtain a permit; that requirement is contained in proposed new §57.385; however, there will be an adverse economic effect on persons required to obtain a permit, namely, the $60 fee for the permit.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The proposed rule itself does not require anyone to obtain a permit; that requirement is contained in proposed new §57.385. Although the required analysis is contained in the preamble to that rulemaking, the department includes it here as a convenience. The department has determined that most if not all businesses affected by the proposed rule will be small businesses or microbusinesses. The permit fee is $60. If adopted, proposed new §57.385 would require persons who possess shad taken from public fresh water in containers whose aggregate volume exceeds of 82 quarts to obtain a permit to possess or sell nongame fish. Because permittees are required to annually report the volume of harvest, means and methods of take; the water bodies where taken; and the price received, per pound (if shad are sold), proposed new §57.385, if adopted, would also result in an additional cost to small and microbusinesses associated with reporting, which the department estimates to be $10 or less per year.

The department considered alternative regulatory approaches to achieve the goal of the proposed rule. The department considered status quo. This alternative was rejected because the impacts of large-scale collection activities on shad populations

cannot be monitored unless the department is able to quantify harvest impacts, which is impossible without requiring harvest reporting from persons conducting such activities. The department also considered implementing a no-cost permit. This alternative was rejected because the regulatory complexity created by the existence of two permits to regulate the same activity could lead to problematic compliance and enforcement issues.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposed rule may be submitted to Ken Kurzawski, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4591 (e-mail: ken.kurzawski@tpwd.texas.gov) or via the department website at http://tpwd.texas.gov/business/feedback/public_comment/.

The amendment is proposed under Parks and Wildlife Code, Chapter 67, which give the commission the authority to establish any limitations on the take, possession, propagation, transportation, importation, exportation, sale, and offering for sale of nongame fish and wildlife necessary to manage those species.

The proposed amendments affect Parks and Wildlife Code, Chapter 67.

§53.12. Commercial Fishing Licenses and Tags.

(a) - (b) (No change.)

(c) General, finfish, menhaden, mussel, clam, and miscellaneous licenses.

(1) Licenses and permits.

(A) - (J) (No change.)

(K) mussel dredge fee--$36; and

(L) permit to possess or sell non-game fish--$60;

(2) (No change.)

(d) - (e) (No change.)

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

Filed with the Office of the Secretary of State on December 9, 2016.

TRD-201606460
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 389-4775

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SUBCHAPTER G. MARINE DEALERS, DISTRIBUTORS, AND MANUFACTURERS

The Texas Parks and Wildlife Department proposes the repeal of §53.110 and new §53.110 - 53.115, concerning Marine Dealers, Distributors, and Manufacturers.

The current rule consists of a single section, which the department has determined is unwieldy and difficult to navigate. By repealing the current rule and replacing it with several new sections delimited according to similarity of subject matter, the department intends to create a more user-friendly and approachable regulatory structure.

Proposed new §53.110, concerning Definitions, retains the provisions of current subsection (a) and adds three new definitions. Proposed new §53.110 (1) would define "applicant" as "a person or entity who has applied for a new or renewal license. This includes each member of a partnership or association, each officer of a corporation, the owner of a majority of a corporation's corporate stock, and any agent or employee acting on behalf of any of the aforementioned persons or entities." The definition is necessary because the term "applicant" is used in several places in the proposed new rules and a definition is necessary to provide an unambiguous meaning. Similarly, the proposed new rule would provide for definitions of "final conviction" and "licensee." Because proposed new §53.113, concerning Refusal to Issue or Renew Licenses; Review of Agency Decision to Refuse or Renew License, would address the denial or refusal of license issuance on the basis of an applicant's criminal history of final convictions for certain offenses, it is necessary to define "final conviction." Therefore, proposed new §53.110(3) would define that term as "a final judgment of guilt, the entering of a plea of guilty or *nolo contendere,* or the granting of deferred adjudication or pretrial diversion in accordance with Occupations Code, §53.021(d)," which identifies the possible judicial outcomes that the department would consider to constitute a final conviction for purposes of denying license issuance. Similarly, proposed new §53.110(4) would define "licensee" as "a person or entity who has received a license under this subchapter. This includes each member of a partnership or association, each officer of a corporation, the owner of a majority of a corporation's corporate stock, and any agent or employee acting on behalf of any of the aforementioned persons or entities," which is necessary to identify the specific conditions under which the department would consider a person to be a licensee for purposes of enforcement or administration of the rules.

Proposed new §53.111, concerning Applicability, would consist of the contents of current §53.110(b), which identifies the activities constituting the business of buying, selling, selling on consignment, displaying for sale, or exchanging a vessel. Under Parks and Wildlife Code, §31.041, a person may not engage in business in this state as a dealer, distributor, or manufacturer unless the person holds a license for that purpose issued by the department. Therefore, it is necessary to delineate the activities that the department considers to constitute "engaging in business" for purposes of the applicability of the rules.

Proposed new §53.112, concerning Application and Issuance, would consist of the contents of current §53.113(c) - (e), which prescribe the documentation required by the department prior to any issuance or renewal of a dealer, distributor, or manufacturer's license.

Proposed §53.112(a) provides that for a dealer license, an applicant would be required to submit the fee for the license, accompanied by photographs of a permanent sign bearing the name of the business at the location of business, the front of the business (proving public access), and space sufficient for office, service

area (not applicable to floating inventory or listings), and display of vessels, motorboats, or outboard motors (not applicable to floating inventory or listings). Additionally, an applicant would be required to furnish a copy of the Tax Permit issued by the Comptroller under Chapter 151, Tax Code, submit all assumed name(s) on file with the Secretary of State or county clerk; a copy of personal identification documentation of the owner, president, or managing partner of the business, and a list of dealer agreements. Parks and Wildlife Code, §31.041(a) prohibits any person from engaging in business in this state as a dealer, distributor, or manufacturer unless the person holds a license issued by the department for that purpose and has entered into a license agreement with the department. That section also requires a dealer to have a separate license for each place of business. Additionally, Parks and Wildlife Code, §31.041(e) requires an application for a dealer license to be accompanied by photographs of the business sufficient to show any sign the business is required to display and the extent of the space the business is required to maintain. The application must also be accompanied by a copy of the tax permit of the dealer, distributor, or manufacturer issued by the comptroller under Chapter 151, Tax Code, if the dealer, distributor, or manufacturer has a tax permit. Therefore, the current as well as the proposed new section require verification of what the department has determined are the minimum reasonable expectations necessary to determine that the applicant has complied with the statute. With respect to the documentation of floating inventory (vessels or outboard motors not kept at a single location), such as commission-sale brokers who at any given time may be attempting to sell vessels located on the water in different parts of the state, the current rules require the applicant to furnish the physical address of the office, the physical address, phone number, and management /ownership information for at least five marinas where vessels are expected to be moored, or an explanatory note if the applicant expects to keep inventory at fewer than five marinas, which is necessary to ensure that the department's rules encompass the variety of business models that affected by the requirements of Parks and Wildlife Code, Chapter 31. The proposed new rule would retain these requirements; however, instead of furnishing the required information for at least five marinas, the proposed new rule would require the information to be provided for all marinas where an applicant maintains inventory. The change is necessary to account for all inventory subject to the rules.

For a distributor or manufacture license, proposed new §53.112(b) would require a properly completed application form, accompanied by the appropriate fee, verification of all assumed names on file with the Secretary of State or county clerk, a complete list of manufacturers represented by a distributorship, and a complete list of distributors, dealers, and representatives for a manufacturer, which is necessary for the department to determine that the applicant, if issued a license, is compliant with the applicable tax and registration requirements applicable to boats and motors in Texas.

Finally, proposed new §53.112(c) would require applicants for a dealer, distributor, or manufacturers license to sign a license agreement stating that the applicant agrees to comply with all applicable state laws, including Occupations Code, Chapter 2352, concerning Franchise Agreements, when required. The proposed new provision is required by Parks and Wildlife Code, §31.041(a) and is necessary to ensure that licensees provide affirmative evidence of intent to comply with the laws of the state.

Proposed new §53.113, regarding Refusal to Issue or Renew License; Review of Agency Decision to Refuse or Renew License would set forth new provisions regarding the circumstances under which the department could refuse to issue or renew a dealer, distributor, or manufacturer license, and would implement a process to review agency decisions to refuse license issuance or renewal.

The department is engaged in an overall effort to create uniform criteria for the denial of special permits and licenses to persons who have been proven to exhibit disregard for statutes and regulations governing license and permit privileges and Parks and Wildlife laws in general. Therefore, the proposed new section would eliminate the current criteria used by the department to revoke or suspend a license and instead institute new criteria for denial of license issuance or renewal, and implement a review process for license denials.

Under proposed new §53.113, the department could choose to refuse license issuance or renewal to any person who applies for a dealer, distributor, or manufacturer license if the applicant has been finally convicted of or been assessed an administrative penalty for any violation of Parks and Wildlife Code, Chapter 31, Subchapter A, B, B-1, C, D, or E or that is a Class A or B misdemeanor, state jail felony, or felony; Chapters 51, 53, or 55 of the department's regulations, or any federal or state law relating to the sale, distribution, financing, registration, or taxing of a vessel, motorboat, or outboard motor. The proposed new section also would provide for license denial if an applicant is liable to the state under Parks and Wildlife Code §12.301 or if department has evidence that the applicant is acting on behalf of or as a surrogate for another person or entity who has a final conviction or has been assessed an administrative penalty for any violation listed in this subsection.

The department believes that a person who has demonstrated egregious, repeated, or reckless disregard for Parks and Wildlife laws other than those punishable as Class C misdemeanors (i.e., minor crimes such as bag and possession limit violations), and specifically, laws relating to water safety, boat registration, titling, and taxation, and commerce should not be accorded the privilege of holding a commercial license issued by the department. Similarly, a person who is indebted to the state for the civil restitution value of fish and wildlife resources that were unlawfully taken or possessed should not be accorded license privileges.

The proposed new section also would allow the department to refuse to issue a license to any person the department has reason to believe is acting on behalf of or as a surrogate for another person who is prohibited by the provisions of this subchapter from engaging in licensed activities. In some cases, persons who have been prohibited from obtaining certain types of permits and licenses have attempted to continue their activities by using proxies to obtain a permit or license. The department's intent is to ensure that persons the department intends to prevent from engaging in certain activities are in fact prevented from doing so.

The department does not intend for a conviction or administrative penalty to be an automatic bar to obtaining a dealer, distributor, or manufacturer license. Therefore, the proposed rule would provide for the department to consider a number of factors and make such determinations on a case-by-case basis. The factors that may be considered by the department in determining whether to deny a license based on a conviction or deferred adjudication would include the seriousness of the offence, the number of offenses, the existence or absences of a pattern of offenses, the length of time between the offense and the license application, and any other pertinent factors.

Finally, the proposed amendment would create a mechanism for persons who have been denied license issuance to have the opportunity to have such decisions reviewed by department managers, which is intended to help ensure that decisions affecting license privileges are correct.

Proposed new §53.114, concerning Suspension or Revocation, would set forth the conditions and process for the department to revoke or suspend a license. Parks and Wildlife Code, Chapter 12, Subchapter F, prescribes the process for the department to revoke or suspend a license or permit. Under that statute, the executive director may suspend or revoke a permit or license, if it is found after notice and hearing, that the licensee violated or has been finally convicted of a violation of the Parks and Wildlife Code or regulation of the commission related to the license being revoked, for making false or misleading statements on an application, or for indebtedness to the state for taxes, fees, payment of penalties relating to the license being revoked or suspended, or is liable to the state under Parks and Wildlife Code, §12.301. Those criteria are recapitulated in the current rule (§53.110(i)(1) - (4)) and would be retained in the proposed new rule. The proposed new rule also would retain current §53.110(i)(5), (6), (8), and (9), which allow for license renewal or revocation if the applicant or licensee was previously the holder of a similar license that was revoked for cause and never reissued by the department, or that was suspended for cause and the terms of the suspension have not been fulfilled; if the applicant or licensee was previously a partner, stockholder, director, or officer controlling or managing a partnership, corporation, or store location whose license was revoked for cause and never reissued, or was suspended for cause and the terms of the suspension have not been fulfilled; if the licensee or an employee of the licensee has obtained, or attempted to obtain, any money, commission, fee, barter, exchange or other compensation by fraud, deception or misrepresentation; or if the licensee or an employee of the licensee is finally convicted or receives deferred adjudication for a violation of any federal or state law relating to the sale, distribution, financing, registration, taxing, or insuring of a vessel. The proposed new rule also would explicitly state that revocation or suspension of a license will be conducted pursuant to the requirements of Parks and Wildlife Code, Chapter 12, Subchapter J.

Proposed new §53.115, concerning Recordkeeping, Display of License, and Notification Requirements, would consist of the contents of current §53.110(f) - (h), which require a licensee to notify the department in writing within 10 days if there is any change of ownership, business name, physical location, dealer agreement, distributors, dealers, or representatives, or address or phone information; require licenses to be publicly displayed at all times in the place of business for which the license is issued; require licensees to keep a complete record (to include date of purchase, date of sale, hull identification number and/or motor identification number, name and address of person selling to the dealer, name and address of person purchasing from the dealer, name and address of selling dealer or individual if vessel and/or outboard motor is offered for sale by consignment, a copy of the vessel/outboard motor title/registration receipt, copies of any and all documents, forms, and agreements applicable to a particular sale, consignment, listing, transfer of ownership, titling, titling and registration, or documentation through the U.S. Coast Guard, including, but not limited to title applications, work-up sheets, Manufacturer's Certificates of Origin, titles or photocopies of the front and back of titles, factory invoices, sales contracts, retail installment agreements, buyer's orders, bills of sale, waivers, or other agreements between the seller and purchaser, and copies of written consignment agreements or power of attorney for vessels, motorboats, or outboard motors. The proposed new section is necessary to allow the department to verify, from inspection of required records, that a licensee is compliant with the applicable provisions of the subchapter and Parks and Wildlife Code.

Cody Jones, Boating Law Administrator, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the rules, as the proposed new rules will not significantly alter the processes currently in place for enforcing and administering the current rules.

Mr. Jones also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be consistent regulations governing the department's administrative processes with regard to license and permit issuance.

There will be no adverse economic effect on persons required to comply with the rules as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that there will be no adverse economic effects on small businesses or microbusinesses because the proposed rules do not create any requirements in addition to those currently in effect for small businesses or micro-businesses. Therefore, the department has not prepared the economic impact statement or regulatory flexibility analysis described in Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may be submitted to Assistant Commander Cody Jones, Texas Parks and Wildlife Department 4200 Smith School Road, Austin, Texas, 78744; (512) 389-4624 (e-mail: cody.jones@tpwd.texas.gov) or via the department website at http://tpwd.texas.gov/business/feedback/public_comment/.

31 TAC §53.110

The repeal is proposed under the authority of Parks and Wildlife Code, §31.0412, which authorizes the commission to promul-

gate rules regarding marine dealer, distributor, and manufacturing licenses, including rules prescribing application and license agreement forms; application and renewal procedures; reporting and recordkeeping requirements for license holders; license requirements; and license revocation and suspension procedures.

The proposed repeal affects Parks and Wildlife Code, Chapter 31.

§53.110 Marine Dealer, Distributors, and Manufacturers

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

Filed with the Office of the Secretary of State on December 9, 2016.

TRD-201606450
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 389-4775

31 TAC §§53.110 - 53.115

The new sections are proposed under the authority of Parks and Wildlife Code, §31.0412, which authorizes the commission to promulgate rules regarding marine dealer, distributor, and manufacturing licenses, including rules prescribing application and license agreement forms; application and renewal procedures; reporting and recordkeeping requirements for license holders; license requirements; and license revocation and suspension procedures.

The new sections affect Parks and Wildlife Code, Chapter 31.

§53.110. Definitions.

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

(1) Applicant--A person or entity who has applied for a new or renewal license. This includes each member of a partnership or association, each officer of a corporation, the owner of a majority of a corporation's corporate stock, and any agent or employee acting on behalf of any of the aforementioned persons or entities.

(2) Consignment--The sale or offer for sale by a person other than the owner under terms of a verbal or written authorization from the owner.

(3) Final conviction- A final judgment of guilt, the entering of a plea of guilty or nolo contendere, or the granting of deferred adjudication or pretrial diversion in accordance with Occupations Code, §53.021(d).

(4) Licensee--A person or entity who has received a license under this subchapter. This includes each member of a partnership or association, each officer of a corporation, the owner of a majority of a corporation's corporate stock, and any agent or employee acting on behalf of any of the aforementioned persons or entities.

§53.111. Applicability.

Any person or entity, including a person or entity purporting to be a broker or brokerage house, who acts as an intermediary or assists in the sale, sale on consignment, display for sale, purchase, trade, or transfer of a vessel, motorboat, or outboard motor in exchange for a fee, commission, or other consideration is considered to be engaged in the business of buying, selling, selling on consignment, displaying for sale, or exchanging a vessel for the purposes of this subchapter. Any person or entity, including a person or entity purporting to be a broker or brokerage house, engaged in any activity described above is subject to the provisions of this subchapter.

§53.112. Application and Issuance.

(a) An applicant shall for a dealer license shall submit a properly completed, department-approved application form, accompanied by the following:

(1) the fee prescribed by law;

(2) photographs clearly showing:

(A) the permanent sign at the location designated in the application as the applicant's permanent place of business, clearly indicating the name of the business;

(B) the front of the business with public access; and

(C) space sufficient for office, service area (not applicable to floating inventory or listings), and display of vessels, motorboats, or outboard motors (not applicable to floating inventory or listings);

(3) a copy of the Tax Permit issued by the Comptroller under Chapter 151, Tax Code;

(4) verification of all assumed name(s), if applicable, in the form of assumed name certificate(s) on file with the Secretary of State or county clerk;

(5) a photocopy of the current driver's license or Department of Public Safety identification of the owner, president or managing partner of the business; and

(6) a complete list of dealer agreements; and

(7) if the applicant is to maintain floating inventory or listings at a location other than that designated as the applicant's permanent place of business, a record of all marinas where floating inventory or listings are expected to be displayed. If the applicant contemplates using less than five marinas, then the application shall include an explanatory statement. The record must identify, at a minimum, the name, physical address, and telephone for each marina.

(b) An applicant for a distributor or manufacturer license shall submit a properly completed, department-approved application form accompanied by the following:

(1) the fee prescribed by law for each license requested;

(2) verification of all assumed name(s), if applicable, in the form of assumed name certificate(s) on file with the Secretary of State or county clerk;

(3) a complete list of manufacturers represented by a distributorship; and

(4) a complete list of distributors, dealers, and representatives for a manufacturer.

(c) The department will not issue a license under this subchapter if the applicant has not signed and submitted a department-provided license agreement stating that the applicant agrees to comply with all applicable state laws, including Occupations Code, Chapter 2352, concerning Franchise Agreements, when required.

§53.113. Refusal to Issue or Renew License; Review of Agency Decision to Refuse or Renew License.

(a) The department may refuse to issue or renew a license under this subchapter if:

(1) an applicant is liable to the state under Parks and Wildlife Code §12.301;

(2) an applicant has a final conviction or has been assessed an administrative penalty for a violation of:

(A) Parks and Wildlife Code, Chapter 31, Subchapter A, B, B-1, C, D, or E;

(B) a provision of the Parks and Wildlife Code not described by subparagraph (A) of this paragraph that is punishable as a Parks and Wildlife Code:

(i) Class A or B misdemeanor;

(ii) state jail felony; or

(iii) felony;

(C) Chapters 51, 53, or 55 of this title; or

(D) any federal or state law relating to the sale, distribution, financing, registration, or taxing of a vessel, motorboat, or outboard motor; or

(E) the department has evidence that the applicant is acting on behalf of or as a surrogate for another person or entity who has a final conviction or has been assessed an administrative penalty for any violation listed in this subsection.

(b) In determining whether to issue or renew a license under this section, the department may consider:

(1) the number of final convictions or administrative penalties;

(2) the seriousness of the conduct on which the final conviction or administrative penalty is based;

(3) the existence, number, and seriousness of offenses or violations other than offenses or violations that resulted in a final conviction or administrative penalty described by paragraph (1) of this subsection;

(4) the length of time between the most recent final conviction or administrative penalty and the license application;

(5) whether the final conviction, administrative penalty, or other offense or violation was the result of negligence or intentional conduct;

(6) whether the final conviction or administrative penalty resulted from conduct committed or omitted by the applicant, an agent of the applicant, or both; and

(7) other mitigating factors.

(c) The department shall provide to the applicant a written statement of the reasons for a decision to deny the issuance or renewal of a license.

(d) An applicant may request a review of a decision of the department with respect to license issuance or denial. The request for review must be made within 30 days of being notified by the department that the application for a license or license renewal has been denied. The review request must be in writing and addressed to: Manager of Boat Titling, Registration, and Marine Licensing, Texas Parks and Wildlife Department, 4200 Smith School Rd., Austin, TX 78744. If no review request is received within 30 days of the date of the letter notifying the licensee of the department's intent to refuse issuance or renewal of the license, the decision to deny the issuance or renewal of a license is final.

(1) Within 10 working days of receiving a request for review under this section, the department shall establish a date and time for the review.

(2) The department shall conduct the review within 30 days of receipt of the request required by subsection (d) of this section, unless another date is established in writing by mutual agreement between the department and the requestor.

(3) The request for review shall be presented to a review panel. The review panel shall consist of three department managers with knowledge in boating regulations, appointed or approved by the executive director or his or her designee.

(4) The decision of the review panel is final.

§53.114. Suspension or Revocation.

The department may suspend or revoke a license under this subchapter as provided by Parks and Wildlife Code, Chapter 12, Subchapter F, if:

(1) a licensee has been finally convicted or been assessed an administrative penalty for a violation or condition listed in §53.113(a) of this title (relating to Refusal to Issue or Renew License; Review of Agency Decision to Refuse or Renew License);

(2) the licensee was previously the holder of a license issued under this subchapter that was revoked for cause and never reissued by the department, or that was suspended for cause and the terms of the suspension have not been fulfilled;

(3) the licensee was previously a partner, stockholder, director, or officer controlling or managing a partnership, corporation, or store location whose license issued under this subsection was revoked for cause and never reissued, or was suspended for cause and the terms of the suspension have not been fulfilled;

(4) the business does not intend to be open to all members of the public nor during normal business hours;

(5) the licensee or an employee of the licensee has obtained, or attempted to obtain, any money, commission, fee, barter, exchange or other compensation by fraud, deception or misrepresentation.

§53.115. Recordkeeping, Display of License, and Notification Requirements.

(a) A licensee shall notify the department in writing within 10 days if there is any change of:

(1) ownership;

(2) business name;

(3) physical location;

(4) dealer agreement;

(5) distributors, dealers, or representatives; or

(6) address or phone information.

(b) The licenses issued under this subchapter to dealers must be publicly displayed at all times in the place of business for which the license is issued.

(c) A licensee must keep a complete record available for inspection in the place of business relating to all vessels, motorboats, and outboard motors purchased, sold, or displayed for sale for a minimum of 24 months. Content of records must include the:

(1) date of purchase;

(2) date of sale;

(3) hull identification number and/or motor identification number;

(4) name and address of person selling to the dealer;

(5) name and address of person purchasing from the dealer;

(6) name and address of selling dealer or individual if vessel and/or outboard motor is offered for sale by consignment;

(7) a copy of the vessel/outboard motor title/registration receipt;

(8) copies of any and all documents, forms, and agreements applicable to a particular sale, consignment, listing, transfer of ownership, titling, titling and registration, or documentation through the U.S. Coast Guard, including, but not limited to title applications, work-up sheets, Manufacturer's Certificates of Origin, titles or photocopies of the front and back of titles, factory invoices, sales contracts, retail installment agreements, buyer's orders, bills of sale, waivers, or other agreements between the seller and purchaser; and

(9) copies of written consignment agreements or power of attorney for vessels, motorboats, or outboard motors.

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

Filed with the Office of the Secretary of State on December 9, 2016.

TRD-201606451
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 389-4775

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CHAPTER 55. LAW ENFORCEMENT
SUBCHAPTER F. FLOATING CABINS

31 TAC §55.202, §55.208

The Texas Parks and Wildlife Department proposes an amendment to §55.202, concerning Period of Validity; Renewal and Transfer of Permits and new §55.208, concerning Refusal to Renew Permit; Review of Agency Decision to Refuse Permit Renewal.

The proposed amendment to §55.202 would eliminate language in subsection (c) providing for notification and review of permit expiration. The proposed amendment is necessary because proposed new §55.208 creates a comprehensive process for refusal of renewal of a floating cabin permit; thus, the provisions in §55.202 are not necessary.

Under current rules the only criteria for denying renewal of a floating cabin permit is if the permittee has allowed a floating cabin permit to expire. Proposed new §55.208 would institute additional criteria for denial of permit renewal, and implement a review process for permit denials. The amendment is part of an overall effort to create uniform criteria for the denial of special permits and licenses to persons who have been proven to exhibit disregard for statutes and regulations governing special permit and license privileges and Parks and Wildlife laws in general.

Proposed new §55.208 would allow the department to deny permit renewal to any person who has been finally convicted or assessed an administrative penalty for a violation of Parks and Wildlife Code that is Class A or B misdemeanor, state jail felony, or felony, or a violation of Water Code, §26.121 (which applies to water pollution, such as wastewater discharges). Additionally, the proposed new section would allow for permit renewal denial if the applicant is liable to the state under Parks and Wildlife Code, §12.301 (civil restitution value of fish and wildlife resources unlawfully taken or possessed).

The department believes that a person who has demonstrated egregious, repeated, or reckless disregard for Parks and Wildlife laws other than those punishable as Class C misdemeanors (i.e., minor crimes such as bag and possession limit violations), and specifically, laws relating to water pollution, should not be accorded the privilege of holding a floating cabin permit. Similarly, a person who is indebted to the state for the civil restitution value of fish and wildlife resources that were unlawfully taken or possessed should not be accorded permit privileges.

The department does not intend for a conviction or administrative penalty to be an automatic bar to renewal of a floating cabin permit. Therefore, the proposed new rule would provide for the department to consider a number of factors and make such determinations on a case-by-case basis. The factors that may be considered by the department in determining whether to deny a permit based on a conviction or deferred adjudication would include the seriousness of the offence, the number of offenses, the existence or absences of a pattern of offenses, the length of time between the offense and the permit application, and any other pertinent factors.

Finally, the proposed amendment would create a mechanism for persons who have been denied permit renewal to have the opportunity to have such decisions reviewed by department managers, which is intended to help ensure that decisions affecting license privileges are correct.

Cody Jones, Boating Law Administrator, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the rules.

Mr. Jones also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be consistent regulations governing the department's administrative processes with regard to license and permit issuance.

There will be no adverse economic effect on persons required to comply with the rules as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits;

adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that there will be no adverse economic effects on small businesses or microbusinesses because the proposed rules will not directly affect small businesses or micro-businesses. Therefore, the department has not prepared the economic impact statement or regulatory flexibility analysis described in Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may be submitted to Assistant Commander Cody Jones, Texas Parks and Wildlife Department 4200 Smith School Road, Austin, Texas, 78744; (512) 389-4624 (e-mail: cody.jones@tpwd.texas.gov) or via the department website at http://tpwd.texas.gov/business/feedback/public_comment/.

The amendment and new section are proposed under the authority of Parks and Wildlife Code, §32.005, which authorizes the commission to promulgate rules necessary to implement the provisions of Parks and Wildlife Code, Chapter 32.

The proposed amendment affects Parks and Wildlife Code, Chapter 32.

§55.202. Period of Validity; Renewal and Transfer of Permits.

(a) - (b) (No change.)

(c) Permits that are not renewed within 90 days after expiration will become ineligible for renewal and the affected floating cabin will be subject to removal at the permittee's expense according to the provisions of Parks and Wildlife Code, §32.154. The department shall notify each permittee by certified mail upon determining that a permit has expired and become ineligible for renewal.

~~[(1) A permittee whose permit has expired and become ineligible for renewal may request a review of the ineligibility status to show why the permit should be renewed. A person seeking a review under this subsection must contact the department within 10 working days after the date that the department issues the notification required by this section.]~~

~~[(2) The request for review shall be presented to a review panel. The review panel shall consist of the following:]~~

~~[(A) the Deputy Executive Director for Operations (or his or her designee);]~~

~~[(B) the Director of Law Enforcement (or his or her designee); and]~~

~~[(C) the Director of the Coastal Fisheries Division (or his or her designee).]~~

~~[(3) The decision of the review panel is final.]~~

(d) - (e) (No change.)

§55.208. Refusal to Renew Permit; Review of Agency Decision to Refuse Permit Renewal.

(a) In addition to refusal of permit renewal under the provisions of §55.202(c) of this title (relating to Period of Validity; Renewal and Transfer of Permits), the department may refuse to renew a permit under this subchapter if:

(1) an applicant is liable to the state under Parks and Wildlife Code §12.301;

(2) an applicant has been finally convicted or assessed an administrative penalty for a violation of:

(A) a provision of the Parks and Wildlife Code that is punishable as a Parks and Wildlife Code:

(i) Class A or B misdemeanor;

(ii) state jail felony; or

(iii) felony; or

(iv) a violation of Water Code, §26.121.

(b) In determining whether to renew a permit under this section, the department may consider:

(1) the number of final convictions or administrative penalties;

(2) the seriousness of the conduct on which the final conviction or administrative penalty is based;

(3) the existence, number, and seriousness of offenses or violations other than offenses or violations that resulted in a final conviction or administrative penalty described by subsection (a)(2) of this section;

(4) the length of time between the most recent final conviction or administrative penalty and the application for permit renewal;

(5) whether the final conviction, administrative penalty, or other offense or violation was the result of negligence or intentional conduct;

(6) whether the final conviction or administrative penalty resulted from conduct committed or omitted by the applicant; and

(7) other mitigating factors.

(c) The department shall provide to the applicant a written statement of the reasons for a decision to deny the renewal of a permit.

(d) An applicant for a permit renewal may request a review of a decision of the department to refuse permit renewal.

(1) An applicant seeking review of a decision of the department with respect to permit renewal must request the review within 10 working days of being notified by the department that the application for permit renewal has been denied. The review request must be in writing and addressed to: Marine Enforcement, Texas Parks and Wildlife Department, 4200 Smith School Rd., Austin, TX 78744.

(2) Within 10 working days of receiving a request for review under this subsection, the department shall establish a date and time for the review.

(3) The department shall conduct the review within 30 days of receipt of the request required by paragraph (2) of this subsection, unless another date is established in writing by mutual agreement between the department and the requestor.

(4) The request for review shall be presented to a review panel. The review panel shall consist of three department managers with expertise in marine regulations, appointed or approved by the executive director, or designee.

(5) The decision of the review panel is final.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 9, 2016.

TRD-201606449
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: January 22, 2017
Proposal publication date: December 23, 2016
For further information, please call: (512) 389-4775

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SUBCHAPTER H. PARTY BOATS

31 TAC §55.404

The Texas Parks and Wildlife Department proposes an amendment to §55.404, concerning Party Boat Operator License--General Provisions.

The proposed amendment would eliminate the current criteria used by the department to refuse issuance or renewal of a party boat operator license, institute new criteria for permit issuance denial, and implement a review process for permit denials. The amendment is part of an overall effort to create uniform criteria for the denial of special permits and licenses to persons who have been proven to exhibit disregard for statutes and regulations governing permit privileges and Parks and Wildlife laws in general.

Under the current rule the department will not issue a party boat operator license to any person who has, within five-years of an application, been convicted of a violation of Penal Code, Chapter 49, involving the operation of a motorboat or a violation of Parks and Wildlife Code, Chapter 31, involving reckless or negligent behavior, or behavior that placed passengers in peril. The current rule also prohibits license issuance to a person who is prohibited from holding an equivalent license in another state.

The proposed amendment would eliminate the current automatic prohibition and allow licenses to be issued at the department's discretion; however, the current five-year period of applicability would be eliminated (meaning conviction for a listed offense committed at any time could be a justification for license denial) and the subsection would apply to a wider range of offenses. In addition to the current criteria for license denial, the proposed amendment would provide for the department to refuse permit issuance to any person who applies for a party boat operator license if the applicant has been finally convicted of or been assessed an administrative penalty for any violation of Parks and Wildlife Code that is a Class A or B misdemeanor, state jail felony, or felony; a violation of Water Code, §26.121 (environmental crimes related to water pollution by boats); or any federal or state law relating to the sale, distribution, financing, registration, or taxing of a vessel, motorboat, or outboard motor. The proposed amendment also would provide for permit denial if an applicant is liable to the state under Parks and Wildlife Code §12.301 or if department has evidence that the applicant is acting on behalf of or as a surrogate for another person or entity who has a final conviction or has been assessed an administrative penalty for any violation listed in this subsection.

The department believes that a person who has demonstrated egregious, repeated, or reckless disregard for Parks and Wildlife laws other than those punishable as Class C misdemeanors (i.e., minor crimes such as bag and possession limit violations), and specifically, laws relating to water safety, water pollution, and boat registration, taxation, and commerce should not be accorded the privilege of holding a commercial license issued by the department. Similarly, a person who is indebted to the state for the civil restitution value of fish and wildlife resources that were unlawfully taken or possessed should not be accorded license privileges.

The amendment also would allow the department to refuse to issue a permit to any person the department has reason to believe is acting on behalf of or as a surrogate for another person who is prohibited by the provisions of this subchapter from engaging in permitted activities. In some cases, persons who have been prohibited from obtaining certain types of permits and licenses have attempted to continue their activities by using proxies to obtain a permit or license. The department's intent is to ensure that persons the department intends to prevent from engaging in certain activities are in fact prevented from doing so.

The department does not intend for a conviction or administrative penalty to be an automatic bar to obtaining a party boat operator license. Therefore, the proposed rule would provide for the department to consider a number of factors and make such determinations on a case-by-case basis. The factors that may be considered by the department in determining whether to deny a permit based on a conviction or deferred adjudication would include the seriousness of the offence, the number of offenses, the existence or absences of a pattern of offenses, the length of time between the offense and the permit application, and any other pertinent factors.

Finally, the proposed amendment would create a mechanism for persons who have been denied license issuance to have the opportunity to have such decisions reviewed by department managers, which is intended to help ensure that decisions affecting license privileges are correct.

Cody Jones, Boating Law Administrator, has determined that for each of the first five years that the rule as proposed is in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the rule.

Mr. Jones also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be consistent regulations governing the department's administrative processes with regard to license and permit issuance.

There will be no adverse economic effect on persons required to comply with the rule as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting

requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that there will be no adverse economic effects on small businesses or microbusinesses because the proposed rule will not directly affect small businesses or micro-businesses. Therefore, the department has not prepared the economic impact statement or regulatory flexibility analysis described in Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposed rule may be submitted to Assistant Commander Cody Jones, Texas Parks and Wildlife Department 4200 Smith School Road, Austin, Texas, 78744; (512) 389-4624 (e-mail: cody.jones@tpwd.texas.gov) or via the department website at http://tpwd.texas.gov/business/feedback/public_comment/.

The amendment is proposed under the authority of Parks and Wildlife Code, §31.180, which authorizes the commission to promulgate rules necessary to implement Parks and Wildlife Code, Chapter 31, Subchapter G.

The proposed amendment affects Parks and Wildlife Code, Chapter 31.

§55.404. Party Boat Operator License--General Provisions.

(a) - (d) (No change.)

(e) Refusal to Issue or Renew License.; Review of Agency Decision to Refuse or Renew License[~~Denial of license issuance~~].

(1) The department may refuse to issue or renew a license under this subchapter if:

(A) an applicant is liable to the state under Parks and Wildlife Code §12.301;

(B) an applicant has a final conviction or has been assessed an administrative penalty for a violation of:

(i) Parks and Wildlife Code, Chapter 31, involving reckless or negligent behavior, or behavior that placed passengers in peril.

(ii) a provision of the Parks and Wildlife Code that is punishable as a Parks and Wildlife Code:

(I) Class A or B misdemeanor;

(II) state jail felony; or

(III) felony;

(iii) a violation of Penal Code, Chapter 49 involving the operation of a motorboat;

(iv) a violation of Water Code, §26.121; or

(v) any federal or state law relating to the sale, distribution, financing, registration, or taxing of a vessel, motorboat, or outboard motor; or

(C) the department has evidence that the applicant is acting on behalf of or as a surrogate for another person or entity who has a final conviction or has been assessed an administrative penalty for any violation listed in this subsection.

(2) The department will not issue a party boat operator license to a person who is prohibited from holding an equivalent license in another state.

(3) In determining whether to issue or renew a license under this section, the department may consider:

(A) the number of final convictions or administrative penalties;

(B) the seriousness of the conduct on which the final conviction or administrative penalty is based;

(C) the existence, number, and seriousness of offenses or violations other than offenses or violations that resulted in a final conviction or administrative penalty described by paragraph (1) of this subsection;

(D) the length of time between the most recent final conviction or administrative penalty and the license application;

(E) whether the final conviction, administrative penalty, or other offense or violation was the result of negligence or intentional conduct;

(F) whether the final conviction or administrative penalty resulted from conduct committed or omitted by the applicant, an agent of the applicant, or both; and

(G) other mitigating factors.

(4) The department shall provide to the applicant a written statement of the reasons for a decision to deny the issuance or renewal of a license.

(5) An applicant may request a review of a decision of the department with respect to license issuance or denial. The request for review must be made within 30 days of being notified by the department that the application for a license or license renewal has been denied. The review request must be in writing and addressed to: Marine Enforcement, Texas Parks and Wildlife Department, 4200 Smith School Rd., Austin, TX 78744. If no review request is received within 30 days of the date of the letter notifying the licensee of the department's intent to refuse issuance or renewal of the license, the decision to deny the issuance or renewal of a license is final.

(A) Within 10 working days of receiving a request for review under this section, the department shall establish a date and time for the review.

(B) The department shall conduct the review within 30 days of receipt of the request required by subparagraph (A) of this section, unless another date is established in writing by mutual agreement between the department and the requestor.

(C) The request for review shall be presented to a review panel. The review panel shall consist of three department managers with knowledge in marine regulations, appointed or approved by the executive director or his or her designee.

(D) The decision of the review panel is final.

[~~(1) The department will not issue a party boat operator license to any person who has, within the five-year period preceding an application for a party boat operator license, been convicted of:~~]

[~~(A) a violation of Penal Code, Chapter 49 involving the operation of a motorboat; or~~]

[(B) a violation of Parks and Wildlife Code, Chapter 31, involving reckless or negligent behavior, or behavior that placed passengers in peril.]

[(2) The department will not issue a party boat operator license to a person who is prohibited from holding an equivalent license in another state.]

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

Filed with the Office of the Secretary of State on December 9, 2016.

TRD-201606453
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 389-4775

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CHAPTER 57. FISHERIES
SUBCHAPTER E. PERMITS TO COLLECT OR SELL NONGAME FISH TAKEN FROM PUBLIC FRESH WATER

31 TAC §§57.377, 57.379 - 57.381, 57.384, 57.385

The Texas Parks and Wildlife Department proposes amendments to §§57.377, 57.379, 57.380, 57.381, and 57.384, and new §57.385, concerning Permits to Sell Nongame Fish Taken from Public Water. Under the current provisions of Chapter 57, Subchapter E, a permit is required for any person who wishes to sell certain nongame fishes, including shad, taken from public waters. Proposed new §57.385, concerning Special Provisions - Shad, would establish a volumetric value for the collection of shad, at or above which a permit would be required, irrespective of whether the harvested shad were sold. Therefore, the department also proposes to change the title of Subchapter E to Permits to Collect or Sell Nongame Fish Taken from Public Water. The department has determined that because shad are a public resource managed by the department, the large-scale harvest of that resource should be monitored and managed by the department. By requiring persons who harvest large numbers of shad to obtain a permit and file annual reports, the proposed amendments will allow the department to monitor any impacts to the resource. In addition, the proposed amendments alter provisions regarding the department's actions regarding issuance and renewal of permits.

The proposed amendment to §57.377, concerning Definitions, would define "shad" as "gizzard and threadfin shad (Dorosoma spp.)," which is necessary to definitively establish the taxonomic identity of the species to which the rules apply.

The proposed amendment to §57.379, concerning Prohibited Acts, would replace the word "exempted" with the word "provided" in the initial sentence of the section. In a technical sense, the rules do not exempt anyone from anything, but provide for the various circumstance under which the provisions of the subchapter apply.

The proposed amendment to §57.380, concerning Permit Application, would streamline language, add a cross-reference to department regulations concerning fees, and provide for up to eight persons to be named on a permit as assistants to the permittee in the conduct of permitted activities. Current subsection (a) refers to "a permit to sell nongame fish taken from public fresh waters of this state." The department has determined that since Subchapter E consists of the rules governing permits to sell nongame fish taken from public fresh waters of the state, it is redundant to repeat it everywhere. Instead, the department believes it is simpler and easier to simply refer to "permits issued under this subchapter." Similar changes are made in the proposed amendments to §57.381. The proposed amendment also would alter subsection (a) to include a cross-reference to Chapter 53 of the department's regulations, which establish permit fees, for ease of reference. Finally, the proposed amendment would allow a permittee to designate up to eight individuals to assist the permittee in the conduct of permitted activities. Under current rule, a permittee is authorized to name up to two additional persons to assist in the conduct of permitted activities; however, a permit amendment is required if a permittee wishes to eliminate or replace assistants. For purposes of enforcement, it is necessary for assistants to be named on a permit; however, the department has determined that it is inefficient for the department and the regulated community to go through the process of permit amendment each time an assistant is added or removed and that increasing the number of assistants that may be named on a permit will streamline the process for both the department and the regulated community.

The proposed amendment to §57.381, concerning Permit Specifications and Requirements, would require designated assistants be either on board the same vessel with the permit holder or within line-of-sight of the permit holder (if the assistant is not on the same vessel) at all time that the assistant is engaged in permitted activities. The line-of-sight requirement is necessary because the permit holder should be directly supervising all permit activities in order to ensure that permit requirements are met. Additionally, having a line-of-sight requirement will enhance enforcement. The proposed amendment also makes nonsubstantive changes as previously described in the discussion of the proposed amendment to §57.380.

The proposed amendment to §57.384, concerning Refusal to Issue; Review of Agency Decision to Refuse Issuance, would allow the department to refuse permit issuance on the basis of the likelihood that prospective permit activities could increase the risk of the transfer or spread of harmful or potentially harmful exotic fish or shellfish. The negative environmental and recreational impacts of invasive species such as zebra mussels are well documented. The department is aggressively engaged in efforts to stop the spread of such species and had determined that because the transport of aquatic species represents the potential to also transport harmful and potentially harmful species, it might be necessary to refuse permit issuance in instances in which a prospective activity presents unacceptable risk. The proposed amendment also would allow for the refusal of permit issuance to persons whom the department has evidence to believe is attempting to obtain a permit on behalf of or as a surrogate for another person not eligible to obtain a permit. Under the current rule, the department may decide not to issue a permit on the basis of an applicant's criminal history with respect to violations of fish and wildlife law. The department does not believe that a person who has by their own conduct and behavior become ineligible for permit privileges should be able to use a

surrogate to avoid the intent of the department in denying permit issuance; therefore, the proposed amendment would authorize the department to refuse permit issuance to persons attempting to obtain a permit on behalf of someone who is prevented from obtaining the permit on the basis of previous criminal activity.

Proposed new §57.385, concerning Special Provisions - Shad, would establish the conditions under which a permit is required for the possession and/or sale of shad taken from public waters.

Proposed new §57.385(a) would prohibit the sale, offer for sale, possession for purpose of sale, or exchange for anything of value of shad taken from public fresh water without a valid fishing license and appropriate nongame fish permit. Under current rule, it is unlawful to sell any nongame fish taken from public water without an appropriate fishing license and permit for that activity; thus the proposed new provision is not substantive.

Proposed new §57.385(b) would prohibit, with exceptions, the collection of shad from public fresh water without a permit if the shad are possessed in container(s) exceeding 82 quarts in volume. A permit would not be required if the shad were not sold or exchanged for anything of value, if the shad were used only as bait on the waterbody where they were collected, or the shad are possessed by a licensed fishing guide who furnishes the shad as bait to customers as part of the guide's services. The department selected a volumetric value for a possession standard because shad are small fish that are sensitive to handling. A specific numerical bag limit of individual fish would be problematic in the context of compliance and enforcement and in any event significant capture mortality could be expected as a result of the counting process. The department selected the 82-quart value because it is not believed that the collection of smaller volumes of shad for purposes of sale is biologically significant.

Ken Kurzawski, Regulations and Information Programs Director, Inland Fisheries Division, has determined that for each of the first five years that the rules as proposed are in effect, there will be fiscal implications to state government as a result of enforcing or administering the rules, consisting of increased revenue to the department resulting from permit fees from persons who would be required to obtain a permit under the proposed rules. The department estimates that there are 10 or less persons who would be required to obtain a permit as a result of the proposed rules. Therefore, the revenue increase to the department as a result of the proposed rules is estimated to be $600 or less per year (the current permit cost is $60 per year). Existing personnel will administer and enforce the rules as part of existing job duties; thus, there will be no costs associated with administering and enforcing the proposed rules.

Mr. Kurzawski also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be the management and protection of nongame fisheries resources.

There will be an adverse economic effect on persons required to comply with the rule as proposed, namely, the $60 fee for a permit.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that most if not all businesses affected by the proposed rules will be small businesses or microbusinesses. The department estimates that there are 10 or less persons who would be required to obtain a permit as a result of the proposed rules. The proposed rules would require persons who possess shad taken from public fresh water in containers whose aggregate volume exceeds of 82 quarts to obtain a permit to possess or sell nongame fish. The permit is an annual permit and the permit fee is $60. Because permittees are required to annually report the volume of harvest, means and methods of take; the water bodies where taken; and the price received, per pound (if shad are sold), the proposed amendments would also result in an additional cost to small and microbusinesses associated with reporting, which the department estimates to be $10 or less per year.

The department considered alternative regulatory approaches to achieve the goal of the proposed rules. The department considered status quo. This alternative was rejected because the impacts of large-scale collection activities on shad populations cannot be monitored unless the department is able to quantify harvest impacts, which is impossible without requiring harvest reporting from persons conducting such activities. The department also considered implementing a no-cost permit. This alternative was rejected because the regulatory complexity created by the existence of two permits to regulate the same activity could lead to problematic compliance and enforcement issues.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rule may be submitted to Ken Kurzawski, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4591 (e-mail: ken.kurzawski@tpwd.texas.gov) or via the department website at http://tpwd.texas.gov/business/feedback/public_comment/.

The amendments and new section are proposed under Parks and Wildlife Code, Chapter 67, which give the commission the authority to establish any limitations on the take, possession, propagation, transportation, importation, exportation, sale, and offering for sale of nongame fish and wildlife necessary to manage those species.

The proposed amendments and new rule affect Parks and Wildlife Code, Chapter 67.

§57.377. Definitions.

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

(1) - (4) (No change.)

(5) Shad--Gizzard and threadfin shad (Dorosoma spp.).

§57.379. Prohibited Acts.

Except as provided [~~exempted~~] by this subchapter it is unlawful for any person to:

(1) - (5) (No change.)

§57.380. Permit Application.

(a) An applicant for a permit under this subchapter [~~to sell nongame fish taken from public fresh waters of this state~~] shall submit a completed application to the department on a form supplied by the department, accompanied by the nonrefundable fee specified in Chapter 53 of this title (relating to Finance).

(b) The application must be received by the department at least 30 days before the proposed activity.

(c) An application may designate no more than eight persons, in addition to the applicant, to assist in conducting permitted activities.

§57.381. Permit Specifications and Requirements.

(a) A permit issued under this subchapter [~~by the department to sell nongame fish taken from public fresh water~~] shall specify:

(1) The name, telephone number and physical address of the permittee;

(2) The water body where the activity is permitted;

(3) The nongame fish species for which take and/or sale is allowed; and

(4) The types and number of devices which may be used to take nongame fish.

(b) A permit issued under this subchapter [~~these rules~~] is not transferable or assignable.

(c) At all times that a person designated as an assistant is engaged in a permitted activity, that person must be: [~~A permit may list no more than two persons, in addition to the permittee, who may assist in conducting the permitted activity.~~]

(1) on board the same vessel with the permit holder; or

(2) within line-of-sight of the permit holder if not on a vessel.

(d) - (g) (No change.)

(h) All permits issued under this subchapter [~~these rules~~] expire on December 31 of the year issued.

§57.384. Refusal to Issue; Review of Agency Decision to Refuse Issuance.

(a) The department may refuse to authorize any prospective activity on any water body or impose restrictions on permitted species, water bodies, devices, or live transfer if the department determines that: [~~The department may refuse permit issuance or renewal if:~~]

(1) The prospective take of nongame fish is [~~determined by the department to be~~] detrimental to the target species, species listed as endangered or threatened, or any other aquatic species;

(2) The prospective take of nongame fish is likely to increase the risk of transfer or spread of harmful or potentially harmful exotic fish or shellfish;

(3) [~~(2)~~] the prospective take of nongame fish cannot be accomplished in a manner consistent with the management goals and objectives of the department;

(4) [~~(3)~~] the applicant or assistant(s) seeking renewal is not in compliance with provisions of this subchapter; or

(5) [~~(4)~~] the applicant or assistant(s) have been:

(A) Convicted of, pleaded guilty or nolo contendere to, or received deferred adjudication for a violation of Parks and Wildlife Code or a regulation of the commission; or

(B) convicted, pleaded guilty or nolo contendere, received deferred adjudication or pre-trial diversion, or assessed a civil penalty for a violation of 16 U.S.C. §§3371 - 3378 (the Lacey Act); or

(C) The department has evidence that the applicant is acting on behalf of or as a surrogate for another person not eligible for a permit under this subsection.

(b) (No change.)

§57.385. Special Provisions - Shad.

(a) No person may sell, offer for sale, possess for purposes of sale, or exchange for anything of value shad taken from public fresh water unless the person possesses:

(1) a valid permit issued by the department under this subchapter specifically authorizing that activity; or

(2) a valid fishing guide license issued by the department and the shad are being provided to persons engaged in fishing as part of the guide's services.

(b) No person may collect and possess shad taken from public fresh water without a permit issued under this section unless person possesses a valid recreational fishing license issued by the department and the shad:

(1) are not sold or exchanged for anything of value; and

(2) are possessed:

(A) in a container or containers that in the aggregate constitute 82 quarts or less in volume;

(B) on the waterbody from which the shad were taken and are used as bait; or

(C) by a licensed fishing guide to be provided to persons engaged in fishing as part of the guide's services regardless of the container volume.

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

Filed with the Office of the Secretary of State on December 9, 2016.

TRD-201606461
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 389-4775

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CHAPTER 59. PARKS

SUBCHAPTER A. PARK ENTRANCE AND PARK USER FEES

31 TAC §§59.2 - 59.4

The Texas Parks and Wildlife Department proposes amendments to §§59.2-59.4, concerning State Parks. The proposed

amendments are a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires a state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review. The proposed amendments are nonsubstantive and intended to clarify regulatory provisions. The department wishes to stress that the rules as proposed will not result in additional fees or increased fees at any park and are strictly nonsubstantive in that regard.

The proposed amendment to §59.2, concerning Park Entrance Fees, would delete references to a "permit"" in subsection (a). In parks at which a fee is required for park entrance, the department has determined that it is more accurate to describe the fee as an entrance fee, rather than a permit fee. The proposed amendment also would alter subsection (a)(3) to eliminate the reference to an overnight facility use fee since such fees are addressed in §59.4. The proposed amendment also would replace the word "imposed" in subsection (b) with the more accurate term "collected" to clarify that that fee is actually collected, rather than imposed.

The proposed amendment to §59.3 concerning Park Entry Passes, would delete the reference to a "tour" fee since that fee is addressed in §59.4(c)(7). In addition, the proposed amendment would delete the word "other" from paragraph (1)(A)(ii) and (iii) because it is unnecessary in describing the number of persons authorized to enter a park by an annual park pass. Similarly, "motorcycle" is added to the list of means by which persons may enter a park other than a vehicle in paragraph (1)(A)(iii) and the word "guided" is deleted from paragraph (1)(B)(ii), since not all tours in parks are guided. The proposed amendment would also remove reference to an "order of" the department's executive director from paragraphs (1)(D) and (2)(C) since the executive director may document the establishment of the referenced fee by a method other than an executive order.

The proposed amendment to §59.4, concerning Activity and Facility Use Fees, would combine the group day use facility fee in subsection (b)(3) with the group day use area fee in subsection (b)(4) and remove the reference to "recreation/meeting hall/dining hall" in subsection (b)(3) to better describe the facilities for which the fee is imposed. In addition, the proposed amendment would move the fee for group use of a swimming pool facility from subsection (c)(2)(C) to subsection (b)(8) since other group fees are located in subsection (b). The proposed amendment also would alter subsection (c)(7) by removing the detailed description of types of tours and simply refer to "tour fees." The proposed amendment also would alter subsection(c)(7) to replace "$.25" with the more accurate "$0.25."

Kevin Good, Special Assistant to the Division Director of the State Parks Division, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the proposed rules.

Mr. Good also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be clearer, more understandable rules to enhance recreational benefits to the park-going public, consistent management of state park concessions, and the protection of habitats and ecosystems on department lands for the enjoyment of the public.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, commission considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that there will be no adverse economic effects on small businesses, microbusinesses, or persons required to comply with the rules as proposed. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may be submitted to http://www.tpwd.state.tx.us/business/feedback/public_comment/ or Kevin Good, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas, 78744; (512) 389-4415 (e-mail: kevin.good@tpwd.texas.gov).

The amendments are proposed under Parks and Wildlife Code, §11.027(e), which authorizes the commission to establish by rule for the collection of a fee for entering, reserving, or using a facility or property owned or managed by the department; §13.015(a), which authorizes the commission to set park user fees for park services; §13.018(e), which requires the commission to establish by rule the eligibility requirements and privileges available to the holder of a state parklands passport; and §13.0191, which authorizes the department to set fees for the use of a facility or lodging at a state park in an amount to recover the direct and indirect costs of providing the facility or lodging and provide a reasonable rate of return to the department.

The proposed rules affect Parks and Wildlife Code, Chapter 13.

§59.2. Park Entrance Fees.

(a) An entrance/day use [~~permit~~] fee may be levied at a state park as provided in this section.

(1) Payment of an [~~An~~] entrance/day use fee [~~permit~~] allows unlimited entry privileges to a person for the period of time specified by the park [~~permit~~].

(2) (No change.)

(3) Entry [~~When an overnight facility use fee has been paid in addition to an entry fee, entry~~] privileges cease at closing time on the

day of checkout, unless the executive director has approved an alternative timeframe, which shall be clearly posted at the park.

(b) An entrance fee of $1.00 - $15.00 per person may be collected [~~imposed~~] at designated parks.

(c) (No change.)

§59.3. Park Entry Passes.

Park entry passes authorize entry privileges to parks where entry fees apply but are not valid for [~~tour,~~] activity or other applicable fees.

(1) Annual Park Entrance Passes.

(A) A valid annual park entrance pass authorizes park entry without payment of an individual entrance fee for the holder of the annual pass, and:

(i) (No change.)

(ii) up to 14 [~~other~~] persons accompanying the pass holder in the same boat if the holder of the annual park entrance pass is entering by boat; or

(iii) up to 14 [~~other~~] persons accompanying the pass holder if the holder of the annual park entrance pass is entering by motorcycle, bicycle or on foot.

(B) An annual park entrance pass is valid only for private, noncommercial use and is not valid for:

(i) (No change.)

(ii) commercial use such as [~~guided~~] tour groups.

(C) (No change.)

(D) The fee for an annual park entrance pass shall be established by [~~order of~~] the executive director within the range of $50 - $100.

(E) (No change.)

(2) Youth Group Annual Entrance Pass.

(A) - (B) (No change.)

(C) The fee for a pass under this subsection shall be established by [~~order of~~] the executive director within the range of $50 - $300.

(D) (No change.)

(3) State Parklands Passport. A state parklands passport shall be issued at no cost to any person meeting the criteria established by Parks and Wildlife Code, §13.018.

(A) - (D) (No change.)

(E) The department may collect [~~impose~~] a fee for a replacement state parklands passport.

§59.4. Activity and Facility Use Fees.

(a) (No change.)

(b) Fee ranges - facility use:

(1) - (2) (No change.)

(3) group day use facility or area [~~(recreation/meeting hall/dining hall)~~] - $15 [~~$50~~] - $1,000;

[~~(4) group day use area - $17-$200;~~]

(4) [~~(5)~~] group overnight use facility(bunkhouses, barracks, campsites, shelters), variable by facility type or number of occupants - $100 - $1,500;

(5) [~~(6)~~] bunkhouse/hotel/motel room - $35-225;

(6) [~~(7)~~] excess vehicle parking(per vehicle) - $1.00-$6.00(parking areas designated by park superintendent);

(7) [~~(8)~~] (excess occupancy fee (in addition to facility use fee), per person - $1.00-$25;

(8) swimming pool facility $35 - $750.

(c) Fee ranges - activities:

(1) (No change.)

(2) swimming pools use:

(A) - (B) (No change.)

[~~(C) group use(before or after normal operating hours) - $35-$750~~]

(3) - (6) (No change.)

(7) tour fees [~~(educational, interpretive, instructional, adventure and/or entertainment or any combination of fees packaged into one rate for park-specific special events up to and including multi-night visitation, food, accommodations, increased staffing, special preparations or equipment, or similar considerations)~~] per person - $0.25 [~~$.25~~] - $1,000;

(8) - (9) (No change.)

(d) - (e) (No change.)

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

Filed with the Office of the Secretary of State on December 9, 2016.

TRD-201606452
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 389-4775

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CHAPTER 69. RESOURCE PROTECTION
SUBCHAPTER A. ENDANGERED, THREATENED, AND PROTECTED NATIVE PLANTS

31 TAC §69.2, §69.8

The Texas Parks and Wildlife Department (the department) proposes the repeal of §69.6 and amendments to §§69.2, 69.8, 69.26, 69.102, 69.116, 69.121, 69.301 and 69.405, concerning Resource Protection. The proposed amendments are a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires a state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

The proposed repeal of §69.6, concerning Permit and Tag, would eliminate a duplicative provision regarding the fee for a commercial plant permit. Over the years, the department has sought to locate regulations regarding most department fees in 31 TAC

Chapter 53. In 2004, the fee for the commercial plant permit was adopted as part of §53.15 (29 TexReg 6309) and is now at §53.15(h)(1) (see, 34 TexReg 5381). Therefore, §69.6 is duplicative and unnecessary.

The proposed amendment to §69.2, concerning Scientific Plant Permit, would correct a cross-reference in subsection (d)(2) regarding the letter of permission required to engage in regulated activities on public land. The requirement to obtain a letter of permission is contained in subsection (c)(3) rather than subsection (b)(3). The proposed amendment corrects that error.

The proposed amendment to §69.8, concerning Endangered and Threatened Plants, would remove Johnston's frankenia (Frankenia johnstonii) from the list of endangered species of plants in subsection (a) and add the Neches River rose-mallow (*Hibiscus dasycalyx*) to the list of threatened species of plants in subsection (b). Under Parks and Wildlife Code, Chapter 88, a species of plant is endangered, threatened, or protected if it is indigenous to Texas and (1) listed by the federal government as endangered, or (2) designated by the executive director of the Texas Parks and Wildlife Department as endangered, threatened or protected. At the current time, the department maintains a single list of endangered plants that contains only those plants indigenous to Texas listed by the federal government as endangered. The proposed amendment removes the Johnston's frankenia from the endangered species list because this species has been removed from the federal endangered species list.

The proposed amendment to §69.26, concerning Commercial Species--Recovery Value, would alter subsection (a) by adding a mechanism for calculating the value of alligator eggs. Parks and Wildlife Code, §12.301, provides that a "person who kills, catches, takes, possesses, or injures any fish, shellfish, reptile, amphibian, bird, or animal in violation of this code or a proclamation or regulation adopted under this code is liable to the state for the value of each fish, shellfish, reptile, amphibian, bird, or animal unlawfully killed, caught, taken, possessed, or injured." Parks and Wildlife Code, §12.302, requires the commission to adopt rules "to establish guidelines for determining the value of injured or destroyed fish, shellfish, reptiles, amphibians, birds and animals." The current per-foot calculation applicable to alligators does not accurately reflect the commercial value of alligator eggs. Therefore, the proposed amendment would add a mechanism for more accurately calculating the value of alligator eggs based on the market price and the survival rate of hatchlings.

The proposed amendments to regulations in Subchapter H, concerning Issuance of Marl, Sand and Gravel Permits would make several nonsubstantive changes. The proposed amendment to §69.102, concerning Definitions, would replace the reference to TNRCC in paragraph (8) with the current agency name, Texas Commission in Environmental Quality. The proposed amendment to §69.116, concerning Conditions, would correct cross-references, replacing "§65.115(b)" with "§69.115(a)" and "§69.101" with "§69.118." The proposed amendment to §69.121, concerning Prices, would delete an outdated reference to the previous royalty of 6.25% in subsection (a) and replace "$.20 ton" with the more accurate "$0.20 ton."

The proposed amendment to §69.301, concerning Definitions, would update taxonomical information regarding the definition of "raptor" in paragraph (3). From time to time the scientific community reclassifies an organism in light of consensus and/or emerging science. Scientific reclassification or change in nomenclature of taxa at any level in the taxonomic hierarchy does not, in and of itself, affect the status of a species as endangered, threatened or protected, but the department believes that the common and scientific names of listed organisms should reflect the most current agreement by the scientific community. Current §69.601(3) defines raptor by reference to the order Falconiformes or Stringiformes. However, the classification of Falconiformes has been split into two orders, Accipitriformes (eagles, hawks, kites, harriers, osprey, secretary bird, etc.) and Falconiformes (all falcons, caracaras). In addition, all New World Vultures have been placed into their own Order, Cathartiformes, based upon recent phylogenetics research. The proposed amendment would make these taxonomic changes. Strigiformes remains unchanged.

The proposed amendment to §69.405, concerning Permit Renewal, eliminates a reference to a duplicative and inaccurate provision regarding the nongame species fee in §53.15(c)(5) and (6). Over the years, the department has sought to locate regulations regarding most fees department fees in 31 TAC Chapter 53. In 2004, the fee for a nongame species permit and permit renewal was included in the fees relocated to §53.15 (29 TexReg 6309), and was increased to $210 in 2009 and redesignated as §53.15(c)((5) and (6) (see, 34 TexReg 5381).

Ann Bright, General Counsel has determined that for each of the first five years the repeal and amendments as proposed are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Bright has also determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the proposed rules will be clearer, better organized, and more accurate regulations governing the processes and entities administered under the provisions of Chapter 69.

There will be no adverse economic impact on persons required to comply with the rule as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. The department has determined that the rules will not directly affect small businesses and/or micro-businesses. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may be submitted to Mr. Robert Macdonald, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4770, e-mail: *robert.macdonald@tpwd.texas.gov* or on the department website at *www.tpwd.texas.gov.*

The amendments are proposed under Parks and Wildlife Code, §88.006, which requires the department to adopt regulations to administer the provisions of Parks and Wildlife Code, Chapter 88.

The proposed amendments affect Parks and Wildlife Code, Chapter 88.

§69.2. Scientific Plant Permit.

(a) - (c) (No change.)

(d) Special provisions.

(1) (No change.)

(2) While conducting any permit activities on public lands, each person named on a permit shall carry copies of the permit and the letter of permission required by subsection (c)(3) [~~(b)(3)~~] of this section, and shall produce such documents upon demand by a game warden.

(3) - (4) (No change.)

§69.8. Endangered and Threatened Plants.

(a) The following plants are endangered:

Figure: 31 TAC §69.8(a)

(b) - (c) (No change.)

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

Filed with the Office of the Secretary of State on December 9, 2016.

TRD-201606455
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 389-4775

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31 TAC §69.6

The repeal is proposed under Parks and Wildlife Code, §88.006, which requires the department to adopt regulations to administer the provisions of Parks and Wildlife Code, Chapter 88.

The proposed repeal affects Parks and Wildlife Code, Chapter 88.

§69.6. Permit and Tag 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 December 9, 2016.

TRD-201606454
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 389-4775

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SUBCHAPTER B. FISH AND WILDLIFE VALUES

31 TAC §69.26

The amendment is proposed under Parks and Wildlife Code, §12.302, which requires the commission to adopt rules to establish guidelines for determining the value of injured or destroyed fish, shellfish, reptiles, amphibians, birds and animals.

The proposed amendment affects Parks and Wildlife Code, Chapter 12.

§69.26. Commercial Species-Recovery Value

(a) Recovery of value for commercial species is based on the following: [~~ex-vessel or dockside price (by weight or individual as normally determined), or for alligators, current per-foot market value.~~]

(1) ex-vessel or dockside price (by weight or individual as normally determined);

(2) for alligators, current per-foot market value; and

(3) for alligator eggs, a number derived by multiplying the current market alligator egg price by the current percentage of successful hatchlings per 100 eggs.

(b) - (d) (No change.)

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

Filed with the Office of the Secretary of State on December 9, 2016.

TRD-201606456
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 389-4775

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SUBCHAPTER H. ISSUANCE OF MARL, SAND, AND GRAVEL PERMITS

31 TAC §§69.102, 69.116, 69.121

The amendments are proposed under Parks and Wildlife Code, §86.020, which authorizes the commission to adopt rules governing applications, fees, and permits to disturb, take or carry away marl, sand, gravel, shell or mudshell, sand, shell and gravel.

The proposed amendments affect Parks and Wildlife Code, Chapter 86.

§69.102. Definitions.

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

(1) - (7) (No change.)

(8) River segment--Reach of river and tributaries as designated by the Texas Commission on Environmental Quality (TCEQ) [~~TNRCC~~] based on flow and water quality attributes in the Surface Water Quality Standards.

(9) - (10) (No change)

§69.116. Conditions.

A general permit may be authorized for an activity listed in §69.115(a) [~~§69.115(b)~~] of this title (relating to General Permits [~~Permit~~]), provided that the proposed activity:

(1) - (2) (No change.)

(3) will be conducted in compliance with the best management practices set forth in §69.118[~~§69.101~~] of this title (relating to Best Management Practices).

§69.121. Prices.

(a) The commission, with the approval of the governor, establishes a minimum royalty of $0.20 [~~$.20~~] ton for sedimentary materials. The permittee shall pay the minimum royalty or a percent royalty of 8.0% [~~6.25%~~] on the average selling price per ton sold calculated on a monthly basis, whichever is higher. [~~The percent royalty shall increase to 8.0% on September 1, 1996.~~]

(1) - (3) (No change.)

(b) - (d) (No change.)

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

Filed with the Office of the Secretary of State on December 9, 2016.

TRD-201606457
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 389-4775

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SUBCHAPTER J. SCIENTIFIC, EDUCATIONAL, AND ZOOLOGICAL PERMITS

31 TAC §69.301

The amendment is proposed under Parks and Wildlife Code, §43.022, which requires the commission to adopt rules governing the collecting, holding, possession, propagation, release, display, or transport of protected wildlife for scientific research, zoological collection, rehabilitation and educational display.

The proposed amendment affects Parks and Wildlife Code, Chapter 43.

§69.301. Definitions.

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

(1) - (2) (No change.)

(3) Raptor--A bird of the order Falconiformes, Accipitriformes, Cathartiformes, or Strigiformes.

(4) - (7) (No change.)

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

Filed with the Office of the Secretary of State on December 9, 2016.

TRD-201606458
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 389-4775

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SUBCHAPTER K. SALE OF NONGAME SPECIES

31 TAC §69.405

The amendment is proposed under Parks and Wildlife Code, §67.004 and §67.0041, which requires the commission to establish by regulation any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species, and authorizes the department to issue permits for the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife, and to establish fees for such permits.

The proposed amendment affects Parks and Wildlife Code, Chapter 67.

§69.405. Permit Renewal.

(a) A person possessing a permit issued under this subchapter may renew that permit by submitting a completed permit renewal form to the department, accompanied by a permit renewal fee specified in §53.15 of this title (relating to Miscellaneous Fisheries and Wildlife Licenses and Permits [~~of $200~~]. A permit renewal shall be valid for one year.

(b) (No change.)

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

Filed with the Office of the Secretary of State on December 9, 2016.

TRD-201606459
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 389-4775

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER F. MOTOR VEHICLE SALES TAX

34 TAC §3.83

The Comptroller of Public Accounts proposes new §3.83, concerning sales and use of motor vehicles purchased or leased by public agencies; and sales and use of motor vehicles purchased by commercial transportation companies. This section implements Senate Bill 724 (SB 724), 84th Legislature, 2015. Effective June 17, 2015, this legislation amended Tax Code, §152.082 (Sale of Motor Vehicle to or Use of Motor Vehicle by Public Agency) to allow commercial transportation companies who provide transportation services under a contract with the board of county school trustees, school district board of trustees, or the governing body of an open-enrollment charter school, to purchase a motor vehicle tax-free when the motor vehicle is operated with exempt license plates. This section also memorializes long-standing comptroller policies not previously addressed by this section.

Subsection (a) contains definitions of key terms. Paragraph (1) defines "Application for Texas Title and/or Registration."

Paragraph (2) defines "lease." The definition is based on Tax Code, §152.001(6) (Definitions).

Paragraph (3) defines the term "motor vehicle" and provides specific examples. This definition is based, in part, on Tax Code, §152.001(3) and (4) (Definitions), and the definition of the term given in §3.80 of this title (relating to Motor Vehicles Transferred as a Gift or for No Consideration).

Paragraph (4) defines "public agency" in accordance with Tax Code, §152.001(7), and provides specific examples of entities considered public agencies that have previously not been addressed for purposes of this section. These examples are taken, in part, from §3.322(c) of this title (relating to Exempt Organizations) and attorney general (AG) opinions. See, for example, STAR Accession Nos. 7112A2002A10 (AG Opinion No. M-1033 1971) (community centers for mental health and mental retardation services are political subdivisions when created by a city, a hospital district, or a school district); 8303498A (AG Opinion JM-12 1983) (community centers for mental health and mental retardation centers may be operated by counties, cities, hospital districts, school districts, or any combination); 4912A2003C06 (AG Opinion V-955 1949) (navigation districts and flood districts are public agencies); and 8504L0653C09 (April 4, 1985) (Federal Intermediate Credit Bank, Federal Credit Union, Federal Reserve Banks, and Federal Home Loan Mortgage, Inc. are public agencies for the purposes of motor vehicle tax).

Subsection (b) addresses the sale or use of a motor vehicle purchased by a public agency or an entity exempted by another statute. Paragraph (1) identifies the requirements that must be met in order for a public agency to qualify for the exemption from motor vehicle tax under Tax Code, §152.082. Subparagraph (A) addresses motor vehicles operated with an exempt license plate issued pursuant to Transportation Code, §502.451 (Exempt Vehicles). Subparagraph (B) addresses motor vehicles that are exempted from inscription requirements by Transportation Code, §721.003 (Exemption from Inscription Requirement for Certain State-Owned Motor Vehicles) or §721.005 (Exemption from Inscription Requirement for Certain Municipal and County-Owned Motor Vehicles), and may be operated without an exempt license plate. Subparagraph (C) addresses motor vehicles operated with regularly designed license plates issued pursuant to Transportation Code, §502.451(f) (Exempt Vehicles), because the vehicles are dedicated to law enforcement activities. Subparagraph (D) addresses motor vehicles purchased by the federal government, which are exempt from Texas tax regardless of the type of license plate displayed. Subparagraph (E) addresses motor vehicles purchased by an entity exempt from taxation by other Texas statutes or federal statutes. Examples of entities exempted by other Texas statutes include, but are not limited to, the Cotton Growers' Boll Weevil Eradication Foundation created under Agriculture Code, Chapter 74 and an electric cooperative created under Utilities Code, Chapter 161.

Paragraph (2) provides that when a motor vehicle is purchased to be leased to a public agency, and operated with an exempt license plate issued under Transportation Code, §502.451, it is exempt from the motor vehicle tax pursuant to Tax Code, §152.083 (Lease of Motor Vehicle to Public Agency). Tax is due if the vehicle is not operated with exempt license plates. See STAR Accession No. 9602L1397G14 (February 22, 1996), ("Sections 152.082 and 152.083 of the Texas Tax Code exempts the lease or purchase of a motor vehicle by a public agency from tax if they carry an exempt license plate…").

Paragraph (3) provides the requirements for a seller and purchaser claiming an exemption pursuant to Tax Code, §152.083. It also provides the requirements for a seller and purchaser to file a joint statement with the tax assessor-collector of the county pursuant to Tax Code, §152.062.

Paragraph (4) provides that motor vehicle tax is due if a motor vehicle ceases to be leased to a public agency and is not held for sale. Paragraph (4) further describes how the tax is calculated and how to pay the tax, as provided by Tax Code §152.083.

Subsection (c) implements SB 724, allowing a commercial transportation company to purchase motor vehicles tax-free when it provides transportation services under contract with certain public agencies.

Paragraph (1) addresses motor vehicles purchased for use by a commercial transportation company under contract with the board of county school trustees, the school district board of trustees, or governing body of an open-enrollment charter school, and operated with an exempt license plate issued under Transportation Code, §502.451.

Paragraph (2) provides the requirements for a commercial transportation company to claim a tax exemption under this section.

Paragraph (3) provides that the tax exemption does not apply to motor vehicles purchased for lease to a commercial transportation company, regardless of whether the commercial transportation company provides transportation services under a contract with certain public agencies. This is based on the plain language of the statute. SB 724 only amended the provisions of sales or use of a motor vehicle by a public agency in Tax Code, §152.082, and not Tax Code, §152.083, which addresses the lease of motor vehicles to a public agency.

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 implementing current statutory provisions and clarifying agency tax 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.*

This new section is proposed under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

This section implements Tax Code, Chapter 152 (Taxes on Sale, Rental, and Use of Motor Vehicles), including, but not limited to, §152.082 (Sale of Motor Vehicle to or Use of Motor Vehicle by Public Agency) and §152.083 (Lease of Motor Vehicle to Public Agency).

§3.83. Sales and Use of Motor Vehicles Purchased or Leased by Public Agencies; and Sales and Use of Motor Vehicles Purchased by Commercial Transportation Companies.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Application for Texas Title and/or Registration--Form 130-U, its electronic equivalent, or a successor form, promulgated jointly by the comptroller and the Texas Department of Motor Vehicles, which is used by a person to apply for a title and registration and to pay any motor vehicle sales or use tax due. The Application for Texas Title and/or Registration is available at comptroller.texas.gov.

(2) Lease--An agreement, other than a rental, by an owner of a motor vehicle to give for longer than 180 days exclusive use of a motor vehicle to another for consideration. For more information on motor vehicle leases, see §3.70 of this title (relating to Motor Vehicle Leases and Sales).

(3) Motor vehicle--A vehicle described by Tax Code, §152.001(3) (Definitions). In general, a motor vehicle includes a self-propelled vehicle designed to transport persons or property upon the public highway and a vehicle designed to be towed by a self-propelled vehicle while carrying property. The term includes, but is not limited to: automobiles; buses; vans; motor homes; motorcycles; trucks; truck tractors; truck cab/chassis; semitrailers; trailers and travel trailers, as defined by §3.72 of this title (relating to Trailers, Farm Machines, and Timber Machines). The term does not include a vehicle to which the certificate of title has been surrendered in exchange for a salvage vehicle title or a nonrepairable vehicle title issued pursuant to Transportation Code, Chapter 501 (Certificate of Title Act).

(4) Public agency--A department, commission, board, office, institution, or other agency of this state or of a county, city, town, school district, hospital district, water district, or other special district or authority or political subdivision created by or under the constitution or the statutes of this state, or an unincorporated agency or instrumentality of the United States. The term includes:

(A) any college or university created or authorized by the Texas constitution or Texas statutes; and

(B) all independent boards, commissions, agencies, or corporations that are instrumentalities of the United States and are wholly owned by the United States or by another corporation wholly owned by the United States, including organizations specifically exempted as an instrumentality of the United States by federal statute, such as a federal credit union, federal reserve bank, or federal home loan bank.

(b) Motor vehicles purchased or leased by a public agency or an entity exempted by another statute.

(1) The sale or use of a motor vehicle is exempt from the taxes imposed by Tax Code, Chapter 152 (Taxes on the Sale, Rental, and Use of Motor Vehicles), when the motor vehicle is:

(A) purchased and used by a public agency and operated with an exempt license plate issued under Transportation Code, §502.451 (Exempt Vehicles);

(B) purchased and used by a public agency and exempted from inscription requirements as provided by Transportation Code, §721.003 (Exemption from Inscription Requirement for Certain State-Owned Motor Vehicles) or §721.005 (Exemption from Inscription Requirement for Certain Municipal and County-Owned Motor Vehicles), regardless of whether the vehicle is operated with an exempt or regularly designed license plate;

(C) purchased and used by a public agency and issued a regularly designed license plate, pursuant to Transportation Code, §502.451(f), because the motor vehicle is dedicated to law enforcement activities;

(D) purchased by the federal government, its agencies, and its instrumentalities, regardless of whether the vehicle is operated with an exempt or regularly designed license plate; or

(E) purchased and used by an entity who is exempted from the taxes imposed by Tax Code, Chapter 152 or by another Texas or federal statute, regardless of whether the vehicle is operated with an exempt or regularly designated license plate.

(2) The sale or use of a motor vehicle is exempt from taxes imposed by Tax Code, Chapter 152, when the motor vehicle is purchased to be leased to a public agency, including the federal government, its agencies, and its instrumentalities; and operated with an exempt license plate issued under Transportation Code, §502.451.

(3) To claim an exemption under this section, a Texas seller and purchaser must complete and sign an Application for Texas Title and/or Registration and any other documents required by the Texas Department of Motor Vehicles to apply for title or register the motor vehicle in Texas. The purchaser must indicate the reason an exemption is claimed on the Application for Texas Title and/or Registration at the time of purchase. For example, when a motor vehicle is purchased by public agency, the purchaser may write "exempt as a public agency," or "exempt as a public agency, as provided by §152.082 Sale of Motor Vehicle to or Use of Motor Vehicle by Public Agency." When a motor vehicle is purchased to be leased to a public agency, the purchaser may write, for example, "leased to a public agency" or "exempt as a lease to a public agency, as provided by §152.083 Lease of Motor Vehicle to Public Agency." The Application for Texas Title and/or Registration is submitted to the county tax assessor-collector.

(4) When a motor vehicle purchased tax-free and leased to a public agency ceases to be leased to a public agency, and is not held for sale, the owner must remit motor vehicle tax directly to the comptroller by completing Motor Vehicle Sales/Use Tax Payment, Form

14-112, its electronic equivalent, or a successor form, promulgated by the comptroller. The amount of motor vehicle tax due is based on the owner's book value of the motor vehicle at that time. For more information concerning lease vehicles, see §3.70 of this title (relating to Motor Vehicle Leases and Sales).

(c) Sale, use, or lease of a motor vehicle by a commercial transportation company.

(1) The sale or use of a motor vehicle is exempt from taxes imposed by Tax Code, Chapter 152 (Taxes on Sale, Rental, and Use of Motor Vehicles), when the motor vehicle is operated with an exempt license plate issued under Transportation Code, §502.451 and purchased by a commercial transportation company to provide transportation services under a contract with:

(A) a board of county school trustees or school district board of trustees under Education Code, §34.008 (Contract with Transit Authority, Commercial Transportation Company, or Juvenile Board); or

(B) the governing body of an open-enrollment charter school.

(2) To claim an exemption under this section, a Texas seller and purchaser must complete and sign an Application for Texas Title and/or Registration and any other documents required by the Texas Department of Motor Vehicles to apply for title or register the motor vehicle in Texas. The purchaser must indicate the reason an exemption is claimed on the Application for Texas Title and/or Registration at the time of purchase. For example, a commercial transportation company agency may write "exempt as a commercial transportation company, as provided by §152.082." The Application for Texas Title and/or Registration is submitted to the county tax assessor-collector.

(3) This exemption under this section does not apply to a motor vehicle leased to a commercial transportation company, or a motor vehicle purchased by a third party to be leased to a commercial transportation company, even if the commercial transportation company uses the motor vehicle to provide transportation services under a contract with the board of county school trustees, the school district board of trustees, or the governing body of an open-enrollment charter school. For more information concerning lease vehicles, see §3.70 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 December 6, 2016.

TRD-201606300
Don Neal
Chief Deputy General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 151. GENERAL PROVISIONS

37 TAC §151.71

The Texas Board of Criminal Justice proposes amendments to §151.71, concerning Marking of State Vehicles of the Department of Criminal Justice. The amendments are proposed in conjunction with a proposed rule review of §151.71 as published in other sections of the *Texas Register.* The proposed amendments are necessary to update formatting.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that for each year of the first five year period, there will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit, as a result of enforcing the rule, will be to update the existing rule.

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 this rule in the *Texas Register.*

The amendments are proposed under Texas Government Code §492.013; Texas Transportation Code §721.002, §721.003.

Cross Reference to Statutes: None.

§151.71. Marking of Texas [~~State Vehicles of the~~] Department of Criminal Justice Vehicles.

(a) Except as provided in subsections (b) and (c) of this rule [~~section~~], all Texas Department of Criminal Justice (TDCJ) vehicles shall be inscribed in accordance with Texas Transportation Code §721.002 and §721.003.

(b) The purposes for not inscribing TDCJ vehicles are to legitimately maintain anonymity for law enforcement purposes, to avoid damage to a vehicle or danger to staff that could occur if the vehicle were identified as a TDCJ vehicle, and to avoid hindrance of TDCJ efforts in an emergency, such as an escape, attempted escape, or riot. Accordingly, the following vehicles are exempt from inscription:

(1) vehicles used for surveillance, undercover work, or investigation of law or TDCJ policy violations by the Office of the Inspector General or any other investigatory unit within the TDCJ;

(2) vehicles assigned to officials holding administrative positions whose jobs require response to emergency situations involving offenders; and

(3) vehicles used to conduct home visits of offenders under supervision of the TDCJ [~~Agency~~].

(c) The TDCJ shall establish a procedure for determining whether a vehicle is subject to an exemption in subsection (b) of this rule [~~section~~]. If the executive director [~~Executive Director~~] determines that a vehicle should be exempt but does not fit into an exemption under subsection (b) of this rule [~~section~~], the executive director [~~Executive Director~~] may authorize the non-inscription of the vehicle subject to ratification at the next regularly scheduled meeting of the Texas Board of Criminal Justice (TBCJ) [~~(Board)~~]. Ratification may be by inclusion under consent items on the TBCJ [~~Board's~~] meeting agenda at such meeting as described above.

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606481
Sharon Howell
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: January 22, 2017
For further information, please call: (936) 437-6700

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37 TAC §151.73

The Texas Board of Criminal Justice proposes amendments to §151.73, concerning Texas Department of Criminal Justice Vehicle Assignments. The amendments are proposed in conjunction with a proposed rule review of §151.73 as published in other sections of the *Texas Register.* The proposed amendments are necessary to update formatting.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that for each year of the first five year period, there will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit, as a result of enforcing the rule, will be to update the existing rule.

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 this rule in the *Texas Register.*

The amendments are proposed under Texas Government Code §492.013, §2101.0115, §2113.013, §2171.1045, §2203.004.

Cross Reference to Statutes: None.

§151.73. Texas Department of Criminal Justice Vehicle Assignments.

(a) It is the policy of the Texas Board of Criminal Justice (TBCJ) that each Texas Department of Criminal Justice (TDCJ[~~or Agency~~]) vehicle, with the exception of any vehicle assigned to a field employee, the Office of the Inspector General (OIG), and as noted in subsection (c) of this rule, be assigned to the TDCJ [~~Agency~~] motor pool and be available for check out.

(b) TDCJ [~~Agency~~] vehicles shall only be used on official state business. TDCJ [~~Agency~~] vehicles shall not be used to transport employee pets.

(c) The TDCJ [~~Agency~~] may assign a vehicle to an individual administrative or executive employee on a regular or everyday basis, if the TDCJ [~~Agency~~] determines the assignment of the vehicle is critical to the needs and mission of the TDCJ [~~Agency~~]. Such vehicle assignments may include[~~, but are not limited to,~~] vehicles used for law enforcement purposes and vehicles assigned to positions that are required to respond to emergency situations.

(d) The executive director [~~Executive Director~~] may authorize an employee to use a [~~an~~] TDCJ [~~Agency~~] vehicle to commute to and from work when it is determined the use of the vehicle may be necessary to ensure that vital TDCJ [~~Agency~~] functions are performed. The name and job title of each employee authorized for such use and the reasons for the authorization must [~~shall~~] be included in the TDCJ [~~Agency~~] annual report required by [~~filed pursuant to~~] Texas Government Code §2101.0115.

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606484
Sharon Howell
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: January 22, 2017
For further information, please call: (936) 437-6700

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CHAPTER 155. REPORTS AND INFORMATION GATHERING
SUBCHAPTER B. SITE SELECTION AND FACILITY NAMES

37 TAC §155.23

The Texas Board of Criminal Justice proposes amendments to §155.23, concerning the Site Selection Process for the Location of Additional Facilities. The amendments are proposed in conjunction with a proposed rule review of §155.23 as published in other sections of the *Texas Register.* The proposed amendments are necessary to update formatting.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that for each year of the first five year period, there will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit, as a result of enforcing the rule, will be to update the existing rule.

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 this rule in the *Texas Register.*

The amendments are proposed under Texas Government Code §§492.013, 496.007.

Cross Reference to Statutes: None.

§155.23. Site Selection Process for the Location of Additional Facilities.

(a) Purpose. This rule [~~section~~] establishes procedures [~~policy~~] for determining the location of new Texas Department of Criminal Justice (TDCJ) facilities in a manner that is fair and open, [~~is~~] cost-effective for construction and operations, and sensitive to the ultimate mission of the facilities sited. Determining the location of a new facility designed to house offenders is a multi-factor process [~~entailing a number of factors,~~] that assesses [~~including~~] cost-effectiveness, logistical support requirements, operational concerns, and legal mandates.

(b) Definitions. The following words and terms, when used in this rule[~~section~~], shall have the following meanings, unless the context clearly indicates otherwise.

(1) Facility is a substantially self-contained, permanently constructed correctional facility for housing offenders. This includes prison units, state jails, transfer facilities, and substance abuse felony punishment [~~Substance Abuse Felony Punishment~~] (SAFP) facilities, but does not include community corrections facilities, as defined by Texas Government Code §509.001, or parole facilities defined in Texas Government Code §§508.118, 508.119, or 508.320.

(2) Prison unit [~~Unit~~] includes a private prison under Texas Government Code Chapter 495, Subchapter A (Contracts with Private Vendors and Commissioners Courts), a psychiatric unit, and a unit whose capacity is determined by Texas Government Code Chapter 499, Subchapters B (Population Management)[~~,~~] and E (Unit and System Capacity).

(3) SAFP facility [~~Facility~~] is a substance abuse felony punishment [~~Substance Abuse Felony Punishment~~] facility authorized by Texas Government Code §493.009.

(4) State jail [~~Jail~~] is a state jail felony facility authorized by Texas Government Code Chapter 507.

(5) Transfer facility [~~Facility~~] is a facility authorized by Texas Government Code Chapter 499, Subchapter G (Transfer Facilities).

(c) Procedures.

(1) The Legislative Budget Board is responsible for projecting the demand for prison unit, state jail, SAFP facility, and transfer facility beds. Based on these projections, a plan shall be developed by [~~the~~] TDCJ staff and adopted by the Texas Board of Criminal Justice (TBCJ [~~board~~]) that details how any additional bed needs shall be met. This plan shall be presented to the legislature with a request for appropriations. With respect to new facilities requiring the selection of a site, the plan adopted by the TBCJ [~~board~~] shall include:

(A) Recommendations for specific types of facilities needed by the TDCJ, the approximate size of each facility, and the regional distribution by facility type;

(B) A description of each facility's mission;

(C) A description of the type of offenders to be housed in each facility and the programming requirements for that population; and

(D) Any recommendations for re-designation and renovation of existing facilities.

(2) Site selections shall be made in accordance with and through a Request for Proposals (RFP) process, unless the TBCJ [~~board~~] determines that land currently owned by the state shall be used as the site for the location of additional facilities, in which case a RFP process shall not be required. The RFP shall be based on the array of facilities authorized by the legislature. For each round of site selections, the RFP shall specify:

(A) Types of facilities needed;

(B) Minimum acreage and site characteristics required for each facility type;

(C) Requirements for geotechnical information based on drilling matrix and site preparation requirements;

(D) Requirements for verified documentation of the absence of any environmental problems and historical preservation conditions;

(E) Requirements for supporting information such as easement, utility, and topographical maps;

(F) Requirements for description of land values, transferability of mineral rights, surface leases, easements, title report, warranty deed, aerial photographs, and other issues affecting the timely transferability of a site;

(G) Transportation and utility requirements; and

(H) Requirements for soliciting citizen input and state and local elected official input regarding a specific site.

(3) Under the direction of the TDCJ executive director, the Facilities Division shall coordinate the site selection process. In accordance with the TBCJ [~~board~~] approved criteria and process, [~~the~~] TDCJ staff shall be responsible for the development of the RFP, devising and completing scoring instruments, as well as cost analysis for TBCJ [~~board~~] review and action. Information presented to the TBCJ [~~board~~] shall:

(A) Be structured in a uniform format as illustrated in the Facilities Division policies and procedures;

(B) Include data from a weighted scoring evaluation system that objectively assesses each site based on the proposal requirements, the site visit, and supporting information developed before any review, based on the Facilities Division policies and procedures and on the requirements outlined in the RFP;

(C) Include life-cycle cost calculations for a specific time period for each responsive proposal;

(D) Include information relating to the workforce available in the area surrounding each proposed site from which the TDCJ would recruit correctional staff; and

(E) Identify and explain any deviations from the TBCJ [~~board~~] approved process.

(4) Any selection process shall take into consideration the intent of the legislature to locate each facility:

(A) In close proximity to a county with 100,000 or more inhabitants to provide services and other resources provided in such a county;

(B) Cost-effectively with respect to its proximity to other TDCJ facilities[~~in the TDCJ~~];

(C) In close proximity to an area that would facilitate release of offenders or persons to their area of residence; and

(D) In close proximity to an area that provides adequate educational opportunities and medical care.

(5) The TBCJ [~~board~~] shall be responsible for site selection, but may request that TDCJ staff provide a short list of recommended sites or a preference ranking of sites with an explanation for the recommendation or ranking. Staff recommendations shall be determined through the scoring of information contained in each submitted proposal based on RFP requirements, actual site assessment, and infor-

mation obtained from external and internal sources for each site. Staff recommendations may include, and the TBCJ [board] may select, a site other than one contained in the submitted proposals if the site is on state-owned land.

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606501
Sharon Howell
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: January 22, 2017
For further information, please call: (936) 437-6700

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CHAPTER 163. COMMUNITY JUSTICE ASSISTANCE DIVISION STANDARDS

37 TAC §163.21

The Texas Board of Criminal Justice proposes amendments to §163.21, concerning Administration. The amendments are proposed in conjunction with a proposed rule review of §163.21 as published in other sections of the Texas Register. The proposed amendments are necessary to update formatting.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that for each year of the first five year period, there will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit, as a result of enforcing the rule, will be to update the existing rule.

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 this rule in the *Texas Register.*

The amendments are proposed under Texas Government Code §§492.013, 509.003.

Cross Reference to Statutes: None.

§163.21. Administration.

(a) Appointment and Responsibilities of a Community Supervision and Corrections Department (CSCD [or department]) Director.

(1) When there is a vacancy in the position of CSCD director, the judge or judges as described by Texas Government Code §76.002 shall:

(A) Publicly advertise the position;

(B) Post a job description, the qualifications for the position, and the application requirements;

(C) Conduct a competitive hiring process and adhere to state and federal equal employment opportunity laws; and

(D) Review applicants who meet the posted qualifications and comply with the application requirements.

(2) The judge or judges as described by Texas Government Code §76.002 shall appoint a CSCD director who shall meet, at a minimum, the eligibility requirements for community supervision officers (CSOs) established under Texas Government Code §76.005 and 37 Texas Administrative Code §163.33 [(relating to CSOs)].

(3) The CSCD director shall employ a sufficient number of officers and other employees to conduct presentence [pre-sentence] investigations, supervise and rehabilitate defendants placed on community supervision, enforce the conditions of community supervision, and staff community corrections facilities. A person employed under this subsection is an employee of the CSCD [department] and not of the judges or judicial districts.

(4) The Texas Department of Criminal Justice Community Justice Assistance Division (TDCJ CJAD [TDCJ-CJAD]) director shall be notified by the administrative judge of the appointment of a CSCD director.

(5) The CSCD director shall perform or delegate the responsibility for performing the following duties:

(A) Overseeing the daily operations of the CSCD [department];

(B) Preparing, annually or biennially, a budget for the CSCD [department];

(C) Negotiating and entering into contracts on behalf of the CSCD [department];

(D) Establishing policies and procedures for all functions of the CSCD [department];

(E) Developing personnel policies and procedures, including disciplinary proceedings; and

(F) Establishing procedures and practices through which the CSCD [department] will address an employment-related grievance.

(b) Administrative Manual. The CSCD director shall [be responsible for] develop, update, revise, and maintain [developing, updating, revising and maintaining] an administrative manual that defines the CSCD's general purposes and functional objectives. The CSCD director shall ensure the administrative manual is available to all staff members and provide the TDCJ CJAD [TDCJ-CJAD] director with a copy of the CSCD's administrative manual for review upon request. The manual shall incorporate all of the written policies and procedures, which shall provide a detailed description of the procedures followed in performing the routine tasks of the CSCD [department]. At a minimum, the policies and procedures in the manual shall include:

(1) Human Resources.

(A) Recruitment procedures;

(B) Promotion requirements and procedures;

(C) Equal employment opportunity and [Employment Opportunity Commission (EEOC)/]affirmative action provisions;

(D) Provisions of the *Americans with Disabilities Act;*

(E) Provisions of the *Fair Labor Standards Act;*

(F) Provisions of the *Family Medical Leave Act;*

(G) Sexual harassment policy;

(H) Confidentiality of information;

(I) Organizational plan or [/]chart;

(J) Salary scales;

(K) Benefits;

(L) Holidays and work schedules;

(M) Explanation of amount and limitations of leaves;

(N) Personnel records;

(O) Employee performance appraisals;

(P) Disciplinary procedures;

(Q) Grievance procedures;

(R) Probationary employment periods;

(S) Contract employees;

(T) Dress code;

(U) Pre-employment criminal record checks;

(V) Staff safety;

(W) Political participation;

(X) Travel and [/]mileage reimbursement policy; and

(Y) *Immigration Reform and Control Act.*

(2) Medical.

(A) Medical and psychological records management;

(B) Contagious disease policy, including Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS); and

(C) Tuberculosis and other communicable diseases.

(3) Supervision.

(A) Supervision description;

(B) Assessment and remediation of literacy skills for offenders;

(C) Arrest and firearms policy and procedures; and

(D) Presentence [~~Pre-sentencing~~] investigation and reporting policy and procedures.

(4) Standards.

(A) Code of ethics;

(B) Training and staff development;

(C) Job descriptions, qualifications, and responsibilities;

(D) Insurance and honesty bonds;

(E) Intrastate and interstate compact policies and procedures;

(F) Case classification and case management;

(G) Supervision of offenders and [/]continuum of sanctions (policies [~~policy~~] and procedures [~~procedure~~]);

(H) Internal case management audit procedures; and

(I) Violation of community supervision order procedures.

(c) Ethics. The CSCD director shall provide each CSCD employee with a copy of the Code of Ethics adopted by the TDCJ CJAD [~~TDCJ-CJAD~~] and a copy of the procedure developed by the CSCD director that shall be used to review and investigate an alleged ethics violation. All employees of the CSCD shall comply with the Code of Ethics developed by the TDCJ CJAD [~~TDCJ-CJAD~~].

(d) Internal Audits. Each CSCD shall have a designated procedure to monitor the skill levels and training needs of individual staff members and shall develop a plan to meet those needs. Internal audits of direct supervision cases shall be conducted to check for standards compliance, use of case classification, and supervision planning.

(e) Records. The CSCD director shall ensure that program records and statistical data consistent with the requirements of the law and TDCJ CJAD [~~TDCJ-CJAD~~] standards are maintained and provided to TDCJ CJAD [~~TDCJ-CJAD~~] as required.

(f) Budget. The CSCD director shall prepare and operate from a budget in a manner consistent with good accounting practices and approved by the judge(s) of their judicial district. The budget shall be submitted to the TDCJ CJAD [~~TDCJ-CJAD~~] director in a format as required and within the provisions as outlined in 37 Texas Administrative Code §163.43 [~~(relating to Funding and Financial Management)~~].

(g) Multi-CSCD [~~Multi-Department~~] Districts.

(1) Judicial districts composed of more than one [~~(1)~~] county may apply to the TDCJ CJAD [~~TDCJ-CJAD~~] director for authorization to establish more than one [~~(1)~~] CSCD within the judicial district. The application submitted by the judge(s) shall explain how the creation of more than one [~~(1)~~] CSCD [~~department~~] will promote:

(A) Administrative convenience;

(B) Economy; or

(C) Improved community supervision and corrections services and other reasons, if any.

(2) The application shall indicate the financial impact and the approval of the judges in the judicial district or districts hearing criminal cases affected by the change.

(h) Complaint Notice. Each CSCD shall notify the public, offenders, and victims of crimes, that they can direct written complaints to the CSCD and[~~/or~~] TDCJ CJAD [~~TDCJ-CJAD~~]. The notification shall be in the form of a sign posted in a conspicuous public area in each CSCD office [~~of the CSCD's offices~~], or [~~shall be~~] in the form of written brochures which are to be displayed in a conspicuous public area in each CSCD office [~~of the CSCD's offices~~]. Signs and brochures shall be written in both English and Spanish, [~~and shall~~] list the address of the CSCD director and TDCJ CJAD [~~TDCJ-CJAD's~~] address, and [~~shall~~] inform persons that attempts should first be made to resolve complaints locally; unsatisfactory results may be reported to the TDCJ CJAD [~~TDCJ-CJAD~~].

(i) Compliance with Statutes and TDCJ CJAD [~~TDCJ-CJAD~~] Policy Statements. Each [~~The~~] CSCD director [~~directors~~] shall ensure that all CSCD operations comply with all applicable local, state, and federal laws and the TDCJ CJAD [~~TDCJ-CJAD~~] policy statements and official manuals pertaining to the CSCDs.

(j) Citizen Involvement and Volunteers. If volunteers are used, the CSCD director shall ensure that suitable orientation and supervision is provided in the functions they will be expected to perform. The CSCDs are encouraged to establish and maintain opportunities for effective volunteer participation in CSCD operations. If volunteers are used, the CSCD director shall:

(1) Ensure that written policy, procedure, and practice exists for guiding the selection and utilization of citizen involvement; and

(2) Require volunteers to acknowledge and comply with all CSCD [~~departmental~~] rules governing the confidentiality of information.

(k) Victim Services. The criminal justice system recognizes the many stakeholders affected by crime and wishes to acknowledge crime victims' interests and right to be informed, heard, and protected by the system. With that goal in mind, standards are incorporated to facilitate the participation of crime victims within community supervision.

(1) Training. The CSCD victim services coordinators [~~Victim Services Coordinators~~] shall obtain no [~~not~~] less than eight [~~(8)~~] documented hours of professional, skill-based training within the first biennium of appointment to the position of victim service coordinator. Training shall be specific to community supervision and should include:

(A) Victims' rights;

(B) Victim sensitivity;

(C) Confidentiality issues; and

(D) Crime victim compensation.

(2) Policy and Procedures. Each CSCD shall adopt written policies and procedures regarding victim notification of offenders placed on community supervision and offender information that may be released to victims.

(A) Notifying the victim of the offender's crime, or if the victim has a guardian or is deceased, notifying [~~notify~~] the guardian of the victim or close relative of the deceased victim, when the offender is released and placed on community supervision. Notification shall include the information specified in Texas Government Code §76.016, which includes:

(i) Notice the offender is being placed on community supervision;

(ii) The conditions of community supervision imposed by the court; and

(iii) The date, time, and location of any hearing or proceeding at which the conditions of the offender's community supervision may be modified or the offender's placement on community supervision may be revoked or terminated.

(B) Offender information that is public may be released to victims. Such information includes:

(i) Court ordered community supervision identifying the CSCD [~~department~~] with jurisdiction;

(ii) A written copy of the conditions of supervision;

(iii) The name of the supervising officer;

(iv) Victim service coordinator contact information;

(v) Motion to revoke supervision being filed and the results of the motion;

(vi) Information regarding the transfer of an offender to another jurisdiction and contact information; and

(vii) Information that the offender has been placed in residential confinement and released from confinement, unless such confinement is in a substance abuse treatment facility.

(3) Other information that may be released includes information that the victim would have knowledge of, such as:

(A) Uncollected or [~~/~~]unpaid restitution; and

(B) Sanctions for violating the terms and conditions of supervision.

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606508
Sharon Howell
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: January 22, 2017
For further information, please call: (936) 437-6700

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

SUBCHAPTER E. INTAKE, INVESTIGATION, AND ASSESSMENT

DIVISION 1. INVESTIGATIONS

40 TAC §700.516

The Texas Health and Human Services Commission, on behalf of the Department of Family and Protective Services (DFPS), proposes to amend §700.516 in Title 40, Texas Administrative Code (TAC), Chapter 700, Subchapter E, relating to Child Protective Services Intake, Investigation, and Assessment.

BACKGROUND AND PURPOSE

The purpose of the amendment is to clarify that if a designated perpetrator submits a written request for an administrative review of investigation findings (ARIF), the individual must respond to attempts made by a DFPS' resolution specialist to schedule the review. If the resolution specialist is unable to make contact with the individual and the individual does not respond to the attempts to make contact within 30 days of the initial contact attempt, DFPS will not proceed with the review and the individual waives his or her right to an ARIF. However, if the individual subsequently contacts DFPS after the specified timeframe, the resolution specialist may reschedule the review if the resolutions specialist determines good reason existed for exceeding the timeframe. Currently, if a designated perpetrator submits a written request for an ARIF but fails to respond to attempts by the resolution specialist to schedule the ARIF, the case may either remain open indefinitely or the resolution specialist proceeds with the ARIF without input from the designated perpetrator. This proposed update will ensure that ARIFs are not conducted without any input from the designated perpetrator if the resolution spe-

cialist is unable to make contact and will also ensure that the ARIF does not remain open indefinitely. Further, by permitting the resolution specialist to reschedule an ARIF if the designated perpetrator subsequently contacts DFPS and provides good reason for failing to respond to the resolution specialist's attempts to schedule the initial ARIF, the rule effectively balances the due process rights of the designated perpetrator with the statutory requirements to conduct an ARIF within 45 days of the request.

In addition, the edits update the procedure for conducting an ARIF as well as the procedure and timeframes that apply when an ARIF is postponed due to a court case or ongoing criminal investigation to ensure consistency with current policy and procedure. Finally, the edits clarify that DFPS only reviews and issues a written decision on findings pertaining to the requestor and does not alter dispositions of "Ruled Out" and "Unable to Determine."

SECTION-BY-SECTION SUMMARY

The amendments to §700.516 are as follows: (1) specifies that if a requestor does not respond to DFPS's attempts to schedule an ARIF within 30 days of the initial contact attempt, DFPS will not proceed with the review and the requestor waives his or her right to an ARIF unless the requestor subsequently contacts DFPS and provides good reason for exceeding the timeframe; (2) clarifies that the requestor has the right to bring a legal representative and a support person to the review but the support person may not participate in the review; (3) clarifies that if the designated perpetrator is a minor, a parent or guardian may speak on his or her behalf at the review; (4) clarifies that the review does not include formal witness testimony and any witnesses for the requestor must submit statements in writing; (5) specifies that DFPS only reviews and issues a written decision on findings pertaining to the requestor and does not alter dispositions of "Ruled Out" and "Unable to Determine;" (6) clarifies that if an ARIF is postponed due to a court case or ongoing criminal investigation, the resolution specialist will notify the requestor in writing within 45 days of receipt of the request with either the specific length of time of the delay or with a request to notify TDFPS when the case or criminal investigation is completed at which time the resolution specialist will review ARIF eligibility; and (7) changes "reviewer" to "resolution specialist" and "TDPRS" to "TDFPS" to reflect current terminology.

FISCAL NOTE

Lisa Subia, Chief Financial Officer of DFPS, 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 government as a result of enforcing or administering the amendment.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

There will be no effect on small or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

PUBLIC BENEFIT AND COST

Ms. Subia also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated is that the public will gain a better understanding and be on notice of the required timeframes for scheduling an ARIF and making contact with the resolution specialist as well as the applicable procedures for conducting an ARIF.

TAKINGS IMPACT ASSESSMENT

Ms. Subia has determined that the proposed amendment does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

PUBLIC COMMENT

Questions about the content of the proposal may be directed to Elena Perez at, (512) 929-6434 in DFPS's Child Protective Services Investigations Division. Electronic comments may be submitted to Elena.Perez@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-563, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

STATUTORY AUTHORITY

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendment implements Texas Family Code §261.309.

§700.516. Administrative Review of Investigation Findings.

(a) - (c) (No change.)

(d) Except as provided in subsection (f) [~~(e)~~] of this section, Department of Family and Protective Services (DFPS) [~~TDPRS~~] must within 45 days after the date on which a request for an ARIF is received:

(1) - (2) (No change.)

(e) After a designated perpetrator submits a written request for an ARIF, a resolution specialist will contact the requestor to schedule the review. If the resolution specialist is unable to make contact with the requestor and the requestor does not respond to the attempts to make contact within 30 days of the initial attempt, DFPS will not proceed with the review and the requestor waives his or her right to an ARIF. If the requestor subsequently contacts DFPS after the above-specified timeframe, the resolution specialist may reschedule the review if the resolution specialist determines good reason existed for exceeding the timeframe.

(f) [~~(e)~~] DFPS [~~TDPRS~~] may postpone [~~the conduct of~~] an ARIF when there is a pending civil or criminal suit or an ongoing criminal investigation relating to the same acts or omissions involved in DFPS's [~~TDPRS's~~] finding of abuse or neglect. If DFPS decides to postpone the ARIF, the resolution specialist will notify the requester in writing within 45 days after the request for an ARIF was received. The notification will indicate the length of time of the delay or specify that the requester may notify DFPS when the court case has been completed or the criminal investigation has been closed, as appropriate. The resolution specialist will review the requester's eligibility for an ARIF after the delay. If the requester is determined eligible for an ARIF, it [~~An ARIF that is postponed for this reason~~] must be conducted within 45 days from notification of the completion of the suit or criminal investigation that caused the postponement.

(g) [~~(f)~~] The ARIF is conducted by a DFPS [~~TDPRS~~] employee (the "resolution specialist [~~reviewer~~]") who was not involved in the investigation and did not directly supervise the investigation.

The ARIF is an informal review in which the participants [~~requestor, investigation worker, and investigation supervisor~~] may appear, make statements, provide relevant written materials, and ask questions. The requestor has the right to bring a legal representative and a support person to the review. The support person may not participate in the review. If the designated perpetrator is a minor, the parent or guardian may also speak on the minor's behalf during the review. Any witnesses for the requestor must submit their statements in writing to the resolution specialist. [~~be represented by another individual~~] [~~Other interested individuals may participate or provide information at the sole discretion of the reviewer~~]

(h) [~~(g)~~] The resolution specialist [~~reviewer~~] may review the investigation case record, ask questions, and gather other relevant information. The formal rules of evidence do not apply and the review does not include formal witness testimony. The resolution specialist [~~reviewer~~] may consider all allegations relating to the investigation, including allegations that were "reason-to-believe," "unable-to-determine," or "ruled-out" at the conclusion of the investigation, and the evidence gathered during the investigation and the ARIF process. The resolution specialist [~~reviewer~~] must confirm that decisions of "reason-to-believe" are supported by a preponderance of the evidence.

(i) [~~(h)~~] After completing the ARIF, the resolution specialist [~~reviewer~~] must timely issue a written decision that upholds, reverses, or alters the original investigation findings. The resolution specialist only reviews and issues a written decision on findings pertaining to the requestor. An original finding of "reason-to-believe" for abuse or neglect may be upheld, or may be reversed to a finding of either "unable-to-determine" or "ruled-out." A finding may be altered with respect to the type of abuse or neglect found to have occurred. For example, an original finding of "reason-to-believe" for "physical abuse" of a child may be altered to a finding of "reason-to-believe" for "neglectful supervision" of the child. [~~A "reason-to-believe" finding may be altered as to the type of abuse or neglect even when the original finding with respect to that same type of abuse or neglect had been "ruled-out" or "unable-to-determine."~~]

(j) [~~(i)~~] If the resolution specialist's [~~reviewer's~~] decision reverses or alters any of the original investigation findings, DFPS [~~TDPRS~~] must change its records regarding the outcome of the investigation to reflect the resolution specialist's [~~reviewer's~~] decision.

(k) [~~(j)~~] Notwithstanding anything in this section, if an individual is entitled to an administrative hearing before the State Office of Administrative Hearings (SOAH), DFPS [~~TDPRS~~] may, at its sole discretion, waive the conduct of an ARIF and proceed directly to the SOAH hearing.

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

Filed with the Office of the Secretary of State on December 9, 2016.

TRD-201606415
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 929-6434

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CHAPTER 747. MINIMUM STANDARDS FOR CHILD-CARE HOMES

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), the repeal of §§747.103, 747.105, 747.107, 747.109, 747.111, 747.113, 747.209, 747.615, 747.617, 747.619, 747.621, 747.623, 747.625, 747.703, 747.907, 747.1009, 747.1123, 747.1125, 747.1127, 747.1133, 747.1135, 747.1205, 747.1215, 747.1217, 747.1219, 747.1303, 747.1323, 747.2311, 747.2701, 747.2711, 747.2715, 747.2907, 747.3205, 747.3207, 747.4107, and 747.4311; new sections §§747.111, 747.113, 747.115, 747.117, 747.121, 747.123, 747.615, 747.623, 747.1123, 747.1303, 747.2311, 747.2326, 747.3216, and 747.3406; and amendments to §§747.207, 747.301, 747.401, 747.403, 747.501, 747.503, 747.505, 747.603, 747.605, 747.613, 747.705, 747.801, 747.803, 747.909, 747.1007, 747.1107, 747.1113, 747.1129, 747.1131, 747.1137, 747.1145, 747.1147, 747.1149, 747.1153, 747.1207, 747.1209, 747.1211, 747.1305, 747.1309, 747.1311, 747.1313, 747.1314, 747.1315, 747.1317, 747.1321, 747.1401, 747.1501, 747.2103, 747.2301, 747.2305, 747.2307, 747.2309, 747.2313, 747.2315, 747.2317, 747.2319, 747.2321, 747.2323, 747.2325, 747.2327, 747.2328, 747.2331, 747.2401, 747.2405, 747.2407, 747.2507, 747.2605, 747.2607, 747.2703, 747.2705, 747.2801, 747.2803, 747.2805, 747.2807, 747.2811, 747.3003, 747.3101, 747.3109, 747.3117, 747.3203, 747.3211, 747.3215, 747.3217, 747.3301, 747.3303, 747.3307, 747.3401, 747.3403, 747.3407, 747.3411, 747.3503, 747.3505, 747.3507, 747.3601, 747.3619, 747.3701, 747.3903, 747.4011, 747.4015, 747.4113, 747.4203, 747.4301, 747.4303, 747.4305, 747.4307, 747.4309, 747.4401, 747.4407, 747.4751, 747.4803, 747.4807, 747.4809, 747.4815, 747.5013, 747.5101, 747.5103, 747.5105, 747.5107, 747.5109, 747.5115, 747.5117, 747.5401, 747.5405, 747.5407, 747.5409, 747.5411, 747.5417, 747.5419, and 747.5421 in Chapter 747, concerning Minimum Standards for Child-Care Homes.

BACKGROUND AND PURPOSE

The Child Care Licensing (CCL) Division proposes to amend 40 TAC, Chapter 747, Minimum Standards for Child-Care Homes. Texas Human Resources Code (HRC) §42.042(b) requires CCL to conduct a comprehensive review of all rules and minimum standards every six years. The proposed changes are a result of the comprehensive review of all minimum standards located in Chapter 747.

During this review of standards, CCL's goal was to review the concerns of child advocacy groups, child-care homes, children, and parents and to formulate standards that balance children's health and safety with affordability and availability of care.

In preparation for the review of minimum standards, CCL conducted a web-based survey open to permit holders, caregivers, advocates, parents, CCL staff, and anyone in the general public interested in commenting on the standards. The survey was available for public input from late August through December 2014. The next step in the review was to hold a series of 31 stakeholder forums throughout the state between September and November 2015 to solicit additional input from the public about proposed changes to the minimum standards.

Between the web-based survey and the stakeholder forums, CCL received more than 1,200 comments relating to Chapters 744 (Minimum Standards for School-Age and Before- or After-School Programs), 745 (Licensing), 746 (Minimum Standards for Child-Care Centers), and 747 from stakeholders

for consideration in the review. These comments, along with a line-by-line review of all minimum standards conducted by both regional and State Office Licensing staff, formed the basis of the first round of recommendations.

In response to the comments received, DFPS is recommending amending/repealing/adding over 165 minimum standards in Chapter 747. In addition to responding to comments, three other primary goals of this comprehensive review were to: (1) make the language of the rules consistent throughout this chapter and consistent with the language of sister rules in Chapters 744 and 746, as much as possible; (2) delete minimum standards or portions of minimum standards that are duplicative or redundant or not necessary; and (3) combine minimum standards when appropriate. The last two goals resulted in the net deletion of approximately 25 minimum standards. Below is a broad overview of some of the different areas and types of changes that DFPS is recommending:

(1) Repealing, adding, moving, and modifying definitions. One example is the repeal of §747.3205 and §747.3207 which defined "sanitizing" and "disinfecting solution" and combining, modifying, and updating these definitions into one definition for "sanitize" and adding it to the new §747.123(41);

(2) Reorganizing Subchapter A by creating three new Divisions: Purpose, Scope, and Definitions. The focus of the reorganization is to provide better clarity and continuity;

(3) Updating or deleting outdated rules or language in the rules, including: (a) Deleting outdated grandfather clauses (§§747.4015, 747.4107, and 747.4311) and outdated wording ("coin operated pay phone" at §747.4307); (b) Updating the immunization minimum standards to be consistent with the current Department of State Health Services rules (§§747.613, 747.615, 747.617, 747.619, 747.621 and 747.623); and (c) Deleting the use of rectal thermometers and allowing the use of tympanic (ear) thermometers (§747.3401);

(4) Clarifying confusing concepts by: (a) Modifying the rules regarding the safety requirements for cribs, including adding a new rule specifying the safety requirements for "play yards" - which includes mesh cribs (§747.2309 and §747.2311); (b) Adding a new rule that a sick child may return to care when the child is free of symptoms for 24 hours or there is a written doctor's statement that the child no longer has an excludable condition (§747.3406); and (c) Deleting the term "critical illness/injury" and replacing it with the actual meaning - an illness or injury that requires the immediate attention of a health-care professional (§747.3407);

(5) Strengthening the minimum standards when it is necessary for the safety of children, for example: (a) Adding required operational policies for safe sleep for infants 12 months and younger (§747.501); (b) Not allowing infants to sleep in restrictive devices (§747.2326); and (c) Banning the use of e-cigarettes and any type of vapors (§747.3503); and

(6) Allowing more discretion by providers while still ensuring the safety of children, for example: (A) Allowing first aid (but not CPR) to be obtained through self-instructional training (§747.1313); (B) Only requiring cribs for non-walking infants less than 12 months of age (§747.2305); and (C) Further allowing the use of hand sanitizers (§747.3216).

None of the changes are anticipated to be controversial or high-profile. However, with the high number of rule changes noted in this agenda item, there may be comments that are not anticipated. CCL will respond to the comments accordingly.

The recommended changes to Chapter 747 (and the recommended changes to Chapters 744 and 746) were presented to a temporary workgroup. The temporary workgroup was comprised of approximately 15 participants, including providers from child-care centers, a provider from a school-age and before- and after-school program, a parent, representatives from Licensing, and a representative from the Texas Workforce Commission. The workgroup had an introductory meeting on March 22, 2016, and subsequently met twice on April 5, 2016 and May 16, 2016 to review and provide comments regarding the recommended changes. Several child-care home providers were invited to the workgroup, but none of those providers were able to attend these meetings.

SECTION-BY-SECTION SUMMARY

Subchapter A is being renamed "Purpose, Scope, and Definitions" for clarity and better continuity.

New Division 1 is being added for clarity and better continuity. The only rule in this Division is current §747.101.

Section 747.103 is being repealed and the content, regarding pronouns, is being incorporated verbatim into new §747.121.

Section 747.105 is being repealed and the content, regarding definitions, is being incorporated into new §747.123. Many substantive changes are being made to the content, including the deletion, addition, and modification of definitions.

Section 747.107 is being repealed and the content, regarding the types of operations the minimum standards in this chapter apply to, is being incorporated into new §747.111. However: (1) the family home language is being deleted, because these homes are now all registered; and (2) the exception information regarding licensed child-care homes that don't have to be in the primary caregiver's own address is being deleted, because this exception is being incorporated into new §747.115(b).

Section 747.109 is being repealed and the content, regarding registered child-care homes, is being incorporated verbatim into new §747.113.

Section 747.111 is being repealed and the content, regarding licensed child-care homes, is being incorporated verbatim into new §747.115.

Section 747.113 is being repealed and the content, regarding who must comply with the minimum standards in this chapter, is being incorporated with non-substantive changes into new §747.117.

New Division 2, Scope, is being added for clarity and better continuity.

New §747.111 includes portions of the content from §747.107, which is being deleted, and adds language to clarify that the minimum standards in this chapter also apply to any unlicensed child-care home that requires a registration or a license per Human Resources Code (HRC), Chapter 42, because the home is providing child-care services.

New §747.113 includes the content regarding a registered child-care home from: (1) §747.109, which is being deleted; and (2) a portion of the definition of child-care home to clarify that a registered child-care home includes the program, building, grounds, furnishings, and equipment.

New §747.115 includes the content regarding a licensed child-care home from: (1) §747.111, which is being deleted; and (2) a portion of the definition of child-care home to clarify

that a licensed child-care home includes the program, building, grounds, furnishings, and equipment.

New §747.117 includes the modified content from §747.113, which is being deleted, with an addition that the home's owner, other person overseeing the home, or controlling person who has the ability to influence or direct the home's management, expenditures, or policies must ensure compliance with the minimum standards in this chapter.

New Division 3, Definitions, is being added for clarity and better continuity.

New §747.121 includes the content regarding the meaning of pronouns from §747.103, which is being deleted.

New §747.123 includes the following addition of new terms and modifications, movement to other rules, and deletion of terms currently in §747.105, which is being deleted: (1) the definitions to several terms are being modified, including "caregiver" (this definition has been substantively changed), "Certified Child-Care Professional Credential", "Child Development Associate Credential", "inflatable", "instructor-led training", "janitorial duties", "self-instructional training", "special care needs", and "water activities"; (2) several terms from §747.105 are not being incorporated into new §747.123 because the content of the terms are being incorporated into the only rule where the term is used in this chapter, including "baby doorway (bungee) jumpers", "baby walkers", "caregiver-initiated activities", "child-initiated activities", and "single-use area"; (3) several terms are being deleted because these words are not used in this chapter, are already defined in some other section, or are not needed, including "alternate care program", "child-care location", "child passenger safety-seat system", "creative activities", "critical illness", "pre-service training", and "state or local sanitation official"; (4) several terms are being deleted from other rules and are being incorporated into this definition rule, including "CEUs", "clock hours"(with modifications), "high-school equivalent" (with modifications, including the addition of a home-school that adequately addresses basic competencies), "instructor-led training", "sanitize" (with substantive changes), and "self-instructional training"; and (5) new terms are being added, including "child", "employee", "restrictive device", and "self-study training".

The amendment to §747.207: (1) clarifies that the primary caregiver is responsible for ensuring that the number of children in care never exceeds the capacity of the home as specified on the license or registration, even when the children are away from the home (e.g. field trip). This is currently required at §747.1605; and (2) updates the language for clarity, including deleting and moving a paragraph.

Section 747.209 is being repealed and the content, that a child-care home does not have to have liability insurance, is being added to a Helpful Information box located on the DFPS public website version of the minimum standards immediately following §747.207.

The amendment to §747.301: (1) adds the content of the "child-care location" definition, which is being deleted; and (2) requires Licensing to be notified before a home offers nighttime care services.

The amendment to §747.401: (1) replaces the term "item" with "record" to clarify that the documents posted are child-care records that must be maintained according to §747.803; (2) deletes the cite to another chapter regarding the definition of "employee", because "employee" is being defined in §747.123 of this chapter; and (3) clarifies that household members that prepare or serve food must also be aware of each child's food allergies.

The amendment to §747.403: (1) deletes the requirement to post the address of the nearest Licensing office, because the workers are now mobile workers and not at a particular office; (2) deletes subsection (b) because the content regarding where to post the phone numbers is outdated, and clarifies in subsection (a) that phone numbers should be posted in a prominent place; and (3) clarifies the wording of the rule for accuracy.

The amendment to §747.501: (1) clarifies that the discipline and guidance policy must be consistent with Subchapter L, or Subchapter L may be used as the discipline and guidance policy. This change is being incorporated from §747.2711, which is being deleted; (2) adds a requirement for a new operational policy for the safe sleep of infants 12 months old and younger, including that the policy must be consistent with rules in Subchapter H that relate to sleep requirements and restrictions for infants; (3) clarifies that a home must show the parents how to access the minimum standards, but they do not have to provide the parents with a copy; and (4) clarifies the wording of the rule for better readability and ease of understanding.

The amendment to §747.503 clarifies the language of the rule, including that a parent's signature for the enrollment agreement and the operational policies may be a signature on one document or several documents.

The amendment to §747.505 clarifies: (1) that caregivers must be notified of any changes to the operational policies and the enrollment agreement; (2) that household members must be notified of any changes to the discipline and guidance policy (this came from §747.2715, which is being deleted); and (3) the language of the rule for better readability and ease of understanding.

The amendment to §747.603 clarifies several paragraphs by stating: (1) admission information is that information required in §747.605; (2) TB screening is only needed if required by DSHS or a local health authority; and (3) documentation from a health-care professional that allows for a deviation from a minimum standard must be maintained in the child's record.

The amendment to §747.605 clarifies that permission for transportation includes authorization for pick-up and drop-off locations. This change is being incorporated from a vague version of this requirement, which is being deleted from §747.5401.

The amendment to §747.613 clarifies: (1) that current immunization records must be maintained, including records of any exemptions or exceptions; and (2) the situations where immunizations are not required by the date of admission, including exemptions, exceptions, and provisional enrollment for up to 30 days for homeless children or children in foster care.

Section 747.615 is being repealed and new §747.615 incorporates the language from the repealed rule and explains in greater detail the immunization exemptions and exceptions that are allowed by the DSHS rules.

Section 747.617 is being repealed and the content, regarding where to find more information on immunizations, is being added to and expounded upon in a Helpful Information box located on the DFPS public website version of the minimum standards immediately following §747.613.

Section 747.619 is being repealed and the content, regarding the completion of immunizations by the date of admission, is being incorporated into §747.613(c).

Section 747.621 is being repealed and the content, regarding provisional admittance, is being incorporated into §747.613(c)(2).

Section 747.623 is being repealed and new §747.623: (1) incorporates the counted from this rule; (2) reorganizes the structure of the rule to be more consistent with its sister rules in Chapters 744 and 746; (3) adds the language that a parent may sign a statement documenting that a child's immunization record is on file at a pre-kindergarten program or school that the child attends from §747.625, which is being deleted; (4) clarifies the documentation requirements that are acceptable for an immunization record, including: (a) what is acceptable as a signature for a health-care professional; and (b) the signature of the health-care professional is not required for an official immunization record generated from a state or local health authority or a school.

Section 747.625 is being repealed and the content, regarding a parent documenting that a child's immunization record is on file at a pre-kindergarten program or school that the child attends, is being incorporated into §747.623(a).

Section 747.703 is being repealed and the content, regarding where to find a copy of Licensing's *Incident/Illness Report* form, is being added to a Helpful Information box located on the DFPS public website version of the minimum standards immediately following §747.701.

The amendment to §747.705 clarifies the wording of the rule for better readability and ease of understanding.

The amendment to §747.801 corrects some cites and deletes two paragraphs regarding what records must be kept at the home, including the paragraphs regarding: (1) proof of background checks, because it is already required to be in a caregiver's personnel record at §747.901(6); and (2) the most recent Licensing inspection report because the report is already required to be posted at §747.401(2).

The amendment to §747.803 clarifies that a posted record must be kept for at least three months from the date the record was created.

Section 747.907 is being repealed and the content, regarding where to find a copy of Licensing's *Affidavit for Applicants for Employment* form, is being added to a Helpful Information box located on the DFPS public website version of the minimum standards immediately following §747.901.

The amendment to §747.909 deletes the requirement to maintain an *Affidavit for Applicants for Employment* for a permit holder (who is also the primary caregiver), because this form is only required for applicants for employment, not a permit holder.

The amendment to §747.1007 clarifies the qualifications of a primary caregiver of a registered child-care home by: (1) adding the background check requirement; and (2) updating the language regarding a TB examination.

Section 747.1009 is being repealed because the content, regarding a grandfather clause exempting a primary caregiver of a registered child-care home from the qualifications for orientation and a high school diploma, is outdated and orientation is not required for a primary caregiver.

The amendment to §747.1107 clarifies the qualifications of a primary caregiver of a licensed child-care home by: (1) adding the background check requirement; (2) updating the language regarding a TB examination; (3) changing the "business management credit hours" to "management credit hours", which is more consistent with descriptions of current college courses; and (4) deleting subsection (b) and adding its content regarding the education options that need periodic renewal to a Helpful Information box located on the DFPS public website version of the minimum standards immediately following this rule.

The amendment to §747.1113 substantially modifies the wording of the rule regarding what constitutes experience for better readability and ease of understanding, without changing the substance of the rule.

Section 747.1123 is being repealed and the content, regarding "clock hours," is being incorporated into the definitions rule at §747.123 with some modifications for clarity and accuracy.

New §747.1123, regarding the documentation requirements for child development and management education qualifications: (1) incorporates §747.1133, which is being deleted; (2) reorganizes the placement of the rule for a better flow of the rules; and (3) clarifies the wording for better readability and ease of understanding.

Section 747.1125 is being repealed because the content is not accurate, since §747.1315 does provide criteria for trainers.

Section 747.1127 is being repealed and the content, regarding "CEUs," is being incorporated into the definitions rule at §747.123.

The amendment to §747.1129 incorporates the content regarding the documentation of clock hours and CEUs from §747.1135, which is being deleted; and clarifies the wording of the question and the answer for better readability and ease of understanding.

The amendment to §747.1131 clarifies that a primary caregiver must meet the qualifications noted in this rule in addition to the primary caregiver qualifications.

Section 747.1133 is being repealed and the content, regarding the documentation requirements for the child development and management education qualifications, is being incorporated into new §747.1123.

Section 747.1135 is being repealed and the content, regarding the documentation of clock hours and CEUs, is being incorporated into §747.1129(c).

The amendment to §747.1137, regarding education received outside of the U.S., makes the rule more consistent with the wording of §747.1213.

The amendments to §747.1145 and §747.1147 update cite references.

The amendment to §747.1149 clarifies when a credential expires.

The amendment to §747.1153 clarifies the wording and organization of the rule for better readability and ease of understanding.

Section 747.1205 is being repealed and the content, regarding the different qualifications for assistant and substitute caregivers, is being added with non-substantive modifications to a Helpful Information box located on the DFPS public website version of the minimum standards immediately following §747.1209.

The amendment to §747.1207, regarding the minimum qualifications of an assistant caregiver: (1) deletes the phrase "counted in the child-caregiver ratio" after assistant caregiver, because by definition an assistant caregiver is counted in the child-caregiver ratio; and (2) updates the language of the TB examination qualification to be consistent with the rest of this chapter and Chapters 744 and 746.

The amendment to §747.1209, regarding the minimum qualifications of a substitute caregiver, updates the language of the question and the answer to be more consistent with the wording of §747.1207 and for better readability and ease of understanding.

The amendment to §747.1211, regarding employing a person under the age of 18 with or without a high school diploma, clarifies: (1) that the person must never have sole responsibility for a group of children; (2) that child-care-related career programs may also be approved by: (a) charter schools; (b) the Texas Private School Accreditation Commission; or (c) a home-school, if the person completes eight hours of annual training before being placed in a room with children; and (3) the language of the rule for better readability and ease of understanding.

Section 747.1215 is being repealed because the content, regarding a grandfather clause that exempts an assistant caregiver from qualifications, is outdated and no longer necessary.

Section 747.1217 is being repealed because the content, regarding a grandfather clause that exempts a substitute caregiver from qualifications, is outdated and no longer necessary.

Section 747.1219 is being repealed and the content, regarding "high school equivalent," is being incorporated into the definitions rule at §747.123 with some modifications for clarity and accuracy.

Section 747.1303 is being repealed and the content, regarding the training caregivers need, is being incorporated into this new rule that includes a table and modified wording for better readability and ease of understanding.

The amendment to §747.1305 clarifies that while 80% of the annual training hours for caregivers may come from self-instructional training, no more than three of those self-instructional hours may come from self-study training.

The amendment to §747.1309 clarifies that while 80% of the annual training hours for a primary caregiver may come self-instructional training, no more than three of those self-instructional hours may come from self-study training.

The amendment to §747.1311 is being clarified for better readability and ease of understanding; and the last sentence in subsection (a) is being deleted because it is redundant with subsection (c).

The amendment to §747.1313 clarifies that first aid training can now be obtained through self-instructional training.

The amendment to §747.1314 clarifies that the training for transportation applies to a caregiver, which is also consistent with the answer.

The amendment to §747.1315 regarding criteria for training: (1) updates the title of the training registry; (2) changes the term "director" to "primary caregiver"; (3) clarifies the language of the rule for better readability and ease of understanding; (4) clarifies that a Child Development Associate credential must be current; (4) deletes subsection (c) because this information is already noted in §747.1313(d); and (5) clarifies that new subsection (c) applies to both instructor-led and self-instructional training (as stated in §747.1323(c), which is being deleted), but does not apply to self-study training.

The amendment to §747.1317 clarifies the language of the rule for better readability and ease of understanding; and clarifies that while Licensing does not approve training resources, training must comply with the: (1) criteria specified in §747.1315; (2) required training topics; and (3) documentation requirements.

The amendment to §747.1321: (1) updates the wording for better readability and ease of understanding, and to be consistent with the wording in the sister rules in Chapters 744 and 746; and (2) simplifies and streamlines the requirement for counting training received by caregivers from another day-care operation by deleting the requirement to adjust the annual training year for those caregivers.

Section 747.1323 is being repealed and the content, regarding the definitions for "self-instructional training" and "instructor-led training", is being incorporated into the definitions rule at §747.123 with some modifications for clarity and accuracy; and the content for subsection (c) is being incorporated into §747.1315(c).

The amendment to §747.1401, regarding qualifications for household members: (1) updates the language of the TB examination qualification to be consistent with the rest of this chapter and Chapters 744 and 746; (2) clarifies the background check requirements; and (3) clarifies that household members that are not regularly or frequently present at the home must not be left alone with a child unless the household member meets the caregiver qualifications requirements in this chapter.

The amendment to §747.1501, regarding the responsibilities of caregivers, clarifies the wording for better readability, including: (1) correcting a typographical error, (2) deleting a redundancy; and (3) deleting and moving the adjectives regarding "janitorial duties" to the definition of the term at §747.123.

The amendment to §747.2103, regarding what must be included in an activity plan, include: (1) incorporates the definitions for the following terms that are being deleted from the definitions rule: (a) "creative activities"; (b) "child-initiated activities"; and (c) "caregiver-initiated activities"; and (2) adds a cite to a subchapter for clarification.

The amendment to §747.2301 clarifies the rule by replacing the term "child/ren" with "infant/s".

The amendment to §747.2305 clarifies that cribs are to sleep in and are only required for non-walking infants younger than 12 months of age; and replaces the term "children" with "infants".

The amendment to §747.2307 rewrites the rule to clarify that if a manufacturer requires safety straps on equipment, then the safety straps must be fastened whenever a child is using the equipment.

The amendment to §747.2309, regarding safety requirements for cribs: (1) incorporates information regarding "port-a-cribs" (which are "non-full-size" cribs as defined by CPSC) from §747.2311, which is being deleted, by clarifying that this rule applies to all full-size and non-full-size cribs; (2) requires that only mattresses designed specifically for use with a crib model number may be used; and (3) replaces the term "child" with "infant".

Section 747.2311 is being repealed because the terms are somewhat outdated and the content with modifications is being incorporated into other rules as follows: (1) the content for "port-a-cribs" (which are now called "non-full-size" cribs) is incorporated into §747.2309, because these cribs must meet all of the requirements in §747.2309; and (2) the content for "mesh cribs" (which is now a subset of "play yards") is incorporated into new §747.2311.

New §747.2311 incorporates the content related to mesh cribs/play yards from §747.2311; and it clarifies: (1) the term "play yard", which are mesh or fabric sided cribs; (2) play yards must be used according to the manufacturer's instructions, including the cleaning of the play yard, (3) play yards must have a firm, flat mattress that snugly fits the sides of the play yard; the mattresses must be designed by the manufacturer specifically for the play yard model number that is being used; and mattresses must not be supplemented with additional foam material or pads; and (4) additional play yard requirements.

The amendment to §747.2313 clarifies that stacking wall cribs are allowed only for an infant who cannot stand or is able to stand without hitting the infant's head on either the top of the crib or the ceiling above the top crib; replaces the term "child" with "infant"; and clarifies the wording of the rule for better readability and ease of understanding.

The amendment to §747.2315, regarding prohibited equipment for use with infants: (1) incorporates the content of the definitions for "baby walkers" and "baby doorway jumpers" from the definition rule, because this is the only rule in which these two terms are used; (2) replaces the term "baby bungee jumpers" with "baby doorway jumpers", which is the equipment that is actually prohibited; (3) establishes that the safest course for a sleeping infant is a bare crib, except for a tight fitting sheet and/or a mattress cover used to protect against wetness (if the mattress cover is designed specifically for the crib and crib mattress, tight fitting, thin, and not designed to make the sleep surface softer); (4) modifies the wording of the rule for better readability and ease of understanding; and (5) replaces the term "children" with "infants".

The amendment to §747.2317 clarifies that when an infant explores outside of the crib, the infant must also be free of restrictive devices; and deletes "confining equipment" because that term is subsumed by "restrictive devices".

The amendment to §747.2319 clarifies that propped bottles are not allowed; and replaces the term "child/ren" with "infant/s".

The amendment to §747.2321: (1) deletes the option for a home to participate in the Child and Adult Care Food Program (CACFP) pertaining to the feeding instructions for an infant, because this option is misplaced and the CACFP does not have a different option regarding the feeding instructions for an infant; (2) clarifies the question of the rule for better readability and ease of understanding; and (3) replaces the terms "child/ren" with "infant/s" and "physician" with "health-care professional".

The amendment to §747.2323 clarifies the rule for better readability and ease of understanding; and corrects a typographical error".

The amendment to §747.2325 clarifies this rule, which allows an infant to remain in a crib for up to 30 minutes after the infant wakes up, by deleting the phrase "other confining equipment". The deletion of the phrase clarifies that an infant must be sleeping in a crib and not be sleeping in confining equipment, also known as a restrictive devices.

New §747.2326 clarifies that infants are not allowed to sleep in restrictive devices. If the infant falls asleep in a restrictive device, then the infant must be removed from the device and placed in a crib as soon as possible. Note: "Restrictive Device" has been defined in the new definitions rule in §747.123.

The amendment to §747.2327 clarifies (1) that infants not yet able to turn over must be placed in a face-up sleeping position in their own cribs; (2) an exception if there is a written statement from a health-care professional stating a different sleeping position is medically necessary; and (3) replaces term "child" with "infant".

The amendment to §747.2328 clarifies that swaddling is only allowed if there is a written statement from a health-care professional stating that swaddling a specific child for sleeping purposes is medically necessary.

The amendment to §747.2331, regarding daily reports for parents, clarifies the rule by replacing the term "child" with "infant".

The amendment to §747.2401, regarding basic care requirements for toddlers, clarifies the rule by replacing the term "child" with "toddler".

The amendment to §747.2405, regarding furnishings and equipment for toddlers: (1) clarifies that toddlers should never be allowed to sleep with or walk around with bottles or training cups; (2) clarifies the wording of the rule for better readability and ease of understanding; and (3) replaces the term "child" with "toddler".

The amendment to §747.2407 deletes the required toddler activities of regular meal and snack times and supervised naptime because these activities are redundant as they are already required by §747.2801 and §747.3101, respectively.

The amendment to §747.2507 deletes the required pre-kindergarten age activities of regular meal and snack times and supervised naptime because these activities are redundant as they are already required by §747.2801 and §747.3101, respectively.

The amendment to §747.2605 clarifies the rule for better readability and ease of understanding.

The amendment to §747.2607 deletes the required school-age activities of regular meal and snack times and supervised naptime because these activities are redundant as they are already required by §747.2801 and §747.3101, respectively.

Section 747.2701is being repealed and the content, regarding what discipline is appropriate, is being incorporated into §747.2703.

The amendment to §747.2703 incorporates the content from §747.2701, which is being deleted; and clarifies the rule for better readability and ease of understanding.

The amendment to §747.2705 clarifies that prohibited discipline includes: (1) placing a child in a dark room, whether the door is closed or not; and (2) requiring a child to remain in a restrictive device.

Section 747.2711 is being repealed and the content, regarding whether a discipline and guidance policy is needed, is being incorporated into §747.501(5).

Section 747.2715 is being repealed because the content, regarding updating the discipline and guidance policy, is either already required in §747.505 or is being incorporated into §747.505.

The amendments to §747.2801 and §747.2803, regarding nap time and a rest period, modify the wording in these two rules to be consistent with the wording of the rules throughout this division.

The amendment to §747.2805 clarifies that children must not be confined in a restrictive device in an attempt to make the child rest or sleep.

The amendment to §747.2807, regarding children that cannot sleep, makes the wording in the rule consistent with the wording of other rules in this division.

The amendment to §747.2811 clarifies that lowering the lighting in a room requires enough lighting that a person's eyes do not need to adjust for the person to be able to see upon entering the room.

Section 747.2907 is being repealed and the content, regarding the referral to Subchapter E for information relating to child/caregiver ratios and group sizes, is being added to a Helpful Information box located on the DFPS public website version of the minimum standards immediately following §747.2901.

The amendment to §747.3003 deletes the statement that a home needs a residential child-care license to exceed the nighttime care limits because this chapter only relates to child-care homes, not residential licensing.

The amendment to §747.3101 corrects and inadvertent change to the meaning of this rule that occurred when this rule was previously amended in response to the Child Care Development Block Grant of 2014. The correction clarifies that new paragraph (3), regarding the option for a home to meet the requirements of the Child and Adult Care Food Program, only applies to subsection (a). The subsections have also been renumbered.

The amendment to §747.3109: (1) deletes "meals" from subsection (d) because parents must not be providing meals for other children; and (2) clarifies that snacks that are shared must meet the needs of children who require special diets.

The amendments to §747.3117 and §747.3203 clarify the rules for better readability and ease of understanding.

Section 747.3205 is being repealed and the content, regarding the definition for "sanitizing," is being incorporated into the new definition for "sanitize" at §747.123 with modifications.

Section 747.3207 is being repealed and the content, regarding the definition for "disinfecting solution," is being incorporated into the new definition for "sanitize" at §747.123 with modifications.

The amendment to §747.3211 clarifies: (1) that caregivers must wash their hands after removing gloves; and (2) the wording of the rule for better readability and ease of understanding.

The amendment to §747.3215 deletes the portion of the rule regarding hand sanitizers and incorporates it into new §747.3216.

New §747.3216 clarifies that hand sanitizer may be used as a substitute for washing hands under certain conditions: (1) not used for visibly dirty hands; (2) only used on children 24 months and older; (3) stored out of the reach of children; (4) labelling instructions are followed; and (5) used only with adult supervision.

The amendment to §747.3217 replaces the term "child" with "infant".

The amendment to §747.3301 clarifies the rule for better readability and ease of understanding.

The amendment to §747.3303 clarifies that to prevent a child from falling from a diaper changing surface that is above the floor level the caregiver's hand must remain on the child "or the caregiver must be facing the child" at all times.

The amendment to §747.3307 clarifies the rule for better readability and ease of understanding, including deleting one outdated cite and replacing another cite with the actual relevant wording.

The amendment to §747.3401 updates the language of the rule by deleting the use of rectal temperatures and adding the use of tympanic (ear) temperatures; and clarifies the rule for better readability and ease of understanding.

The amendment to §747.3403 deletes the portion of the rule that describes where to access the DSHS communicable disease information and adds the content with additional information to the Helpful Information box located on the DFPS public website version of the minimum standards immediately following this rule.

New §747.3406 clarifies that an ill child may return to the child-care home when: (1) the child is free of illness symptoms for 24 hours; or (2) there is a health-care professional's written statement that the child no longer has the excludable disease or condition.

The amendment to §747.3407: (1) deletes the term "critical illness/injury" and simplifies the rule by including the actual definition, which is an illness or injury that requires the immediate attention of a health-care professional. This is the only rule that discusses a "critical illness/injury"; (2) substitutes the term "health-care professional" for "physician"; (3) reorganizes the order of the caregiver's response to an illness or injury that requires the immediate attention of a health-care professional; and (4) clarifies that even if a child must be taken to an emergency room, the caregiver must first ensure the supervision of the other children.

The amendment to §747.3411 clarifies that only licensed child-care homes that are NOT located in the primary caregiver's own residence must have a vaccine-preventable disease policy.

The amendment to §747.3503: (1) clarifies that people whose behavior and/or health status "poses an immediate threat or danger" to the health or safety of children must not be present when children are in care; and (2) bans the use of e-cigarettes and any type of vapors.

The amendment to §747.3505: (1) substitutes the term "peace officer", which is defined at §2.12, Code of Criminal Procedure, for the colloquial term of "law enforcement official"; and (2) adds commissioned security officers as persons who may carry a firearm in a child-care home.

The amendment to §747.3507: (1) clarifies the language of the rule for better readability and ease of understanding; and (2) applies the limitation on toys that explode or shoot to both the home and on field trips.

The amendment to §747.3601 clarifies that a non-prescription topical ointment, such as insect repellant, is not a medication.

The amendment to §747.3619 clarifies the language of the rule for better readability and ease of understanding; and makes the rule consistent with sister rules in Chapters 744 and 746.

The amendment to §747.3701 clarifies that the requirements for animals in a home while children are in care also apply to field trips.

The amendment to §747.3903 highlights that caregivers must be the individuals responsible for overseeing the release of children; and clarifies the language of the rule for better readability and ease of understanding.

The amendment to §747.4011 deletes the cite for the "single-us area" definition, and incorporates the actual definition because it is not used in any other rule in this chapter; and clarifies the language of the rule for better readability and ease of understanding.

The amendment to §747.4015 deletes an outdated grandfather clause.

Section 747.4107 is being repealed because the grandfather clause is outdated and irrelevant.

The amendment to §747.4113, regarding the criteria to approve outdoor activity space not connected to the home, makes the language of the rule consistent with the language throughout the division; adds "neighborhood circumstances" as a criteria to be considered; and makes paragraph (5) consistent with sister rules in Chapters 744 and 746.

The amendment to §747.4203 deletes the portion of the that describes where to find information on hand washing and adds the content to the Helpful Information box located on the DFPS public website version of the minimum standards immediately following this rule.

The amendment to §747.4301 clarifies that if the manufacturer requires safety straps on a chair, then the safety straps must be fastened whenever a child is using the chair.

The amendment to §747.4303: (1) clarifies that a home may require a parent to provide the cot or mat for the child; (2) deletes the individual crib requirement because it is already required in §747.2305; (3) deletes the nap and rest requirements because they are already required at §747.2801; and (4) clarifies the wording of the rule for better readability and ease of understanding.

The amendment to §747.4305 deletes a masculine pronoun.

The amendment to §747.4307 deletes an outdated reference to a coin operated pay phone.

The amendment to §747.4309, regarding the safety standards for indoor lofts: (1) makes the language of the rule: (a) consistent with the language throughout the division; (b) consistent with the language in sister rules in Chapters 744 and 746; and (c) clarifies the wording of the rule for better readability and ease of understanding; and (2) adds a reminder that lofts must also comply with §747.4015 (state and local fire marshal's approval for caring for children above ground).

Section 747.4311 is being repealed because the grandfather clause is outdated an irrelevant.

The amendment to §747.4401 clarifies that active play equipment must be used according to the manufacturer's instructions.

The amendment to §747.4407 clarifies that active play equipment, in addition to active play space, must be inspected daily before children go out to play.

The amendment to §747.4751 clarifies: (1) the language of the rule for better readability and ease of understanding; and (2) that inflatables must be used according to manufacturer's instructions.

The amendment to §747.4803 deletes the word "built" from the question, because child-care home swimming pools must be maintained according to DSHS standards, not built according to DSHS standards.

The amendment to §747.4807, regarding fences around a swimming pool at a child-care home: (1) clarifies the question of the rule so the answer is more responsive to the question and for better readability and ease of understanding; and (2) makes the rule consistent with sister rules in Chapters 744 and 746.

The amendment to §747.4809, regarding whether a fence relieves a caregiver of supervision duties, clarifies: (1) the question of the rule for better readability and ease of understanding; (2) the wording of the rule to be more consistent with §747.1501 (c)(4) - "supervise children at all times".

The amendment to §747.4815 clarifies: (1) the language of the rule for better readability and ease of understanding; (2) that children must not be left alone with sprinkler equipment; and (3) that the splash pad/sprinkler play area must be maintained according to manufacturer's instructions.

The amendment to §747.5013 clarifies the rule for better readability and ease of understanding.

The amendment to §747.5101 clarifies the title for a "state or local fire marshal", which is defined at §747.123.

The amendment to §747.5103: (1) deletes an outdated grandfather clause; (2) clarifies the rule for better readability and ease of understanding; and (3) clarifies the title for a "state or local fire marshal", which is defined at §747.123.

The amendment to §747.5105 clarifies: (1) the order of the sentences in the rule to be consistent with the sister rules in Chapters 744 and 746; and (2) that the manufacturer's instructions for mounting a fire extinguisher must be followed.

The amendment to §747.5107 clarifies the rule for better readability and ease of understanding.

The amendment to §747.5109 clarifies the: (1) title for a "state or local fire marshal", which is defined at §747.123; and (2) rule for better readability and ease of understanding.

The amendment to §747.5115: (1) clarifies the rule for better readability and ease of understanding; and (2) adds a documentation requirement for the date of installation of new batteries.

The amendment to §747.5117 clarifies the rule for better readability and ease of understanding.

The amendment to §747.5401: (1) clarifies the rule for better readability and ease of understanding; and (2) deletes the issue of parental authorization for drop-offs and incorporates it and adds parental authorization for pick-ups into §747.605(8).

The amendment to §747.5405 clarifies the rule for better readability and ease of understanding.

The amendment to §747.5407 clarifies the term "child passenger safety seat system"; and restructures the rule for better readability and ease of understanding.

The amendment to §747.5409 clarifies the rule for better readability and the ease of understanding; and makes the rule consistent with sister rules in Chapters 744 and 746.

The amendment to §747.5411 clarifies the rule for better readability and the ease of understanding, and makes the rule consistent with a sister rule in Chapter 744.

The amendment to §747.5417: (1) clarifies the rule for better readability and ease of understanding; and (2) adds a requirement that the driver must carry a current driver's license.

The amendment to §747.5419 clarifies the rule for better readability and ease of understanding; and makes the rule consistent with a sister rule in Chapter 744.

The amendment to §747.5421 requires a cell phone or two-way radio in a transportation vehicle in case of an emergency.

FISCAL NOTE

Lisa Subia, Chief Financial Officer of DFPS, has determined that for each year of the first five years the proposed new, amended and repealed rules are in effect, there will no costs or revenues to state or local government as a result of enforcing or administering these rules.

There is no anticipated impact to costs and revenues of local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DFPS has determined that there will be an anticipated adverse impact on small or micro businesses as a result of the proposed rule changes to §747.501 and §747.5421. These two proposed changes may impact Registered and Licensed Child-Care Homes that meet the definition of a small and micro-business.

Chapter 2006 of the Government Code defines a small business as one that is for-profit, independently owned, and has fewer than 100 employees or less than six million dollars in annual gross receipts. A small business that has no more than 20 employees is also defined as a micro-business.

According to the DFPS FY 2015 Annual Report and Data Book as of August 31, 2015 there were 4,678 Registered Child-Care Homes and 1,720 Licensed Child-Care Homes in Texas. CCL is assuming all Registered and Licensed Child-Care Homes meet the definitions of a small and micro-business.

Licensing staff developed the methodologies used to calculate the fiscal impact of these rules. The impacts were calculated using cost research conducted by staff and assumptions regarding child-care practices. The key assumptions and methodologies are described in detail below, as these underlie the individual impact calculations for the rules that are projected to have a fiscal impact.

For both Registered and Licensed Child-Care Homes, the staff time required to comply with the standards will impact Primary Caregivers. For use in this impact analysis, DFPS will use the following mean wages that were obtained from the Texas Workforce Commission's website for Occupational Wages based on 2015 estimates: For all Primary Caregivers, DFPS is using a $25.57 per hour mean wage from the Occupational Title of Education Administrator, Preschool and Childcare Center.

Fiscal Impact for Proposed §747.501: This section adds a new operational policy that must be developed for "safe sleep for infants 12 months and younger". The fiscal impact to these homes results from staff time to develop policy regarding this topic. It is anticipated, after discussing this issue with the temporary workgroup, that a Primary Caregiver, or curriculum developer that is similarly paid, will spend an average of one to two hours developing this operational policy. Therefore, the approximate one-time cost for the development of this safe sleep policy is between $25.57 (1 hour X $25.57) and $51.14 (2 hours X $25.57) per affected home.

The maximum overall statewide impact for the combined affected homes (assuming no homes have an operational policy regarding safe sleep) under proposed §747.501 is between $163,597 and $327,194 ($25.57 X (4,678 + 1,720) = $163,597 and $51.14 X (4,678 + 1,720) = $327,194, respectively).

Fiscal Impact for Proposed §747.5421: In case of an emergency, this section requires a communications device, like a cellular phone, to be carried in a transportation vehicle when transporting children, which was not previously required. It is anticipated that this change will only affect a small number of homes. This section only applies to those homes that provide transportation services. Of the 4,678 Registered Child-Care Homes, 767 of those homes are noted in CLASS as providing transportation services. Of the 1,720 Licensed Child-Care Homes, 410 of those homes are noted in CLASS as providing transportation services. In addition, a 2015 study from the Pew Research Center indicated that 68% of all adults have cell phones, and that number is higher for 30 - 49 year olds (83%) and 18 - 29 year olds (86%). However, for those homes or individuals that do not currently have a cellular phone and are providing transportation, the costs will be minimal. A very basic cell phone can be bought for $10 to $20 with another $10 to $20 to buy minutes. If this phone is only used in transportation emergencies, this should be a one-time cost of $20 to $40 per affected home.

The overall statewide impact for the combined affected homes under proposed §747.5421 may be as little as $0 under the assumption that all individuals transporting children already have personal or business cell phones, or between $16,007 and $32,014 ((767 + 410) X $20 X 68% = $16,007 and (767 + 410) X $40 X 68% = $32,014, respectively).

The other recommended rule changes should not affect the cost of doing business; does not impose new requirements on any business; and does not require the purchase of any new equipment or any increased staff time in order to comply.

Regulatory Flexibility Analysis: As previously noted, of the 4,678 Registered Child-Care Homes and 1,720 Licensed Child-Care Homes in Texas CCL is estimating that all of them are small and micro-businesses. The projected fiscal impact on small and micro-businesses for §747.501 and §747.5421 is addressed in the foregoing section. CCL did consider not requiring the new safe sleep operational policy and not requiring a cellular phone during transportation, but ultimately decided that the one-time cost for both rules are appropriately small and merited the changes. In addition, these two changes will ensure the health and safety of children while sleeping and during the transportation of children in the event of an emergency.

PUBLIC BENEFIT AND COST

Ms. Subia has determined that for each year of the first five years the proposed new, amended and repealed rules are in effect, the public benefit anticipated as a result of the rule change will be that: (1) there will be clarification of the Minimum Standards for Child-Care Homes resulting in more compliance; (2) DFPS will be in compliance with HRC §42.042(b); and (3) there will be reduced risk to children.

TAKINGS IMPACT ASSESSMENT

Ms. Subia has determined that the proposed amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and,

therefore, do not constitute a taking under §2007.043, Government Code.

PUBLIC COMMENT

Questions about the content of the proposal may be directed to Gerry Williams at, (512) 438-5559 in DFPS's Child Care Licensing Division. Electronic comments may be submitted to CCLRules@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-564, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

SUBCHAPTER A. PURPOSE AND DEFINITIONS

40 TAC §§747.103, 747.105, 747.107, 747.109, 747.111, 747.113

STATUTORY AUTHORITY (DFPS)

These repealed rules are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed repeals implement HRC §42.042.

§747.103. What do certain pronouns mean when used in this chapter?

§747.105. What do certain words and terms mean when used in this chapter?

§747.107. What types of operations do these minimum standards apply to?

§747.109. What is a registered child-care home?

§747.111. What is a licensed child-care home?

§747.113. Who is responsible for complying with the minimum standards?

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606463
Audrey Carmical
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Department of Family and Protective Services
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 438-3854

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SUBCHAPTER A. PURPOSE, SCOPE, AND DEFINITIONS
DIVISION 2. SCOPE

40 TAC §§747.111, 747.113, 747.115, 747.117

These new rules are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed new sections implement HRC §42.042.

§747.111. What types of operations do these minimum standards apply to?

The minimum standards in this chapter apply to:

(1) Child-care homes registered or licensed by us to care for 12 or fewer children in the caregiver's own home for less than 24 hours per day; and

(2) Any unlicensed child-care home that requires a registration or license per the Human Resources Code, Chapter 42, because the home is providing child-care services.

§747.113. What is a registered child-care home?

(a) In a registered child-care home, the registered primary caregiver provides care in the caregiver's own residence for not more than six children from birth through 13 years, and may provide care after-school hours for not more than six additional elementary school children. The total number of children in care at any given time, including the children related to the caregiver, must not exceed 12.

(b) A registered child-care home includes the program, building, grounds, furnishings, and equipment.

§747.115. What is a licensed child-care home?

(a) In a licensed child-care home, the licensed primary caregiver provides care in the caregiver's own residence for children from birth through 13 years, unless the operation was licensed as a group day care home prior to September 1, 2003.

(b) A child-care home licensed as a group day care home prior to September 1, 2003, may provide care at a location other than the primary caregiver's own residence, until the permit is no longer valid. A location, other than the primary caregiver's own residence, is subject to the minimum standards in this chapter and, if applicable, the conditions specified in §745.373 of this title (relating to May I have more than one licensed child-care home?).

(c) The total number of children in care varies with the ages of the children, but the total number of children in care in a licensed child-care home at any given time, including the children related to the caregiver, must not exceed 12.

(d) A licensed child-care home includes the program, building, grounds, furnishings, and equipment.

§747.117. Who is responsible for complying with these minimum standards?

(a) For a registered child-care home, the permit holder must ensure compliance with all minimum standards in this chapter at all times, with the exception of any minimum standard identified:

(1) Only for licensed child-care homes; or

(2) For specific types of child-care programs or activities the child-care home does not offer, such as transportation or swimming activities.

(b) For a licensed child-care home, the permit holder must ensure compliance with all minimum standards in this chapter at all times, with the exception of any minimum standard identified:

(1) Only for registered child-care homes; or

(2) For specific types of child-care programs or activities the child-care home does not offer, such as transportation or swimming activities.

(c) For a child-care home that is subject to Licensing's regulation under this chapter but does not have the appropriate registration or license, the owner, other person overseeing the child-care services, or controlling person who has the ability to influence or direct the home's management, expenditures, or policies must ensure compliance with all minimum standards in this chapter as described in (a) and (b) of this section.

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606464
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Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 438-3854

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DIVISION 3. DEFINITIONS

40 TAC §747.121, §747.123

These new rules are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed new sections implement HRC §42.042.

§747.121. What do certain pronouns mean when used in this chapter?

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

(1) I, my, you, and your--A permit holder who is the primary caregiver in a licensed or registered child-care home, unless otherwise stated.

(2) We, us, our, and Licensing--The Licensing Division of the Texas Department of Family and Protective Services (DFPS).

§747.123. What do certain words and terms mean when used in this chapter?

The words and terms used in this chapter have the meanings assigned to them under §745.21 of this title (relating to What do the following words and terms mean when used in this chapter?), unless another meaning is assigned in this section or another subchapter or unless the context clearly indicates otherwise. In addition, the following words and terms used in this chapter have the following meanings unless the context clearly indicates otherwise:

(1) Activity space--An area or room used for children's activities.

(2) Administrative and clerical duties--Duties that involve the operation of a child-care home, such as bookkeeping, enrolling children, answering the telephone, and collecting fees.

(3) Admission--The process of enrolling a child in a child-care home. The date of admission is the first day the child is physically present in the home.

(4) Adult--A person 18 years old and older.

(5) After-school hours--Hours before and after school, and days when school is not in session, such as school holidays, summer vacations, and teacher in-service days.

(6) Age-appropriate--Activities, equipment, materials, curriculum, and environment that are developmentally consistent with the chronological age of the child being served.

(7) Attendance--When referring to a child's attendance, the physical presence of a child at the child-care home on any given day or at any given time, as distinct from the child's enrollment in the child-care home.

(8) Bouncer seat--A stationary seat designed to provide gentle rocking or bouncing motion by an infant's movement, or by battery-operated movement. This type of equipment is designed for an infant's use from birth until the child can sit up unassisted.

(9) Caregiver--A person who is counted in the child/caregiver ratio, whose duties include the supervision, guidance, and protection of a child. As used in this chapter, a caregiver must meet the minimum education, work experience, and training qualifications required under Subchapter D of this chapter (relating to Personnel).

(10) Certified Child-Care Professional Credential--A credential given by the National Early Childhood Program Accreditation to a person working directly with children. The credential is based on assessed competency in several areas of child care and child development.

(11) Certified lifeguard--A person who has been trained in life saving and water safety by a qualified instructor, from a recognized organization which awards a certificate upon successful completion of the training. The certificate is not required to use the term "lifeguard," but you must be able to document that the certificate represents the type of training described.

(12) CEUs (continuing education units)--A standard unit of measure for adult education and training activities. One CEU equals ten clock hours of participation in an organized, continuing-education experience, under responsible, qualified direction and instruction. Although a person may obtain a CEU in many of the same settings as clock hours, the CEU provider must meet the criteria established by the International Association for Continuing Education and Training to be able to offer the CEU.

(13) Child--An infant, toddler, pre-kindergarten age child, or school-age child.

(14) Child-care home--A registered or licensed child-care home, as specified in §747.113 of this title (relating to What is a registered child-care home?) or §747.115 of this title (relating to What is a licensed child-care home?). This term includes the program, home, grounds, furnishings, and equipment.

(15) Child-care program--The services and activities provided by a child-care home.

(16) Child Development Associate Credential--A credential given by the Council for Professional Recognition to a person work-

ing directly with children. The credential is based on assessed competency in several areas of child care and child development.

(17) Clock hours--An actual hour of documented:

(A) Attendance at instructor-led training, such as seminars, workshops, conferences, early childhood classes, and other planned learning opportunities, provided by an individual/s as specified in §747.1315(a) of this title (relating to Must child-care training meet certain criteria?); or

(B) Self-instructional training that was created by an individual/s as specified in §747.1315(a) and (b), or self-study training.

(18) Corporal punishment--The infliction of physical pain on a child as a means of controlling behavior. This includes spanking, hitting, slapping, or thumping a child.

(19) Days--Calendar days, unless otherwise stated.

(20) Employee--An assistant caregiver, substitute caregiver, or any other person a child-care home employs full-time or part-time to work for wages, salary, or other compensation, including kitchen staff, office staff, maintenance staff, or anyone hired to transport a child.

(21) Enrollment--The list of names or number of children who have been admitted to attend a child-care home for any given period of time; the number of children enrolled in a child-care home may vary from the number of children in attendance on any given day.

(22) Entrap--A component or group of components on equipment that forms angles or openings may entrap a child's head by being too small to allow the child's body to pass through, or large enough for the child's body to pass through but too small to allow the child's head to pass through.

(23) Field trips--Activities conducted away from the child-care home.

(24) Food service--The preparation or serving of meals or snacks.

(25) Frequent--More than two times in a 30-day period. Note: For the definition of "regularly or frequently present at an operation" (child-care home) as it applies to background checks, see §745.601 of this title (relating to What words must I know to understand this subchapter?).

(26) Garbage--Waste food or items that when deteriorating cause offensive odors and attract rodents, insects, and other pests.

(27) Group activities--Activities that allow children to interact with others in large or small groups. Group activities include storytelling, finger plays, show and tell, organized games, and singing.

(28) Health check--A visual or physical assessment of a child to identify potential concerns about a child's health, including signs or symptoms of illness and injury, in response to changes in the child's behavior since the last date of attendance.

(29) Health-care professional--A licensed physician, licensed registered nurse with appropriate advanced practice authorization from the Texas Board of Nurse Examiners, a licensed vocational nurse (LVN), licensed registered nurse (RN), or other licensed medical personnel providing health care to the child within the scope of the license. This does not include medical doctors or medical personnel not licensed to practice in the United States.

(30) High school equivalent--Documentation:

(A) Of a program recognized by the Texas Education Agency (TEA) or other public educational entity in another state, which offers similar training on reading, writing, and math skills taught at the high school level, such as a General Educational Development (GED) certificate; or

(B) That verifies home-schooling that adequately addresses basic competencies that would have been necessary for the person to obtain a high-school diploma or GED, including basic reading, writing, and math skills.

(31) Individual activities--Opportunities for the child to work independently or to be away from the group, but supervised.

(32) Infant--A child from birth through 17 months.

(33) Inflatable--An amusement ride or device, consisting of air-filled structures designed for use by children, as specified by the manufacturer, which may include bouncing, climbing, sliding, or interactive play. They are made of flexible fabric, kept inflated by continuous air flow by one or more blowers, and rely upon air pressure to maintain their shape.

(34) Instructor-led training--Training characterized by the communication and interaction that takes place between the student and the instructor. The training must include an opportunity for the student to interact with the instructor to obtain clarifications and information beyond the scope of the training materials. For such an opportunity to exist, the instructor must communicate with the student in a timely fashion, including answering questions, providing feedback on skills practice, providing guidance or information on additional resources, and proactively interacting with students. Examples of this type of training include, classroom training, web-based on-line facilitated learning, video-conferencing, or other group learning experiences.

(35) Janitorial duties--Those duties that involve the cleaning and maintenance of the child-care home, building, rooms, furniture, etc. Cleaning and maintenance include such duties as cleansing carpets, washing cots, and sweeping, vacuuming, or mopping a restroom or a classroom. Sweeping up after an activity or mopping up a spill in a classroom that is immediately necessary for the children's safety is not considered a janitorial duty.

(36) Natural environment--Settings that are natural or normal for all children of an age group without regard to ability or disability. For example, the primary natural group setting for a toddler with a disability would be a play group or whatever setting exists for toddlers without disabilities.

(37) Permit is no longer valid--For purposes of this chapter, a permit remains valid through the renewal process. A permit only becomes invalid when your:

(A) Home voluntarily closes;

(B) Home must close because of an enforcement action in Subchapter L of Chapter 745 (relating to Enforcement Actions);

(C) Permit expires according to §745.481 of this title (relating to When does my permit expire?); or

(D) Home must close because its permit is automatically revoked according to the Human Resources Code §§42.048(e), 42.052(i), or 42.054(f).

(38) Regular--On a recurring, scheduled basis. Note: For the definition of "regularly or frequently present at an operation" (child-care home) as it applies to background checks, see §745.601 of this title (relating to What words must I know to understand this subchapter?).

(39) Restrictive device--Equipment that places the body of a child in a position that may restrict airflow or cause strangulation;

usually, the child is placed in a semi-seated position. Examples of restrictive devices are car seats, swings, bouncy seats, and high chairs.

(40) Safety belt--A lap belt and any shoulder straps included as original equipment on or added to a vehicle.

(41) Sanitize--The use of a product (usually a disinfecting solution) that is registered by the Environmental Protection Agency (EPA) which substantially reduces germs on inanimate objects to levels considered safe by public health requirements. Many bleach and hydrogen peroxide products are EPA-registered. You must follow the product's labelling instructions for sanitizing (paying particular attention to any instructions regarding contact time and toxicity on surfaces likely to be mouthed by children, such as toys and crib rails). For an EPA-registered sanitizing product or disinfecting solution that does not include labelling instructions for sanitizing (a bleach product, for example), you must follow these steps in order:

(A) Washing with water and soap;

(B) Rinsing with clear water;

(C) Soaking in or spraying on a disinfecting solution for at least two minutes. Rinsing with cool water only those items that children are likely to place in their mouths; and

(D) Allowing the surface or item to air-dry.

(42) School-age child--A child who is five years of age and older, and who will attend school at or away from the child-care home beginning in August or September of that year.

(43) Self-instructional training--Training designed to be used by one individual working alone and at the individual's own pace to complete lessons or modules. An example of this type of training is web-based training. Self-study training is also a type of self-instructional training.

(44) Self-study training--Non-standardized training where an individual reads written materials, watches a training video, or listens to a recording to obtain certain knowledge that is required for annual training. Self-study training is limited to three hours, see §747.1305(j) and §747.1309(j) of this title (relating to What topics must annual training for caregivers include? and What topics must my annual training include?), respectively.

(45) Special care needs--A child with special care needs is a child who has a chronic physical, developmental, behavioral, or emotional condition and who also requires assistance beyond that required by a child generally to perform tasks that are within the typical chronological range of development, including the movement of large and/or small muscles, learning, talking, communicating, self-help, social skills, emotional well-being, seeing, hearing, and breathing.

(46) State or local fire marshal--A fire official designated by the city, county, or state government.

(47) Toddler--A child from 18 months through 35 months.

(48) Universal precautions--An approach to infection control where all human blood and certain human bodily fluids are treated as if known to be infectious for HIV, HBV, and other blood-borne pathogens.

(49) Water activities--Related to the use of swimming pools, splashing/wading pools, sprinkler play, or other bodies of water.

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606467
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 438-3854

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SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION
DIVISION 1. PRIMARY CAREGIVER RESPONSIBILITIES

40 TAC §747.207

These amended rules are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed amendment implements HRC §42.042.

§747.207. What are my responsibilities as the primary caregiver?

You are responsible for the following:

(1) Developing and implementing your child-care home's operational policies, which comply with or exceed Division 4 of this subchapter (relating to Operational Policies) [~~the minimum standards~~];

[~~(2) Complying with all minimum standards that apply to your licensed or registered child-care home, as specified in this chapter;~~]

(2) [~~(3)~~] Ensuring all [~~substitute and~~] assistant caregivers and substitute caregivers comply with the relevant minimum standards for those caregivers, as specified in this chapter, and are provided assignments that match their skills, abilities, and training;

(3) [~~(4)~~] Ensuring all household members comply with the minimum standards that apply to household members, as specified in this chapter;

(4) [~~(5)~~] Reporting suspected abuse, neglect, and exploitation as required by the Texas Family Code, §261.401;

(5) [~~(6)~~] Ensuring parents have the opportunity to visit your child-care home any time during all hours of operation to observe their child, program activities, the home, the grounds, and the equipment, without having to secure prior approval;

(6) [~~(7)~~] Initiating background checks as specified in Chapter 745, Subchapter F of this title (relating to Background Checks);

(7) [~~(8)~~] Ensuring all information related to background checks is kept confidential as required by the Human Resources Code, §40.005(d) and (e); [~~and~~]

(8) [~~(9)~~] Complying with:

(A) The [~~the~~] child-care licensing law, found in Chapter 42 of the Human Resources Code;[~~, and~~]

(B) All the minimum standards that apply to your licensed or registered child-care home, as specified in this chapter; and

(C) All [~~all~~] other applicable laws and rules in the Texas Administrative Code; and[, ~~including the minimum standards in this chapter.~~]

(9) Ensuring the total number of children in care at the home or away from the home, such as during a field trip, never exceeds the capacity of the home as specified on the license or registration.

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606468
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 438-3854

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DIVISION 1. PRIMARY CAREGIVER

40 TAC §747.209

These repealed rules are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed repeal implements HRC §42.042.

§747.209. Must I maintain liability insurance?

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606469
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Earliest possible date of adoption: January 22, 2017
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DIVISION 2. REQUIRED NOTIFICATIONS

40 TAC §747.301

These amended rules are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed amendment implements HRC §42.042.

§747.301. What changes regarding my child-care home must I notify Licensing about before making the change?

You must notify us in writing before:

(1) Changing the address or location of the child-care home;

(2) - (5) (No change.)

(6) Offering new services relating to minimum standards found in this chapter, such as nighttime care, transportation, or field trips;

(7) Planned closure of five consecutive days or more, during designated hours of operation when the home [~~operation~~] is not caring for children, with the exception of nationally recognized holidays; or

(8) (No change.)

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606470
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 438-3854

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DIVISION 3. REQUIRED POSTINGS

40 TAC §747.401, §747.403

These amended rules are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed amendments implement HRC §42.042.

§747.401. What records [~~items~~] must I post at my child-care home during hours of operation?

(a) You must post the following in a prominent and publicly accessible place where parents and others may easily view them during all hours of operation:

(1) - (4) (No change.)

(5) A list of your employees, which [~~as defined in §745.21 of this title (relating to What do the following word and terms mean when used in this chapter?). The list~~] must be printed on paper at least 8 1/2 inches by 11 inches in size and must include each employee's first and last name; and

(6) (No change.)

(b) For food allergies that require an emergency plan, you must either:

(1) (No change.)

(2) Ensure that all caregivers, [~~and~~] employees, and household members who prepare and serve food are aware of each child's food allergies.

§747.403. What telephone numbers must I post and where must I post them?

[~~(a)~~] You must post in a prominent place the following telephone numbers:

(1) 911 or, if 911 is not available in your area, you must post the telephone numbers for:

(A) - (C) (No change.)

(2) (No change.)

(3) The Texas Abuse and Neglect Hotline (1-800-252-5400) [~~DFPS child abuse hotline~~];

(4) The local [~~Nearest~~] Licensing office telephone number [~~and address~~]; and

(5) Your telephone number, name, and home address[~~, and telephone number~~].

[~~(b) You must post the telephone numbers next to each telephone in the child-care home. If you use a cordless or cellular phone, you must post these same numbers in a prominent place on the wall near the base of the phone or on the handset.~~]

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606471
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Interim General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 438-3854

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DIVISION 4. OPERATIONAL POLICIES

40 TAC §§747.501, 747.503, 747.505

These amended rules are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed amendments implement HRC §42.042.

§747.501. What written operational policies must I have?

You must develop written operational policies and procedures that at a minimum address each of the following:

(1) Procedure for the release of children;

(2) (No change.)

(3) Procedures for dispensing medication [~~medications~~], or a statement that medication is not dispensed [~~given~~];

(4) (No change.)

(5) Discipline and guidance policy that is consistent with Subchapter L of this title (relating to Discipline and Guidance). A copy of Subchapter L may be used for your discipline and guidance policy [~~practices~~];

(6) Safe sleep for infants 12 months old or younger that is consistent with the rules in subchapter H of this chapter (relating to Basic Requirements for Infants) that relate to sleep requirements and restrictions, including sleep positioning, and crib requirements and restrictions, including mattresses, bedding, blankets, toys, and restrictive devices;

(7) [~~(6)~~] Animals, if applicable;

(8) [~~(7)~~] The procedures for parents to visit the child-care home any time during your hours of operation to observe their child or the child-care home's operation and program activities, without having to secure prior approval;

(9) [~~(8)~~] The procedures for parents to review a copy of [~~the minimum standards and~~] the child-care home's most recent Licensing inspection report and how the parent may access the minimum standards online;

(10) [~~(9)~~] Instructions on how a parent may contact the local Licensing office, access the Texas Abuse and Neglect Hotline [~~DFPS child abuse hotline~~], and access the DFPS website;

(11) [~~(10)~~] Your emergency preparedness plan;

(12) [~~(11)~~] Procedures for conducting health checks, if applicable; and

(13) [~~(12)~~] Vaccine-preventable diseases for employees if your licensed child-care home is not located in your own residence [~~home~~]. The policy must address the requirements outlined in §747.3411 of this title (relating to What must a policy for protecting children from vaccine-preventable diseases include?).

§747.503. Must I provide parents with a copy of my operational polices?

Yes. On or before the date of the child's admission, the parents [~~Parents~~] must sign an [~~a child-care~~] enrollment agreement or other similar documents, which must include [~~document that includes~~] at least the operational policies listed in this division[~~, before the date of the child's admission~~]. You must keep the [~~a copy of this~~] signed document in the child's record or at least one for each family, if siblings are enrolled at the same time.

§747.505. What must I do when I change an operational policy or an item in the enrollment agreement?

When you change an operational policy or your enrollment agreement, you [~~You~~] must notify:

(1) Your caregivers of any changes:

(2) The parents in writing of any changes [~~to your policies and enrollment agreement~~]. Parents must sign and date the updated information. You must keep the updated information in the child's record or at least one for each family; and[~~, if siblings are enrolled at the same time.~~]

(3) Your household members of any changes to the discipline and guidance policy, which must be documented.

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606472

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Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 438-3854

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SUBCHAPTER C. RECORD KEEPING
DIVISION 1. RECORDS OF CHILDREN

40 TAC §§747.603, 747.605, 747.613, 747.615, 747.623

These amendments and new rules are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed amendments and new sections implement HRC §42.042.

§747.603. What records must I have for the children in my care and how long must I keep them?

(a) You must maintain the following records for each child enrolled in your child-care home:

(1) (No change.)

(2) Admission information specified in §747.605 of this title (relating to What admission information must I obtain for each child?);

(3) - (4) (No change.)

(5) Tuberculosis screening and [~~Tuberculin~~] testing information, if required by your regional Texas Department of State Health Services or local health authority [~~applicable~~];

(6) Vision and hearing [~~Hearing and vision~~] screening results, if applicable;

(7) Licensing *Incident/Illness Report* form, if applicable;

(8) Medication administration records, if applicable; and

(9) A copy of any health-care professional recommendations or orders for providing specialized medical assistance to the child. In some instances, minimum standards allow for a deviation from a minimum standard with written documentation from a health-care professional. You must also maintain this written documentation.

(b) These records must at a minimum be kept at the child-care home and must be available for review during operating hours, and for the following periods of time:

(1) - (3) (No change.)

§747.605. What admission information must I obtain for [~~on~~] each child?

You must obtain at least the following information before admitting a child to the child-care home [~~care~~]:

(1) - (7) (No change.)

(8) Permission for transportation, if provided, including any authorized pick-up and drop-off locations;

(9) - (16) (No change.)

§747.613. What immunizations must a child [~~are children~~] in my care [~~required to~~] have?

(a) Each child enrolled or admitted to a child-care home must meet and continue to meet applicable immunization requirements specified by the Texas Department of State Health Services (DSHS) [~~in 25 TAC Chapter 97, Subchapter B (relating to Immunization Requirements in Texas Elementary and Secondary Schools and Institutions of Higher Education)~~]. This requirement applies to all children in the child-care home from birth through 14 years.

(b) You must maintain current immunization records for each child in your care, including any immunization exemptions or exceptions.

(c) All immunizations required for the child's age must be completed by the date of admission, unless:

(1) The child is exempt or excepted from an immunization, and you verify the exemption or exception by the date of admission; or

(2) The child is homeless or a child in foster care and is provisionally admitted for up to 30 days if evidence of immunization is not available. You should immediately refer the child to an appropriate health-care professional to obtain the required immunizations. The DSHS rule at 25 TAC §97.66 (relating to Provisional Enrollment for Students) establishes the guidelines for a provisional enrollment.

§747.615. What exemptions or exceptions are there concerning immunization requirements?

(a) A child may be exempt from immunization requirements for a medical reason or reason of conscience, including a religious belief. To claim an exemption, the person applying for the child's admission must meet criteria specified by the Department of State Health Services (DSHS) rule at 25 TAC §97.62 (relating to Exclusions from Compliance).

(b) For some diseases, a child who previously had a disease and is accordingly naturally immune from it may qualify for an exception to the immunization requirements for the disease. To claim this exception, the person applying for the child's admission must meet the criteria specified by the DSHS rule at 25 TAC §97.65 (relating to Exceptions to Immunization Requirements).

§747.623. What documentation is acceptable for an immunization record?

Acceptable documentation includes:

(1) A signed statement from the child's parent that the child's immunization record is current and on file at the pre-kindergarten program or school that the child attends. The statement must be dated and include the name, address, and telephone number of the pre-kindergarten program or school listed in the statement.

(2) An official immunization record generated from a state or local health authority, including a record from another state. Examples include a registry, a copy of the current immunization record that is on file at the pre-kindergarten program or school, or the health passport for a child in the conservatorship of DFPS, so long as the record includes:

(A) The child's name and date of birth;

(B) The type of vaccine and number of doses; and

(C) The month, day, and year the child received each vaccination; or

(3) An official immunization record or photocopy, such as from a doctor's office, that includes:

(A) The child's name and date of birth;

(B) The type of vaccine and number of doses;

(C) The month, day, and year the child received each vaccination;

(D) The signature (including a rubber stamp or electronic signature) of the health-care professional who administered the vaccine, or another health-care professional's documentation of the immunization as long as the name of the health-care professional that administered the vaccine is documented; and

(E) Clinic contact information, if the immunization record is generated from an electronic health record system.

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606474
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Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 438-3854

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40 TAC §§747.615, 747.617, 747.619, 747.621, 747.623, 747.625

These repealed rules are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed repeals implement HRC §42.042.

§747.615. Are there exemptions for these immunization requirements?

§747.617. Where can I find more information on immunizations?

§747.619. When must I have the child's immunization record on file?

§747.621. May I admit a child who is not current on immunizations?

§747.623. What documentation is acceptable for immunization records?

§747.625. If a child's immunization record is already on file at a prekindergarten program or school away from my child-care home, must I also have a copy of the child's immunization record in my files?

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606475
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Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 438-3854

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DIVISION 2. RECORDS OF ACCIDENTS AND INCIDENTS

40 TAC §747.703

This repealed rule is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed repeal implements HRC §42.042.

§747.703. Where can I get a copy of Licensing's Incident/Illness Report form?

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606479
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Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 438-3854

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40 TAC §747.705

This amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed amendment implements HRC §42.042.

§747.705. Must someone from my child-care home sign the Incident/Illness Report form?

Yes. You or your substitute caregiver must complete, sign, and date the form [~~completed~~ ~~report~~].

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606485
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Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 438-3854

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DIVISION 3. RECORDS THAT MUST BE KEPT ON FILE AT THE CHILD-CARE HOME

40 TAC §747.801, §747.803

These amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed amendments implement HRC §42.042.

§747.801. What records must I keep at my child-care home?

You must maintain and make the following records available for our review upon request during hours of operation. Paragraphs (8), (9), and (10)[, ~~(11), and (12)~~] are optional, but if provided, will allow Licensing to avoid duplicating the evaluation of standards that have been evaluated by another state agency within the past year:

(1) - (3) (No change.)

[~~(4) Proof of request for all background checks required by Chapter 745, Subchapter F of this title (relating to Background Checks);~~]

(4) [~~(5)~~] Menus, as required in §747.3113 of this title (relating to Must I post and maintain daily menus?);

(5) [~~(6)~~] Medication records, as required in §747.3605 of this title (relating to How must I administer medication to a child in my care?) if applicable;

(6) [~~(7)~~] Pet vaccination records, as required in §747.3703 of this title (relating to Must I keep documentation of vaccinations for the animals?), if applicable;

(7) [~~(8)~~] Safety [~~Fire safety~~] documentation for emergency drills, fire extinguishers, smoke detectors and emergency evacuation and relocation diagram, as required in §747.5005 of this title (relating to Must I practice my emergency preparedness plan [~~plans~~]?), §747.5007 of this title (relating to Must I have an emergency evacuation and relocation [~~relation~~] diagram?), §747.5107 of this title (relating to How often must I inspect and service the fire extinguisher?), §747.5115 of this title (relating to How often must the smoke detectors at my child-care home be tested?), and §747.5117 of this title (relating to How often must I have an electronic smoke alarm system tested?);

[~~(9) Most recent Licensing inspection report, letter, or notice;~~]

(8) [~~(10)~~] Most recent Texas Department of State Health Services' [~~Services~~] immunization compliance review form, if applicable;

(9) [~~(11)~~] Most recent Texas Department of Agriculture Child and Adult Care Food Program (CACFP) report, if applicable;

(10) [~~(12)~~] Most recent local workforce board Child-Care Services Contractor inspection report, if applicable;

(11) [~~(13)~~] Written approval from the fire marshal to provide care above or below ground level, if applicable;

(12) [~~(14)~~] Most recent DFPS form certifying that you have reviewed each of the bulletins and notices issued by the United States Consumer Product Safety Commission regarding unsafe children's products and that there are no unsafe children's products in use or accessible to children in the home; and

(13) [~~(15)~~] Documentation for cribs as specified in §747.2309(a)(9) of this title (relating to What specific safety requirements must my cribs meet?), if applicable.

§747.803. How long must I keep [~~these~~] records at my child-care home?

(a) Unless otherwise stated in this chapter:

(1) You must keep at the child-care home each record that your home is required to post or keep; and

(2) These records must be kept for at least three months from the date the record was created. [~~these records at your child-care home for at least three months from the date the record was created, unless otherwise stated in these minimum standards.~~]

(b) (No change.)

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606487
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Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 438-3854

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DIVISION 4. RECORDS ON CAREGIVERS AND HOUSEHOLD MEMBERS

40 TAC §747.907

This repealed rule is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed repeal implements HRC §42.042.

§747.907. Where can I obtain a copy of the Licensing Affidavit for Applicants for Employment form?

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606489
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Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 438-3854

♦ ♦ ♦

40 TAC §747.909

This amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed amendment implements HRC §42.042.

§747.909. What records must I maintain on myself?
You must have the following records available for review during hours of operation:

[(1) A notarized Licensing *Affidavit for Applicants for Employment* form, as specified in Human Resources Code, §42.059;]

(1) [(2)] A copy of a health card or physician's statement verifying you are free of contagious [active] tuberculosis, if required by the regional Texas Department of State Health Services TB program or local health authority;

(2) [(3)] A record of your training hours; and

(3) [(4)] A copy of a current driver's license or other photo identification.

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606492
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Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 438-3854

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SUBCHAPTER D. PERSONNEL
DIVISION 1. PRIMARY CAREGIVER QUALIFICATIONS FOR A REGISTERED CHILD-CARE HOME

40 TAC §747.1007

This amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed amendment implements HRC §42.042.

§747.1007. What qualifications must I meet to be the primary caregiver of a registered child-care home?
Except as otherwise provided in this division, you must:

(1) (No change.)

(2) Have a:

(A) High [high] school diploma; or

(B) High school equivalent;

(3) (No change.)

(4) Meet the requirements in Subchapter F of Chapter 745 of this title (relating to Background Checks);

(5) [(4)] Have current certification in CPR and first aid with rescue breathing and choking;

(6) [(5)] Have a current record of a [Be free of active] tuberculosis (TB) examination showing you are free of contagious TB, if required by the [regional] Texas Department of State Health Services or local health authority; and

(7) [(6)] Have proof of training in the following:

(A) Recognizing and preventing shaken baby syndrome and abusive head trauma;

(B) Understanding and using safe sleep practices and preventing sudden infant death syndrome (SIDS);

(C) Understanding early childhood brain development;

(D) Emergency preparedness;

(E) Preventing and controlling the spread of communicable diseases, including immunizations;

(F) Administering medication, if applicable, including compliance with §747.3603 of this title (relating to What authorization must I obtain before administering a medication to a child in my care?);

(G) Preventing and responding to emergencies due to food or an [and] allergic reaction;

(H) Understanding building and physical premises safety, including identification and protection from hazards that can cause bodily injury such as electric hazards, bodies of water, and vehicular traffic;

(I) Handling, storing, and disposing of hazardous materials including compliance with §747.3221 of this title (relating to Must caregivers wear gloves when handling blood or bodily fluids containing blood?); and

(J) Precautions in transporting children if your child-care home plans to transport a child whose chronological or developmental age is younger than nine years old.

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606494
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Earliest possible date of adoption: January 22, 2017
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DIVISION 1. PRIMARY CAREGIVER OF A REGISTERED CHILD-CARE HOME

40 TAC §747.1009

This repealed rule is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of ser-

vices by the health and human services agencies, including the Department of Family and Protective Services.

The proposed repeal implements HRC §42.042.

§747.1009. Are there exemptions to any of the qualifications specified in this division?

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606496
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Earliest possible date of adoption: January 22, 2017
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DIVISION 2. PRIMARY CAREGIVER QUALIFICATIONS OF A LICENSED CHILD-CARE HOME

40 TAC §§747.1107, 747.1113, 747.1123, 747.1129, 747.1131, 747.1137, 747.1145, 747.1147, 747.1149, 747.1153

These amendments and new rules are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed amendments and new rules implements HRC §42.042.

§747.1107. What qualifications must I meet to be the primary caregiver of a licensed child-care home?

[~~(a)~~] Except as otherwise provided in this division, a primary caregiver for a licensed child-care home must:

(1) Be at least 21 years of age;

(2) Have a:

(A) High [~~high~~] school diploma; or

(B) High school [~~its~~] equivalent;

(3) Have a certificate of completion of the Licensing pre-application course within one year prior to your application date;

(4) Meet the requirements in Subchapter F of Chapter 745 of this title (relating to Background Checks);

(5) [~~(4)~~] Have current certification in CPR and first aid with rescue breathing and choking;

(6) Have a current record of a tuberculosis (TB) examination showing you are free of contagious TB, if required by the Texas Department of State Health Services or local health authority;

(7) [~~(5)~~] Have proof of training in the following:

(A) Recognizing and preventing shaken baby syndrome and abusive head trauma;

(B) Understanding and using safe sleep practices and preventing sudden infant death syndrome (SIDS);

(C) Understanding early childhood brain development;

(D) Emergency preparedness;

(E) Preventing the spread of communicable diseases, including immunizations;

(F) Administering medication, if applicable, including compliance with §747.3603 of this title (relating to What authorization must I obtain before administering a medication to a child in my care?);

(G) Preventing and responding to emergencies due to food or an [~~and~~] allergic reaction;

(H) Understanding building and physical premises safety, including identification and protection from hazards that can cause bodily injury such as electric hazards, bodies of water, and vehicular traffic;

(I) Handling, storing, and disposing of hazardous materials including compliance with §747.3221 of this title (relating to Must caregivers wear gloves when handling blood or bodily fluids containing blood?); and

(J) Precautions in transporting children if your child-care home plans to transport a child whose chronological or developmental age is younger than nine years old; and

(8) [~~(6)~~] Have one of the following combinations of education and experience in a licensed child-care center, or in a licensed or registered child-care home, as defined in §747.1113 of this title (relating to What constitutes experience in a licensed child-care center, or in a licensed or registered child-care home?):
Figure: 40 TAC §747.1107(8)
[~~Figure: 40 TAC §747.1107(6)~~]

[~~(b) Options (D) and (F) of subsection (a)(6) of this section require periodic renewal.~~]

§747.1113. What constitutes experience in a licensed child-care center, or in a licensed or registered child-care home?

(a) Only the following types of experience may be counted as experience in a licensed child-care center:

(1) Experience as a director, assistant director, or as a caregiver working directly with children[~~, obtained~~] in a [~~any~~] DFPS licensed or certified child-care center (or similar type of day care center that was formerly licensed, certified, or accredited by DFPS)[~~, whether paid or unpaid~~]; and

[~~(2) Experience as a director, assistant director or caregiver working directly with children, whether paid or unpaid, in a DFPS licensed day-care center, group day-care home, kindergarten and nursery school, school: grades kindergarten and above, drop-in care center, or in a DFPS alternatively accredited program; and~~]

(2) [~~(3)~~] Experience as a director, assistant director, or caregiver working directly with children in a licensed or certified child-care center in another state or country.

(b) Only [~~the following types of~~] experience as an assistant caregiver, substitute caregiver, or primary caregiver working directly with children in a DFPS registered or licensed child-care home (or in a group day-care home that was formerly licensed by DFPS) may be counted as experience in a licensed or registered child-care home.[~~:~~]

[~~(1) Experience as a primary caregiver or assistant caregiver working directly with children, whether paid or unpaid, in a DFPS licensed or registered child-care home;~~]

[(2) Experience as a director, assistant director, or caregiver working directly with children, whether paid or unpaid in a DFPS licensed group day-care home; or]

[(3) Experience as a primary caregiver of a DFPS registered family home.]

(c) You must have obtained all work experience in a full-time capacity or its equivalent in a part-time capacity. Full-time is defined as 30 hours per week. The work experience may be paid or unpaid.

§747.1123. What documentation must I provide to show that I meet the child development and management education qualifications for a primary caregiver?

If requested by Licensing, you must provide original transcripts and supporting documentation, such as a credit course catalog description or a course syllabus or outline, to determine whether the course is recognized as child development or management.

§747.1129. May I substitute clock hours or CEUs for any of the educational requirements [in any of the options] in this division?

(a) Clock [You may only substitute clock] hours or CEUs may only be substituted for the required college credit hours in child development and [business] management.

(b) [You may substitute] 50 clock hours or five CEUs may be substituted for every [each] three college credit hours required in child development and [business] management.

(c) The documentation to verify the clock hours or CEUs must be as specified in §747.1327 of this title (relating to What documentation must I provide to Licensing to verify that training requirements have been met?).

§747.1131. What additional [kind of] documentation must I submit to show I am qualified to be a primary caregiver of a licensed child-care home?

(a) In addition to showing that you meet the minimum qualifications for a primary caregiver, you [You] must submit the following to Licensing staff:

(1) - (3) (No change.)

(b) (No change.)

§747.1137. Does education received outside of the United States substitute for primary caregiver qualifications?

Yes, but you must provide supporting information, such as a copy of the diploma, transcript, or letter from the school to indicate that the education is equivalent to a program in the United States. [provided you submit to us information that we can use to interpret and evaluate educational qualifications.] Documentation written in a foreign language must be translated into English.

§747.1145. Will the Child-Care Director's Certificate expire?

The Licensing *Child-Care Director's Certificate* will have an expiration date if you qualified under paragraph (8), [subsection (a),] options (D) or (F) in §747.1107 of this title (relating to What qualifications must I meet to be the primary caregiver of a licensed child-care home?). Otherwise, the certificate will not expire.

§747.1147. How often must an expiring Child-Care Director's Certificate be renewed?

If you qualified [qualify] under paragraph (8), [subsection (a),] options (D) or (F) in [of] §747.1107 of this title (relating to What qualifications must I meet to be the primary caregiver of a licensed child-care home?), you must maintain your credential according to the organization's requirements. You must submit to us a copy of a letter or other documentation confirming the credential is current before we can renew your *Child-Care Director's Certificate.*

§747.1149. What happens if my credential expires [I do not submit the documentation confirming the credential is current]?

We will give you a deadline to submit the required documentation. If you allow the credential [certificate] to expire without submitting the required documentation, then your home will [and you] no longer meet the minimum standards related to primary caregiver qualifications[, you violate minimum standards].

§747.1153. Can I get a replacement Child-Care Director's Certificate?

Yes. We will issue a replacement *Child-Care Director's Certificate*, if you submit your request to us in writing, specifying:

(1) Your [your] name and address;[,]

(2) The [the] date [when] we issued the original certificate;[,] and

(3) The [the] reason a replacement certificate is needed.

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606498
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Earliest possible date of adoption: January 22, 2017
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DIVISION 2. PRIMARY CAREGIVER OF A LICENSED CHILD-CARE HOME

40 TAC §§747.1123, 747.1125, 747.1127, 747.1133, 747.1135

These repealed rules are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed repeals implement HRC §42.042.

§747.1123. What are clock hours?

§747.1125. Must the trainer or provider of clock hours meet specific criteria?

§747.1127. What are CEUs?

§747.1133. What documentation must I provide to Licensing to show I have acceptable child development and business management education?

§747.1135. What documentation must I have to prove that I received the clock hours or CEUs?

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606500

Audrey Carmical
Interim General Counsel
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Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 438-3854

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DIVISION 3. ASSISTANT AND SUBSTITUTE CAREGIVERS

40 TAC §§747.1205, 747.1215, 747.1217, 747.1219

These repealed rules are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed repeals implement HRC §42.042.

§747.1205. Are there different qualifications for assistant and substitute caregivers?

§747.1215. Do the qualifications specified in this division apply to an assistant caregiver that was employed before May 1, 1985?

§747.1217. Do the qualifications specified in this division apply to a substitute caregiver that I employed before May 1, 1985?

§747.1219. What does Licensing mean by the term "high school equivalent"?

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606503
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 438-3854

♦ ♦ ♦

40 TAC §§747.1207, 747.1209, 747.1211

These amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed amendments implement HRC §42.042.

§747.1207. What minimum qualifications must an assistant caregiver meet?

Except as otherwise provided in this division, an assistant caregiver [~~counted in the child/caregiver ratio~~] must:

(1) - (4) (No change.)

(5) Have a current record of a [~~Be free of active~~] tuberculosis (TB) examination showing the caregiver is free of contagious TB, if required by the Texas Department of State Health Services or local health authority; and

(6) (No change.)

§747.1209. What minimum qualifications must a substitute caregiver meet?

A substitute caregiver must comply with all of the minimum qualifications [~~standards~~] for an assistant caregiver [~~caregivers~~] and must also have current certification in CPR and first aid with rescue breathing and choking.

§747.1211. Are there circumstances when I may employ a person under the age of 18 or a person who does not have a high school diploma or equivalent as a caregiver?

(a) You may employ a 16 or 17 year old who has a high school diploma or its equivalent as an assistant caregiver [~~and count the person in the child/caregiver ratio~~], provided that:

(1) The person is never in charge of an individual child, never has sole responsibility for a group of children, and does not act [~~You don't leave the person alone with or responsible for a child or~~] as the substitute caregiver in your absence;

(2) (No change.)

(3) The person has completed a child-care-related career program, which:

(A) The Texas Education Agency (including a charter school), the Texas Private School Accreditation Commission, other similar educational entity in another state, or federal agency approves; or

(B) A home-school approves, and the person completes eight hours of annual training before being placed in a room with children [~~the Texas Education Agency or another state or federal agency approves~~].

(b) You may employ a 16,17, or 18 year old who attends high school but has not graduated as an assistant caregiver [~~and count the person in the child/caregiver ratio~~], provided that:

(1) The person is never in charge of an individual child, never has sole responsibility for a group of children, and does not act [~~You don't leave the person alone with or responsible for a child or~~] as the substitute caregiver in your absence;

(2) (No change.)

(3) The person is currently enrolled in or has completed a child-care-related career program which:

(A) The Texas Education Agency (including a charter school), the Texas Private School Accreditation Commission, other similar educational entity in another state, or federal agency approves; or

(B) A home-school approves, and the person completes eight hours of annual training before being placed in a room with children; [~~the Texas Education Agency or another state or federal agency approves;~~] and

(4) The person is expected to obtain a high school diploma or equivalent.

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606504

Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 438-3854

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DIVISION 4. PROFESSIONAL DEVELOPMENT

40 TAC §747.1303, §747.1323

These repealed rules are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed repeals implement HRC §42.042.

§747.1303. What training must I ensure that my caregivers have?

§747.1323. What is self-instructional and instructor-led training?

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606509
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 438-3854

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40 TAC §§747.1303, 747.1305, 747.1309, 747.1311, 747.1313 - 747.1315, 747.1317, 747.1321

These amendments and new rules are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed amendments and new rules implement HRC §42.042.

§747.1303. What training must I ensure that my caregivers have?

You must make sure that each caregiver has the training required in the following chart:
Figure: 40 TAC §747.1303

§747.1305. What topics must the annual training for caregivers include?

(a) - (f) (No change.)

(g) No more than 80% of the required annual training hours may come [~~be obtained~~] from self-instructional training. No more than three of those self-instructional hours may come from self-study training.

§747.1309. What topics must my annual training include?

(a) - (i) (No change.)

(j) No more than 80% of the required annual training hours may come [~~be obtained~~] from self-instructional training. No more than three of those self-instructional hours may come from self-study training.

§747.1311. When must the annual training be obtained?

(a) The [~~Your~~] annual training for a primary caregiver must be obtained within 12 months from the date you are registered or licensed with us and during each subsequent 12-month period. [~~If you obtain more than the minimum number of annual training clock hours required, you may not carry the additional hours over to the next year.~~]

(b) The annual [~~Annual~~] training for each assistant caregiver and substitute caregiver must be obtained within 12 months from the date of the caregiver's employment and during each subsequent 12-month period.

(c) If a caregiver obtains more than the minimum number of annual training clock hours required, the [~~this~~] caregiver may not carry the additional hours over to the next year.

§747.1313. Who must have first-aid and CPR training?

(a) - (c) (No change.)

(d) CPR [~~and first-aid~~] training must not be obtained through self-instructional training.

§747.1314. What additional training must a caregiver [~~person~~] have in order to transport a child in care?

(a) A caregiver must complete two hours of annual training on transportation safety in order to transport a child whose chronological or developmental [~~development~~] age is younger than nine years old. This training is in addition to other required training hours.

(b) (No change.)

§747.1315. Must child-care training meet certain criteria?

(a) Training may include clock hours or CEUs provided by:

(1) A training provider registered with the Texas Early Childhood Professional [~~Care and Education Career~~] Development System Training [~~System's Texas Trainer~~] Registry, maintained by the Texas Head Start State Collaboration Office;

(2) - (5) (No change.)

(6) The primary caregiver [~~A director at your licensed child-care home or a registered family home provider~~] who has demonstrated core knowledge in child development and caregiving; and[~~, if~~]:

(A) The primary caregiver only provides training to the caregivers at your home; [~~Providing training to his own staff;~~] and

(B) Your home [~~operation~~] has not been on probation, suspension, emergency suspension, or revocation in the two years preceding the training or been assessed an administrative penalty in the two years preceding the training; or

(7) A person who has at least two years of experience working in child development, a child development program, early childhood education, a childhood education program, or a Head Start or Early Head Start program and:

(A) Has a current [~~been awarded a~~] Child Development Associate (CDA) credential; or

(B) (No change.)

(b) (No change.)

[(c) Self-instructional training may not be used for CPR or first-aid certification.]

(c) [(d)] [All training] Instructor-led and self-instructional training, but not self-study training, must include:

(1) Specifically stated learning objectives;

(2) A curriculum, which includes experiential or applied activities;

(3) An evaluation/assessment tool to determine whether the person has obtained the information necessary to meet the stated objectives; and

(4) A certificate of successful completion from the training source.

§747.1317. Does Licensing approve training resources or trainers for training [eloek] hours?

No. We do not approve or endorse training resources or trainers for training [eloek] hours. But you must [You should, however,] ensure you and your caregivers receive [relevant] training that:

(1) Meets the criteria specified in §747.1315 of this title (relating to Must child-care training meet certain criteria?);

(2) Is relevant to the [from reliable resources, in] topics specified in this division;[,] and

(3) The [that] participants receive original documentation of completion, as specified in this division.

§747.1321. If I hire a caregiver that received training at another child-care home or center, may these hours count towards the annual training requirement at my child-care home?

If the caregiver provides [can provide] documentation of training as specified in §747.1327 of this title (relating to What documentation must I provide to Licensing to verify that training requirements have been met?) and that was obtained from another child day-care operation that we regulate within two months before coming to work at your child-care home, this training may apply toward the annual training requirement. [If you apply this training to the annual requirement, you must adjust the annual training due dates accordingly.]

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606513
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Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 438-3854

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DIVISION 5. HOUSEHOLD MEMBERS, VOLUNTEERS, AND PEOPLE WHO OFFER CONTRACTED SERVICES

40 TAC §747.1401

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed amendment implements HRC §42.042.

§747.1401. Must members of my household meet specific qualifications?

(a) For each household member that is 14 years of age or older [you are required to request a background check on, as specified in Subchapter F of Chapter 745 of this title (relating to Background Checks)], the member must:

(1) Have a current record of a tuberculosis (TB) examination showing the caregiver is free of contagious TB, [Provide a copy of a health card or health-care professional's statement verifying they are free of active tuberculosis] if required by the [regional] Texas Department of State Health Services or local health authority; and

(2) (No change.)

(b) - (c) (No change.)

(d) A household member who is 14 years of age [old] or older, but is not regularly or frequently present [staying or working] at the child-care home while children are in care, [is not required to meet the qualifications or training requirements for caregivers specified in this subchapter, but] must never be left alone with a child in care, unless the household member meets the qualifications requirements for caregivers specified in this chapter.

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606514
Audrey Carmical
Interim General Counsel
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Earliest possible date of adoption: January 22, 2017
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DIVISION 6. GENERAL RESPONSIBILITIES FOR CAREGIVERS AND HOUSEHOLD MEMBERS

40 TAC §747.1501

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed amendment implements HRC §42.042.

§747.1501. What general responsibilities do caregivers have in my child-care home?

(a) - (b) (No change.)

(c) You and all other caregivers must also:

(1) - (5) (No change.)

(6) Be free from other activities not directly involving the teaching, care, and supervision of children, such as:

(A) Administrative and clerical duties that take the caregiver's attention [~~caregiver~~] away from the children [~~except for brief periods, such as for necessary phone calls, as long as appropriate supervision is maintained~~];

(B) Janitorial duties[~~, such as mopping, vacuuming, and cleansing bathrooms. Sweeping up after an activity or mopping up spills may be necessary for the children's safety and are not considered janitorial duties~~]; and

(C) Personal use of electronic devices, such as cell phones, MP3 players, and video games[~~, and cell phones~~]. Cell phones may be briefly used for necessary phone calls, as long as appropriate supervision is maintained; and

(7) (No change.)

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606515
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 438-3854

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SUBCHAPTER F. DEVELOPMENTAL ACTIVITIES AND ACTIVITY PLAN

40 TAC §747.2103

These amended rules are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed amendment implements HRC §42.042.

§747.2103. What must [~~should~~] the activity plan include?

(a) Your activity plan must include at least the following:

(1) A variety of creative activities that encourages the use of a child's imagination. Creative activities include dramatic play, block building, stories and books, science and nature activities, and music and art activities;

(2) - (3) (No change.)

(4) Regular meal and snack times as specified in Subchapter Q of this Chapter (relating to Nutrition and Food Service);

(5) Supervised naptimes, or a period of rest for those children too old to nap;

(6) A variety of:

(A) Child-initiated activities, which are those activities that the child chooses on the child's own initiative, and that foster the child's independence. Child initiated activities require equipment, materials, and supplies to be within the reach of a child; [~~child-initiated~~] and

(B) Caregiver-initiated [~~caregiver-initiated~~] activities, which are those activities that are directed or chosen by the caregiver;

(7) - (8) (No change.)

(b) (No change.)

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606516
Audrey Carmical
Interim General Counsel
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Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 438-3854

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SUBCHAPTER H. BASIC CARE REQUIREMENTS FOR INFANTS

40 TAC §§747.2301, 747.2305, 747.2307, 747.2309, 747.2311, 747.2313, 747.2315, 747.2317, 747.2319, 747.2321, 747.2323, 747.2325 - 747.2328, 747.2331

These amendments and new rules are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed amendments and new rules implement HRC §42.042.

§747.2301. What are the basic care requirements for infants?

Basic care for infants must include:

(1) Individual attention given to each infant [~~child~~] including playing, talking, cuddling, and holding;

(2) Holding and comforting an infant [~~a child~~] who is upset;

(3) (No change.)

(4) Talking to infants [~~children~~] as they are fed, changed, and held, such as naming objects, singing, or saying rhymes; and

(5) Ensuring objects less than 1 and 1/4 inches in diameter are kept out of the reach of infants or toddlers [~~children younger than three years~~].

§747.2305. What furnishings and equipment must I have available for [~~the~~] infants?

Furnishings and equipment for infants must include at least the following:

(1) An individual crib to sleep in for each non-walking infant younger than 12 months of age;

(2) An individual crib, cot, bed, or mat that is waterproof or washable for each walking infant; and

(3) A sufficient number of toys to keep the infants [~~the children~~] engaged in activities.

§747.2307. Must the equipment I use for infants be equipped with safety straps?

If the manufacturer requires safety straps on a chair, swing, stroller, infant carrier, bouncer seat, or similar type of equipment, then the safety straps must be fastened whenever a child is using the equipment [~~you use high chairs, swings, strollers, infant carriers, rockers, and bouncer seats, or similar types of equipment, they must be equipped with safety straps that must be fastened whenever a child is using the equipment~~].

§747.2309. What specific safety requirements must my cribs meet?

(a) All full-size and non-full-size cribs must have:

(1) A firm, flat mattress that snugly fits the sides of the crib and that is specifically designed for use with the crib model number. The mattress must not be supplemented with additional foam material or pads;

(2) - (6) (No change.)

(7) No cutout areas in the headboard or footboard that would entrap an infant's [~~a child's~~] head or body;

(8) - (9) (No change.)

(b) You must sanitize each crib when soiled and before another infant [~~child~~] uses the crib.

(c) You must never leave an infant [~~a child~~] in a crib with the drop gate down.

§747.2311. Are play yards allowed?

You may use a play yard, which is a mesh or fabric sided crib, if it meets the following safety requirements:

(1) The play yards must be used according to the manufacturer's instructions, including the cleaning of the play yard;

(2) Play yards must have:

(A) A firm, flat mattress that snugly fits the sides of the play yard and that is designed by the manufacturer specifically for the play yard model number. The mattress must not be supplemented with additional foam material or pads;

(B) Sheets that fit snugly and do not present an entanglement hazard;

(C) A mattress that is waterproof or washable;

(D) Secure mattress support hangers, and no loose hardware or improperly installed or damaged parts;

(E) A minimum height of 22 inches from the top of the railing to the mattress support at its lowest level;

(F) Folded sides that securely latch in place when raised;

(G) For play yards that have mesh sides, mesh openings that are 1/4 inch or less; and

(H) Mesh or fabric that is securely attached to the top rail, side rail, and floor plate; and

(3) You must never leave an infant in a play yard with a side folded down.

§747.2313. Are stacking wall cribs allowed?

You may use a stacking [~~Yes. Stacking~~] wall crib that meets the [~~cribs must meet the~~] requirements specified in § 747.2309 of this title (relating to What specific safety requirements must my cribs meet?), and you:

(1) Do not stack more than [~~Are limited to~~] two [~~stacked~~] cribs;

(2) Only use a stacked crib for an infant who cannot stand or is able to stand without hitting the infant's head on either the top crib or the ceiling above the top crib;

(3) [~~(2)~~] Use the crib [~~Must be used~~] according to manufacturer's directions; and

(4) [~~(3)~~] Securely latch the crib's doors/gates [~~Doors/gates must be securely latched~~] anytime an infant [~~a child~~] is in the crib.

§747.2315. What [~~Are~~] specific types of equipment am I prohibited from using [~~for use~~] with infants?

(a) You may not use the [~~Yes. The~~] following [~~list of~~] equipment for infants, which has been identified as unsafe for infants by the Consumer Product Safety Commission and the American Academy of Pediatrics[~~, must not be used in your child-care home~~]:

(1) Baby walkers, which are devices that allow an infant to sit inside a walker equipped with rollers or wheels and move across the floor;

(2) Baby doorway [~~bungee~~] jumpers, which are devices that allow an infant to bounce while supported in a seat by an elastic "bungee cord" suspended from a doorway;

(3) Accordion Safety gates; and

(4) Bean bags, waterbeds, and foam pads used as sleeping equipment.[~~; and~~]

(b) [~~(5)~~] Except for a tight fitting sheet and as provided in subsection (c), the crib must be bare for an infant younger than twelve months of age. [~~Soft or loose bedding, such as blankets, sleep positioning devices, stuffed toys, quilts, pillows, bumper pads, and comforters, must not be used in cribs for children younger than 12 months of age.~~]

(c) A crib mattress cover may also be used to protect against wetness, but the cover must:

(1) Be designed specifically for the size and type of crib and crib mattress that it is being used with;

(2) Be tight fitting and thin; and

(3) Not be designed to make the sleep surface softer.

§747.2317. What activities must I provide for infants?

Activities for infants must include at least the following:

(1) (No change.)

(2) Multiple opportunities [~~Opportunities~~] to explore each day that are outside of the crib and any restrictive device [~~or other confining equipment multiple times during each day~~];

(3) - (8) (No change.)

§747.2319. Are there specific requirements for feeding infants?

Yes. You must:

(1) (No change.)

(2) Not prop or support bottles with some object. The infant [~~child~~] or an adult must hold the bottle;

(3) (No change.)

(4) Ensure infants [~~children~~] no longer being held for feeding are fed in a safe manner;

(5) Label, color-code or otherwise distinguish among bottles and training cups used by different infants [~~children~~];

(6) Never [~~Not~~] allow infants [~~children~~] to walk around with or sleep with a bottle or training cup;

(7) Never [~~Not~~] use the bathroom sink or diaper-changing surface for food preparation, or for washing food service/preparation equipment, bottles, pacifiers, or toys; and

(8) (No change.)

§747.2321. What [~~Must I obtain~~] written, feeding instructions must I obtain for an infant [~~children~~] not ready for table food?

(a) [~~Yes.~~] For an infant who is [~~children~~] not ready for table food, you must obtain and follow written feeding instructions that are signed and dated by the infant's [~~child's~~] parent or health-care professional [~~physician~~].

(b) You must review and update the feeding instructions with the parent every 30 days until the infant [~~child~~] is able to eat table food.

[~~(c) If your child-care home is participating in the Child and Adult Care Food Program administered by the Texas Department of Agriculture, you may elect to meet those requirements rather than those specified in this section.~~]

§747.2323. Must I provide a regularly scheduled naptime for infants?

Yes. Each infant must have a nap period that:

(1) (No change.)

(2) Is supervised by [~~Allows~~] the caregiver [~~to supervise the infant~~] according to §747.1503 of this title (relating to What does Licensing mean by [~~be~~] "supervise children at all times"?).

§747.2325. How long are infants allowed to remain in their cribs after awakening?

An infant may remain in the crib [~~or other confining equipment~~] for up to 30 minutes after awakening, as long as the infant is content and responsive.

§747.2326. May I allow infants to sleep in a restrictive device?

[~~No.~~] You may not allow an infant to sleep in a restrictive device. If an infant falls asleep in a restrictive device, the infant must be removed from the device and placed in a crib as soon as possible.

§747.2327. Are infants required to sleep on their backs?

Infants not yet able to turn over on their own must be placed in a face-up sleeping position in the infant's own crib, unless you have a written statement [~~the child's parent presents written documentation~~] from a health-care professional stating that a different sleeping position is medically necessary [~~allowed or will not harm the infant~~].

§747.2328. May I swaddle an infant to help the infant sleep?

[~~No.~~] You may not lay a swaddled infant down to sleep or rest on any surface at any time, unless you have a written statement from a health-care professional stating that swaddling a specific child for sleeping purposes is medically necessary.

§747.2331. Must I share a daily report with parents for each infant in my care?

No, you are not required to provide a daily written report to the infant's [~~child's~~] parent.

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606517
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Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 438-3854

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40 TAC §747.2311

These repealed rules are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed repeal implements HRC §42.042.

§747.2311. Are mesh cribs or port-a-cribs allowed?

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606519
Audrey Carmical
Interim General Counsel
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Earliest possible date of adoption: January 22, 2017
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SUBCHAPTER I. BASIC CARE REQUIREMENTS FOR TODDLERS

40 TAC §§747.2401, 747.2405, 747.2407

These amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed amendments implement HRC §42.042.

§747.2401. What are the basic care requirements for toddlers?

Basic care for toddlers must include:

(1) (No change.)

(2) Individual attention given to each toddler [~~child~~] including playing, talking, and cuddling;

(3) Holding and comforting a toddler who [~~child that~~] is upset; and

(4) Ensuring objects less than 1 and 1/4 inches in diameter are [~~be~~] kept out of the reach of infants or toddlers [~~children younger than three years~~].

§747.2405. What furnishings and equipment must I provide for toddlers?

Furnishings and equipment for toddlers must include at least the following:

(1) - (2) (No change.)

(3) Containers or low shelving that are accessible to toddlers, so toddlers [~~items children~~] can safely obtain the items [~~use~~] without adult intervention [~~direct supervision are accessible to children during the activity~~]; and

(4) Bottles and training [~~Training~~] cups if used, must be [~~that are~~]:

(A) Labeled with the toddler's [~~child's~~] first name and initial of last name or otherwise individually assigned to each toddler [~~child~~]; [~~and/or~~]

(B) Cleaned and sanitized between each use; and

(C) Used for drinking and feeding, and you must never allow toddlers to sleep with or walk around with a bottle or training cup.

§747.2407. What activities must I provide for toddlers?

Activities for toddlers must include at least the following:

(1) - (6) (No change.)

(7) Opportunities for social/emotional development. Examples of age-appropriate equipment or activities include dress up clothes and accessories, housekeeping equipment, unbreakable mirrors, washable dolls with accessories, items for practicing buttoning, zipping, lacing, and snapping, and baskets, tubs, and tote bags (not plastic bags) [~~, and baskets~~] for carrying and toting; and

(8) Opportunities to develop self-help skills such as toileting, hand washing, and feeding themselves.[;]

[~~(9) Regular meal and snack times; and~~]

[~~(10) Naptimes, during which children should be supervised according to §747.1503 of this title (relating to What does Licensing mean by "supervise children at all times"?).~~]

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606520
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Interim General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 438-3854

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SUBCHAPTER J. BASIC CARE REQUIREMENTS FOR PRE-KINDERGARTEN AGE CHILDREN

40 TAC §747.2507

These amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed amendment implements HRC §42.042.

§747.2507. What activities must I provide for pre-kindergarten age children?

Activities for pre-kindergarten age children must include at least the following:

(1) - (6) (No change.)

(7) Opportunities for social/emotional development. Examples of age-appropriate equipment or activities include dress up clothes and accessories, mirrors, dolls, simple props for different themes, puppets, transportation toys, toy animals, and table games; and

(8) Opportunities to develop self-help skills such as toileting, hand washing, returning equipment to storage areas [~~area~~] or containers, and serving and feeding themselves.[;]

[~~(9) Regular meal and snack times; and~~]

[~~(10) Naptimes, or a period of rest for those children too old to nap, during which children should be supervised according to §747.1503 of this title (relating to What does Licensing mean by "supervise children at all times"?).~~]

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606521
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Interim General Counsel
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Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 438-3854

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SUBCHAPTER K. BASIC CARE REQUIREMENTS FOR SCHOOL-AGE CHILDREN

40 TAC §747.2605, §747.2607

These amended rules are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed amendments implement HRC §42.042.

§747.2605. What furnishings and equipment must I provide for school-age children?

Furnishings and equipment for school-age children must include:

(1) (No change.)

(2) Age-appropriate nap or rest equipment; and

(3) Containers or shelving to make [~~so~~] items accessible to the children and the items can be used safely [~~use~~] without direct supervision [~~are accessible to children during the activity~~].

§747.2607. What activities must I provide for school-age children?

Activities for school-age children must include at least the following:

(1) - (5) (No change.)

(6) Opportunities for active play both indoors and outdoors. Examples of age-appropriate active play include active games such as tag and Simon says, dancing and creative movement to music and singing, simple games, and dramatic or imaginary play that encourages running, stretching, climbing, and walking; and

(7) Opportunities for social/emotional development. Examples of age-appropriate equipment or activities include dolls with detailed, realistic accessories; role-play materials, including real equipment for library, hospital, post office, costumes, makeup, and disguise materials; puppets and puppet show equipment; transportation toys, such as small vehicles or models; play and art materials; nature materials; and human and animal figurines.[;]

[~~(8) Regular meal and snack times; and~~]

[~~(9) Naptimes, or a period of rest for those children too old to nap, during which children should be supervised according to §747.1503 of this title (relating to What does Licensing mean by "supervise children at all times"?).~~]

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606522
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Interim General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 438-3854

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SUBCHAPTER L. DISCIPLINE

40 TAC §§747.2701, 747.2711, 747.2715

These repealed rules are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed repeals implement HRC §42.042.

§747.2701. To what extent may I discipline the children in my care?

§747.2711. Must I have a written discipline and guidance policy?

§747.2715. How often must I update my written discipline and guidance 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 December 12, 2016.

TRD-201606523
Audrey Carmical
Interim General Counsel
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Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 438-3854

♦ ♦ ♦

40 TAC §747.2703, §747.2705

These amended rules are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed amendments implement HRC §42.042.

§747.2703. What methods of discipline and guidance may I use?
Discipline must be:

(1) Individualized and consistent for each child;

(2) Appropriate to the child's level of understanding;

(3) Directed toward teaching the child acceptable behavior and self-control; and

(4) A [~~You may only use~~] positive method [~~methods~~] of discipline and guidance that encourages [~~encourage~~] self-esteem, self-control, and self-direction, including [~~and include at least~~] the following:

(A) [~~(1)~~] Using praise and encouragement of good behavior instead of focusing only upon unacceptable behavior;

(B) [~~(2)~~] Reminding a child [~~the children~~] of behavior expectations daily by using clear, positive statements;

(C) [~~(3)~~] Redirecting behavior using positive statements; and

(D) [~~(4)~~] Using brief supervised separation or time out from the group, when appropriate for the child's age and development, which is limited to no more than one minute per year of the child's age.

§747.2705. What types of discipline and guidance or punishment are prohibited?
There must be no harsh, cruel, or unusual treatment of any child. The following types of discipline and guidance are prohibited:

(1) - (7) (No change.)

(8) Placing a child in a locked or dark room, bathroom, or closet [~~with the door closed~~]; and

(9) Requiring a child to remain silent or inactive for inappropriately long periods of time for the child's age, including requiring a child to remain in a restrictive device.

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606524

Audrey Carmical
Interim General Counsel
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Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 438-3854

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SUBCHAPTER M. NAPTIME

40 TAC §§747.2801, 747.2803, 747.2805, 747.2807, 747.2811

These amended rules are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed amendments implement HRC §42.042.

§747.2801. Must children have a naptime every day?

You must provide a supervised nap [~~sleep~~] or rest period for all children 18 months of age or older who are in care for five or more consecutive hours or[~~,~~] according to the child's individual physical needs. You may provide a supervised nap [~~sleep~~] or rest period for each child who attends the child-care home for fewer than five hours and whose individual physical needs call for a nap or rest period while the child is in care.

§747.2803. How long may the nap or [~~and~~] rest period [~~time~~] last each day?

The nap [~~planned sleep~~] or rest period must not exceed three hours.

§747.2805. Are children required to sleep during this time?

No. You must not:

(1) Force [~~force~~] a child to sleep, or put anything in or on a child's head or body to force the child to rest or sleep; or [~~.~~]

(2) Confine a child in a restrictive device in an attempt to make the child rest or sleep.

§747.2807. Must I provide an alternative activity for those children who cannot sleep?

(a) Yes. You must allow each child who is awake after napping or resting [~~or sleeping~~] for one hour to participate in an alternative, quiet activity until the nap/rest period [~~time~~] is over for the other children.

(b) You must take a toddler who naps [~~sleeps~~] or rests in a crib out of the crib for other activities when he awakens.

§747.2811. May I lower the lighting in [~~darken~~] the room while children are sleeping?

Yes, you may lower the lighting [~~lights~~], provided there is adequate lighting to allow visual supervision of all children in the group at all times. Lighting in a room is adequate if a person's eyes do not need to adjust for the person to be able to see upon entering the room.

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606526
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Interim General Counsel
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Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 438-3854

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SUBCHAPTER N. FIELD TRIPS

40 TAC §747.2907

These repealed rules are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed repeal implements HRC §42.042.

§747.2907. Must I have additional caregivers present to take children on a field trip?

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606527
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Earliest possible date of adoption: January 22, 2017
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SUBCHAPTER P. NIGHTTIME CARE

40 TAC §747.3003

These amended rules are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed amendment implements HRC §42.042.

§747.3003. May I provide nighttime care to children at my child-care home?

(a) You [~~Yes, you~~] may care for children both during the day and night if we approve it. Even then, a child may only be in care for:

(1) - (2) (No change.)

(b) You cannot exceed these limits [~~without getting a license for a residential child-care operation~~].

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606528

Audrey Carmical
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Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 438-3854

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SUBCHAPTER Q. NUTRITION AND FOOD SERVICE

40 TAC §§747.3101, 747.3109, 747.3117

STATUTORY AUTHORITY (DFPS)

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed amendments implement HRC §42.042.

§747.3101. What are the basic requirements for snack and mealtimes?

(a) You must serve all children ready for table food regular meals and morning and afternoon snacks as specified in this subchapter; including:[.]

(1) [~~(b)~~] If breakfast is served, a morning snack is not required.

(2) [~~(c)~~] A child must not go more than three hours without a meal or snack being offered, unless the child is sleeping.

(3) [~~(d)~~] If your child-care home is participating in the Child and Adult Care Food Program (CACFP) administered by the Texas Department of Agriculture, you may elect to meet those requirements rather than those specified in this subsection [~~section~~].

(b) [~~(e)~~] You must ensure a supply of drinking water is always available to each child and is served at every snack, mealtime, and after active play in a safe and sanitary manner.

(c) [~~(f)~~] You must not serve beverages with added sugars, such as carbonated beverages, fruit punch, or sweetened milk except for a special occasion such as a holiday or birthday celebration.

(d) [~~(g)~~] You must not use food as a reward.

(e) [~~(h)~~] You must not serve a child a food identified on the child's food allergy emergency plan as specified in §747.3617 of this title (relating to What is a food allergy emergency plan?).

§747.3109. May parents provide meals and/or snacks for their children instead of my child-care home providing them?

(a) - (c) (No change.)

(d) Snacks [~~Meals and snacks~~] provided by a parent must not be shared with other children, unless:

(1) A [~~a~~] parent is providing baked goods for a celebration or party being held at the home; and [~~operation.~~]

(2) You ensure that the shared snacks meet the needs of children who require special diets.

§747.3117. What general requirements apply to food service and preparation?

All food and drinks must be of safe quality and stored, prepared, distributed, and served under sanitary and safe conditions, including [~~at least the following~~]:

(1) - (4) (No change.)

(5) You must serve children's food on plates, napkins, or other sanitary holders, such as a high chair tray, and you must not place food [~~them~~] on a bare table or eating surface, which includes the floor;

(6) - (8) (No change.)

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606529
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 438-3854

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SUBCHAPTER R. HEALTH PRACTICES
DIVISION 1. ENVIRONMENTAL HEALTH

40 TAC §§747.3203, 747.3211, 747.3215 - 747.3217

STATUTORY AUTHORITY (DFPS)

The new rule and amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed new rule and amendments implement HRC §42.042.

§747.3203. What steps must I take to ensure a healthy environment for children at my child-care home?

You must clean, repair, and maintain your child-care home, grounds, and equipment to protect the health of the children, including[. ~~This includes, but is not limited to~~]:

(1) Setting aside toys and equipment that are placed in children's mouths or are otherwise contaminated by body secretion or excrement, to be sanitized daily or before handling by another child;

(2) Machine washing used cloth toys [~~, if used,~~] at least weekly and when contaminated;

(3) Machine washing used [~~all~~] linens at least weekly, and when soiled and before another child uses them;

(4) - (5) (No change.)

(6) Emptying water play tables and toys used in water play tables daily, [~~and~~] sanitizing, and ensuring children and caregivers wash their hands before using the water table;

(7) - (8) (No change.)

(9) Keeping all floors, ceilings, and walls in good repair and clean;[.]

(10) Ensuring paints [~~Paints~~] used at the child-care home are [~~must be~~] lead-free;

(11) [~~(10)~~] Keeping all parts of the child-care home used by children well heated, lighted, and ventilated;

(12) [~~(11)~~] Sanitizing table tops, furniture, and other similar equipment used by children when soiled or contaminated with matter such as food, body secretions, or excrement;

(13) [~~(12)~~] Clearly marking cleaning supplies and other toxic materials and keeping them separate from food and inaccessible to children; and

(14) [~~(13)~~] Using, storing, and disposing of hazardous materials as recommended by the manufacturer.

§747.3211. When must caregivers wash their hands?

Caregivers must wash their hands:

(1) - (6) (No change.)

(7) After handling or cleaning bodily [~~body~~] fluids, such as after tending sores and wiping noses, mouths, or bottoms [~~, and tending sores~~];

(8) - (10) (No change.)

(11) After eating, drinking, or smoking; [~~and~~]

(12) After using any cleaners or toxic chemicals; and [~~.~~]

(13) After removing gloves.

§747.3215. How must children and caregivers wash their hands?

Children 18 months and older and caregivers must wash their hands with soap and running water. [~~An alcohol-based hand sanitizer may be used by caregivers on visibly clean hands when soap and running water are not readily accessible, except before handling food. You must follow label directions when using alcohol-based hand sanitizers.~~]

§747.3216. May I use hand sanitizer as a substitute for washing hands?

You may use hand sanitizers as a substitute for washing hands under the following conditions:

(1) You do not use hand sanitizers to wash hands that are visibly dirty or greasy or have chemicals on them, unless you are away from the activity space and soap and water are not available for hand washing;

(2) You only use hand sanitizers on children 24 months and older;

(3) You store hand sanitizers out of the reach of children when not in use;

(4) You follow the labelling instructions for the appropriate amount to be used and for how long the hand sanitizer needs to remain on the skin surface to be effective; and

(5) Children have adult supervision when using hand sanitizers.

§747.3217. How must I wash an infant's hands?

(a) (No change.)

(b) Use soap and running water as specified in this division when infants are old enough to be raised to the faucet and reach for the water and any other time that the caregiver has reason to believe the infant [~~child~~] has come in contact with substances that could be harmful to the infant [~~child~~].

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606530
Audrey Carmical
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Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 438-3854

♦ ♦ ♦

40 TAC §747.3205, §747.3207

STATUTORY AUTHORITY (DFPS)

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed repeals implement HRC §42.042.

§747.3205. What does Licensing mean when it refers to "sanitizing"?

§747.3207. What is a disinfecting solution?

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606531
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 438-3854

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DIVISION 2. DIAPER CHANGING

40 TAC §§747.3301, 747.3303, 747.3307

STATUTORY AUTHORITY (DFPS)

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed amendments implement HRC §42.042.

§747.3301. What steps must I follow for diaper changing?

Caregivers must:

(1) (No change.)

(2) Thoroughly cleanse the child with [~~an~~] individual cloths [~~cloth~~] or disposable towels [~~towel~~]. You must discard the

disposable towels [~~towel~~] after use and launder any cloths [~~cloth~~] before using them [~~it~~] again;

(3) (No change.)

(4) Not apply powders, creams, ointments, or lotions unless [~~without~~] the parent's written permission is obtained. If the parent supplies these items, permission is implicit and you do not need to obtain permission for each use;

(5) (No change.)

(6) Keep all diaper-changing supplies out of the reach of children [~~children's reach~~].

§747.3303. What equipment must I have for diaper changing?

(a) - (b) (No change.)

(c) To prevent a child from falling, a diaper changing surface that is above the floor level:

(1) Must have a safety mechanism (such as [~~safety straps or~~] raised sides) that is used at all times when a child is on the surface; or

(2) The caregivers hand must remain on the child or the caregiver must be facing the child at all times when the child is on the surface.

§747.3307. What must I do to prevent the spread of germs when diapering children?

(a) - (b) (No change.)

(c) If you use disposable gloves, you must discard them after each diaper change and wash your hands with soap and running water [~~as specified in §747.3215 of this title~~].

~~[(d) You must cover containers used for soiled diapers or keep them in a sanitary manner, such as placing soiled diapers in a sealed bags.]~~

(d) [~~(e)~~] You must sanitize the diapering-changing [~~diapering~~] surface after each use, [~~as specified in §747.3205 of this title (relating to What does Licensing mean when it refers to "sanitizing"?),~~] or use a clean, disposable covering on the diapering surface that must be changed after each use.

(e) You must cover containers used for soiled diapers or keep them in a sanitary manner, such as placing soiled diapers in a tied, sealed, or otherwise closed plastic bag.

(f) (No change.)

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606532
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Earliest possible date of adoption: January 22, 2017
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DIVISION 3. ILLNESS AND INJURY

40 TAC §§747.3401, 747.3403, 747.3406, 747.3407, 747.3411

STATUTORY AUTHORITY (DFPS)

The new rule and amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed new rule and amendments implement HRC §42.042.

§747.3401. What type of illness would prohibit a child from attending the child-care home [~~being admitted for care~~]?

You must not allow an ill child to attend your child-care home [~~admit an ill child for care~~] if one or more of the following exists:

(1) - (2) (No change.)

(3) The child has one of the following[~~,~~] (unless a medical evaluation by a health-care professional indicates that you can include the child in the child-care activities):

(A) An oral [~~Oral~~] temperature above 101 degrees that is [~~and~~] accompanied by behavior changes or other signs or symptoms of illness;

(B) A tympanic (ear) temperature above 100 degrees that is accompanied by behavior changes or other signs or symptoms of illness. Tympanic thermometers are not recommended for children under six months old [~~Rectal temperature above 102 degrees and accompanied by behavior changes or other signs or symptoms of illness~~];

(C) An axillary (armpit) [~~Armpit~~] temperature above 100 degrees that is [~~and~~] accompanied by behavior changes or other signs or symptoms of illness;

(D) Symptoms and signs of possible severe illness, such as lethargy, abnormal breathing, uncontrolled diarrhea, two or more vomiting episodes in 24 hours, rash with fever, mouth sores with drooling, [~~wheezing,~~] behavior changes, or other signs that the child may be severely ill; or [~~and~~]

(4) (No change.)

§747.3403. What communicable diseases would exclude a child from attending my child-care home?

You must follow the communicable disease exclusions required for schools as defined by the Texas Department of State Health Services (DSHS) in 25 TAC §97.7 (relating to Diseases Requiring Exclusion from Schools). [~~You can access this information from DSHS or Licensing staff.~~]

§747.3406. When may a child who was ill return to my child-care home?

A child who was ill may return to your child-care home when:

(1) The child is free of symptoms of illness for 24 hours; or

(2) You have obtained a health care professional's written statement that the child no longer has an excludable disease or condition.

§747.3407. How should I respond to an [~~critical~~] illness or injury that requires the immediate attention of a health-care professional?

For an [~~If critical~~] illness or injury that requires the immediate attention of a health-care professional [~~physician~~], you must:

(1) Contact emergency medical services (or take the child to the nearest emergency room after you have ensured the supervision of other children in the home);

(2) (No change.)

(3) Contact the child's parent [physician identified in the child's record];

(4) Contact the physician identified in the child's record [the child's parent]; and

(5) (No change.)

§747.3411. What must a policy for protecting children from vaccine-preventable diseases include?

A licensed child-care home that is not located in the primary caregiver's own residence must have a policy for protecting the children in your care from vaccine-preventable diseases. The policy must:

(1) - (8) (No change.)

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606533
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Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 438-3854

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SUBCHAPTER S. SAFETY PRACTICES
DIVISION 1. SAFETY PRECAUTIONS

40 TAC §§747.3503, 747.3505, 747.3507

STATUTORY AUTHORITY (DFPS)

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed amendments implement HRC §42.042.

§747.3503. How can [may] I ensure the safety of the children from other persons?

(a) People whose behavior and/or health status poses an immediate threat or danger to [appears to endanger] the health or safety of the children must not be present when children are in care.

(b) - (c) (No change.)

(d) People must not smoke or use tobacco products, e-cigarettes, or any type of vaporizers during operating hours in your child-care [the child- care] home, garage, on the playground, in transportation vehicles, or during field trips.

§747.3505. Are firearms or other weapons allowed at my child-care home?

(a) Firearms, hunting knives, bows and arrows, or other weapons kept on the premises of a child-care home must remain in a locked cabinet that is inaccessible to children during all hours of operation, with the exception of peace officers as listed in §2.12 of the Code of Criminal Procedure and security officers commissioned by the Texas Private Security Board [law enforcement officials] who are trained and certified to carry a firearm and ammunition.

(b) Ammunition must be kept [You must keep ammunition] in a separate locked cabinet that is [and] inaccessible to children during all hours of operation.

§747.3507. May I have toys or other types of equipment that explode [explodes] or shoot [shoots] things?

[No.] Toys or other types of equipment that explode or that shoot things, such as caps, BB guns, darts, or fireworks, are prohibited for children's use at the child-care home and on field trips, and must remain in a locked cabinet, inaccessible to children during all hours of operation.

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606534
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Interim General Counsel
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Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 438-3854

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DIVISION 2. MEDICATION AND MEDICAL ASSISTANCE

40 TAC §747.3601, §747.3619

STATUTORY AUTHORITY (DFPS)

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed amendments implement HRC §42.042.

§747.3601. What does "medication" refer to in this division?

In this division, medication means:

(1) (No change.)

(2) A non-prescription medication, excluding topical ointments such as diaper ointment, insect repellant, or sunscreen.

§747.3619. When must I have a food allergy plan for a child [is this plan required]?

You must have a [A] food allergy emergency plan [is required] for each child with a known food allergy that has been diagnosed by a health-care professional. The child's health-care [health care] professional and parent must sign and date the plan. You must keep a copy of the plan in the child's file.

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606535
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 438-3854

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DIVISION 3. ANIMALS AT MY CHILD-CARE HOME

40 TAC §747.3701

STATUTORY AUTHORITY (DFPS)

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed amendment implements HRC §42.042.

§747.3701. What steps must I take to have animals at my child-care home or on field trips?

If you choose to have animals on the premises of your child-care home while children are in care or on field trips, you must:

(1) - (4) (No change.)

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606537
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 438-3854

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DIVISION 5. RELEASE OF CHILDREN

40 TAC §747.3903

STATUTORY AUTHORITY (DFPS)

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed amendment implements HRC §42.042.

§747.3903. How does a caregiver [do I, or someone assisting me in my child-care home,] verify the identity of a parent or a person a parent has designated to pick up the child?

(a) You must develop policies for the release of children, including a plan to verify the identity of a person authorized to pick up a child, but whom the caregiver does not know. If your child-care home transports children, the plan must include verifying the identity of a person to whom you release a child from a child-care home transportation vehicle.

(b) Caregivers must be the individuals responsible for overseeing the release of children in care.

(c) [(b)] Your policies must include a reasonable means to record the identity of the individual, such as making a copy of a valid photo identification or instant photograph of the individual or recording the driver's license number or license plate number [ear tag numbers, or making a copy of a valid photo identification or instant photograph of the individual]. You must retain this information in the child's record for at least three months.

(d) [(c)] You must instruct all caregivers and household members, who are 14 years of age [old] and older who are regularly or frequently present at the child-care home while children are in care, of [in] your policies for the release of children, including the verification plan. [Caregivers must handle the release of children in care.]

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606538
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 438-3854

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SUBCHAPTER T. PHYSICAL FACILITIES
DIVISION 1. INDOOR SPACE REQUIREMENTS

40 TAC §747.4011, §747.4015

These amended rules are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed amendments implement HRC §42.042.

§747.4011. How does Licensing determine the indoor useable activity space?

(a) We determine the indoor useable activity space by:

(1) Measuring all indoor useable activity space from wall to wall on the inside at floor level;

(2) Rounding all measurements up to the nearest inch;

(3) Excluding single-use areas, which are areas not routinely used for children's activities, such as a bathroom, hallway, storage room, cooking area of a kitchen, swimming pool, and storage building[. See §747.105(44) of this title (relating to What do certain words and terms mean when used in this chapter?) for more information on single-use areas]; and

(4) (No change.)

(b) We use the sum of the measurements to calculate the indoor useable activity space and to determine the maximum number of children you may care for.

§747.4015. May I care for children above or below ground level?

You must not care for children on any level above or below ground level without written approval from the state or local fire marshal. [~~If your child-care home was registered or licensed before September 1, 2003, you have one year from September 1, 2003, to obtain written approval or relocate all care to the ground level.~~]

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606539
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Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 438-3854

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DIVISION 2. OUTDOOR SPACE REQUIREMENTS

40 TAC §747.4107

These repealed rules are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed repeal implements HRC §42.042.

§747.4107. Does the fence requirement apply to my home if it was registered or licensed before September 1, 2003?

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606540
Audrey Carmical
Interim General Counsel
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Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 438-3854

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40 TAC §747.4113

These amended rules are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed amendments implement HRC §42.042.

§747.4113. Must the outdoor activity space area be connected to the child-care home?

We must approve a plan to use an outdoor activity space area that is not connected to your child-care home, such as a near-by park, schoolyard, or other alternative. All outdoor activity areas used by children must be accessible from the home by a safe route. We will consider the following criteria before approving the plan:

(1) - (4) (No change.)

(5) Neighborhood circumstances, [~~Safety~~] hazards, and risks, including [~~related to~~] the crime rate for the area;

(6) - (8) (No change.)

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606541
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Earliest possible date of adoption: January 22, 2017
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DIVISION 3. TOILETS AND SINKS

40 TAC §747.4203

These amended rules are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed amendments implement HRC §42.042.

§747.4203. Where must the sink and toilet be located for children's use?

(a) - (b) (No change.)

(c) Children must be able to safely and independently access the sink for hand washing. [~~For further information on hand washing, refer to §747. 3215 of this title (relating to How must children and caregivers wash their hands?).~~]

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606542
Audrey Carmical
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Department of Family and Protective Services
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 438-3854

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DIVISION 4. FURNITURE AND EQUIPMENT

40 TAC §§747.4301, 747.4303, 747.4305, 747.4307, 747.4309

These amended rules are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed amendments implement HRC §42.042.

§747.4301. Must I use child-sized tables and chairs for children?

(a) No, but[~~;~~ ~~however,~~] you must ensure that any table or chair used by a child is safe, easy to clean, and of a height and size that the child can use it safely and easily.

(b) If the manufacturer requires safety straps on a chair, then the safety straps must be fastened whenever a child is using the chair.

§747.4303. Must I provide a cot or mat for each child to sleep or rest on?

(a) Yes. You must provide or have the parent provide [~~the following:~~]

[~~(1) An individual crib meeting requirements specified in Subchapter H of this chapter (relating to Basic Care Requirements for Infants) for each non-walking child younger than 18 months to sleep or rest in;~~]

[~~(2)~~] an [~~An~~] individual cot, bed, or mat that is waterproof or washable for each walking child through four years old to sleep or rest on.[~~;~~]

[~~(3) Individual arrangements for sleep or rest for children five years and older who are in care for more than five hours per day, or whose individual care needs require a nap or rest time.~~]

(b) Cots, beds, or mats must be labeled with the child's name. As an alternative, you may label [~~Labeling~~] cots, beds, or mats with a number and have a number/child [~~related to a number~~] assignment map available [~~may be used as an alternative~~].

(c) (No change.)

§747.4305. Must I have storage for each child's individual belongings?

Yes. You must have individual lockers, cubicles, baskets, separate hooks and shelves, or other adequate storage space for each child's personal belongings. You must clearly label the storage space with the child's name, a photograph of the child, or other symbol the child [~~he~~] recognizes [~~as his own~~].

§747.4307. Must I have a telephone at my child-care home?

Yes. You must have a working telephone or cellular phone at your child-care home with a listed telephone number. [~~The telephone must not be a coin-operated pay phone.~~]

§747.4309. May I have indoor lofts?

(a) You may have an indoor loft that is [~~Yes, as long as the lofts are~~] designed and used as an extension of the learning area, if [~~and~~] you comply with the following safety standards:

(1) (No change.)

(2) Stairs and steps, regardless of height, must have handrails the children can reach. Rung ladders do not require handrails;

(3) [~~(2)~~] Platforms over 20 inches in height must be equipped with protective barriers that prevent children from crawling over or falling through the barrier, or becoming entrapped; and

[~~(3) Stairs and steps, regardless of height, must have handrails the children can reach. Rung ladders do not require handrails.~~]

(4) Section 747.4015 of this title (relating to May I care for children above or below ground level?).

(b) (No change.)

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606543
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Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 438-3854

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40 TAC §747.4311

These repealed rules are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed repeal implements HRC §42.042.

§747.4311. If my child-care home was registered or licensed before September 1, 2003, will I be given an opportunity to comply?

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606544
Audrey Carmical
Interim General Counsel
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Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 438-3854

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SUBCHAPTER U. INDOOR AND OUTDOOR ACTIVE PLAY SPACE AND EQUIPMENT
DIVISION 1. MINIMUM SAFETY REQUIREMENTS

40 TAC §747.4401, §747.4407

These amended rules are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed amendments implement HRC §42.042.

§747.4401. What minimum safety requirements must my active play equipment meet?

Indoor and outdoor active play equipment [~~and supplies~~] used both at and away from the child-care home must be safe for the children as follows:

(1) (No change.)

(2) The design, scale, and location of the equipment must be used according to the manufacturer's instructions [~~appropriate for the body size and ability of the children using the equipment~~];

(3) - (10) (No change.)

§747.4407. What special maintenance procedures must I follow for my active play space and equipment?

(a) You or someone you designate must inspect the indoor and outdoor active play space and equipment daily before children go out to play to ensure there are no hazards present.

(b) (No change.)

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606545
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Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 438-3854

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DIVISION 5. INFLATABLES

40 TAC §747.4751

These amended rules are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed amendments implement HRC §42.042.

§747.4751. May I use inflatable active play equipment?

You [~~Yes, you~~] may use inflatable equipment both at and away from your child-care home if you follow these guidelines [~~as long as it meets the following~~]:

(1) You use enclosed [~~Enclosed~~] inflatables (such as bounce houses or moon bounces/walks) according to the manufacturer's instructions [~~must only be used by one child at a time~~];

(2) You use open [~~Open~~] inflatables (such as obstacle courses, slides, or games) [~~must be used~~] according to the manufacturer's label and instructions for the user; and

(3) Inflatables that include water activity [~~must~~] also comply with all applicable requirements in Subchapter V of this chapter (relating to Swimming Pools, [~~and~~] Wading/Splashing Pools, and Sprinkler Play).

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606546
Audrey Carmical
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Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 438-3854

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SUBCHAPTER V. SWIMMING POOLS, WADING/SPLASHING POOLS, AND SPRINKLER PLAY

40 TAC §§747.4803, 747.4807, 747.4809, 747.4815

These amended rules are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed amendments implement HRC §42.042.

§747.4803. How should the swimming pool be [~~built and~~] maintained?

Swimming pools at the child-care home must be maintained according to the standards of the Texas Department of State Health Services for public pools, and any other state or local regulations.

§747.4807. Must I have a fence around [~~How must I prevent children's unsupervised access to~~] a swimming pool at my child-care home?

(a) - (d) (No change.)

§747.4809. Does having a fence affect my [~~relieve me of the~~] duty to supervise children's access to the pool?

No. Although a fence and locked access provides a layer of protection for a child who strays from supervision and may deter some children from entering the pool area, these do not replace the need to supervise children at all times [~~for constant adult supervision~~] and monitoring of safety features to protect children from unsupervised access to the pool.

§747.4815. Are there specific safety requirements for sprinkler play?

(a) You must ensure that no child uses [~~not allow~~] sprinkler equipment [~~to be used by children~~] on or near a hard, slippery surface, such as a concrete driveway, sidewalk, or patio.

(b) You must not leave a child alone with the sprinkler equipment.

(c) You must store sprinkler equipment and water hoses out of the reach of children when not in use [~~so that they do not present a hazard to children~~].

(d) You must maintain your splash pad/sprinkler play area according to manufacturer's instructions.

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606547
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 438-3854

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SUBCHAPTER W. FIRE SAFETY AND EMERGENCY PRACTICES
DIVISION 2. EMERGENCY PREPAREDNESS

40 TAC §747.5013

These amended rules are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed amendments implement HRC §42.042.

§747.5013. May [I ~~count~~] a window count as one of the designated exits for my child-care home?

[~~Yes.~~] You may count a window as an exit for your child-care home if all children in care and caregivers are physically able to get through the window to the ground outside [~~the child-care home~~] safely and quickly.

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606548
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 438-3854

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DIVISION 3. FIRE EXTINGUISHING AND SMOKE DETECTION SYSTEMS

40 TAC §§747.5101, 747.5103, 747.5105, 747.5107, 747.5109, 747.5115, 747.5117

These amended rules are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed amendments implement HRC §42.042.

§747.5101. Must my child-care home have a fire-extinguishing system?

Yes. Your child-care home must have a fire-extinguishing system. This may be a sprinkler system and/or fire extinguishers. The [~~local or~~] state or local fire marshal must approve a sprinkler system.

§747.5103. Am I required to have a [~~What type of~~] fire extinguisher [~~am I required to have~~]?

[~~(a)~~] Yes, you [~~You~~] must have at least one 3A-40BC dry chemical fire extinguisher, or a fire extinguisher [~~one~~] approved by a [~~local or~~] state or local fire marshal.

[~~(b) If you were registered or licensed before September 1, 2003, you may use at least one 40BC rated fire extinguisher until your fire extinguisher is due to be serviced or your permit to operate is no longer valid.~~]

§747.5105. Where must I mount the fire extinguisher?

You must mount the fire extinguisher on the wall by a hanger or bracket. The top of the extinguisher must be no higher than five feet above the floor and the bottom at least four inches above the floor or any other surface. [~~The fire extinguisher must be readily available for immediate use by household members and caregivers.~~] If a state or local fire marshal or the manufacturer's instructions has different mounting instructions, you must [~~may~~] follow those instructions. The fire extinguisher must be readily available for immediate use by household members and caregivers.

§747.5107. How often must I inspect and service the fire extinguisher?

(a) You must:

(1) Inspect [~~inspect~~] the fire extinguisher monthly;[.]

(2) Record [~~You must record~~] the date of the [~~fire extinguisher~~] inspection; and

(3) Keep [~~keep~~] this record at your child-care home.

(b) You must service the fire extinguisher as needed and required by the manufacturer's instructions, or as required by the state or local fire marshal.

§747.5109. How often must I inspect my sprinkler system?

If you use a sprinkler system:[,]

(1) The [~~the system~~] monitoring company or a [~~local or~~] state or local fire marshal must test the system at least annually;[.]

(2) You must document [~~Document~~] the date of the inspection, and the name and telephone number of the inspector; and[.]

(3) You must keep [~~Keep~~] the most recent inspection report at your child-care home.

§747.5115. How often must the smoke detectors at my child-care home be tested?

You must:

(1) Test [~~test~~] all smoke detectors monthly;[,]

(2) Record [~~record~~] the date of the test and date of the installation of new batteries; [~~inspection,~~] and

(3) Keep [~~keep~~] this record at your child-care [~~home for review by Licensing during hours of operation~~].

§747.5117. How often must I have an electronic smoke alarm system tested?

If you use an electronic smoke alarm system;[,]

(1) The [~~the~~] monitoring company[,] or state or local fire marshal must test the system at least annually;[.]

(2) You must document [keep documentation of] the date of the inspection and the [at the child-care home that indicates the date of the inspection and the inspector's] name and telephone number of the inspector; and[.]

(3) You must keep the most recent inspection report at your child-care home.

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606549
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 438-3854

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SUBCHAPTER X. TRANSPORTATION

40 TAC §§747.5401, 747.5405, 747.5407, 747.5409, 747.5411, 747.5417, 747.5419, 747.5421

These amended rules are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The proposed amendments implement HRC §42.042.

§747.5401. What types of transportation does Licensing regulate?

We regulate all [any] transportation provided by or for the child-care home to children in care, including[, but not limited to,] transportation between the child's home and the school, the child's home and your home, your home and the school, your home or the school and field trip locations, and your home or the school and [or] other drop-off locations [authorized by the parent].

§747.5405. What safety precautions must I take when loading and unloading children from the vehicle?

You must take the following precautions when loading and unloading children from any vehicle, including any type of bus:

(1) You must load and unload children at the curbside of the vehicle or in a protected parking area or driveway;[.]

(2) You must not allow a child to cross a street anytime [unless the child is accompanied by an adult anytime] before a child enters [entering] or exits [after leaving] a vehicle, unless the child is accompanied by an adult;[.]

(3) You must account for all children exiting the vehicle before leaving the vehicle unattended; and[.]

(4) You must never [not] leave a child unattended in a vehicle.

§747.5407. What child passenger safety seat [restraint] system must I use when I transport children?

(a) You must use a child passenger safety seat system to restrain a child when transporting the child. The restraint system must meet the federal standards for crash-tested systems as set by the National Highway Traffic Safety Administration and must be properly secured in the vehicle according to manufacturer's instructions.

(b) [(a)] You must secure each child in an infant safety seat, rear-facing convertible child safety seat, forward-facing child safety seat, child booster seat, safety vest, harness, or a safety belt, as appropriate to the child's age, height, and weight according to manufacturer's instructions for all vehicles specified in subsection (d) of this section, unless otherwise noted in this subchapter.

[(b) All child passenger safety restraint systems must meet federal standards for crash-tested restraint systems as set by the National Highway Traffic Safety Administration, and must be properly secured in the vehicle according to manufacturer's instructions.]

(c) - (d) (No change.)

§747.5409. Must caregivers and/or the driver wear a safety belt?

(a) The driver must be properly restrained by a safety belt before starting the vehicle and at [during] all times the vehicle is in motion.

(b) (No change.)

§747.5411. May parents provide the child passenger safety seat equipment required for their child?

[Yes.] Parents may provide the child passenger safety seat system for use in transporting their child, if the equipment is appropriate and can be properly secured in the vehicle. You must use the equipment according to manufacturer's instructions.

§747.5417. Must I carry specific information [equipment] in the vehicles used [vehicle I use] to transport children in my care?

(a) You must have the following in each vehicle used to transport children:

(1) A list of the children being transported;

(2) Emergency medical transport and treatment authorization forms for each child being transported; and

(3) Parent's names and telephone numbers and emergency telephone numbers for each child being transported; and[.]

(b) The driver must carry a current driver's license.

§747.5419. What [Must I have a] plan must I have to handle transportation emergencies?

[Yes.] You must ensure the caregiver who is transporting a child has [driver/caregivers have] clear instructions for [on] handling emergency breakdowns and accidents, including vehicle evacuation procedures, supervision of the children, and contacting emergency help.

§747.5421. Must I have a communications device in a transportation [the] vehicle?

Yes, in case of an emergency you must have a communications device such as a cellular phone or two-way radio when transporting a child. [No, you are not required to have a communications device such as a cellular phone, message pager, or two-way radio in the vehicle unless you are on a field trip.]

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

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606550
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: January 22, 2017
For further information, please call: (512) 438-3854

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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 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS
SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING SCHOOL FACILITIES

19 TAC §61.1033

The Texas Education Agency withdraws the proposed repeal of §61.1033 which appeared in the September 23, 2016, issue of the *Texas Register* (41 TexReg 7373).

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606465
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: December 12, 2016
For further information, please call: (512) 475-1497

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19 TAC §61.1036, §61.1040

The Texas Education Agency withdraws the proposed amended §61.1036 and new §61.1040 which appeared in the September 23, 2016, issue of the *Texas Register* (41 TexReg 7373).

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606466
Cristina De La Fuente-Valadez
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Effective date: December 12, 2016
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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 748. MINIMUM STANDARDS FOR GENERAL RESIDENTIAL OPERATIONS
SUBCHAPTER M. DISCIPLINE AND PUNISHMENT

40 TAC §748.2307

The Department of Family and Protective Services withdraws the proposed amendment to §748.2307, which appeared in the August 26, 2016, issue of the *Texas Register* (41 TexReg 6409).

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606357
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: December 6, 2016
For further information, please call: (512) 438-3854

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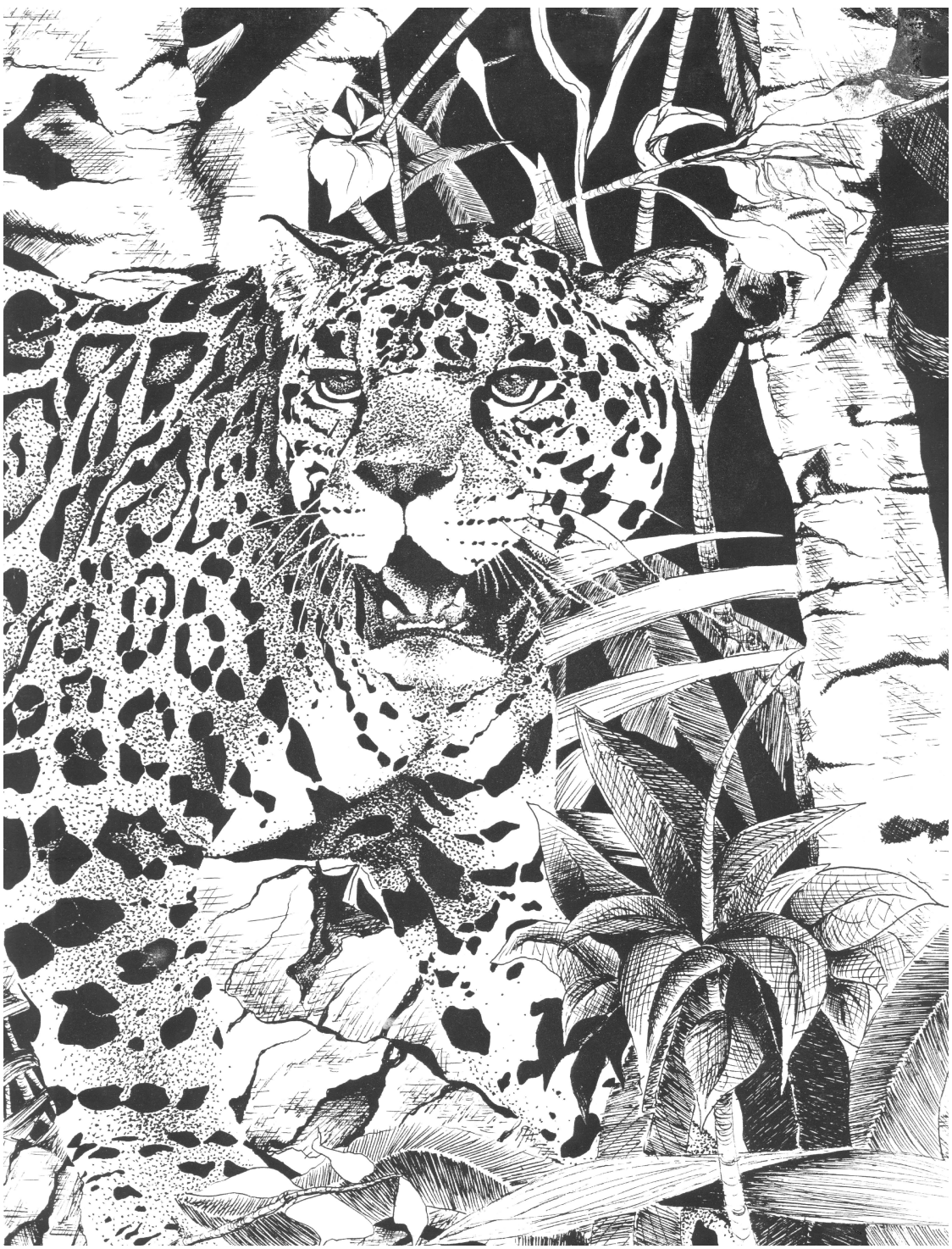

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 10. UNIFORM MULTIFAMILY RULES

SUBCHAPTER A. GENERAL INFORMATION AND DEFINITIONS

10 TAC §§10.1 - 10.4

Preamble, Reasoned Response, and Repealed Rule

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules Subchapter A §§10.1 - 10.4, concerning General Information and Definitions, without changes to the proposed text as published in the September 23, 2016, of the *Texas Register* (41 TexReg 7299). The rules will not be republished.

REASONED JUSTIFICATION. The Department finds that the purpose of the repeal is to replace the sections with a new rule that encompasses all funding made available to multifamily programs. Accordingly, the repeal provides for consistency and minimizes repetition among the programs.

The Department accepted public comments between September 23, 2016, and October 14, 2016. Comments regarding the repealed were accepted in writing and by fax. No comments were received concerning the repeal.

The Board approved the final order adopting the repeal on November 10, 2016.

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

The adopted repeal affects no other code, article or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 9, 2016.

TRD-201606429

Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 29, 2016
Proposal publication date: September 23, 2016
For further information, please call: (512) 475-3344

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10 TAC §§10.1 - 10.4

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter A, §§10.1 - 10.4 concerning General Information and Definitions. Sections 10.3 and 10.4 are adopted with changes to the text as published in the September 23, 2016, issue of the *Texas Register* (41 TexReg 7299). Sections 10.1 and 10.2 are adopted without changes and will not be republished.

REASONED JUSTIFICATION. The Department finds that the adoption of the sections will result in a more consistent approach to governing multifamily activity and to the awarding of funding or assistance through the Department and to minimize repetition. The comments and responses include both administrative clarifications and corrections to the Uniform Multifamily Rule based on the comments received. After each comment title numbers are shown in parentheses. These numbers refer to the person or entity that made the comment as reflected at the end of the reasoned response. If comment resulted in recommended language changes to the proposed Uniform Multifamily Rule as presented to the Board in September, such changes are indicated.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

Public comments were accepted through October 14, 2016, with comments received from (28) Locke Lord Attorneys and Counselors, (33) Anderson Development and Construction, LLC, (40) Dominium, (42) Evolie Housing Partners, (43) Flores Residential, LLC, (54) Leslie Holleman and Associates, Inc., (60) Mears Development, and (73) The Brownstone Group.

1. §10.3 - Subchapter A - Definitions - Qualified Nonprofit Organization (28)

COMMENT SUMMARY: Commenter (28) indicated this definition presents confusion regarding property transfer issues in that not all property transfers involving a nonprofit organization require that organization comply with §2306.6706 of the Texas Government Code. Commenter (28) recommended the following modification "(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 setaside or subsequent transfer of the property, when applicable,

meets the requirements of Tex. Gov't Code §2306.6706, and §2306.6729, and §42(h)(5) of the Code."

STAFF RESPONSE: Staff agrees and has made the modification as requested by commenter (28). Moreover, staff recommends a modification to the definition for Right of First Refusal to be consistent with changes proposed in Chapter 10, Subchapter E relating to the eligible entities can purchase a property under a Right of First Refusal. Staff proposes the following modification "(116) Right of First Refusal ("ROFR")--An Agreement to provide a right to purchase the Property to a Qualified Entity or a Qualified Nonprofit Organization, as applicable, with priority to that of any other buyer at a price established in accordance with an applicable LURA."

BOARD RESPONSE: Accepted staff's recommendation.

2. §10.4(4) - Subchapter A - Definitions - Administrative Deficiency Deadline (28)

COMMENT SUMMARY: Commenter (28) requested this section be modified for consistency with the 3-day timeframe by which to respond to a deficiency as indicated in §10.201(7)(B) of the Uniform Multifamily Rules. Moreover, commenter (28) suggested the 3-day timeframe is too short and should revert to 5-days as was the case for 2016.

STAFF RESPONSE: In response to comments received regarding the proposed 3-day deadline for administrative deficiencies, staff modified the timeframe to 5 days which corrects any inconsistency between sections in the rule. Staff does not recommend any further changes based on this comment.

BOARD RESPONSE: Accepted staff's recommendation.

3. §10.3(10) - Subchapter A - Definitions - Bedroom (40)

COMMENT SUMMARY: Commenter (40) expressed concern over the phrase "has at least one window that provides exterior access" in this definition. Specifically, commenter (40) noted the following: the international building code does not require a window provided the new construction building is fully sprinkled with a NFPA 13 sprinkler system; such windows can be problematic in new construction mid-rise buildings that are served by an elevator and double-loaded corridor since many times an internal bedroom is built; this could be problematic in adaptive re-use developments where the existing building does not necessarily allow for a feasible re-development if all bedrooms had to be located on an exterior wall with a window; and further indicated that buried bedrooms are not only allowed under code but are well accepted in the market. Commenter (40) further stated the requirement for a window that provides exterior access reduces the feasibility of certain new construction and historic adaptive re-use developments.

STAFF RESPONSE: Staff believes the modification as proposed by commenter (40) would require additional consideration by the Department and would constitute a substantive change that would necessitate additional public comment. Staff recommends no change based on this comment.

BOARD RESPONSE: Accepted staff's recommendation.

4. §10.3(29) - Subchapter A - Definitions - Control (42), (43), (54), (60), (73)

COMMENT SUMMARY: Commenters (42), (43), (54), (60), (73) stated that they do not believe Special Limited Partners generally possess factors or attributes that give them control, although some may and; therefore, recommended the following modification to the definition: "(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, may include special limited partners when applicable, but not investor limited partners or special limited partners who do not possess other factors or attributes that give them Control. 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."

STAFF RESPONSE: Staff does not object to the proposed modification and has made the change as suggested. Moreover, staff notes there was a comment proposed by commenter (28) with respect to Subchapter C regarding how the concept of Persons is used throughout the rules that triggers implications regarding certifications and how such Persons are treated. Staff believes the most appropriate way to address those concerns raised by commenter (28) is through a modification to the definition of control and; therefore, proposes the following, taking into account those requested changes by commenters (42), (43), (54), (60), (73): "(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. As used herein "acting in concert" involves more than merely serving as a single member of a multi-member body. For example a single director on a five person board is not automatically deemed to be acting in concert with the other members of the board because they retain independence of judgment. However, if that director is one of three directors on a five person board who all represent a single shareholder, they clearly represent a single interest and are presumptively acting in concert. Similarly, a single shareholder owning only a five percent interest might not exercise control under ordinary circumstances, but if they were in a voting trust under which a majority block of shares were voted as a group, they would be acting in concert with others and in a control position. However, even if a member of a multi-member body is not acting in concert and therefore does not exercise control in that role, they may have other roles, such as executive officer positions, which involve actual or apparent authority to exercise control. Controlling entities of a partnership include the general partners, may include special limited partners when applicable, but not investor limited partners or special limited partners who do not possess other factors or attributes that give them Control. 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."

BOARD RESPONSE: Accepted staff's recommendation.

5. §10.3(47) - Subchapter A - Definitions - Elderly Development (42), (43), (54), (60), (73)

COMMENT SUMMARY: Commenter (42), (43), (54), (60), (73) indicated the Elderly Preference component of this definition does not preclude an applicant from choosing this type of Elderly Development even if HUD funding (or other federal assistance) is not used. Commenter (42), (43), (54), (60), (73) stated the 2016 application conflicted with this plain language and didn't allow for that type of choice to be made. Commenter (42), (43), (54), (60), (73) recommended that if the intention of the Elderly Preference definition is that it only apply to developments with HUD funding or other types of federal assistance then such intention should be clearly articulated in the definition.

STAFF RESPONSE: Staff acknowledges the oversight in the 2016 Uniform Multifamily Application that allowed an applicant to select from the drop down menu the specific type of HUD funding involved if Elderly Limitation was selected. Staff will correct this oversight in the 2017 Uniform Multifamily Application. Staff does not believe the definition needs to be modified to include the exhaustive list of the specific types of HUD or other federal funding that would trigger a development to be classified as Elderly Preference but believes this is best handled through the Application Submission Procedures Manual and Uniform Multifamily Application. Staff does not recommend any changes based on these comments.

BOARD RESPONSE: Accepted staff's recommendation.

6. §10.3(98) - Subchapter A - Definitions - Principal (42), (43), (54), (60), (73)

COMMENT SUMMARY: Commenter (42), (43), (54), (60), (73) stated it is unclear whether "Persons" is capitalized because it refers to the defined term, or simply because it is the first word in the sentence and further indicated that the context seems to indicate that it is the generalized term and; therefore, recommended the following modification, which also incorporates a prior suggestion by commenter (42), (43), (73) relating to the definition of control: "(98) Principal--Any 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, and Principals with ownership interest, and special limited partners with ownership interest who also possess factors or attributes that give them Control; (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."

STAFF RESPONSE: The proposed modification to change "person" to lower case could create doubt to exactly any person means; staff recommends no change in this regard. Staff does not object to the modifications to subparagraph (A) as requested by the commenters and has made the change accordingly.

BOARD RESPONSE: Accepted staff's recommendation.

7. §10.4(6) - Subchapter A - Definitions - Resolution Delivery Date (33)

COMMENT SUMMARY: Commenter (33) indicated the new language in this section regarding Direct Loan applications not layered with housing tax credits implies that resolutions will be required in the future. Commenter (33) stated that resolutions are not required by statute and the requirement for resolutions in this section seems to work contradictory to Affirmatively Furthering Fair Housing and will thus make development more difficult.

STAFF RESPONSE: Staff agrees that the resolutions are not required by statute and recommends the following modification: (6) Resolutions Delivery Date. Resolutions required for Tax-Exempt Bond Developments 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.

BOARD RESPONSE: Accepted staff's recommendation.

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

The adopted rule affects no other code, article or statute.

§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. As used herein "acting in concert" involves more than merely serving as a single member of a multi-member body. For example a single director on a five person board is not automatically deemed to be acting in concert with the other members of the board because they retain independence of judgment. However, if that director is one of three directors on a five person board who all represent a single shareholder, they clearly represent a single interest and are presumptively acting in concert. Similarly, a single shareholder owning only a five percent interest might not exercise control under ordinary circumstances, but if they were in a voting trust under which a majority block of shares were voted as a group, they would be acting in concert with others and in a control position. However, even if a member of a multi-member body is not acting in concert and therefore does not exercise control in that role, they may have other roles, such as executive officer positions, which involve actual or apparent authority to exercise control. Controlling entities of a partnership include the general partners, may include special limited partners when applicable, but not investor limited partners or special limited partners who do not possess other factors or attributes that give them Control. 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, and Principals with ownership interest and special limited partners with ownership interest who also possess factors or attributes that give them Control;

(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, when applicable, 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 or a Qualified Nonprofit Organization, as applicable, 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 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 adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 9, 2016.

TRD-201606435
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 29, 2016
Proposal publication date: September 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

Preamble, Reasoned Response, and Repealed Rule

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules Subchapter B §10.101, concerning Site and Development Requirements and Restrictions without changes to the proposed text as published in the September 23, 2016, issue of the *Texas Register* (41 TexReg 7308). The rules will not be republished.

REASONED JUSTIFICATION. The Department finds that the purpose of the repeal is to replace the sections with a new rule that encompasses all funding made available to multifamily programs. Accordingly, the repeal provides for consistency and minimizes repetition among the programs.

The Department accepted public comments between September 23, 2016, and October 14, 2016. Comments regarding the repeal were accepted in writing and by fax. No comments were received concerning the repeal.

The Board approved the final order adopting the repeal on November 10, 2016.

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

The adopted repeal affects no other code, article or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 9, 2016.

TRD-201606431
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 29, 2016
Proposal publication date: September 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") adopts new 10 TAC, Chapter 10 Uniform Multifamily Rules, Subchapter B, §10.101, concerning Site and Development Restrictions and Requirements, with changes to the proposed text as published in the September 23, 2016, issue of the *Texas Register* (41 TexReg 7309).

REASONED JUSTIFICATION. The Department finds that the adoption of the section will result in a more consistent approach to governing multifamily activity and to the awarding of funding or assistance through the Department and to minimize repetition. The comments and responses include both administrative clarifications and corrections to the Uniform Multifamily Rule based on the comments received. After each comment title, numbers are shown in parentheses. These numbers refer to the person or entity that made the comment as reflected at the end of the reasoned response. If comment resulted in recommended language changes to the Uniform Multifamily Rule as presented to the Board in September, such changes are indicated.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

Public comments were accepted through October 14, 2016, with comments received from (4) Senator Jose Menendez, (9) City of Harlingen, (13) Fort Worth Housing Solutions, (17) 5th Ward Community Redevelopment Corporation, (19) Texas Association of Community Development Corporations, (22) Texas Affiliation of Affordable Housing Providers, (23) Texas Coalition of Affordable Developers, (24) Low Income Housing Information Service, (25) Center for Supportive Housing (28) Locke Lord Attorneys and Counselors, (33) Anderson Development and Construction, LLC, (34) BETCO Consulting, LLC (39) DMA Companies, (40) Dominium, (41) Endeavor Real Estate Group, (42) Evolie Housing Partners, (43) Flores Residential, LLC, (44) Foundation Communities, (50) Hoke Development Services, LLC, (51) Investment Builders, Inc., (52) ITEX Group, (54) Leslie Holleman and Associates, Inc., (58) Mark-Dana Corporation, (59) Marque Real Estate Consultants, (60) Mears Development, (63) National Church Residences, (64) New Hope Housing, (65) OM Housing, (69) Purple Martin Real Estate, (72) Structure Development, (73) The Brownstone Group, (74) Alyssa Carpenter, (78) Coats Rose.

1. §10.101(a)(2) - Subchapter B - Undesirable Site Features (4), (9), (17), (19), (22), (23), (24), (28), (33), (39), (40), (41), (42), (43), (44), (51), (52), (54), (58), (59), (60), (65), (69), (73), (74)

COMMENT SUMMARY: Commenter (4) expressed concern over the proposed change in proximity to a railroad track from 100 feet to 500 feet stating that many Texas communities were settled on the railroad and; therefore, many of the historic structures are near them. Commenter (4) further stated that such historical structures should be repurposed for affordable housing and the increased distance requirement thwarts that effort and could affect revitalization efforts in many of these areas. Commenter (4) suggested that historic structures be exempt from the distance requirements for railroad tracks. Commenter (9) expressed similar concerns as commenter (4) and further stated that this increased distance requirement would result in no historic building being eligible to be rehabbed into residences, no matter how appropriate and desirable. Commenter (9) also indicated that there is a difference between rehabbing a building that has been sitting near a railroad track for 50 to 100 years and allowing new construction within 500 feet of such railroad track. Similar to that of commenter (4), commenter (9) requested that should the distance requirement of 500 feet remain, that historical buildings be exempt from the requirement. Commenter (72) recommended that rehabilitation developments be exempt from the railroad distance separation requirement on the basis that it is impossible or cost prohibitive to move an existing building.

Similarly, commenters (22), (39), (41), (65), (81) stated that the distance in prior year rules are more appropriate and commenters (22), (39), (41), (81) further stated that HUD guidelines on proximity to active railroad tracks are more appropriate guidelines to use because they address the impact to the resident, rather than redline entire swaths of urban areas. Commenters (22), (39), (41), (69) recommended the following changes to this section: "(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, unless the Applicant provides information regarding mitigation of the applicable undesirable site feature(s). 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. 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 has smaller distances than 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...(D) Development Sites in which the buildings are located within 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; high voltage transmission are lines that carry 138 Kv of power or greater; (E) Development Sites located within 100 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, or the Applicant submits a noise study with the Application and commits at the time of commitment to provide sound attenuation of noise levels in excess of 65 decibels; (H) Development Sites in which the buildings are located within the accident zones or clear zones of any airport; (J) Development Sites located within 1,000 feet 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."

Commenter (17) noted that while this section allows the Board to find a site eligible despite the undesirable site feature, applicants will not spend their time, money and effort to pursue a site that might not receive Board approval due to its proximity to such feature. Commenter (59) stated several of the changes proposed add significant barriers to the site selection and inner city development and re-development activities. Commenters (17), (59) requested the language in this section remain as written in 2016.

Commenter (58) requested the distance to the undesirable feature be modified such that it be measured from the nearest residential building of the development site to the nearest undesirable feature (rather than from the nearest boundary of the site to the nearest boundary of the property or easement containing the feature). Commenter (58) stated that if the development site is large, the residential building could actually be farther away from the undesirable feature than residential buildings on a small site that meet the boundary to boundary distances. Commenter (58) also requested the proximity to railroads not be considered an undesirable site feature if the development will provide adequate noise attenuation inside the residential units and further indicated that many high opportunity neighborhoods that back up to railroads, such as West University Place in Houston. In line with these comments, the suggested modifications from commenter (58) included the following: "(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. The distances are to be measured from the nearest residential building of the Development Site to the nearest 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, in which case this section does not apply.. Where there is a local ordinance that regulates the proximity of such undesirable feature to a multifamily development that has smaller distances than the minimum distances noted below, then such smaller distances shall be used and documentation such as a copy of the local ordinance identifying such distances relative to the Development Site must be included in the Application...(D) Development Sites in which the buildings are located within 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; high voltage transmission are lines that carry 138 Kv of power or greater; (E) Development Sites located within 100 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, or the Applicant submits a noise study with the Application and commits at the time of Commitment to provide sound attenuation of noise levels in excess of 65 decibels; (H) Development Sites in which the buildings are located within the accident zones or clear zones of any airport; (J) Development Sites located within 1,000 feet of refineries capable of refining more than 100,000 barrels of oil daily; or"

Commenters (19), (44) expressed support for the language added to this section indicating that proximity to such site features "may" be determined by the Board to be ineligible compared to prior language indicating the presence of such feature "will" be determined to be ineligible. Commenters (19), (44) indicated that it is important for staff and the Board to have the flexibility to waive the presence of such features if the developer can demonstrate that the feature would not negatively impact residents.

Commenters (23), (33) expressed concern over how the proposed distance modifications were derived and suggested that they should mirror HUD requirements. Commenter (23) requested an explanation as to why the changes were made and what they were based on as it relates to the proximity to a railroad track, high voltage lines and the distance from a refinery.

Commenter (24) recommended that, at a minimum, the distances in this section should remain at the greater of the 2016 distances or those proposed in the 2017 draft on the basis that while most of us have many housing choices available to us and would choose not to live in proximity to some of the undesirable site features, there is no reason to believe the desires of a low-income household would be any different.

Commenters (28), (42), (54) requested clarification on what is meant by use of the term "intervening barriers" in this section as it relates to the distance between the undesirable site feature and the proposed development site. Specifically, commenter (28) questioned if a there is an intervening barrier (i.e. river) that separates a development site from a nuclear plant, for example, whether the nuclear plant is considered an undesirable site feature. Similarly, commenters (28), (42) questioned if there is a noise suppression wall between a railroad track and a development site then whether this constitutes an undesirable site feature, even if the railroad track is within the applicable distance from the development site. Commenters (42), (54) asserted much of the new language in this section is far too subjective and questioned how the Department intends to define such things as high speed roads, which are listed separately from highways.

Commenters (42), (43), (54), (60), (73) proposed the modifications listed below and commenters (42), (54) further explained the language regarding the primary purpose of the list should be removed since a number of the items relate to safety (i.e. nuclear power plants and airport accident zones). Commenters (42), (54) expressed support for the changes to high voltage power lines since fire burning near them can create electrical arcs or flashovers which could endanger near-by residents and also expressed support for the distance from a nuclear power plant state such change is in line with the Nuclear Regulatory Commission's first (of two) Emergency Planning Zone (plume exposure pathway zone). "(2) Undesirable Site Features. Development Sites within the applicable distance of any of the undesirable features identified in subparagraphs (A) - (K) of this paragraph may be 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 undesirable feature. Where there is a local ordinance that for closer proximity to such undesirable feature than 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. 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...(D) Development Sites in which the buildings are located within 100 feet of the easement of any overhead high voltage transmission line, or support structures for high voltage transmission lines. This does not apply to local service electric lines and poles; (E) Development Sites located within 100 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..."

Commenter (74) questioned that if there are significant intervening barriers between a site and an undesirable site feature, what is the process for submission and proof that those barriers provide mitigation of any sensory concerns and additionally questioned whether these would be Board determinations that must be submitted at a certain point in the application process. Commenter (74) also stated the new language in this section that speaks to addressing sensory concerns such as noise or smell, there should be an avenue for the applicant to prove existing mitigation or provide mitigation of any sensory concerns for a site that would otherwise be ineligible within such distances. Commenter (74) provided by way of example, a site located 1.99 miles from an oil refinery, would be extremely unlikely to have any sensory noise or smell factors that would render it undesirable and ineligible.

Commenter (52) recommended proximity to transmission lines be removed as an undesirable site feature. Should it remain; however, commenter (52) recommended that it be modified to state that buildings should not be placed within a power company right-of-way. Commenter (52) indicated that these right-of-ways are sized based on the amount of power carried over the lines.

Commenter (52) recommended the following modification based on their observation that there have been uninformed challenges to applications where the challenger made statements or assumptions that were incorrect, for example, the presence of oil refineries in the area means the air quality is bad. Commenter (52) believed that such burden of proof should be on the challenger, especially in instances where, in this example, the air quality data indicates it is below national and state air quality standards. "(K) Any other Site deemed unacceptable, which would include, without limitation, those with exposure to an environmental factor that have proven adverse affects on the health and safety of the residents and which cannot be adequately mitigated."

Commenter (33) stated the new language that requires documentation "such as a copy of the local ordinance identifying such distances relative to the Development Site must be included in the Application" is unduly burdensome and creates an opportunity for a challenge if a developer is unaware of a particular ordinance after reasonable due diligence on the matter.

Commenter (51) recommended the proximity to the railroad track be modified to state the 500 feet should be measured from the centerline of the railroad tracks to the nearest property boundaries.

Commenter (47) stated the 500 feet distance from a railroad track is excessive and should be relaxed to 200 to 300 feet.

Commenter (77) stated the Department of Transportation does not regulate development nor does it have any separation requirements from railroads.

Commenter (72) indicated easements on other people's property will not be revealed on a survey and; therefore, requested the distance requirements relating to high voltage power lines revert to the 2016 requirements.

Commenter (40) recommended 4% applications for existing residential developments (i.e. HUD Project Based Section 8 and existing Section 42 developments) should be exempted on the basis that such developments should be encouraged considering it is not feasible or practical to relocate existing housing. Commenter (40) further stated that the applicability of these site features is more appropriate for 9% applications.

STAFF RESPONSE: In response to comments recommending that rehabilitation developments be exempt from the railroad distance separation requirement, staff notes that there is language in this section that speaks to an exemption that may be granted by the Board for a development with ongoing and existing federal assistance from HUD, USDA or Veterans Affairs. This provision has worked well over the several years that it has been in the rule and staff does not believe there is a sound, policy reason by which it should be modified.

In response to those commenters requesting clarification regarding use of the term "intervening barriers" in this section, staff agrees that the additional language creates confusion and recommends the additional language be removed. Staff also agrees with the suggestion by commenter (74) to remove the language that speaks to sensory concerns and has removed it accordingly.

In response to those comments requesting historic preservation developments be exempt, staff has modified the language to include such developments, provided they would qualify as historic

preservation under §11.9(e)(6) of the QAP. In response to other recommendations to reduce the distance requirement, staff proposes the distance remain at 500 feet but proposes to modify the measurement from the closest rail to the nearest boundary of the development site. Staff also notes that this section includes an option for mitigation to be provided should the distance be less than 500 feet.

Staff does not believe the language proposed by commenter (52) under option (K) is necessary in that should staff identify an environmental factor that could affect the health and safety of the residents, the applicant would have an opportunity, as the item suggests, to provide documentation that such environmental factor is adequately mitigated. Staff recommends no change based on this comment.

In response to those comments suggesting the distance from a high voltage transmission line be removed and the language just state that residential buildings cannot be in the easement of such lines, staff does not understand how a building would ever be in the easement. Staff recommends the distance remain at within 100 feet of the transmission line but has added clarifying language that it be within the nearest line or structural element. In response to those comments suggesting to define high voltage transmission lines as those that carry 138 Kv of power or greater, staff believes it would be difficult to document the actual KiloVolts associated with such transmission lines such that the undesirable site feature is not present. Moreover, data or other documentation was not provided by the commenters to substantiate that 138Kv is the threshold to be considered high voltage. Preliminary research by staff seemed to indicate such threshold could be as low as 115 Kv and be considered high voltage. Staff does not recommend any changes based on these comments and appreciates the support for this item from commenters (42) and (54).

In response to those comments that suggest the proximity from a refinery be reduced from 2 miles to 1,000 feet, staff has not received any data or other documentation to indicate the lesser distance is more appropriate than the current distance. Staff recommends no change based on this comment.

Staff agrees with those commenters requesting clarifying language if there is a local ordinance that has smaller distances than what is noted in this section and recommends the following modification but notes that even if there is a local ordinance, disclosure of the undesirable site feature would still be required: "Where there is a local ordinance that regulates the proximity of such undesirable feature to a multifamily development that has smaller distances than the minimum distances noted below, then such smaller distances may be used and documentation such as a copy of the local ordinance identifying such distances relative to the Development Site must be included in the Application."

In response to commenter (33) a copy of the ordinance would only be required to the extent an applicant was pursuing a development site that is closer in proximity to any of the undesirable site features noted. Absent such ordinance staff would expect the distance to the development site to adhere to those noted in this section. Staff recommends no change based on this comment.

BOARD RESPONSE: Accepted staff's recommendation.

2. §10.101(a)(3) - Subchapter B- Undesirable Neighborhood Characteristics (13), (17), (19), (22), (24), (25), (28), (33), (34), (39), (40), (42), (43), (44), (50), (52), (54), (58), (59), (60), (63), (64), (69), (72), (73), (78)

COMMENT SUMMARY: Commenters (17), (44), (59) indicated that making a development site ineligible if located in a census tract with greater than 30% poverty will significantly impact the production of affordable housing in the inner city neighborhoods that are gentrifying and undergoing active revitalization. Commenters (17), (59) suggested the language from 2016 be reinstated, allowing for a 40% poverty rate (55% for Regions 11 and 13) and further suggested the performance of the schools be stricken from consideration of ineligibility since the applicant has no control over the decision making process regarding school performance. Commenter (23) similarly recommended the higher limits for the poverty rate for Regions 11 and 13 be added back to this section. Commenters (13), (19), (22), (39), (33), (42), (43), (44), (54), (58), (60), (64), (72), (73) also requested the poverty rate increase to 40% with commenters (13), (22), (39), (42), (43), (54), (58), (60), (64), (69), (73) requesting the following language be added: "(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 40% 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, evidence of gentrification in the area (which may include contiguous census tracts) and a clear and compelling reason that the Development should be located at the Site. ."

Commenters (25), (52), (59), (63), (69) requested the undesirable neighborhood characteristics be removed in their entirety, or should they remain, commenters (25), (59), (63) recommended the most restrictive proposed language be changed back to 2016 standards. Specifically, commenters (25), (63) requested the poverty rate be increased back to 40% on the basis that at 30% poverty there are approximately 20% of the census tracts that would be excluded from receiving or preserving affordable housing. This would, according to commenters (25), (63), exclude areas of gentrification and areas of mixed-income and is in direct conflict with federal statute that encourages developments in QCTs which often have poverty rates greater than 30%. Commenters (33), (52) similarly expressed that increasing the poverty rate back to 40% would allow for inclusion of revitalization areas worthy of redevelopment and reinvestment. If the poverty rate remains at 30%, commenter (52) requested 4% applications be exempt from the requirement since the lower threshold would eliminate most qualified census tracts and destroy the 4% program.

Commenters (17), (59) stated that blighted structures and school performance are not within the control of an applicant to solve and; therefore, an applicant would not be able to demonstrate "satisfactory mitigation" or the "strong likelihood of a reasonable rapid transformation of the area to a more economically vibrant area" as required under the proposed rule.

Commenters (13), (22), (23), (39), (42), (43), (54), (58), (60), (64), (73) recommended the blight provision be modified to require disclosure if the proposed site is located within at least 5 vacant structures, rather than use of the current word "multiple" while commenter (52) requested specification and suggested it be modified to state at least 20 vacant structures and commenter

((69) suggested it be modified to reflect at least 15 vacant structures. Commenters (13), (22), (39), (42), (43), (54), (58), (60), (64), (69), (73) further recommended the following revision to this section: "(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. 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."

Commenter (33) indicated that blight should be expected in revitalization areas. Commenter (78) expressed that in major cities the appearance of a vacant, derelict, or overgrown building may not be indicative of a vacant property, high crime area or undesirable location for urban redevelopment. Commenter (78) stated that dwellings in such condition may in fact be occupied by a living tenant, possibly elderly persons, living without assistance that may be unable to care for their yard. Commenter (78) asserted that ambiguity in the definition of urban blight has the potential to lead to irregular application of the criteria leaving many neighborhoods characterized as undesirable for development purposes when they should not be.

Commenter (52) indicated the 1,000 foot distance requirement for proximity to a blighted structure is too far and recommended the distance be shortened to 300 feet on the basis that it is too easy for a challenger to find a house in some surrounding neighborhood owned by someone who doesn't take care of their property in a radius that large that wasn't disclosed by the applicant. Commenter (52) further indicated that most cities are reluctant to require a private property owner to make repairs, paint or cut their grass unless there is a health risk.

Commenters (13), (22), (39), (42), (43), (52), (54), (58), (60), (64), (69), (73) recommended the violent crime provision be removed from consideration in the rule with commenter (13) stating that use of Neighborhoodscout requires a paid subscription, the data is not transparent and the fact that some of the most successful public housing redevelopment efforts have involved high-crime areas. Commenter (58) indicated that because crime can fluctuate significantly from year to year it doesn't seem reasonable to use such criteria in evaluating a site. Commenter (13) asserted that the Department should be part of the solution, rather redline neighborhoods that have some of the greatest housing need. Commenters (13), (22), (39), (42), (43), (54), (58), (60), (64) requested the following modification: "(ii) Evidence that crime rates are 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."

Commenters (19), (25), (63), (69) recommended that the three consecutive year Met Standard requirement for schools be deleted from this section, asserting that TEA ratings do not provide sufficient reason for directing affordable housing away from large numbers of neighborhoods and communities. Commenters (19), (25), (63) expressed the belief that safe, affordable housing options are increasingly viewed by educators as an important element in reducing school transfers and absenteeism and improving grades among low income students.

Commenters (13), (22), (39), (42), (43), (54), (58), (60), (64), (73) suggested that only elementary schools that do not have the Met Standard rating be required to disclose and that the performance of middle and high schools be removed from this section, with commenter (13) citing the reality that many kids attend charter schools and elementary schools are often neighborhood schools that include a majority of children living in affordable housing. Commenters (13), (22), (39), (42), (43), (54), (58), (60), (64), (69), (73) further suggested the following modifications to this item: "(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. 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."

Commenter (52) recommended schools that do not achieve Met Standard be removed as an undesirable neighborhood characteristic.

Commenters (17), (59) requested that the language be modified such that if an undesirable neighborhood characteristic exists, then in order for the development site to be considered eligible the applicant should only be required to provide evidence that such area is covered by a concerted plan of revitalization to demonstrate satisfactory mitigation for each characteristic disclosed. Commenter (69) recommended the requirement for a concerted plan of revitalization if a site involves three or more undesirable characteristics be removed from the rule.

As it relates to mitigation, commenter (13) indicated the proposed language is much stricter and severely constrains the Board in exercising discretion. Commenter (13) requested the language be modified to restore the discretion that was in the rule before the court dismissed the Dallas lawsuit. Moreover, commenters (13), (50) recommended that because the undesirable neighborhood characteristics are interwoven with fair housing, a letter from HUD stating that a site is consistent with site and neighborhood standards should be allowed as mitigating evidence. Along those lines, commenters (13), (22), (39), (42), (43), (50), (54), (58), (60), (64), (73) recommended the following modifications to this section: "(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 at least one of the goals in clauses (i) - (iii) of this subparagraph. (i) Preservation of existing occupied affordable housing units subject to federal rent or income restrictions and mitigating evidence supports a conclusion that the characteristic will be remedied in an appropriate time period, which may be after placement in service; or; (ii) Factual determination that the undesirable characteristic(s) that has been dis-

closed 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; or" (iii) The Development satisfied HUD Site and Neighborhood Standards or is necessary to enable the state, a participating jurisdiction, or an entitlement community to comply with its obligation to affirmatively further fair housing, a HUD approved Conciliation Agreement, or a final and non-appealable court order."

Commenter (44) requested clarification regarding the instances by which the Board can find a development site eligible despite the existence of such characteristics, specifically as it relates to the language "subject to federal rent or income restrictions." Commenter (44) indicated this section appears to indicate a project must be preservation or federally sources in order for the Board to have the ability to consider it eligible. Commenter (44) asserted that while staff did an amazing job of adding scoring items to the QAP that allow Urban core projects to compete, this decision regarding eligibility directly impedes those projects that might score competitively under the new scoring priorities and; therefore, commenter (44) recommended the following modification to this section: "(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; or (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.

Commenters (13), (19), (22), (39), (42), (43), (44), (54), (58), (60), (64), (69), (73) requested that Single Room Occupancy developments be exempt from having to disclose the presence of low-performing schools, with commenters (19), (44), (64) stating that such developments have similar, if not more restrictive, occupancy standards as elderly limitation projects which are exempt from the school requirement. Commenters (25), (63) asserted that all elderly properties (preference and limitation) along with supportive housing developments targeting only adults should be exempt, indicating that it is rare that a single child would live at such properties. Commenter (25) stated that development and housing decisions should not be based on rare exceptions, but rather to serve the intended target population that the building will specifically serve.

Commenters (19), (44) suggested that only in instances where any 3 or more undesirable neighborhood characteristics exist should an applicant be required to provide the detailed report as required in this section. Similarly, commenters (25), (44), (63) requested that instead of all of the items being required as part of the report, only those that relate to the undesirable characteristic at hand. Requiring all of the items, according to commenters (25), (44), (63) is an excessive amount of information for the applicant to compile and staff to review. Commenter (34) indicated that the newly added requirement of an applicant submitting a report that outlines the disclosures and in-depth research of the area for staff review is labor intensive for both the applicant and staff further contending that these requirements can interfere with transactional timelines that may jeopardize a housing development unnecessarily. Commenter (33) expressed that the mitigation of such undesirable characteristics is highly subjective and creates an undue burden on the development community and the Department for review and further added that such subjectivity increases the likelihood of inconsistency of opinions on applications.

Commenter (24) indicated that no changes should be made to the undesirable neighborhood characteristics noted in this section and asserted that without a QAP, these are the only controls staff has on what the locational priorities are in awarding multifamily funding outside of the competitive housing tax credit applications. Commenter (24) stated that any decision to remove these in their entirety disregard the well-documented effects that such characteristics have on the levels of opportunity afforded to neighborhood residents, as well as their general quality of life. Commenter (24) expressed support for use of Neighborhoodscout in assessing the level of crime, since it is the best data that currently exists. Commenter (42), (54) indicated that this section is largely irrelevant for 9% applications due to the competitive nature of the program and incentives for high opportunity areas but believe this section is still necessary as threshold to ensure 4% developments are not placed in undesirable locations.

Commenters (22), (39), (42), (43), (50), (54), (58), (60), (64), (69), (73), (78) along with similar sentiments from commenter (34), recommended that the entire undesirable neighborhood characteristics section be deleted in its entirety on the basis that it is a remnant of the remediation plan and the dismissal of the ICP litigation warrants its removal. Moreover, commenters (22), (39), (42), (43), (54), (58), (60), (73), (78) indicated that such neighborhood characteristics work to eliminate large swaths of urban areas and the inherently faulty and inconsistent results found through the use of Neighborhoodscout and TEA school performance, such measures are of questionable value in determining the worth of certain neighborhoods. Similarly, commenters (64), (78) contended that the undesirable neighborhood characteristics are largely biased against urban core development and inhibits redevelopment in the most rapidly gentrifying parts of major metro areas with commenter (78) further indicating that should this section remain, the language should be altered such that re-development should be allowed to occur in the urban core of the State's largest cities.

Commenter (78) stated that based on the criteria relative to crime, nearly the entirety of the inner loop of Houston would be classified as an undesirable neighborhood which arguably indicates other large cities in Texas would be classified in the same way. Similar to that of crime, commenter (78) indicated that there is a high probability of being in proximity to a school that does not have the Met Standard rating based on a representation in the Houston Chronicle that nearly 40% of campuses in the Houston ISD were characterized as poor performers, with Dallas ISD reflecting the same percentage, the two of which comprise the two largest school districts in Texas.

Commenter (28) stated that the requirement that the undesirable characteristic be cured or mitigated by the time of placement in service is too rigid and further stated that communities undergoing revitalization take time to change and concurred with the recommendation by commenter (22) that this section be modified to indicate such undesirable neighborhood characteristics may be remedied after placement in service. Commenter (28) further expressed that the construction or rehabilitation of a development can promote other positive changes. Similarly, commenter (69) requested this be modified to reflect the undesirable

characteristic be sufficiently mitigated 5 years after placement in service.

Commenter (40) recommended that these characteristics should not apply to HUD assisted Project Based Section 8 and existing Section 42 developments and requested language be added that would exempt such developments. Commenter (40) also recommended the following modification to the beginning paragraph of this section, stating that 4% applications utilizing a local issuer should be provided with the same opportunity for a determination regarding eligibility. "(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, 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."

Commenter (40) expressed concern over the added language that "preservation of affordable units alone does not present a compelling reason to support a conclusion of eligibility" because it seems to indicate preservation of existing affordable housing is not a priority for the Department. Commenter (69) recommended such language be removed from the rule.

Commenter (50) requested all mitigation requirements for undesirable neighborhood characteristics should be removed from the rule for existing occupied affordable housing that are subject to state or federal income restrictions further contending that if such characteristics are not able to be mitigated the residents will still reside at the property but without the benefit of rehabilitation of their residence.

STAFF RESPONSE: The presence of undesirable neighborhood characteristics does not automatically indicate a development site is ineligible. There are benchmarks and/or thresholds that simply indicate a more detailed assessment of the site and neighborhood needs to occur. Staff believes it is important for applicants to perform an initial evaluation of their sites with respect to all of the undesirable neighborhood characteristics and this rule encourages that evaluation. While a number of commenters requested this section be removed from the rule entirely, staff believes the safety, well-being of tenants and the decency of affordable housing should be of utmost importance and; therefore, recommends the section not be removed.

As it relates to comments received on the poverty rate; specifically that such rate revert to 40% with a consideration of 55% for Regions 11 and 13, staff agrees and has modified the proposed language accordingly. This section has also been modified to incorporate a number of comments to allow for gentrification as a way to address poverty rate. Staff recommends the following modification: "(i) The Development Site is located within a census tract that has a poverty rate above 40 percent for individuals (or 55 percent for Developments in regions 11 and 13)....(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, evidence of gentrification in the area which may include contiguous census tracts that could conceivably be considered part of the neighborhood containing the proposed Development, and a clear and compelling reason that the Development should be located at the Site."

In response to the suggestion by commenter (40) that allows for a pre-determination where the Department is not the issuer, staff agrees and has modified the language to reflect the following: "(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 or for Tax-Exempt Bond Developments utilizing a local issuer such documentation may be submitted with the request for a pre-determination 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 that point in time regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information related to any of the undesirable 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."

As it relates to blight, several commenters provided suggestions for quantifying a specific number of blighted structures that would necessitate disclosure and there were also comments recommending the distance to such blighted structure be reduced. Staff could not identify a sound basis for incorporating one number over another and recommends no change to this section based on these comments. Moreover, while it may be true that blight is present in revitalization areas, staff also believes that there should conceivably be a plan to address the blight. In response to commenters who stated that blight in the neighborhood is not within the control of the applicant, staff recommends a modification to the manner in which it could be mitigated as reflected in the following: "...Acceptable mitigation to address extensive blight should include a plan whereby it is contemplated that a responsible party will use the property in a manner that complies with local ordinances...."

As it relates to crime, several commenters requested this undesirable characteristic be removed from the rule entirely mostly

based on the assessment tool used (i.e. NeighborhoodScout) to trigger the need for disclosure. Recognizing that how local police departments report crime differs from city to city, NeighborhoodScout is the only universal benchmark by which such evaluation can be performed. Staff believes the rule provides additional flexibility in the data source or other information that can be used as mitigation. In response to several commenters who suggested removal of the word "substantially" as it relates to the trend of crime rates, staff agrees that the inclusion of such word could make it difficult to assess and proposes the word be removed.

As it relates to schools, a school that has failed to achieve Met Standard for consecutive years may be indicative of a systemic issue that requires more time and resources to turn the school around. The Texas Education Agency ratings and corresponding data can be a good initial assessment into performance trends. In response to comments that only the performance of the elementary school should be considered, staff believes that children residing in affordable housing should have the opportunity to receive a quality education from all three schools in the attendance zone and; therefore, all three schools should be included in the disclosure. Staff has not been provided with information that presents a sound, policy reason for excluding middle and high school performance and recommends no change based on these comments. Regarding the proposed modification from several commenters to remove the letter from an education professional that speaks to the degree to which the staff tasked with carrying out the goals and objectives will be successful as mitigation for school performance, staff believes that such letter is appropriate considering that prior staff and/or administration had been unsuccessful. It is worth understanding what makes the plan they have in place now is what it will take to turn the school around. Staff recommends no change based on this comment.

As it relates to comments received regarding criteria by which the Board would need to evaluate in order to find a site eligible, staff believes it is important to evaluate rehabilitation developments in a similar fashion as new construction developments in terms of severity of the undesirable neighborhood characteristics disclosed. This is important considering staff has seen rehabilitation developments where there are no undesirable characteristics present. Staff recommends no change based on these comments.

In response to commenter (44) requesting clarification on the phrase "subject to rent or income restrictions", an application that is awarded would be subject to rent and income restrictions. This was not intended to indicate preservation would have to already have these restrictions in place before being considered eligible.

Several commenters recommended a third criterion by which the Board could find a site eligible be added that includes documentation that the site satisfied HUD Site and Neighborhood Standards. The Department has been informed that HUD is no longer doing such reviews for HOME and that it is now the responsibility of the participating jurisdiction. Moreover, the standards by which HUD evaluates a site and neighborhood may not necessarily align with the policies and objectives of the Department. Staff agrees with those commenters that recommended prior language be added back that speaks to the development fulfilling an obligation to affirmatively further fair housing, a HUD Conciliation Agreement, etc. and has incorporated such language in the form of a waiver that is requested. Specifically, staff recommends the following modification to this section: "(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) - (iii) of this subparagraph. (i) Preservation of existing occupied affordable housing units to ensure they are safe and suitable or the new construction of high quality affordable housing units that are subject to federal rent or income restrictions; 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.; or (iii) The Applicant has requested a waiver of the presence of undesirable neighborhood characteristics on the basis that the Development is necessary to enable the state, a participating jurisdiction, or an entitlement community to comply with its obligation to affirmatively further fair housing, a HUD approved Conciliation Agreement, or a final and non-appealable court order and such documentation is submitted with the disclosure."

In response to commenters who requested that Single Room Occupancy and Elderly Preference developments be exempt from the school performance characteristic, staff maintains that a development characterized as Elderly Preference includes the possibility of residents of school age and; therefore, maintains that such target population not be exempt from this undesirable characteristic. Moreover, staff has concerns regarding exempting Single Room Occupancy developments because generally staff does not believe an adult with a child could lawfully be refused occupancy at a Single Room Occupancy development, unless a federal funding source has a specific exemption.

In response to comments relating to the content of the Undesirable Neighborhood Characteristic Report, staff believes that regardless of the number of characteristics applicable to a particular site, the Report should still be submitted. Staff agrees with the comments made that only information that pertains to the characteristic would need to be addressed in the report and has modified this section to reflect the following: "(B) The undesirable neighborhood characteristics include those noted in clauses (i) - (iv) of this subparagraph and additional information as applicable to the undesirable neighborhood characteristic(s) disclosed as provided in subparagraphs (C) and (D) of this paragraph must be submitted in the Application....(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 as such information might be considered to pertain to the undesirable neighborhood characteristic(s) disclosed so that staff may conduct a further Development Site and neighborhood review."

Staff appreciates the support expressed by commenter (24).

In response to comments that the undesirable neighborhood characteristics would preclude inner city preservation or new construction developments, staff notes that no such categorical exclusion resulted in 2016 after review of approximately 52 4% HTC applications with undesirable neighborhood characteristics.

Several comments were received that requested the timeframe by which the undesirable characteristic should be mitigated should be allowed to extend beyond placement in service. Staff believes that such flexibility is contemplated in the current language and has further modified this section of the rule for

clarity as reflected in the following, along with removing what might be considered an inconsistency regarding the evaluation of such timeline in another part of this section. "(B)....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 and reasonable expectation the undesirable characteristic will be sufficiently mitigated or significantly improved within a reasonable time, typically prior to placement in service, and that the undesirable characteristic demonstrates a positive trend and continued improvement. Conclusions for such reasonable expectation may need to be affirmed by an industry professional, as appropriate, and may be dependent upon the severity of the undesirable neighborhood characteristic disclosed. (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. "

BOARD RESPONSE: Accepted staff's recommendation.

3. §10.101(b)(1) - Subchapter B- General Ineligibility Criteria (22), (23), (66), (80)

COMMENT SUMMARY: Commenters (23), (66) indicated that the addition of adaptive reuse as it relates to one-for-one replacement units is not appropriate since adaptive reuse by definition includes no units because it was not being used for residential. Commenter (23), (66) recommended the following modification: "(vi) A Development utilizing a Direct Loan that is subject to the Housing and Community Development Act, §104(d) requirements and proposing Rehabilitation, Reconstruction, if the Applicant is not proposing at least the one-for-one replacement of the existing unit mix. Adding additional units would not violate this provision."

Commenters (22), (80) recommended the following modification to the limitation on development size and stated that the QAP in prior years allowed for developments in rural areas that exceeded 80 units, specifically noting that similar language to what commenters (22), (80) proposed was included in the 2004 QAP. Commenters (22), (80) indicated that rural areas exist in major MSAs such as Dallas, Austin, Houston, San Antonio, El Paso and McAllen that have significant demand and the market study is the most reasonable method to determine the number of units demand in the market. Commenter (80) further indicated that there have been 33 developments that have placed in service in rural areas that exceed 80 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. New Construction Tax-Exempt Bond Developments may exceed 80 units if the Market Analysis clearly documents that there is significant demand for additional Units. Other Developments do not have a limitation as to the maximum number of Units."

STAFF RESPONSE: In response to removing adaptive reuse as a one-for-one replacement staff agrees and has made the change as requested.

In response to the proposed changes by commenters (22), (80) relating to the development size limitations, staff believes that the ability to exceed 80 units is already contemplated in the rule via the waiver process and that such requests are better addressed on a case-by-case basis and based on more information that may be available other than solely a Market Study.

BOARD RESPONSE: Accepted staff's recommendation.

4. §10.101(b)(3) - Subchapter B- Rehabilitation Costs (27), (40), (50)

COMMENT SUMMARY: Commenter (40) recommended the minimum thresholds for rehabilitation costs be reduced to $15,000 per unit regardless of age. According to commenter (40) the increased levels will effectively encourage long-term owners of affordable housing to not maintain their property at high levels, it will encourage a waste of scarce resources (9% HTC and tax-exempt bonds) for developments that don't need more than $15,000 to $20,000 per unit of rehab. Commenters (27), (40) expressed the belief that lenders and investors should determine the level of rehab needed and are incentivized to ensure that any rehabilitation adequately addresses the short-and long-term needs of a property, with commenter (40) further stating that the increased thresholds would likely encourage existing Section 42 properties that have completed their initial 15-year compliance period to go to market versus preservation through re-syndication.

Commenter (27) stated the proposed increases for 4% developments will exclude many large multifamily projects from utilizing the tax credit program for substantial renovations and further explained that the availability of soft financing has decreased and the criteria for even obtaining such are skewed heavily towards developments that are more likely to receive a 9% allocation. Commenter (27) contended that in order to fund such rehabilitation costs, what doesn't get funded from equity will need to be funded from additional debt or deferred developer fee. Commenter (27) suggested that if the Department is concerned that credits would be allocated to projects that were not including enough in renovation expenditures to adequately preserve the property through the Compliance Period, perhaps it would be more precise to incorporate threshold criteria which require that systems of a certain age be replaced or that certain scope items be addressed absent some evidence of recent improvements addressing those items. Commenter (27) further stated that while the per unit minimum establishes a dollar amount to be spent, it does not necessarily direct that those dollars be spent on items that will preserve and enhance the property.

Commenter (50) requested the rehab costs per unit not be increased because it is an arbitrary cost considering the great diversity of developments throughout the State. Commenter (50) further recommended including exception language allowing the Department to approve a lesser amount of rehab per unit if a third party PCA, which meets Department requirements, supports the lower per unit rehab amount, and a letter from the investor/syndicator stating they have reviewed the PCA and support its conclusions that the rehab budget and scope of work is sufficient to extend the useful life of the development throughout the initial compliance period is submitted with the Application.

STAFF RESPONSE: In response to those commenters who recommended the minimum threshold costs be reduced, staff does not believe a reduction to $15,000/unit regardless of the age of the property is consistent with the needs of the property. Moreover, staff disagrees with the sentiment expressed by

commenter (40) that the higher levels required would prevent the preservation of the affordability and would lead the property to go to market. Staff believes that the rehabilitation should be at a level that would allow the property to compete with market and that absent improvements to the property it would not be in a position to compete in the market. Staff does; however, believe the proposed increase by $10,000/unit for those properties less than 20 years old might be too much of an increase and that it would be more appropriate that for these properties the level is reduced to $20,000/unit. Since presumably such costs are funded with the tax credit proceeds and credit pricing remains at relatively high levels staff believes an increase nonetheless is appropriate. Staff believes the suggestion by commenter (27) is reasonable in that depending on the age of the property and absent recent improvements, it could make sense to require certain systems be replaced as part of the scope of work or that a certain level of improvements address the interior and exterior of the development; however, this would be a more substantive change that would necessitate additional public comment and could be considered in subsequent year rule-making.

In response to commenter (50) staff does not believe adding language to the rule that would allow for a lesser amount is appropriate. While the PCA is intended to document the scope of work needed for the development, staff believes that to the extent this scope of work does not meet the minimum threshold requirement for rehab costs as reflected in this section that the applicant is allowed to further add items to the scope of work beyond just those that the PCA provider identified. In such instances, staff would require the PCA provider review those additional items and sign off on those being appropriate needs for the development.

BOARD RESPONSE: Accepted staff's recommendation.

5. §10.101(b)(4) - Subchapter B- Mandatory Development Amenities (22), (23), (31), (33), (39), (40), (42), (43), (54), (58), (60), (62), (66), (67), (73)

COMMENT SUMMARY: Commenters (22), (23), (33), (39), (40), (42), (43), (54), (58), (60), (62), (73) disagreed with the addition of solar screens as a mandatory amenity for all developments and commenter (23) stated that in addition to the enormous cost associated with the screens, there could be potential conflicts and/or violations with local design ordinances. Commenter (23) provided comments from green building consultants who purportedly indicated that solar screens will reduce the effectiveness during winter to help heat the units, solar screens reduce the amount of natural daylight coming into the room, and that other green building features can be used to show equivalent or better energy savings instead of mandating solar screens for all units. Commenters (22), (23), (33), (39), (42), (43), (54), (58), (60), (62), (73) recommended that solar screens be added as a Green Building amenity at the option of the applicant, and not mandated. Commenter (40) requested the solar screen requirement be defined with more detail and further added that they shouldn't be required on existing affordable housing, especially where the windows are in good condition and are not being replaced.

Similarly, commenter (31), (58), (66) indicated that rather than requiring solar screens, a better solution to address the problem of energy use and heat infiltration is to install better quality windows which would have a more effective, longer-lasting solution and further stated that if solar screens are attached to window frames it may void the manufacturer's warranty. Commenter (31), (66) suggested that an alternative to solar screens could include mandating a specific window value (SHGC) minimum, appropriate per climate zone, or exempting those who achieve a Green certification since such certifications already include minimum standards for windows and shading.

Commenters (22), (39) stated that modern PTAC units are energy and cost efficient and older existing buildings typically don't have the plate height to allow for both central air and a reasonable ceiling height. While the current rule allows for PTAC units in historic preservation properties, this is an undefined term and commenters (22), (39) recommended historic preservation be replaced with Rehabilitation which is a defined term, as reflected in the following: "(L) All Units must have central heating and air-conditioning (Packaged Terminal Air Conditioners meet this requirement for SRO or Efficiency Units only or Rehabilitation where central would be cost prohibitive); and"

Commenter (67) requested clarification regarding the parking requirement in this section and stated that many urban developments include market rate units and with those units, covered parking as a way to add additional income to help make the development feasible. Commenter (67) indicated the current language is too limiting and does not allow for flexibility and; therefore, recommended the following modification: "(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 affordable units at no cost."

Commenter (40) recommended that ceiling fans not be required on existing affordable housing where ceiling fans never existed.

Commenter (58) requested clarification regarding the RG-6/U COAX or better option under this section, specifically what the "U" is supposed to be an indicator of since there does not seem to be an industry standard definition.

STAFF RESPONSE: In response to commenters (22), (23), (33), (39), (40), (42), (43), (54), (58), (60), (62), (73) staff has removed the requirement that solar screens be mandatory and has instead, in response to commenters (22), (23), (33), (39), (42), (43), (54), (58), (60), (62), (73) moved the item to the Limited Green Amenities section such that it would be a matter of choice on the owner whether or not to provide. This option is separate and apart from the permanent shading device already listed under the Limited Green Amenities. Moreover, staff modified language in this section to require screens on all operable windows.

In response to commenter (40) regarding ceiling fans, staff believes this amenity is one that would be of beneficial use to tenants and should be provided, regardless of whether a ceiling fan currently exists on proposed rehabilitation developments.

In response to commenter (58) regarding the RG-6/U COAX, staff believes this to be the most recent technology and believes the "U" to represent "universal."

In response to commenters (22), (39) regarding the suggested modification on PTAC units, while staff agrees that historic preservation is not a defined term, replacing the term with rehabilitation effectively eliminates the requirement for all rehabilitation developments. Staff believes that the general high caliber of rehabilitation expected by the Department requires that central air conditioning remain a requirement for rehabilitation developments; however, should the Board choose to offer some relief to Applicant's proposing rehabilitation, specifically

where there is a demonstrated structural need, the Board may still approve a waiver on a case-by-case basis.

In response to commenter (67) requesting a modification to the parking requirement, staff believes that free parking should be provided for affordable and market rate residents alike to prevent market rate residents who do not want to pay for parking from parking on neighborhood streets.

BOARD RESPONSE: Accepted staff's recommendation.

6. §10.101(b)(5) - Subchapter B- Common Amenities (40), (42), (43), (44), (54), (58), (60), (73), (79)

COMMENT SUMMARY: Commenter (79) indicated that there is not a EPA WaterSense specification for kitchen faucets as is currently reflected in the Green Building Features in this section.

Commenter (40) suggested there is no differentiation for rehabilitation of existing affordable housing and recommended they be treated differently with lower required amenities or provide more points for rehabilitation developments using 4% housing tax credits. Specifically, commenter (40) along with commenters (42), (43), (54), (60), (73) suggested the furnished community room should be worth two points or more because as written a community theater room is worth 3 points but yet a community room is only one point which will dissuade developments from having a furnished community room (and such amenity receives the same points as a horseshoe pit or bicycle parking). Commenter (40) suggested community dining room be defined because it is not clear if this is a separate room or could be included in the community room and asked whether it was a simple as a few tables where people could eat dinner. Moreover, according to commenter (40), the radiant barrier option should be modified to allow rehabilitation developments to be eligible for the points because such barrier can effectively be added to the underside of roof sheathing in renovation developments or where roofs are being replaced.

Commenter (44) stated that full perimeter fencing alone is not an amenity and that if the goal of this point item is security then it should be combined with controlled gate access for a maximum of two points.

Commenter (44) explained that in their experience one printer for every three computers is excessive and unnecessary and suggested requiring one printer per computer lab.

Commenter (44) suggested shade from trees be included as a shade option and further stated that it would be counterproductive to install an awning when a playground is adequately shaded by trees.

Commenter (44) requested clarification concerning the amount of bicycle parking and recommended "one bicycle per five units" be added to this amenity option.

Regarding the Green Building amenities, commenter (44) contended that green building features benefit both the residents and the owners and believed the point category should allow for more than four points and suggested it be modified to reflect six points with the Limited Green Amenities option increasing to four points. Commenter (44) also suggested Solar Arrays be added as its own Green category for two points.

Commenter (44) identified several options under Limited Green Amenities that are difficult to verify as constructed without a Third Party consultant such as those used for Enterprise Green Communities and LEED and further explained that it is beyond the means of Department staff and suggested limiting these options to those items that are high impact and verifiable. Commenter (44) recommended the following items be removed on the basis that they are difficult to verify: "(-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; (-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; (-m-) locate water fixtures within 20 feet of water heater;"

Commenter (44) recommended the installation of individual or sub-metered utility meters for electric and water be removed because it is already Texas code and indicated the healthy finish materials option is too vague as to how much finish materials should be used. Commenter (44) recommended that because this item is difficult to verify, it should be removed. Commenter (40) recommended allowing rehabilitation developments to be eligible for points for individually metered water and electric because if the development was built with individual meters or is changing to individual meters they should be allowed the same points as new construction.

Commenter (44) recommended the provision for the construction waste management system that meets LEEDs minimum standards be removed on the basis that per LEED Version 4 it is extremely difficult to achieve now.

Commenter (44) suggested that the option for developments with 41 units or less, whereby at least 25% by cost FSC certified salvaged wood products be used, be removed because it is very expensive and there is no real benefit to the tenant or building.

Commenter (44) recommended the following options be combined into one in order to truly achieve water savings. "(-n-) drip irrigate at non-turf areas and sprinkler system with rain sensors; "

Commenter (44) recommended TPO roofs be added to the amenity option below since they are considered "cool" roofing. "(-o-) radiant barrier decking for New Construction Developments or other "cool" roofing materials;"

Commenter (44) recommended black-out shades be removed from the option below because they are easy to remove and not as efficient as exterior shading devices. "(-p-) permanent shading devices for windows with solar orientation (does not include solar screens, but may include permanent awnings, fixed overhangs, etc.);"

Commenter (44) recommended the following option be removed because Energy Star does not certify insulation products. "(-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);"

Commenter (44) indicated that because Floor Score only certifies vinyl flooring, other options should be added to the amenity in order to count for points and recommended the following modification: (-t-) FloorScore certified vinyl flooring, Green Label certified carpet, or resilient flooring;

Commenter (58) recommended modifications to the following amenities: "(xxxii) Porte-cochere (1 point); (xv) Service provider office in addition to leasing offices or a desk for service provider in leasing office. (1 point);"

Commenter (58) recommended adding the following options to the Limited Green Amenities section under Green Building Features. "(-w-) no carpet in main living area of all units; (-x-) locate HVAC ducts within thermal envelope; (-y-) label all storm drains and storm inlets on the development site to discourage dumping of pollutants."

STAFF RESPONSE: Staff agrees with the modification suggested by commenter (79) and has made the change.

In response to the multiple suggestions proposed by commenter (44) staff recommends the following: full perimeter fencing alone can be an amenity and can, absent controlled gate access provide an initial layer of protection of security that prevents individuals from passing through a property with, for example, immediate access to a first floor balcony; therefore, staff recommends no change; staff agrees with the comment regarding the one printer per computer lab and has made the change; staff believes that while trees could provide shade for a playground, this could be difficult to monitor and verify to ensure adequate shading is in fact being provided and recommends no change; staff does not believe that additional clarification is needed at this time related to the amount of bicycle parking and believes that it should be adequate for the development size and has added such language. Staff agrees with commenter (44) regarding the difficulty with verifying that HVAC condenser units be located such that they are 75% shaded and has removed this item from the list. Staff does not believe the other items noted by commenter (44) are difficult to verify, has not encountered issues with them and believes there could still be value associated with them and; therefore, recommends no change. In response to the suggestion of adding Solar Arrays as its own category, staff believes there could be some merit in exploring this for possible inclusion in the 2018 Uniform Multifamily Rules when there has been more research and public comment surrounding it. Moreover, staff believes there could also be some merit in re-evaluating the points associated with the Limited Green option but believes this would be better served in re-evaluating in 2018 where there is an opportunity for additional public comment.

In response to commenters (40), (42), (43), (54), (60), (73) staff agrees and has increased the point value associated with a furnished community room to 2 points.

In response to commenter (40) requesting that the community dining room be defined, staff does not believe additional clarification is necessary beyond what is already stated in the item. The introductory paragraph in this section states "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"; therefore, the community dining room could not be included in the community room and points received under both options.

In response to the sub-metering of electric and water staff believes any modification to this could benefit from additional public comment and therefore recommends that such change be contemplated for inclusion in the 2018 draft rules for public comment.

In response to commenter (44) that requested TPO roofs be added to the option for other "cool" roofing materials, staff believes such roofing materials could be used but doesn't believe TPO roofs specifically need to be incorporated into this item. Regardless of the roofing materials used under this option, an applicant would be required to provide documentation identifying the energy savings and something to document the materials are durable. Staff modified this item to provide this clarification as reflected in the following: "(-o-) radiant barrier decking for New Construction Developments or other "cool" roofing materials (documentation must be submitted that substantiates the "cool" roofing materials used are durable and that there are energy savings associated with them);"

Staff agrees with commenter (44) regarding removal of the blackout shades and has removed this from the option for permanent shading devices.

Staff believes that some of the suggestions proposed by commenter (44) such as combining the drip irrigate at non-turf areas and sprinkler system with rain sensors would be worth considering in the 2018 Rules when staff can better evaluate whether there are sufficient other items remaining on the list and there is an opportunity for additional public comment.

Staff does not agree with commenter (44) in removing the items relating to construction waste management and FSC certified salvaged wood products solely on the basis that they are difficult to achieve absent providing alternative options in their place to ensure there are still a sufficient number of items remaining by which applicants can choose from.

In response to the suggestion by commenter (44) to remove the Energy Star insulation products, based on staff's research such products are in fact certified and; therefore, absent any documentation to the contrary staff recommends this item remain.

Staff agrees with commenter (44) regarding the proposed changes to the FloorScore certified flooring and has made the modification as suggested.

In response to commenter (58) staff agrees with the suggestion to allow all developments the option to receive points for a Porte-cochere and has made the change accordingly. Regarding the suggestion to allow simply having a desk in the leasing office for the service provider, staff does not believe this equates to having a separate office for the provider in the leasing office and does not recommend this change.

In response to the additional options suggested by commenter (58) to be added to the list along with other suggestions by other commenters, staff believes more time and attention needs to be spent on the options listed under the Limited Green section as it relates to combining some items, removing and adding some based on whether they add value or not, such that there remains a sufficient number of options to choose from and that such revisions have had the opportunity to be open for public comment in order to receive more input. Staff recommends no changes other than the aforementioned modifications.

BOARD RESPONSE: Accepted staff's recommendation.

7. §10.101(b)(1)(6)(B) - Subchapter B- Unit Requirements (20), (40), (42), (43), (44), (53), (54), (73)

COMMENT SUMMARY: Commenters (20), (53) stated that the ability to use bond volume cap to revitalize multiple properties at one time could be a major solution to preservation efforts and in the interest of this cause recommended the following modifications to this section: "(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, unless the application is preserving multiple (3 or more) USDA rural properties under one bond transaction. 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.."

Commenter (40) indicated the seven point requirement for rehabilitation developments may be hard to achieve and suggested it be lowered for 4% applications. Moreover, commenter (40) requested clarification relating to high speed internet, specifically, whether a tenant can be charged for it or whether the owner just has to provide the ability for the resident to have high speed internet. Commenter (44) recommended the following clarification to the internet service option since the Department requires that such service be offered free of charge. "(xii) Free High Speed Internet service to all Units (can be wired or wireless; required equipment for either must be provided) (1 point);"

Commenter (40) suggested built-up or 4-ply flat roof be added as an option for flat roof developments to make it even with shingles, and further stated that there is a point consideration for a quality flat roof.

Commenters (42), (43), (54), (73) recommended the point value assigned to in-unit laundry equipment be increased to at least 2 points, if not 3 points and further argued that a community laundry room is worth three points under common amenities but it is a far less desirable amenity to tenants than having laundry equipment provided to them in their units.

Commenters (42), (54) recommended the following modification as it relates to exterior finishes: "(xv) Greater than 30 percent stucco or masonry (includes stone, cultured stone, and brick but excludes cementitious siding) on all building exteriors; the percentage calculation may exclude exterior glass entirely (2 points)."

Commenter (44) expressed that the list of features included in this section have been and still are too restrictive and should be expanded to allow for greater design options. Commenter (44) recommended the following amenities be added to the list because they provide value to the tenants and serve to improve the quality of developments. "Pantry (0.5 point); Breakfast bar (0.5 point); Walk-in closet in master bedroom (0.5 point); Low Flow Water Fixtures (0.5 point); Durable Flooring (1 point); Solar panels that directly offset the tenant's electricity bill (2 points)."

Commenter (44) indicated that because Energy Star dryers are cost prohibitive, the following modification should be made to the laundry equipment option: "(vii) Energy-Star qualified laundry equipment (washers) for each individual Unit; must be front loading washer in required accessible Units (1.5 points);"

Commenter (44) indicated that because R-value slabs are important in north Texas, the following modification should be made to the R-value requirements. "(x) Meet current R-value requirements (rating of wall/ceiling/slab system) of current IECC for the Development's climate zone (1.5 points);"

In order to incentivize Energy Star appliances, commenter (44) recommended the following modification to the HVAC option: "(xi) Energy Star Rated HVAC equipment (or greater) for New Construction, Adaptive Reuse, and Reconstruction or radiant barrier in the attic 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);"

Commenter (44) indicated that because the following option creates an accessibility conflict with 2010 ADA that it be removed: "(xii) Floor to ceiling kitchen cabinetry (1 point);"

Commenter (44) indicated the following option can add complications to ceiling assemblies due to fire rating and in their opinion do not add value for the tenant. Moreover, commenter (44) indicated that track LED lighting is difficult to source and should be removed.

Commenter (44) recommended a modification to the roofing option that includes TPO roofing material based on the following: many TPO roofing systems come with 30-year warranties and are arguably more durable and energy efficient than the commonly used 30-year shingle and TPO is a popular high-grade commercial roofing material with long term heat and UV resistance and a highly reflective, emissive white material that helps reduce energy costs and urban heat island effect. Moreover, commenter (44) explained the following practical benefits to a flat roof: it maximizes space for smaller urban sites or sites with strict impervious cover limits, allows projects to mount HVAC on the roof which frees up valuable space on the ground, provides more space and greater flexibility for placement of solar panels, allows for more strategic placement of downspouts and rainwater collection, allows projects to take full advantage of max height restrictions without using valuable vertical space for attics, and it's easier to provide significant continuous roofing insulation which is more effective than batts or loose fill typical in a pitched roof design. "(xiv) Thirty (30) year shingle or metal roofing (including Thermoplastic Polyolefin (TPO) roofing material) (0.5 point); and"

As it relates to masonry, commenter (44) recommended that Hardi be included as an option and contended that stone and brick are cost prohibitive and do not provide enough of a benefit to the resident to justify the cost; whereas Hardi is durable, aesthetically pleasing and popular Texas façade.

Commenter (44) requested the following modification: "(xv) Greater than 30 percent stucco or masonry (includes stone, cultured stone, hardi and brick metal siding) on all building exteriors; the percentage calculation may exclude exterior glass entirely (2 points)."

STAFF RESPONSE: In response to commenters (20), (53) proposing developments that are pooled together under a portfolio bond issuance be held to a different minimum threshold, staff believes this would constitute a substantive change that would necessitate additional public comment and; therefore, recommends no change.

In response to commenter (40) relating to the difficulty some Rehabilitation Developments may have in meeting the seven point minimum threshold for unit and development features, staff notes that this section already provides for Rehabilitation Developments to start with a base score of three points and; therefore, does not believe additional changes to the minimum threshold or the point values are necessitated. Staff recommends no change based on this comment.

In response to commenters (40), (44) regarding the high speed internet, staff notes that the introductory paragraph to this section states "the amenity shall be for every Unit at no extra charge to the tenant" and that because the item specifically states "high speed internet service" that no additional clarification is neces-

sary. The intent of this option is that the service be provided and that it be free to the tenant. Staff recommends no change based on these comments.

In response to commenters (42), (54) who recommended the exterior finishes option be revised to allow for metal siding, staff notes that an applicant is not necessarily precluded from using metal siding should they choose to do so, they just wouldn't be allowed to claim the points associated with this option. Staff does not recommend any changes based on this comment.

In response to commenter (44) to allow for Hardi to be included as an option for exterior finishes, staff believes that while such option might be a cheaper alternative to stone or masonry it isn't necessarily cost prohibitive since such costs would be covered with tax credit proceeds. An applicant is not necessarily precluded from using Hardi should they choose to do so, they just wouldn't be allowed to claim the points associated with this option. Staff does not recommend any changes based on this comment.

In response to commenters who suggested the point value assigned to in-unit laundry equipment be increased to at least 2 points, staff agrees and has modified the point value accordingly.

In response to the additional features suggested by commenter (44) that would allow for greater design options, staff recommends adding a Breakfast Bar worth 0.5 points a and Walk-in closet in Master Bedroom worth 0.5 points and has modified the list accordingly.

Staff believes having an energy-star dryer could provide cost savings to the tenant and considering such cost would be covered with tax credit proceeds staff does not understand the cost prohibitive nature of the comment. Staff recommends no change based on this comment.

In response to the suggestion by commenter (44) to revise the R-value requirements to include the slab system, staff believes that because such R-value requirements are already state law and regulation based on climate zone, it should be removed from consideration and has modified this section accordingly.

In response to commenter (44) who suggested the 14 SEER HVAC system be modified to require Energy-Star Rated HVAC equipment, staff believes that such change could benefit from additional public comment and recommends it be contemplated for inclusion in the 2018 draft rules.

In response to the suggestion by commenter (44) that the floor to ceiling kitchen cabinetry be removed on the basis that it creates an accessibility conflict with 2010 ADA staff believes that cabinetry is already required to conform to the construction standards in 10 TAC Subchapter B for the accessible units and that floor to ceiling kitchen cabinetry could be included in all other units. However, staff believes that this item could create additional confusion on what is intended and has removed the item until it can be clarified further.

In response to the suggestion by commenter (44) that the recessed or track LED lighting option be removed, staff believes that if such option adds complications based on the design of the building then it could simply not be an option for that owner to provide. Staff believes that it should remain an option nonetheless in the event there are owners who wish to include it. Staff recommends no change based on this comment.

BOARD RESPONSE: Accepted staff's recommendation.

8. §10.101(b)(7) - Subchapter B- Tenant Supportive Services (20), (22), (23), (33), (42), (43), (44), (53), (54), (58), (60), (64), (69), (73)

COMMENT SUMMARY: Commenters (20), (53) stated that the ability to use bond volume cap to revitalize multiple properties at one time could be a major solution to preservation efforts and in the interest of this cause recommended the following modifications to this section: "(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, unless the application is preserving multiple (3 or more) USDA rural properties under one bond transaction; Direct Loan Applications not layered with Housing Tax Credits must include enough services to meet a minimum of four (4) points."

Commenters (22), (23), (33), (42), (43), (54), (60), (73) objected to the fact that all tenant services should be provided by a third party/off-site entity and commenter (23) further noted that many of the tenant services (i.e. on-site food pantry, notary services and onsite social events) are most appropriately administered by on-site leasing or other property staff. Commenter (33) indicated this requirement will add undue cost to every development, escalating operating costs by $30,000 or more a year. Commenter (23), (58) recommended the following modifications to this section with commenter (58) indicating that on-site personnel can be and are qualified to provide many of the services listed and not allowing them to do so just increases operating costs unnecessarily: "(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....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 such that the experience and background of the provider demonstrates sufficient knowledge to be providing the service. Where applicable, the services must be documented by a written agreement with the provider."

Similarly, commenters (22), (42), (43), (54), (60), (69), (73) recommended the following modification to this section considering many smaller rural properties cannot financially support a separate staff person or a third party provider and in many rural communities such third party providers are not even available: "(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....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."

Commenter (44) expressed similar concerns as it relates to smaller developments and indicated where a dedicated service coordinator is not feasible, property management staff should be allowed to provide the services noted below (included herein for ease of reference but no changes to specific services were proposed by commenter), as reflected in their proposed modification to the introductory paragraph: "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, with the exception of services specified in subparagraphs C, D, L, P, Q, and Y in developments of less than 40 units. Where applicable, the services must be documented by a written agreement with the provider....(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); (L) Notary Services during regular business hours (§2306.6710(b)(3)) (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); (Y) a resident-run community garden with annual soil preparation and mulch provided by the Owner and access to water (1 point); and"

Commenters (44), (64) expressed support for the new language that tenant services are intended to be provided by a qualified and reputable provider citing that this significantly enhances the quality of services to residents and it is an appropriate expectation that qualified personnel administer any supportive programs selected.

Commenter (44) requested clarification of use of the term "regular" in the following tenant service and further suggested the frequency be quarterly. "(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);"

Commenter (44) recommended the following modification to the food pantry service, stating that household items are not commonly available through nonprofit food banks and further suggested such item be replaced with fruits/vegetables. "(D) Food pantry consisting of an assortment of non-perishable food items and accessible to residents at least on a monthly basis or upon request by a tenant (1 point);"

Commenter (44) recommended the following modification to the income tax preparation tenant service: "(O) annual income tax preparation or IRS-certified VITA program (offered by an income tax prep service) (1 point);"

Commenter (44) requested the following tenant services be increased to 3 points because they are of utmost importance, are time consuming and expensive: "(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 (3 points); (X) a full-time resident services coordinator with a dedicated office space at the Development (3 points);

Commenters (42), (43), (54), (73) recommended the point value associated with scholastic tutoring be increased to at least 5 or 6 points because the requirements have increased, along with the cost to the Development to provide such a service and the enormous benefit gained by the tenants.

STAFF RESPONSE: In response to the suggestion by commenter (44) regarding the frequency of the partnership with local law enforcement, staff agrees that this tenant service needs clarification and further agrees that it should be provided quarterly and has made this change.

Staff believes, based on the proposed modification by commenter (44) regarding the food pantry, that this tenant service might need some clarification. The intent of providing a food pantry is that it be provided on-site and stocked with the non-perishable food items and common household items as indicated in the item. While it is possible that an owner can provide transportation (free of charge to a resident) to a nearby food bank to satisfy the requirement of this tenant service, and staff recognizes that such food banks may not provide common household items, the tenant must not be required to pay for items they receive at the food bank. Staff has clarified this item accordingly.

Staff agrees with the proposed modification by commenter (44) including the IRS-certified VITA program. It is staff's understanding that such service is a volunteer income tax assistance service whereby an individual is certified and qualified to provide such service. As such, staff has modified the item accordingly.

In response to the suggestions by commenter (44) relating to the increased point values relating to specific case management services and a full-time resident services coordinator, staff partially agrees with the suggestions. Specifically, as it relates to the specific case management services, staff agrees that it should be worth more than 1 point and recommends a modification to 2 points. Staff believes it is worth clarifying that, while a specific owner or developer may be qualified to provide this service, it could also be provided by a specific qualified provider and has modified the item accordingly. Regarding the suggested revision to the resident services coordinator item, staff does not agree with the proposed point value from 2 points to 3 points. Staff believes that this particular item is mutually beneficial considering the benefits received through the services. While the owner must market the property in this manner, in turn it helps make the property more appealing to prospective tenants and helps resident retention. Staff does not recommend any changes to the point value associated with resident services.

In response to commenters (42), (43), (54), (73) regarding the recommended increase in point value for scholastic tutoring, staff does not believe that, considering the minimum thresholds for applications to provide tenant services, such a high point value is appropriate because it could result in only a couple of services being provided to the tenants. Staff believes the provision of tenant services is important and of immense value to residents and that there should be multiple services available to the residents. Staff has proposed a slight modification to the frequency requirements of the scholastic tutoring indicating that instead of providing the tutoring Monday- Friday, that Monday-Thursday might be more indicative of the realistic use of the service.

In response to all other commenters regarding the language that requires the services be provided by a qualified and reputable provider in the specified industry, staff agrees that there are some services on the list that could possibly be provided by on-site property leasing staff (i.e. notary services and on-site social events) and others could possibly be provided by on-site maintenance staff (i.e. resident-run community garden, and transportation) rather than being out-sourced to a third party provider. Staff believes that some services do require greater levels of specialized skill or experience, such as providing case management or counseling and; therefore, staff would expect to see and require such services to be provided in a compe-

tent manner by someone with the certification or credentials otherwise necessary to provide the service. Staff believes that this intent and the flexibility that some of the services can be administered by on-site property staff is already captured in the language provided in this section and recommends no changes based on these comments.

In response to commenters (20), (53) proposing developments that are pooled together under a portfolio bond issuance be held to a different minimum threshold, staff believes this would constitute a substantive change that would necessitate additional public comment and therefore recommends no change.

BOARD RESPONSE: Accepted staff's recommendation.

INDEX OF COMMENTERS

(4) Senator Jose Menendez

(9) City of Harlingen

(13) Fort Worth Housing Solutions

(17) 5th Ward Community Redevelopment Corporation

(19) Texas Association of Community Development Corporations

(22) Texas Affiliation of Affordable Housing Providers

(23) Texas Coalition of Affordable Developers

(24) Low Income Housing Information Service

(25) Center for Supportive Housing

(28) Locke Lord Attorneys and Counselors

(33) Anderson Development and Construction, LLC

(34) BETCO Consulting, LLC

(39) DMA Companies

(40) Dominium

(41) Endeavor Real Estate Group

(42) Evolie Housing Partners

(43) Flores Residential, LLC

(44) Foundation Communities

(50) Hoke Development Services, LLC

(51) Investment Builders, Inc.

(52) ITEX Group

(54) Leslie Holleman and Associates, Inc.

(58) Mark-Dana Corporation

(59) Marque Real Estate Consultants

(60) Mears Development

(63) National Church Residences

(64) New Hope Housing

(65) OM Housing

(69) Purple Martin Real Estate

(72) Structure Development

(73) The Brownstone Group

(74) Alyssa Carpenter

(78) Coats Rose

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

The adopted rule affects no other code, article or statute.

§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 may be considered ineligible as determined by the Board, unless the Applicant provides information regarding mitigation of the applicable undesirable site feature(s). 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. Historic Developments that would otherwise qualify under §11.9(e)(6) of this title (relating to the Qualified Allocation Plan) may be granted an exemption by the Board, and such exemption must be requested at the time of or prior to the filing of an Application. The distances are to be measured from the nearest boundary of the Development Site to the nearest boundary of the property or easement containing the undesirable feature, unless otherwise noted below. Where there is a local ordinance that regulates the proximity of such undesirable feature to a multifamily development that has smaller distances than the minimum distances noted below, then such smaller distances may be used and documentation such as a copy of the local ordinance identifying such distances relative to the Development Site must be included in the Application. 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 nearest line or structural element of any overhead high voltage transmission line, support structures for high voltage transmission lines, or other similar structures. This does not apply to local service electric lines and poles;

(E) Development Sites located within 500 feet of active railroad tracks, measured from the closest rail to the boundary of the Development Site, unless 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 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 or for Tax-Exempt Bond Developments utilizing a local issuer such documentation may be submitted with the request for a pre-determination 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 that point in time regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information related to any of the undesirable 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. Preservation of affordable units alone does not present a compelling reason to support a conclusion of eligibility. 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 applicable to the undesirable neighborhood characteristic(s) disclosed 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 and reasonable expectation the undesirable characteristic will be sufficiently mitigated or significantly improved within a reasonable time, typically prior to placement in service, and that the undesirable characteristic demonstrates a positive trend and continued improvement. Conclusions for such reasonable expectation may need to be affirmed by an industry professional, as appropriate, and may be dependent upon the severity of the undesirable neighborhood characteristic disclosed.

(i) The Development Site is located within a census tract that has a poverty rate above 40 percent for individuals (or 55 percent for Developments in regions 11 and 13).

(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 as such information might be considered to pertain to the undesirable neighborhood characteristic(s) disclosed 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 (2) of this subsection if they are present in the neighborhood, regardless of whether they are within the specified distances referenced in paragraph (2) of this subsection;

(iv) An assessment of the number of existing affordable rental units (generally includes rental properties subject to TDHCA, HUD, or USDA restrictions) in the Primary Market Area, including comment on concentration based on the size of the Primary Market Area;

(v) An assessment of the percentage of households residing in the census tract that have household incomes equal to or greater than the median household income for the MSA or county where the Development Site is located;

(vi) An assessment of the number of market rate multifamily units in the neighborhood and their current rents and levels of occupancy;

(vii) 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.

(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, , evidence of gentrification in the area which may include contiguous census tracts that could conceivably be considered part of the neighborhood containing the proposed Development, and a clear and compelling reason that the Development should be located at the Site.

(ii) Evidence that crime rates are 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 it 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 include a plan whereby it is contemplated that a responsible party will use the property in a manner that complies with local ordinances. In instances where blight exists but may only include a few properties, mitigation efforts could include partnerships with local agencies to engage in community-wide clean-up efforts, or other efforts to address the overall condition of the neighborhood.

(iv) Evidence of mitigation for 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) - (iii) of this subparagraph.

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

(iii) The Applicant has requested a waiver of the presence of undesirable neighborhood characteristics on the basis that the Development is necessary to enable the state, a participating jurisdiction, or an entitlement community to comply with its obligation to affirmatively further fair housing, a HUD approved Conciliation Agreement, or a final and non-appealable court order and such documentation is submitted with the disclosure.

(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 services. 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 or Reconstruction, if the Applicant is not proposing at least the one-for-one replacement of the existing unit mix. Adding additional units would not violate this provision.

(B) Ineligibility of Elderly Developments.

(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 $20,000 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) Screens on all operable windows;

(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 per computer lab and at least one scanner which may be integrated with printer (2 points);

(xi) Furnished Community room (2 points);

(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) and allows sufficient parking relative to the development size (1 point);

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

(xxxi) Porte-cochere (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, and showerheads. Rehabilitation Developments may install WaterSense faucet aerators (minimum of 30% more efficient) instead of replacing the entire faucets;

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

(-e-) 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;

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

(-g-) 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;

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

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

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

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

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

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

(-n-) radiant barrier decking for New Construction Developments or other "cool" roofing materials (documentation must be submitted that substantiates the "cool" roofing materials used are durable and that there are energy savings associated with them);

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

(-p-) 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);

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

(-r-) Energy-Star rated windows;

(-s-) FloorScore certified vinyl flooring, Green Label certified carpet, or resilient flooring;

(-t-) sprinkler system with rain sensors;

(-u-) NAUF (No Added Urea Formaldehyde) cabinets;

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

(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 (2 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) 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);

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

(xii) Built-in (recessed into the wall) computer nook (0.5 point);

(xiii) Built-in (recessed into the wall) shelving unit (0.5 point);

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

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

(xvi) 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);

(xvii) Breakfast Bar (a space, generally between the kitchen and dining area, that includes seating) (0.5 points); and

(xviii) Walk-in closet in master bedroom (0.5 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 quarterly on-site social and interactive activities intended to foster relationships with residents (such activities could include playing sports, having a cook-out, swimming, card games, etc.) (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. While it is possible that transportation may be provided to a local food bank to meet the requirement of this tenant service, the tenant must not be required to pay for the items they receive at the food bank (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-Thursday) 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) or IRS-certified VITA (Volunteer Income Tax Assistance) program (offered by a qualified individual) (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, qualified provider or through external, contracted parties for seniors, Persons with Disabilities or Supportive Housing (2 points);

(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 (i.e., one bedroom one bath, two bedroom one bath, two bedroom two bath, three bedroom two bath) of otherwise exempt units (i.e. single family residence, duplexes, triplexes, and townhomes) 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 adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 9, 2016.

TRD-201606437
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 29, 2016
Proposal publication date: September 23, 2016
For further information, please call: (512) 475-2973

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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

Preamble, Reasoned Response, and Repealed Rule

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 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, without changes to the proposed text as published in the September 23, 2016, issue of the *Texas Register* (41 TexReg 7317). The rules will not be republished.

REASONED JUSTIFICATION. The Department finds that the purpose of the repeal is to replace the sections with a new rule that encompasses all funding made available to multifamily programs. Accordingly, the repeal provides for consistency and minimizes repetition among the programs.

The Department accepted public comments between September 23, 2016 and October 14, 2016. Comments regarding the repeal were accepted in writing and by fax. No comments were received concerning the repeal.

The Board approved the final order adopting the repeal on November 10, 2016.

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

The adopted repeal affects no other code, article or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 9, 2016.

TRD-201606432
Timothy K. Irvine
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Texas Department of Housing and Community Affairs
Effective date: December 29, 2016
Proposal publication date: September 23, 2016
For further information, please call: (512) 475-2973

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10 TAC §§10.201 - 10.207

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC, Chapter 10 Uniform Multifamily Rules, Subchapter C, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications. Sections 10.201 - 10.204 are adopted with changes to the text as published in the September 23, 2016, issue of the *Texas Register* (41 TexReg 7318). Sections 10.205 - 10.207 are adopted without changes and will not be republished.

REASONED JUSTIFICATION. The Department finds that the adoption of the rule will result in a more consistent approach to governing multifamily activity and to the awarding of funding or assistance through the Department and to minimize repetition. The comments and responses include both administrative clarifications and corrections to the Uniform Multifamily Rule based on the comments received. After each comment title, numbers are shown in parentheses. These numbers refer to the person or entity that made the comment as reflected at the end of the reasoned response. If comment resulted in recommended language changes to the Draft Uniform Multifamily Rule as presented to the Board in September, such changes are indicated.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

Public comments were accepted through October 14, 2016, with comments received from (17) Fifth Ward Community Redevelopment Corporation, (19) Texas Association of Community Development Corporations, (20) Rural Rental Housing Association of Texas, Inc., (22) Texas Affiliation of Affordable Housing Providers, (23) Texas Coalition of Affordable Developers, (25) Center for Supportive Housing, (27) Atlantic Housing Foundation, (28) Locke Lord Attorneys and Counselors, (33) Anderson Development and Construction, LLC, (34) BETCO Consulting, LLC, (38) Dharma Development, LLC, (40) Dominium, (42) Evolie Housing Partners, (43) Flores Residential, LLC, (44) Foundation Communities, (48) Hamilton Valley Management, Inc., (50) Hoke Development Services, LLC, (54) Leslie Holleman and Associates, Inc., (58) Mark-Dana Corporation, (59) Marque Real Estate Consultants, (60) Mears Development, (62) Miller Valentine Group, (63) National Church Residences, (66) O-SDA Industries, (69) Purple Martin Real Estate, (72) Structure Development, (73) The Brownstone Group.

1. Subchapter C - General Comment (28)

COMMENT SUMMARY: Commenter (28) noted that throughout the Rules, the Department has various ways of referring to Persons involved with an Application - i.e. Applicant, Affiliate, Principal and Development Team and further stated that sometimes their usage creates unintended burdens or infeasibility for Applicants where the goal should be uniformity and consistency. Commenter (28) asserted that the organizational charts need to be the hub of the wheel hosting the various spokes (ineligibility, previous participation, etc.). Commenter (28) further explained the certain kinds of organizations such as nonprofit organizations, governmental bodies and public corporations require different treatment because control and governance of these entities is so different than private, closely-held organizations. Non-profits, governmental bodies and public corporations are not generally run by those who own the entity or serve on the board but rather they are operated on a day-to-day basis by a few officers and/or employees. According to commenter (28), there have been instances where board members of non-profits, governmental bodies and public companies are uncomfortable with signing certifications required in the application, with some even resigning their role on the board, because they go beyond an individual's personal knowledge. Commenter (28) believed more improvement is needed with respect to these certifications and with the usage of various Persons involved with an Application.

STAFF RESPONSE: In response to the concerns raised by commenter (28) staff believes the most appropriate place to address the concern is within the definition of control. Staff has proposed a modification to that definition as previously mentioned herein. Staff recommends no change to Subchapter C in response to this general comment.

BOARD RESPONSE: Accepted staff's recommendation.

2. §10.201 - Subchapter C - Procedural Requirements for Application Submission (33), (42), (54)

COMMENT SUMMARY: Commenter (33) stated the new language in this section that restricts only one application for assistance relating to a specific development site across all programs does not allow for maximizing the likelihood of successful development on proposed sites. Commenter (33) expressed that such language appears to be directly targeting the successful application for a Direct Loan while a non-competitive 9% application was pending. Commenter (33) requested there be no restriction on applying for different types of funding.

Commenter (42), (54) stated the added language requiring that only one applicant may have an application or applications for assistance related to a specific development site at any given time should revert to its previous construct which read that only one application may be submitted for a development site in an application round. Commenters (42), (54) contended that because site control is a threshold item, it would not be possible for multiple applicants to submit applications for the same development site.

Commenter (42), (54) indicated the language added to this section that allows errors in the calculation of applicable fees to be cured via the administrative deficiency process is a slippery slope considering the highly competitive environment and requested the language be removed. According to commenter (42), (54) the application fee due is not a difficult calculation to perform and allowing such corrections goes against prior years of precedent where the Department terminated applications for unfortunate mistakes. Commenters (42), (54) asserted that miscalculation of a fee is no different from submitting the wrong electronic application file or third party report or exceeding the $3 million cap when, in such instances, applications were terminated. Commenters (42), (54) maintained that considering the highly competitive environment the added language should be removed in order to maintain the integrity of the rule.

Commenter (58) requested the added language that does not allow the cure period for correcting an error in the calculation of the application fee to be extended be removed and indicated it is better to address fees on a case-by-case basis rather than provide a complete prohibition.

STAFF RESPONSE: In response to comments regarding the added language that restricts only one application for assistance relating to a specific development site across all programs, staff recommends the sentence be removed and has reverted to the previous language indicating that only one application may be submitted for a development site in an application round.

In response to comments relating to the ability to cure an error in the calculation of fees staff believes that circumstances surrounding such error are somewhat different from those situations explained by the commenter. In this instance, an application fee was submitted with the application and staff in its review of the application may determine the fee was calculated incorrectly and staff believes the more appropriate way to address such error is through an administrative deficiency.

BOARD RESPONSE: Accepted staff's recommendation.

3. §10.201(3)(A) - Subchapter C - Certification of Tax Exempt Bond Applications with New Docket Numbers. (40)

COMMENT SUMMARY: In an effort to avoid an administrative burden to staff and the developer for something that is truly not material, commenter (40) suggested the following modification to this section: "(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 or such changes are not material."

STAFF RESPONSE: Staff has not found this process to be administratively burdensome and believes that the proposed language by the commenter could present additional issues as it relates to defining what constitutes material changes. Staff recommends no change based on this comment.

BOARD RESPONSE: Accepted staff's recommendation.

4. §10.201(5) - Subchapter C - Evaluation Process (23), (28), (33)

COMMENT SUMMARY: Commenters (23), (33) asserted the posting of an online scoring log should not be what triggers timeframes as important as appeal rights and further asserted that formal scoring notices from the Department should not be considered a "courtesy." Commenter (23) stated that considering the problems associated with posting the log in the 2015 application round; it is not sound administrative policy to have such an important item be left to such a passive and problematic process. Commenter (23) suggested the following modification to this section on the basis that scoring notices are an important part of the administrative process and should be mandatory and not something that staff may provide: "(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...."

Commenter (28) similarly expressed concern regarding the proposed change for staff to not issue scoring notices and cited the fact that in 2016 only 6 scoring logs were posted compared to 15 from the prior year. Commenter (28) requested that if scoring notices will not be issued and applicants are expected to assess their score based on a scoring log, then updated scoring logs need to be posted more frequently throughout the application cycle.

STAFF RESPONSE: In response to these comments, staff notes that an applicant's appeal rights pursuant to statute are triggered by the publication of the application log. A failure by the Department to provide a scoring notice cannot overcome this statutory requirement. Staff will endeavor to post more frequent application logs throughout the application cycle. Staff recommends no change based on these comments.

BOARD RESPONSE: Accepted staff's recommendation.

5. §10.201(6)(B) - Subchapter C - General Review Priority (33)

COMMENT SUMMARY: Commenter (33) asserted that disallowing approval of 4% HTC applications during May, June or July is not good practice and shuts down many opportunities for development and economic growth and further contends that the Department should maintain an open application calendar since the funding source associated with these applications is under-subscribed.

STAFF RESPONSE: It was not staff's intent that the added language in this section would prohibit processing of 4% applications during the months of May, June or July. The language in this section states that in general these applications will not be prioritized over 9% applications and also states that staff will prioritize applications that have statutory or other more restrictive deadlines. Staff has always factored in the needs and timelines associated with 4% applications and has worked those applications into the review process. However, considering staff constraints in finalizing the review and underwriting analysis associated with the volume of housing tax credit applications, staff must prioritize applications in a manner that fulfills its obligations under Chapter 2306 of the Texas Government Code. Staff recommends no changes based on this comment.

BOARD RESPONSE: Accepted staff's recommendation.

6. §10.201(7)(B) - Subchapter C - Administrative Deficiencies for Competitive Applications (19), (22), (23), (25), (28), (33), (34), (42), (43), (44), (54), (58), (60), (62), (63), (69), (72), (73)

COMMENT SUMMARY: Commenters (19), (22), (23), (25), (28), (33), (34), (42), (43), (44), (54), (58), (60), (62), (63), (69), (72), (73) recommended returning to a 5-day deficiency timeframe. Commenters (25), (63) recommended that point deductions not be imposed for late responses since some items that need to come from a third party could require additional time, especially if the third party is out of the office.

Commenter (28) indicated an inconsistency in the rules regarding the timeframe to respond to a deficiency. Specifically, this section indicates that such deficiencies must be satisfied within 3 business days; however, §10.4(4) states the deadline is five business days.

STAFF RESPONSE: In response to the commenters, staff has modified this section to reflect the 2016 language that requires a 5-day deficiency timeframe without incurring point deductions.

Staff does not agree with commenters (25), (63) regarding removal of the point deductions and believes that such deductions are necessary in order to ensure the timeliness of responses and staff's ability to complete its review. Should information contained in a deficiency notice be required from a third party, there is language in the rule that allows for an extension of such item, should it be necessary.

BOARD RESPONSE: Accepted staff's recommendation.

7. §10.202 - Subchapter C - Ineligible Applicants (28)

COMMENT SUMMARY: Commenter (28) expressed concern regarding the new language in this section that permits a third party to question an applicant's eligibility. Specifically, commenter (28) requested staff reinstitute the language that allows the applicant to address the matter. While commenter (28) indicated such process may be inherent in the language "staff will make enquiry as it deems appropriate", the removal of the language giving the applicant the ability to "explain how they believe they or their application is eligible" is concerning.

STAFF RESPONSE: To address the concerns raised by commenter (28) staff proposes the following modification for clarification: "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 may send a notice to the Applicant and provide them the opportunity to explain how they believe they or their Application is eligible. Staff will present the matter to the Board, accompanied by staff's recommendation."

BOARD RESPONSE: Accepted staff's recommendation.

8. §10.202 - Subchapter C - Ineligible Applicants (40)

COMMENT SUMMARY: As it relates to claims that may be made by others regarding the eligibility of an application or applicant, commenter (40) recommended there be a fee required by such challenger to help dissuade bogus or disingenuous challenges. Commenter (40) suggested a fee of $500 stating that it would help offset the time staff spends on the challenge and would also dissuade challenges without merit.

STAFF RESPONSE: Staff believes the inclusion of such a fee is a sufficiently substantive change from what was proposed that it could not be accomplished without re-publication for public comment. Staff recommends no changes based on this comment.

BOARD RESPONSE: Accepted staff's recommendation.

9. §10.202(1) - Subchapter C - Ineligible Applicants (28)

COMMENT SUMMARY: Commenter (28) stated the opening paragraph of this section applies the standard therein to any party on the Development Team, which is defined broadly to include any Person with any role in the Development, which would include not only the developer and guarantor, but also minor players like lawyers, architects, or even construction subcontractor. All of these parties would be held to this standard, and according to commenter (28) it is unconscionable to ask an applicant, developer, or guarantor to make representations and certifications as to every single member of the development team. Commenter (28) recommended the Department only apply these ineligibility standards to those persons reflected on the organizational chart for the applicant, developer and guarantor.

STAFF RESPONSE: Staff does not object to the changes proposed by commenter (28) and recommends this section be modified to reflect the following: "(1) Applicants. An Applicant shall be considered ineligible if any of the criteria in subparagraphs (A) - (M) of this paragraph apply to those identified on the organizational chart for the Applicant, Developer and Guarantor. An Applicant is ineligible if the Applicant, Developer, or Guarantor:.."

BOARD RESPONSE: Accepted staff's recommendation.

10. §10.202(1)(K) - Subchapter C - Ineligible Applicants (33)

COMMENT SUMMARY: Commenter (33) indicated that removal of the term "knowingly" in this section does not allow for due process for the burden placed on an applicant for information submitted, as the developer does not fabricate the majority of the documentation required in the application. Commenter (33) requested "knowingly" be added back to this section.

STAFF RESPONSE: Staff disagrees with commenter (33) in that there could be documentation contained in the application that could be falsified by the applicant. Staff notes that the mere existence of falsified documentation, whether knowingly or not can disqualify an application; however, this section allows for the applicant to have an opportunity to respond if such a claim is made. Staff recommends no changes based on this comment.

BOARD RESPONSE: Accepted staff's recommendation.

11. §10.202(1)(M) - Subchapter C - Ineligible Applicants (28)

COMMENT SUMMARY: Commenter (28) requested an explanation regarding why the considerations for eligibility that were previously listed in clauses (i) through (v) were removed because it leaves room for question as to what the staff will consider when deciding whether an applicant is eligible to proceed. Commenter (28) stated that with the increase in ownership changes for LIHTC properties, applicants may like to know up front whether past activities will cause them to be ineligible. Commenter (28) suggested that such disclosure be made during the pre-application process for 9% applications, to be addressed before final application so that an applicant can decide whether it wants to proceed; and similarly for 4% Applications that a pre-determination be allowed to be submitted prior to the submission of a full application.

STAFF RESPONSE: Staff agrees with commenter (28) that the considerations listed in this section should be reinstated to the proposed rule; however, believes that such determination should be up to the Board and not the Executive Director. Staff recommends the following modifications to this section: "(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 Applica-

tion may be referred to the Board for termination based upon factors in the disclosure. Staff shall present a determination to the Board as to a person's fitness to be involved as a principal with respect to an Application using the factors described in clauses (i) - (v) of this subparagraph as considerations: (i) The amount of resources in a development and the amount of the benefit received from the development; (ii) the legal and practical ability to address issues that may have precipitated the termination or proposed termination of the relationship; (iii) the role of the person in causing or materially contributing to any problems with the success of the development; (iv) the person's compliance history, including compliance history on other developments; and (v) any other facts or circumstances that have a material bearing on the question of the person's ability to be a compliant and effective participant in their proposed role as described in the Application."

BOARD RESPONSE: Accepted staff's recommendation.

12. §10.202(1)(N) - Subchapter C - Ineligible Applicants (28), (58), (62)

COMMENT SUMMARY: Commenter (28) expressed an objection to the deletion of this provision on the basis that while the remedies available in this provision may not have been utilized by the Department in recent years, it is still an important statement to have in the rules because it promotes a fair and professional culture of competition. Commenters (58), (62) expressed similar concerns stating the 2016 language be reinstated on the basis that applicants that actively work to create opposition to competing applications or disseminate misinformation should be considered ineligible.

STAFF RESPONSE: Staff believes the language contained in this section was problematic in that the Department would have been in the position of having to evaluate whether the opposition being created was based in substantive and legitimate concerns, and ultimately, whether such action was a violation of fair housing laws. While staff agrees on the premise that applicants should not work to create opposition on competing applications, absent any other method by which such opposition could be evaluated staff believed it was more appropriate to remove the item from the rule. Staff recommends no change based on these comments.

BOARD RESPONSE: Accepted staff's recommendation.

13. §10.203 - Subchapter C - Public Notifications (22), (33), (38), (42), (43), (54), (58), (60), (66), (69), (73)

COMMENT SUMMARY: Commenters (22), (33), (38), (42), (43), (54), (58), (60), (66), (69), (73) requested the new 14-day requirement by when newly elected or appointed officials would need to be notified be removed on the basis that it is very difficult to keep track of such changes, especially with respect to school districts and school superintendents. Commenters (22), (38), (42), (43), (54), (58), (60), (66), (69), (73) indicated that under prior rules applicants have until the date of full application to notify newly elected/appointed officials and requested the language be modified to reflect such requirement. Commenter (33) requested notice be required within 30 days of when the applicant becomes aware of the newly elected (or appointed) official.

Commenter (66) indicated that townhomes were removed as a development type; however, because this development type is an acceptable community in the application, removing it as a type seems inconsistent and recommended townhomes be re-instated.

STAFF RESPONSE: In response to the commenter (33), staff believes it would be difficult to verify, if ever questioned, when the applicant actually became aware of a change in an elected/appointed official. Staff agrees with the recommendation by the other commenters that would require the newly elected/appointed official be notified no later than the date the full application is submitted to the Department and has made the change accordingly.

In response to commenter (66), townhome-style developments are still allowed as a development type. Staff did not believe it was necessary to specify this development type over others and; therefore, removed any reference to development type.

BOARD RESPONSE: Accepted staff's recommendation.

14. §10.204(7) - Subchapter C - Financing Requirements (20), (42), (48), (54)

COMMENT SUMMARY: Commenters (20), (48) recommended the following modification to this financing requirement, stating the language as proposed places an unnecessary burden on both the applicant and USDA staff, and further stated that Rural Development will not likely process the application until it's known the project will receive an award: "(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 within 60 days of tax credit award."

Commenters (42), (54) questioned why language has been added that requires the financing narrative to include dates and deadlines for application, approvals and closings, etc. associated with the commitments for all funding sources. Commenters (42), (54) stated that such information is merely an educated guess since it is often dependent upon other factors, including whether an allocation is even made, changes in market conditions, changes to proposed debt and equity providers, etc. and further requested the language be removed.

STAFF RESPONSE: In response to commenters (20), (48) regarding confirmation of the complete loan transfer application, staff recognizes that such application would only be completed after an award of housing tax credits. Staff proposes to modify this item as reflected in the following based on the comment and discussions with USDA as far as what would be more a more appropriate indicator of progress with the USDA process: "(iii) For Developments proposing to refinance an existing USDA Section 515 loan, a letter from the USDA confirming that it has been provided with the Preliminary Assessment Tool."

In response to commenters (42), (54) staff recognizes that financing components associated with 9% applications are somewhat fluid and that dates and deadlines associated with approvals, closings, etc are subject to change as the financing terms solidify; however, it is still an important piece of information that better helps staff understand the transaction. Moreover, because staff expects the financing components associated with 4% applications and Direct Loan applications to be more firm, including such information on the financing narrative is justified. Staff recommends no change based on these comments.

BOARD RESPONSE: Accepted staff's recommendation.

15. §10.204(9) - Subchapter C - Architectural Drawings (66)

COMMENT SUMMARY: Commenter (66) stated the requirement to describe flood mitigation that was added to be included on the site plan is typically handled by the civil engineer and;

therefore, recommended that such information be moved to the feasibility report rather than on the face of a site plan.

Commenter (66) expressed concern over the new requirement that the site plan identify accessible routes. Specifically, commenter (66) stated that accessible routes are subject to very nominal slopes and grades, 5%, 8% with handrails and 2% cross slopes and those generally cannot be determined until full topography is known and grading plans are complete. Commenter (66) indicated that at the time of application not enough information or work has been determined to make informed decisions regarding accessible routes and further recommended that a statement by the architect or engineer that the site will comply with the requirement to have an accessible route would be more appropriate than requesting that they be identified on the site plan.

STAFF RESPONSE: In response to commenter (66) regarding the flood mitigation, such requirement is applicable to rehabilitation developments only and; therefore, moving it to the Site Design and Development Feasibility Report is not appropriate because such report is not required for Rehabilitation developments. Moreover, the requirement for accessible routes to be identified on the site plan is also specific to rehabilitation developments and staff believes that such information should be available and able to identify what the accessible routes are. Staff recommends no change based on these comments.

BOARD RESPONSE: Accepted staff's recommendation.

16. §10.204(11) - Subchapter C - Zoning (33)

COMMENT SUMMARY: Commenter (33) stated that requiring an applicant to provide a release to hold a jurisdiction harmless for zoning change requests is not the burden of a developer if the political subdivision is in violation of the Fair Housing Act. Commenter (33) contends that individuals cannot exempt anyone from accountability to the Department of Justice and that such language should be removed and revert to that of the prior year.

STAFF RESPONSE: In response to commenter (33), the requirement for an applicant to provide a release to hold a jurisdiction harmless for zoning change requests is a statutory requirement pursuant to Tex. Gov't Code, §2306.6705(5)(B). While the language contained in this section may have been tweaked over the prior year, the requirement to provide such release has been present in previous versions of the rule. Staff recommends no change based on this comment.

BOARD RESPONSE: Accepted staff's recommendation.

17. §10.204(13) - Subchapter C - Previous Participation (22), (58)

COMMENT SUMMARY: Commenters (22), (58) indicated that the new language in this section seems to require all Affiliates of a Development Owner complete the previous participation documentation and recommended this section be modified to state that only affiliates that have an ownership interest in the Development be required to submit such documentation.

STAFF RESPONSE: Staff agrees and has modified this requirement as suggested by the commenters.

BOARD RESPONSE: Accepted staff's recommendation.

18. §10.204(6) - Subchapter C - Experience Requirement (42), (43), (54), (73)

COMMENT SUMMARY: Commenters (42), (43), (54), (73) stated that because the experience criteria in 2014 is the same as it was in 2016, experience certificates issued in 2014 should be acceptable to meet the requirement. Commenters (42), (54) additionally suggested the term "natural Person" used in subparagraph (A) should be changed to "natural person" as the capitalized term Person includes entities.

STAFF RESPONSE: Staff agrees that the experience requirement proposed for 2017 is the same as it was in 2014 and has modified this section to reflect that experience certificates received in 2014 would be accepted.

BOARD RESPONSE: Accepted staff's recommendation.

19. §10.204(16) - Subchapter C - Section 811 Project Rental Assistance Program (17), (22), (23), (27), (33), (34), (40), (42), (43), (44), (50), (54), (58), (59), (60), (62), (66), (69), (73)

COMMENT SUMMARY: Commenters (17), (22), (23), (27), (33), (34), (40), (42), (43), (44), (50), (54), (58), (59), (60), (62), (69), (73) expressed that the Section 811 program should not be a threshold item, but should remain a scoring item where an applicant has the choice of participation with commenter (27) adding that in such instance the decision as to whether to accept the additional costs and administrative burden created by the federally assisted designation is up to the applicant. Commenter (44) further stated that having leased the first Section 811 unit, it was a very time intensive and multi-detailed program that should be awarded with points for undertaking. Commenters (23), (59) similarly expressed that until the program has been fully implemented and has some history of performance it is premature to make participation in the 811 program a threshold item. Commenters (22), (42), (43), (50), (54), (60), (69), (73) indicated that making it a threshold item will burden 4% developments by adding operating expenses to deals that often need tax exemptions or soft money to make them feasible and the inclusion of such units limits the ability to position these developments as workforce housing and gives neighbors another reason to voice opposition. Commenters (22), (27), (40), (42), (43), (50), (54), (60), (69) suggested that if participation in the 811 program remain as a threshold item that 4% tax credit applications be exempt from the requirement with commenter (27) suggesting that the threshold requirement should be limited to Direct Loan applications or others already choosing to receive funds that would designate the project as federally assisted.

Moreover, commenters (22), (42), (43), (54), (60), (66), (69), (73) indicated that whether it remains as threshold or reverts to a scoring item, there should be an option for an applicant to place the 811 units in an existing development or in the development for which an application is submitted. Commenters (22), (42), (43), (54), (60), (66), (69), (73) believed this flexibility is important, especially when committing to existing developments because of the lender and investor approvals that are required. Commenters (22), (42), (43), (54), (60), (66), (69), (73) further requested that language be added that could exempt an applicant from providing 811 units in an existing development if the applicant provides evidence that it cannot receive approval from either its lender or investor and that for developments with 100 or fewer units, the unit requirement be 10% of the total units, not 10 units. Similarly, commenter (34) recommended 10% of the units be set aside for 811 rather than 10 units in order to achieve economies of scale associated with smaller developments. Commenter (40) recommended that project based Section 8 developments be exempt from participation in the 811 program.

Commenter (58) recommended that while participation in the 811 program should return to being a point item under the QAP, if it remains as threshold, the following modifications be made on the basis that applicants should have the option to add 811 units into their existing developments or in the new development because of the different investors involved that own the developments and may not permit adding 811 units to existing properties. "(16) Section 811 Project Rental Assistance Program. All Applications must participate in the 811 Project Rental Assistance Program in accordance with the requirements of subparagraphs (A) or (B) of this paragraph unless an Applicant is unable to meet the requirements of either subparagraphs (A) or (B). Applications that are unable to meet the requirements of subparagraphs (A) or (B) must certify to that effect in the Application. (A) Applicants that opt to participate under this subparagraph (A) 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 unless limited by the Integrated Housing Rule. 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, unless limited by the Integrated Housing Rule, 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 opt to participate under this subparagraph (B) 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..."

Commenter (27) asserted that requiring participation in the 811 program removes the choice from the applicant to accept the federally assisted housing designation and the requirements that accompany such designation, including Davis Bacon Wages, Uniform Relocation Act (URA), etc. Commenter (27) expressed that the application of URA substantially increases the administrative cost of an in-place rehabilitation relocation due to the federal regulations with which the owner would be required to comply and also suggested that there are significant additional cost burdens implemented by the URA (such as 42 months of rental assistance payment) for any permanently displaced tenants, which would occur for any in-place rehab proposing to increase the percentage of affordable units from its existing configuration. Commenter (27) stated that in the absence of the URA, the owner could determine what, in addition to moving expenses and any incentives offered to relocate, would be needed.

STAFF RESPONSE: Although there were numerous commenters suggesting this item revert to scoring for 2017, staff believes such change is prohibitive considering it was not included in the 2017 draft Qualified Allocation Plan that was published for public comment. However, in response to those commenters who suggested 4% HTC applications be exempt from having to place 811 units on their developments, staff agrees and has modified the language as reflected below. Staff does believe, however, that Direct Loan only applications or those 4% applications layered with Direct Loans should be required to participate in the 811 program. Moreover, in response to some comments, staff recommends adding language that would allow an applicant to place 811 units on the subject application should the lender or investor not approve of the 811 units being placed on an existing development in the applicant's portfolio. Staff also recommends the number of 811 units required should be the lower of 10 units or 10% of the total units, unless a lower number is required by a state or federal regulation. The recommended changes by staff to this item are reflected below: "(16) Section 811 Project Rental Assistance Program. All Competitive HTC Applications, Direct Loan only Applications and Tax-Exempt Bond Development Applications that are layered with Direct Loan funds 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 the lower of 10 units or 10% of the total number of Units in the Development to the Section 811 PRA Program unless the Integrated Housing Rule (10 TAC §1.15) or Section 811 PRA Program guidelines (§PRA.305) or other requirements limit the proposed Development to fewer than 10 Units. 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, the minimum number of Units as stated above 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. An Applicant may be exempt from having to provide 811 units in an Existing Development if approval from either their lender or investor cannot be obtained and documentation to that effect is submitted in the Application, but they would be required to provide such Units through subparagraph (B) of this paragraph. (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 the lower of 10 Units or 10% of the total number of 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)...."

BOARD RESPONSE: Accepted staff's recommendation.

20. §10.205(2) - Subchapter C - Market Study (40)

COMMENT SUMMARY: Commenter (40) recommended that submission of a market study not be required on project based Section 8 developments or existing Section 42 developments that are 95% or greater occupied at the time of application and contended that it is an inefficient use of time and money to provide when it has no meaningful value and would relieve some of the administrative burden on staff. While commenter (40) recognized that such change might be too substantive to modify now, the Department should consider this change in future rule-making and further stated that while a market study is required by statute, a full market study is too much and a less intense version could suffice.

STAFF RESPONSE: Staff believes this suggestion is a sufficiently substantive change from what was proposed that it could not be accomplished without re-publication for public comment. A market study is required by statute and any proposal to deviate from the requirement must be fully evaluated to ensure compliance with statutory requirements. Staff recommends no changes based on this comment.

BOARD RESPONSE: Accepted staff's recommendation.

INDEX OF COMMENTERS

(17) Fifth Ward Community Redevelopment Corporation

(19) Texas Association of Community Development Corporations

(20) Rural Rental Housing Association of Texas, Inc.

(22) Texas Affiliation of Affordable Housing Providers

(23) Texas Coalition of Affordable Developers

(25) Center for Supportive Housing

(27) Atlantic Housing Foundation

(28) Locke Lord Attorneys and Counselors

(33) Anderson Development and Construction, LLC

(34) BETCO Consulting, LLC

(38) Dharma Development, LLC

(40) Dominium

(42) Evolie Housing Partners

(43) Flores Residential, LLC

(44) Foundation Communities

(48) Hamilton Valley Management, Inc.

(50) Hoke Development Services, LLC

(54) Leslie Holleman and Associates, Inc.

(58) Mark-Dana Corporation

(59) Marque Real Estate Consultants

(60) Mears Development

(62) Miller Valentine Group

(63) National Church Residences

(66) O-SDA Industries

(69) Purple Martin Real Estate

(72) Structure Development

(73) The Brownstone Group

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

§10.201. Procedural Requirements for Application Submission.

This subchapter establishes the procedural requirements for Application submission. Only one Application may be submitted for a Development Site in an Application Round. While the Application Acceptance Period is open or prior to the Application deadline, an Applicant may withdraw an Application and subsequently file a new Application utilizing the original pre-application fee (as applicable) that was paid as long as no substantive evaluation was performed by the Department and the re-submitted Application relates to the same Development Site, consistent with §11.9(e)(3) regarding pre-application Site changes. Applicants are subject to the schedule of fees as set forth in §10.901of 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). The Department may have an external party perform all or part of the underwriting evaluation and components thereof to the extent it determines appropriate. The expense of any external underwriting shall be paid by the Applicant prior to the commencement of the aforementioned evaluation pursuant to §10.901(5) of this chapter (relating to Fee Schedule, Appeals and other Provisions). 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 fifth business day following the date of the deficiency notice, then (5 points) shall be deducted from the selection criteria score for each additional day the deficiency remains unresolved. 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 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 may send a notice to the Applicant and provide them the opportunity to explain how they believe they or their Application is eligible. Staff will 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 those identified on the organizational chart for the Applicant, Developer and Guarantor. An Applicant is ineligible if the Applicant, Developer, or Guarantor:

(A) has been or is barred, suspended, or terminated from 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. Staff shall present a determination to the Board as to a person's fitness to be involved as a principal with respect to an Application using the factors described in clauses (i) - (v) of this subparagraph as considerations:

(i) The amount of resources in a development and the amount of the benefit received from the development;

(ii) the legal and practical ability to address issues that may have precipitated the termination or proposed termination of the relationship;

(iii) the role of the person in causing or materially contributing to any problems with the success of the development;

(iv) the person's compliance history, including compliance history on other developments; and

(v) any other facts or circumstances that have a material bearing on the question of the person's ability to be a compliant and effective participant in their proposed role as described in the Application.

(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 no later than the Full Application Delivery Date.

(1) Neighborhood Organization Notifications.

(A) The Applicant must identify and notify all Neighborhood Organizations on record with the county or the state as of 30 days prior to the 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 documentation 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 2014, 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 the Preliminary Assessment Tool.

(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 (with an ownership interest in the Development), 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 Competitive HTC Applications, Direct Loan only Applications and Tax-Exempt Bond Development Applications that are layered with Direct Loan funds 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 the lower of 10 units or 10% of the total number of Units in the Development to the Section 811 PRA Program unless the Integrated Housing Rule (10 TAC §1.15) or Section 811 PRA Program guidelines (§PRA.305) or other requirements limit the proposed Development to fewer than 10 Units. 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, the minimum number of Units as stated above 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. An Applicant may be exempt from having to provide 811 units in an Existing Development if approval from either their lender or investor cannot be obtained and documentation to that effect is submitted in the Application, but they would be required to provide such Units through subparagraph (B) of this paragraph.

(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 the lower

of 10 Units or 10% of the total number of 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 or 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.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 9, 2016.

TRD-201606436
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 29, 2016
Proposal publication date: September 23, 2016
For further information, please call: (512) 475-2973

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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") adopts the repeal of 10 TAC Chapter 10, Subchapter D, §§10.301 - 10.307 concerning 2016 Underwriting and Loan Policy without changes to the proposed text as published in the September 23, 2016, issue of the *Texas Register* (41TexReg 7333).

REASONED JUSTIFICATION. This repeal was published concurrently with the proposed adoption of the new 10 TAC Chapter 10, Subchapter D, §§10.301 - 10.306 concerning 2017 Underwriting and Loan Policy. The purpose of the repeal is to allow for the rewrite of portions of the rule.

The Department accepted public comments between September 23, 2016, and October 14, 2016. Comments regarding the repeal were accepted in writing via fax and email. No comments were received concerning the proposed repeal.

The Board approved the final order adopting the repeal on November 10, 2016.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Specifically Tex. Gov't Code §2306.141 gives the Department the authority to promulgate rules governing the administration of its housing programs. The proposed repeal affects no other code, article or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 9, 2016.

TRD-201606425
Timothy K. Irvine
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Effective date: December 29, 2016
Proposal publication date: September 23, 2016
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10 TAC §§10.301 - 10.307

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 10, Subchapter D, §§10.301 - 10.306, concerning Underwriting and Loan Policy,

with changes to the proposed text as published in the September 23, 2016 issue of the *Texas Register* (41 TexReg 7333).

REASONED JUSTIFICATION FOR THE RULE: The proposed new 10 TAC Chapter 10, Subchapter D, §§10.301 - 10.306, concerning Underwriting and Loan Policy was published concurrently with the proposed repeal of the same section. The new rule clarifies language that was potentially causing uncertainty in the rules and in some instances will require additional supportive information to ensure accurate processing of underwriting activities and communicate the underwriting analysis and recommendations for funding or award by the Department more effectively.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS: The Department accepted public comments between September 23, 2016 and October 14, 2016. Comments regarding new sections and the proposed staff changes were accepted at a public hearing and in writing. Written comments were received from: (1) Doak Brown, Brownstone Affordable Housing, Ltd.; (2) Leslie Holleman, Leslie Holleman & Associates, Inc.; (3) Apolonio Flores, Flores Residential, L.C.; (4) Texas Coalition of Affordable Developers (TX-CAD); (5) Marque Real Estate Consultants; (6) Evon Harris, Evolie Housing Partners; (7) Dominium; (8) Barry J. Palmer, Coats | Rose; (9) Texas Affiliation of Affordable Housing Providers; (10) Terri Anderson, Anderson Development & Construction, LLC; (11) Bob Coe, Affordable Housing Analysts; (12) Darrell G. Jack, Apartment MarketData, (13) Naomi Byrne, Fort Worth Housing Solutions; (14) Blake Rue, Oryx Group; and, (15) Chris Akbari, ITEX Group.

New language will be ALL CAPITALS and deleted language will be italicized.

1. §10.302(d)(4)(D) Acceptable Debt Coverage Ratio Range ("DCR") (7)

COMMENT SUMMARY: Commenter (7) proposes increasing the maximum DCR for tax-exempt bond deals that are 80% or greater project based Section 8 because lenders and investors may underwrite more conservatively and require a higher DCR (greater than 1.35 or even 1.50). Commenter (7) also states this change will allow flexibility to make it easier to preserve HUD-assisted developments.

STAFF RESPONSE: Staff disagrees with commenter's suggested change primarily because it would be inconsistent with the evaluation required under IRC 42(m)(2). Also, the rules already allow for exemptions for additional flexibility in deals that are 50% or greater project based Section 8.

The acceptable debt coverage ratio range serves two purposes. First, the minimum 1.15 times DCR serves to cap the amount of debt on a property to minimize default risk. TDHCA's 1.15 times DCR minimum requirement is lower than the industry standard of 1.20 to 1.25 times providing applicants with more flexibility in structuring their transaction. Lenders and syndicators are going to apply their own credit standards and underwriting guidelines that will certainly be different than the Department's guidelines.

Second, the maximum 1.35 times DCR serves to ensure that tax credits are being efficiently allocated (serves as a sizing tool). This tool addresses the requirement in IRC 42(m)(2)(A) that "The housing credit dollar amount allocated to a project shall not exceed the amount the housing credit agency determines is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period." A DCR greater than 1.35 times indicates that a property can support additional debt and therefore require less tax credits. Lenders and syndicators do not have a maximum DCR as their interest is only the default risk.

At initial underwriting, the capital structure assumptions, including the pro forma net operating income, are merely preliminary. Each lender and syndicator underwrites the transaction based on their own guidelines and risk tolerances. Regardless, all financing participants including TDHCA recognize that there will be a re-underwriting of the transaction at some point in the future based on actual cost and operating information and not on the up front assumptions.

In addition, §10.302(i)(6)(B) allows for exceptions to expense ratio, pro forma rents, and long-term feasibility for Developments that will receive Section 8 vouchers for at least 50% of the Units. These exemptions allow for flexibility in the operating assumptions for Section 8 developments while not inflating eligible basis.

Staff does not recommend any changes to the proposed rule in this section.

2. §10.302(d)(4)(D)(i)(I) Acceptable Debt Coverage Ratio Range (10)

COMMENT SUMMARY: Commenter (10) suggests that REA should not decrease the Direct Loan below an amount that would require more than 50% of the developer fee be deferred, but instead adjust the interest rate and amortization term of the Direct Loan to achieve a 1.15 DCR minimum. Commenter suggests that 100% deferred developer fee makes a transaction more risky.

STAFF RESPONSE: Staff agrees that limiting the amount of developer fee that can be deferred warrants discussion, but the eventual sizing of the deferred fee amount is under control of the Applicant and financing partners. Limiting the fee could potentially increase the tax credit award to an amount greater than is needed for financial feasibility. Regardless, the commenter's proposed change is too significant to address at this time as it is not a natural outgrowth of the proposed changes. Additionally, because the comment is related to the sizing and terms of a Direct Loan, commenter's suggestions have been forwarded to the Multifamily Loan Program. The Multifamily Direct Loan Rule 10 TAC Chapter 13 is out for public comment from October 28, 2016 to November 28, 2016.

Staff does not recommend any changes to the proposed rule in this section.

3. §10.302(e)(1)(C) Acquisition from Seller without current Title (1), (3), (5), (14)

COMMENT SUMMARY: Commenter (14) opposes the proposed rule stating: (1) that it would increase development site costs; (2) undermine TDHCA policies; (3) generate potential legislative and legal risk for TDHCA; (4) that it takes a long time to close on land in tax credit deals and many contracts never close if tax credits are not awarded; (5) that land sellers dislike long term contracts and often require a premium purchase price for a long term contract; and, (6) that an Intermediary Purchaser allows lower land costs because the contract term is shorter and therefore the Seller does not charge a premium purchase price.

Commenter (14) also states, "By adopting the Proposed Acquisition Language TDHCA would undermine its own policies by limiting locations where affordable housing could be developed. Intermediary Purchasers, through our flexibility to close on development sites within typical short term timeframes, expand the

potential locations of affordable housing in line with TDHCA policies and thereby promote TDHCAs goals and mission."

Lastly, Commenter (14) states that the proposed rule is an "infringement on legally recognized private property rights." The example provided, "Let's look at a scenario where the adoption of the Proposed Acquisition Language could ultimately lead. Landowner A owns legal title to a development site. As previously mentioned legal title, like equitable title, is a private property right recognized by the state of Texas. In February of 20xx, a developer, who has secured an award of tax credits, requests a contract extension from Landowner A. Landowner A, who has no interaction, affiliation, obligation or duty to TDHCA or the developer, over the past 12 months has become educated and realizes his property has significantly increased in value now that an award of tax credits has been secured by the developer. Landowner A now doubles or even triples his required price to the maximum amount he believes a developer could pay. Will TDHCA now attempt to restrict the price for which Landowner A can sell his property to the developer?"

Commenter (1) and (3) state agreement with Commenter (14).

Commenter (5) suggests additional language, "Something to the effect that if the applicant is not purchasing the land from the current title holder (most don't) then the applicant must require in the purchase and sale agreement with the seller that a copy of the closing statement or other evidence of amount paid to the title holder will be provided to the applicant and be submitted at 10% test. Most control the land then assign control via the buy sell agreement to the LP. So they won't care. Those that are flipping the land will care and make noise. The process may impede the intent on this one."

STAFF RESPONSE: Pursuant to IRC §42(m)(2), the Department is legally bound to allocate tax credits in an amount no more than necessary to make a Development financially feasible. Part of that determination requires the Department to determine the "reasonableness of the developmental and operational costs of the project." As land cost is part of the total development costs, the Department is obligated to evaluate its reasonableness.

§2306.6701 requires the Department to administer the tax credit program to "maximize the number of suitable, affordable residential rental units added to the state's housing supply." The impact of providing more credits than needed on one transaction affects the amount of tax credits available for other applications. Over sourcing on one application results in the Department awarding fewer applications generating fewer affordable units which is inconsistent with statute.

Although the proposed language would not restrict or limit the purchase price being paid by the Applicant to the intermediary, or the price being paid by the intermediary to the current title holder, nor does it impact or mandate contractual terms between private parties, staff believes, based on comment that the proposed rule warrants further discussion with stakeholders to ensure it is effective in optimizing the results it is intended to achieve and is consistent with statute.

With regard to Commenter (5), the Department requires a title policy showing the current owner. If the current owner is not the seller pursuant to the Application, then the intermediary contract is to be provided during the application review process. Therefore, the information suggested at 10% Test is not necessary.

Therefore, staff recommends removal of the proposed language.

(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).

4. §10.302(e)(7) Developer Fee (10)

COMMENT SUMMARY: Commenter (10) states the maximum allowable deferred developer fee should be 50% before an application is deemed infeasible.

STAFF RESPONSE: Staff believes this comment is better addressed in §10.302(c)(2) Gap Method which states, "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."

Staff agrees that limiting the amount of developer fee that can be deferred warrants discussion, but the commenter's proposed change is too significant to address at this time, as it is not a natural outgrowth of the proposed changes.

Staff does not recommend any changes to the proposed rule in this section.

5. §10.302(e)(7)(C)(i) Developer Fee (15)

COMMENT SUMMARY: Commenter (15) requests an increase of developer fees for RAD transactions. Commenter (15) proposes the following addition to the rule to allow RAD transactions to become feasible in areas where the rents are lower:

"(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 EITHER HUD RENTAL ASSISTANCE DEMONSTRATION PROGRAM OR HAVE forty-nine (49) Units or less;"

STAFF RESPONSE: Staff evaluated the complexity of converting public housing under the HUD Rental Assistance Demonstration ("RAD") program. The Real Estate Analysis division has underwritten RAD transactions and understands the complexity of combining RAD assistance with tax exempt bond transactions. The RAD program is a HUD program in which guidance and program requirements are changing and evolving. Staff believes that the overhead and resources required of housing authorities to participate in the program on tax exempt bond transactions, due to their inherent complexity, represent additional Developer Services above those already defined in rule. For these reasons, the increase in developer fee was added in 2016.

Comments for the 2016 rules suggested that the developer fee calculation also be based on the building acquisition basis. The comments did not provide evidence of a relationship between the value of a building and Developer Services.

Staff does not recommend any changes to the proposed rule in this section.

6. §10.302(e)(7)(C)(ii) Developer Fee (15), (13)

COMMENT SUMMARY: Commenter (15) requests that the Department allow for developer fee on Identity of Interest acquisition transactions that are utilizing Project-Based Section 8 Rental Assistance or HUD Rental Assistance Demonstration Program. Commenter (15) proposes the following addition to the rule:

"(ii) no Developer fee attributable to an identity of interest acquisition of the Development will be included UNLESS THE PROJECT IS UTILIZING PROJECT-BASED SECTION 8 RENTAL ASSISTANCE OR THE HUD RENTAL ASSISTANCE DEMONSTRATION PROGRAM FOR AT LEAST 50 PERCENT OF THE UNITS."

Commenter (13) suggests allowing a 15% developer fee on acquisition costs in 4% tax credit transactions if financed through the RAD Program as this would reflect the work that is required in seeking the necessary HUD approval, such as for demolition/disposition and RAD. Commenter (13) also states that the 4% program is not competitive, so this change would not harm other developments' feasibility.

STAFF RESPONSE: The requested change would provide additional tax credits on the eligible basis associated with building value. Building value is determined by related parties.

Staff believes that the overhead and resources required of housing authorities to participate in the program on tax exempt bond transactions, due to the inherent complexity of bond transactions, represent additional Developer Services above those already defined in rule however there is no demonstrated relationship between the value of a building and Developer Services. Based on these same comments in the development of 2016 rules, the overall fee for RAD/Bond transactions was increased in the 2016 rules to 20% for the increase in Developer Services and not for building value.

Staff does not recommend any changes to the proposed rule in this section.

7. §10.302(e)(9) Reserves (1), (2), (3), (6)

COMMENT SUMMARY: Commenters (1), (2), (3), and (6) all suggest the same change to the proposed rule to include initial deposits to required voucher reserves in reserve calculation:

"(9) 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, INITIAL DEPOSITS TO REQUIRED VOUCHER RESERVES and transferred replacement reserves *for USDA or HUD financed rehabilitation transactions)."*

STAFF RESPONSE: Voucher reserves are generally a lender requirement to provide contingent operating funds should the rental assistance payments by HUD or USDA be decreased or eliminated. Generally the rent provided by the rental assistance is higher than the tax credit or achievable market rents. While staff understands the concern, the reserves can be substantial (as high as $20K per unit in some cases) and the amount is determined on the lender's underwriting to cover their own risk. Staff believes that the entire underwriting assumes that the rental subsidy is in place and the preservation of that subsidy is the rationale for providing tax credits to the application. Staff believes that tax credits should not be sourcing the reserves. While not to be included in staff's underwriting, staff is not limiting the amount of reserves that can be sourced in other ways, subject to the gap methodology.

Staff does not recommend any changes to the proposed rule in this section.

8. §10.303 Market Study (7)

COMMENT SUMMARY: Commenter (7) suggests a market study not be required for existing tax credit and Section 8 properties if they are not moving rents more than 5% and have been at least 90% occupied over the past 12 months. Commenter (7) states this is an inefficient use of time and money.

STAFF RESPONSE: IRC §42(m)(1)(A)(iii) requires a comprehensive market study of the housing needs of low-income individuals in the area to be served by the project is conducted before the credit allocation is made and at the developer's expense by a disinterested party who is approved by the state agency.

Staff does not recommend any changes to the proposed rule in this section.

9. §10.303(d)(8)(B)(i)(V) Secondary Market Area and §10.303(d)(9)(B)(i)(V) Primary Market Area (11)

COMMENT SUMMARY: Commenter (11) states that the proposed rule is vague and would like to see a minimum number of employment concentrations required.

STAFF RESPONSE: The general intent of this proposed rule is to show where concentrations of income qualified households and income qualifying employment are located in the Primary Market Area (PMA) and Secondary Market Area (SMA). This information allows staff and the Market Analyst to see where the income qualifying people are living and where they are likely to travel for jobs in relation to the Subject property.

Staff believes this type of analysis will only apply in certain situations and is not necessary for every Market Study, and that it is more suitable to be shown by density maps than in the definition of the PMA and SMA.

Staff recommends the removal of the specific subsections of the proposed rule requiring this information on all transactions and will request information on households and employment concentrations on a case-by-case basis as allowed for in §10.303(e).

The change to the proposed rule is combined with Item 10 and shown below.

10. §10.303(d)(8)(B)(i)(VI) Secondary Market Area and §10.303(d)(9)(B)(i)(VI) Primary Market Area (11)

COMMENT SUMMARY: Commenter (11) states: (1) that the proposed rule will increase the cost of market studies and add nothing useful to the demand analysis; (2) that current scoring is pushing tax credit developments into high opportunity areas which have fewer low/moderate income renter households and therefore will not necessarily be within a one mile radius of the Subject; and, (3) that market analysts will have to run additional demographic reports and demand analysis for the 1-mile radius.

STAFF RESPONSE: The general intent of this proposed rule evaluates whether the households in the immediate area can afford the Pro Forma Rents. If household incomes in the immediate area are lower than the county median income that the Pro Forma rents are calculated off of, then local households may not be able to afford the Pro Forma Rents. This is very important

when Pro Forma rents are close to the breakeven rents as this affects the Development's financial feasibility.

The place/city median income is available on the Census Bureau website and would not require additional demographics or demand analysis calculated by the Market Analyst. It would require additional discussion if the local incomes could not support the Pro Forma Rents.

Staff believes this proposed rule is more relevant to §10.303(d)(9)(B)(i)(VI) regarding the Primary Market Area only and should not be included in reference to the Secondary Market Area.

The proposed language will be removed from §10.303(d)(8)(B)(i)(VI) Secondary Market Area and modified in §10.303(d)(9)(B)(i)(VI) Primary Market Area.

Proposed changes to the staff proposed rule resulting from comment #9 and #10:

§10.303(d)(8)(B)(i)(V) Secondary Market Area

(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; AND

(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

(V)(V*II*) other housing issues in general, if pertinent.

§10.303(d)(9)(B)(i)(V) Primary Market Area

(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;

(V) *(VI) that prospective tenants within one mile of the Development* THE MEDIAN INCOME (AS REPORTED ON THE CENSUS BUREAU WEBSITE) OF THE CITY, TOWN OR PLACE WHERE THE SUBJECT IS LOCATED AND IF THIS MEDIAN INCOME will be able to *afford* SUPPORT the Pro Forma rent or if not provide further comment on where eligible demand will come from; and

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

11. §10.303(d)(9)(A)(i) Primary Market Area (12)

COMMENT SUMMARY: Commenter (12) states that the proposed rule is likely to cause the market analyst to have to perform two demand calculations: 1) using the smallest PMA they believe will provide sufficient demand to meet the capture rate threshold, and 2) a larger PMA (likely 100,000 pop.) so that a larger PMA may be considered if the staff's demand number is lower than that calculated by the market analyst. Commenter (12) suggests language be added that would allow the market analyst to submit a modified demand calculation (increasing the population) after the market study deadline if staff determines lower demand on the original PMA.

STAFF RESPONSE: The proposed change to the rule is meant to clarify that Primary Market Areas (PMAs) should not automatically be pushed to the 100,000 population maximum, but instead reflect the logical area that the Market Analyst believes most of the demand for Subject units will come from. The limit should not be used as a target population.

In most Market Studies, the proposed change will not have any effect, but instead gives Staff the ability to request updated information if the PMA is geographically large, and there is insufficient explanation of why demand will come from the large area. This is especially important when a large PMA produces a very low capture rate.

Staff does not recommend any changes to the proposed rule in this section.

12. §10.303(d)(10)(F) Employment (11)

COMMENT SUMMARY: Commenter (11) states that the proposed rule is vague and he would like to see a minimum number of employment opportunities that must be listed. Commenter (11) also states that getting information on employee income levels is very difficult.

STAFF RESPONSE: Income qualifying employment opportunities in the Primary Market Area (PMA) are essential to understanding the demand for Subject units. The proposed language requires the Market Analyst to discuss current or planned employment opportunities in the PMA as this affects where households will locate. Proximity of the Development to the employment centers and traffic patterns must be part of the analysis. For example, if there is a planned distribution center nearby, this may be a reason for income qualified households to move to the area.

Staff does not feel that putting a minimum requirement for employment centers is necessary; Market Analysts should include general employment information/largest employers, etc. as they do now, and also include any planned or current employment opportunities that are a driving factor for income qualified households to relocate or remain in the area.

To clarify, the proposed language does not assume the Market Analyst will verify incomes for all jobs in the PMA, but instead, will do general analysis to see if the jobs that are listed in their report, particularly those in proximity to the Development and within a reasonable drive time, are likely to income qualify for the Pro Forma rents. This will be especially important if a Market Study states that a planned employment opportunity in the PMA is a large factor in drawing tenants to the Subject. In these cases, the Market Analyst should do further research to see if the jobs they reference are indeed, income eligible.

Staff does not recommend any changes to the proposed rule in this section.

13. §10.304(d)(10)(B) Value Estimates (4), (8), (9), (13), (15)

COMMENT SUMMARY: Commenters (4), (8), (9), (13), and (15) all propose the same change to the rule allowing RAD deals to be appraised at unrestricted market rents instead of the post conversion restricted rents.

"(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 ongoing restrictions that will remain in place even if not affecting rents* THE UNRESTRICTED MARKET 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."

Commenter (4) provided further information, "Nationwide a number of closed RAD transactions have been awarded acquisition credits based on building values derived using market rents under the income approach. Tax counsel for these transactions have opined that this approach is reasonable, as have national accounting and appraisal firms. The reason this approach has been accepted nationwide is that in the "As Is" condition public housing developments operate on a breakeven basis, preventing an accurate valuation under the income approach. There are several ways in which HUD may allow the release of public housing restrictions. For public housing converting to Section 8 assistance, at the closing of RAD transactions, the existing public housing restrictions are removed and the property is unencumbered. This release of public housing restrictions supports the use of a market-rent derived value."

The other Commenters provided similar statements stating the unrestricted market value as a common valuation on RAD deals throughout the country.

STAFF RESPONSE: Since acquisition cost is part of the total development costs, the Department is obligated to evaluate its reasonableness.

An appraisal is required on all Identity of Interest transactions. Staff will review the appraisal submitted with the application and may require, a third-party review appraisal to ensure that the value is properly supported. If a third-party review appraisal concludes that the valuation was not appropriately determined the Real Estate Analysis staff may recommend that the award of acquisition credits be based on rent restricted values but this may be an appealable matter.

The Department does not restrict or limit the purchase price being paid by the Applicant to the housing authority. The Department only determines an acquisition value used to size the tax credits pursuant to IRC §42(m)(2). The sale price between the buyer and seller is not dictated by the Department.

Staff recommends the following changes to the staff proposed rule:

(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 APPRAISER MUST PROVIDE A VALUE BASED ON THE FUTURE RESTRICTED RENTS. THE value USED IN THE ANALYSIS *must* MAY be based on *the post conversion* UNrestricted MARKET rents IF SUPPORTED BY THE APPRAISAL. THE DEPARTMENT MAY REQUIRE THAT THE APPRAISAL BE REVIEWED BY A THIRD-PARTY APPRAISER ACCEPTABLE TO THE DEPARTMENT BUT SELECTED BY THE APPLICANT. USE OF FUTURE RESTRICTED RENTS BY THE APPRAISER WILL NOT REQUIRE A THIRD-PARTY APPRAISAL REVIEW. REGARDLESS OF THE RENTS USED IN THE VALUATION, THE APPRAISER *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.

14. §10.307(a)(2) Direct Loan Requirements (10)

COMMENT SUMMARY: Commenter (10) states that Direct Loan terms should not exceed the loan amortizations and both the term and amortization must be greater than the first lien debt term not to exceed 40 years and 6 months.

STAFF RESPONSE: The Direct Loan Requirements have been moved from Subchapter D to Chapter 13. Commenter's suggestions have been forwarded to the Multifamily Loan Program. The Multifamily Direct Loan Rule 10 TAC Chapter 13 is out for public comment from October 28, 2016 to November 28, 2016.

§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 Board approved the final order adopting the new rule on November 10, 2016.

STATUTORY AUTHORITY. The rule is adopted pursuant to Texas Gov't Code §2306.053, which authorizes the Department to adopt rules. Specifically Texas Gov't Code §2306.141 gives the Department the authority to promulgate rules governing the administration of its housing programs. The adopted rule affects 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 financing 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) 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 oper-

ating 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 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 Mar-

ket 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; and

(V) 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; and

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

(ii) a complete demographic report for the defined PMA;

(iii) a scaled distance map indicating the PMA boundaries showing relevant U.S. census tracts with complete 11-digit identification numbers in numerical order with labels as well as the location of the subject Development and all comparable Developments. The map must indicate the total square miles of PMA; and,

(iv) a proximity table indicating distance from the Development to employment centers, medical facilities, schools, entertainment and any other amenities relevant to the potential residents and include drive time estimates.

(C) Comparable Units. Identify developments in the PMA with Comparable Units. In PMAs lacking sufficient rent comparables, it may be necessary for the Market Analyst to collect data from markets with similar characteristics and make quantifiable and qualitative location adjustments. Provide a data sheet for each comparable development consisting of:

(i) development name;

(ii) address;

(iii) year of construction and year of Rehabilitation, if applicable;

(iv) property condition;

(v) Target Population;

(vi) unit mix specifying number of Bedrooms, number of baths, Net Rentable Area; 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.

(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 appraiser must provide a value based on the future restricted rents. The value used in the analysis may be based on the unrestricted market rents if supported by an appraisal. The Department may require that the appraisal be reviewed by a third-party appraiser acceptable to the Department but selected by the Applicant. Use of the restricted rents by the appraiser will not require an appraisal review. Regardless of the rents used in the valuation, the appraiser must consider any other on-going restrictions that will remain in place even if not affecting rents. If the rental assistance has an impact on the value, such as use of a lower capitalization rate due to the lower risk associated with rental rates 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.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 9, 2016.

TRD-201606426
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 29, 2016
Proposal publication date: September 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

Preamble, Reasoned Response, and Repealed Rule

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter G §§10.901 - 10.904, concerning Fee Schedule, Appeals and Other Provisions, without changes to the proposed text as published in the September 23, 2016, issue of the *Texas Register* (41 TexReg 7350) and will not be republished.

REASONED JUSTIFICATION. The Department finds that the purpose of the repeal is to replace the sections with a new rule that encompasses all funding made available to multifamily programs. Accordingly, the repeal provides for consistency and minimizes repetition among the programs.

The Department accepted public comments between September 23, 2016 and October 14, 2016. Comments regarding the repeal were accepted in writing and by fax. No comments were received concerning the repeal.

The Board approved the final order adopting the repeal on November 10, 2016.

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

The adopted repeal affects no other code, article or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 9, 2016.

TRD-201606434
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 29, 2016
Proposal publication date: September 23, 2016
For further information, please call: (512) 475-3344

♦ ♦ ♦

10 TAC §§10.901 - 10.904

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC, Chapter 10 Uniform Multifamily Rules, Subchapter G, §§10.901 - 10.904 concerning Fee Schedule, Appeals and Other Provisions. Section 10.901 is adopted with change and §§10.902 - 10.904 are adopted without changes to text as published in the September 23, 2016, issue of the *Texas Register* (41 TexReg 7351) and will not be republished.

REASONED JUSTIFICATION. The Department finds that the adoption of the sections will result in a more consistent approach to governing multifamily activity and to the awarding of funding or assistance through the Department and to minimize repetition. The comments and responses include both administrative clarifications and corrections to the Uniform Multifamily Rule based on the comments received. After each comment title numbers are shown in parentheses. These numbers refer to the person or entity that made the comment as reflected at the end of the reasoned response. If comment resulted in recommended language changes to the proposed Uniform Multifamily Rule as presented to the Board in September, such changes are indicated.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

Public comments were accepted through October 14, 2016, with comments received from (28) Locke Lord Attorneys and Counselors, (42) Evolie Housing Partners, (43) Flores Residential, LLC, (54) Leslie Holleman and Associates, Inc. (58) Mark-Dana Corporation, (60) Mears Development, (73) The Brownstone Group.

1. §10.901(3) - Subchapter G - Application Fee (28)

COMMENT SUMMARY: Commenter (28) requested the following modification to clarify any confusion as it relates to the change in units from pre-application to final application: "(A) Housing Tax Credit Applications. For Applicants having submitted a competitive housing tax credit pre-application which met the pre-application threshold requirements, and for which a pre-application fee was paid, the Application fee will be $20 per Unit based on the total number of Units in the full Application. Otherwise, the Application fee will be $30 per Unit based on the total number of Units in the full Application.…"

STAFF RESPONSE:

Staff agrees with the modifications proposed and has made the changes accordingly.

BOARD RESPONSE: Accepted staff's recommendation.

2. §10.901(5) - Subchapter G - Third Party Underwriting Fee (42), (43), (54), (73)

COMMENT SUMMARY: Commenters (42), (43), (73) recommended this fee be removed from this section since the third party underwriter language was removed from §10.201(5) of the Uniform Multifamily Rules.

STAFF RESPONSE:

Staff recognizes the inconsistency between these two sections and recommends the language be reinserted under §10.201(5) to correct the inconsistency. The language under §10.201(5) has been modified to reflect the following: "…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). The Department may have an external party perform all or part of the underwriting evaluation and components thereof to the extent it determines appropriate. The expense of any external underwriting shall be paid by the Applicant prior to the commencement of the aforementioned evaluation pursuant to §10.901(5) of this chapter (relating to Fee Schedule, Appeals and other Provisions)…"

BOARD RESPONSE: Accepted staff's recommendation.

3. §10.901(12) and (13) - Subchapter G - Extension and Amendment Fees (28), (42), (43), (44), (54), (58), (60), (73)

COMMENT SUMMARY: Commenter (28) requested clarification regarding the intention of the proposed new language "increase by $500" and how these fees are to be calculated. Specifically, commenter (28) noted whether the first request will be $2500, second request is $3000 and third request is $3500, or whether the first request will be $2500, second request is $500 and third request is $500. Commenter (58) expressed similar concerns and requested clarification noting that the assumption is that multiple amendments in one request will only incur one fee. Commenter (58) requested this new language be removed.

Commenters (42), (43), (44), (54), (58), (60), (73) stated that construction status reports should not need to be extended and recommended removing this reference from this section. Commenter (42), (54) further contended that such report is simply updating the Department on the status of construction progress and fails to see a reason why an owner would need an extension on a simple type of reporting. Commenter (42), (54) indicated that the additional language in this section may be used to collect $2,500 for submitting a late Construction Status Report and stated that if the intention of the Department is to find a penalty for late reporting, imposing a fee is not the appropriate place or method. Commenter (44) stated that such status reports are a relatively new requirement, are not followed up on or enforced by Department staff and are by no means as important or time critical as the Carryover, 10% Test or Cost Certification and should not be treated as such.

STAFF RESPONSE: In response to commenters (28), (58) requesting clarification on the calculation of the amendment fee if subsequent requests are made, the first request for an amendment will be $2,500. If a second request for an amendment related to the same application is submitted, a subsequent fee for $3,000 must accompany the revised request, and if a third request is made related to the same application, a fee in the amount of $3,500 must be submitted before the amendment will be processed by the Department. Amendment requests are typically very time intensive for Owners, several Department Divisions, and (where applicable) the Board. Amendment requests are currently often submitted on multiple occasions for the same Developments, requiring staff to re-evaluate the same Developments, re-work previous amendments, and bring the same Developments back to the Board for consideration multiple times. In response to Commenter 58, multiple amendments in *one* request will only incur one fee; the intent of this rule change is to encourage Owners to be as thorough as possible and to include any and all items requiring amendment in *one* request rather than submitting multiple requests for changes to the same Development. Staff believes that encouraging Owners to review any and all changes from application prior to submitting an amendment request will make amendment requests more thorough and clear, will assist staff and the Board in considering the full and correct scope of changes affecting an application, and will make the amendment process more efficient for all parties. Staff has modified the section for clarity as reflected by the following: "(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. A subsequent request, related to the same application, regardless of whether the first request was non-material and did not require a fee, must include a fee of $3,000 and if a third request for such amendment is made, it must include a fee of $3,500. Amendment fees and fee increases are not required for the Direct Loan programs." Similarly, staff has modified the section relating to Extension fees to reflect the same as reflected by the following: "(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. A subsequent request on the same activity, regardless of whether the first request was submitted thirty (30) calendar days in advance of the applicable deadline, must include a fee of $3,000 and if a third request for such amendment is made, it must include a fee of $3,500. 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."

While the Department recognizes that extension requests for construction status reports would be a new process, the Department disagrees with Commenters 42, 43, 44, 54, 58, 60, and 73 that construction status reports should not need to be extended. The construction status report requirement has been included in Subchapter E of the Uniform Multifamily Rules since 2013, appears in the Post Award Activities Manual, and is relied on by the Department as an essential tool to assist in documenting and discussing issues later brought to light with amendment and other extension requests, force majeure requests, placed in service extension requests, requests from congressional offices, and cost certifications - not just for regular updates to the Department on the status of construction progress, as Commenters 42 and 54 stated. Though this requirement was also explicitly added to Determination Notices and Carryover Allocation Agreements in 2015 (the Department's further attempt at highlighting this critical requirement), the Department continues to struggle with receiving Construction Status Reports on time and sometimes at all from a large number of Owners, which has affected its ability to act timely and reasonably in taking action on different types of external requests and receive an adequate amount of information to form responses for the Board, Owners, and representatives of the public. Because of this continuing issue, the Department has proposed the extension process and $2,500 extension fee as a way to begin better enforcing this requirement, which has thus far been difficult given that there is no consequence for failing to submit the information, as noted by Commenter 44. While construction status reports may not seem as time critical as Carryover, 10% Test, or Cost Certification, as stated by Commenter 44, the Department would argue that the need for responses to items can sometimes be unforeseen by both Owners and staff and that such requests can become even more time critical given the needs of Owners or external parties. Given the Department's reliance on these reports, if the choice is made not to implement the extension process and $2,500 fee because of agreement with Commenters 42 and 54 that imposing a fee is not the appropriate place or method for finding a penalty for late reporting, the Department will still need to seek other fair means of encouraging timely submissions and gaining compliance with the rule, which may result in looking to other available routes of correcting non-compliance, such as referring participants directly to the Administrative Penalties Committee, which the Department fears would become more onerous for Owners than adding construction status reports to the extension process. Staff recommends no change based on this comment.

BOARD RESPONSE: Accepted staff's recommendation.

INDEX OF COMMENTERS

(28) Locke Lord Attorneys and Counselors

(42) Evolie Housing Partners

(43) Flores Residential, LLC

(54) Leslie Holleman and Associates, Inc.

(58) Mark-Dana Corporation

(60) Mears Development

(73) The Brownstone Group

STATUTORY AUTHORITY. The new sections are adopted pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the new sections are adopted pursuant to Texas Government Code, §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan, and Texas Government Code, §2306.144, §2306.147, and §2306.6716.

The adopted rule affects no other code, article or statute.

§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. For Applicants having submitted a competitive housing tax credit pre-application which met the pre-application threshold requirements, and for which a pre-application fee was paid, the Application fee will be $20 per Unit based on the total number of Units in the full Application. Otherwise, the Application fee will be $30 per Unit based on the total number of Units in the full Application. Applications in which a CHDO or Qualified Nonprofit Organization intends to serve as the Managing General Partner of the Development Owner, or Control the Managing General Partner of the Development Owner, may be eligible to receive a discount of 10 percent off the calculated Application fee provided such documentation is submitted with the fee. (§2306.6716(d))

(B) Direct Loan Applications. The fee will be $1,000 per Application except for those Applications that are layered with Housing Tax Credits and submitted simultaneously with the Housing Tax Credit Application. Pursuant to Tex. Gov't Code §2306.147(b), the Department is required to waive Application fees for private nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services

and if HOME funds are awarded. In lieu of the Application fee, these organizations must include proof of their exempt status and a description of their supportive services as part of the Application. The Application fee is not a reimbursable cost under the HOME Program.

(4) Refunds of Application Fees. Upon written request from the Applicant, the Department shall refund the balance of the Application fee for an Application that is withdrawn by the Applicant and that is not fully processed by the Department. The 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. A subsequent request on the same activity, regardless of whether the first request was submitted thirty (30) calendar days in advance of the applicable deadline, must include a fee of $3,000 and if a third request for such amendment is made, it must include a fee of $3,500. 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.A subsequent request, related to the same application, regardless of whether the first request was non-material and did not require a fee, must include a fee of $3,000 and if a third request for such amendment is made, it must include a fee of $3,500. 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 Application Round immediately following the return of credits. If any such point penalty is recommended to be assessed and presented for final determination by the Board, it must include notice from the Department to the affected party not less than 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.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 9, 2016.

TRD-201606438
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 29, 2016
Proposal publication date: September 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") adopts the repeal of 10 TAC Chapter 11, Housing Tax Credit Program Qualified Allocation Plan §§11.1 - 11.10, without changes to the proposed text as published in the September 23, 2016, of the *Texas Register* (41 TexReg 7299). The repealed text will not be republished.

REASONED JUSTIFICATION. The Department finds that the repeal will replace the sections with a new QAP applicable to the 2017 application cycle.

The Department accepted public comments between September 23, 2016, and October 14, 2016. Comments regarding the repealed were accepted in writing and by fax. No comments were received concerning the repeal.

The Board approved the final order adopting the repeal on November 10, 2016.

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

The adopted repeal affects no other code, article or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 9, 2016.

TRD-201606439
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 29, 2016
Proposal publication date: September 23, 2016
For further information, please call: (512) 475-2973

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10 TAC §§11.1 - 11.10

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC, Chapter 11, §§11.1 - 11.10, concerning the Housing Tax Credit Program Qualified Allocation Plan. Sections 11.1, 11.2, 11.6, 11.7, 11.8, 11.9, and 11.10 are adopted with changes to text as published in the September 23, 2016 issue of the *Texas Register* (41 TexReg 7354). Sections 11.3, 11.4, and 11.5 are adopted without change and will not be republished.

REASONED JUSTIFICATION. The Department finds that the adoption of the rule will result in a more consistent approach to governing multifamily activity and to the awarding of multifamily funding or assistance through the Department while minimizing repetition among the programs. The comments and responses include both administrative clarifications and revisions to the Housing Tax Credit Program Qualified Allocation Plan based on the comments received. After each comment title, numbers are shown in parentheses. These numbers refer to the person or entity that made the comment as reflected at the end of the reasoned response. If comment resulted in recommended language changes to the Draft Housing Tax Credit Program Qualified Allocation Plan as presented to the Board in September, such changes are indicated.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS

Public comments were accepted through October 14, 2016, with comments received from (1) Senator Eddie Lucio, Jr., (2) Representative Eddie Lucio, III, (3) Representative Marisa

Márquez, (4) Senator José Menéndez, (5) Representative Joe Moody, (6) Representative Joseph C. Pickett, (7) Senator José Rodríguez, (8) City of Fort Worth, (9) City of Harlingen, (10) City of San Angelo, (11) City of San Saba, (12) Travis County (13) Fort Worth Housing Solutions, (14) San Antonio Housing Authority, (15) Housing Authority of the City of El Paso, (16) Marble Falls Economic Development Corporation, (17) 5th Ward Community Redevelopment Corporation, (18) City Wide Community Development Corporation, (19) Texas Association of Community Development Corporations, (20) Rural Rental Housing Association of Texas, Inc., (21) Trinity University, (22) Texas Affiliation of Affordable Housing Providers, (23) Texas Coalition of Affordable Developers, (24) Low Income Housing Information Service, (25) Corporation for Supportive Housing, (26) Preservation Texas, (27) Atlantic Housing Foundation, Inc., (28) Locke Lord Attorneys and Counselors, (29) Leading Age Texas, (30) Uplift Education, (31) Structure Development, (32) Anderson Development and Construction, LLC, (33) BETCO Consulting, LLC, (34) Savage, William, (35) Casa Linda Development Corporation, (36) Churchill Residential, (37) Columbia Residential, (38) Dharma Development, LLC, (39) DMA Companies, (40) Dominium, (41) Endeavor Real Estate Group, (42) Evolie Housing Partners, (43) Flores Residential, LLC, (44) Foundation Communities, (45) Franklin Development, (46) FW Mason Heights, LP, (47) Marks, Roger, (48) Hamilton Valley Management, Inc., (49) Highridge Costa Development Company, LLC, (50) Hoke Development Services, LLC, (51) Investment Builders, Inc., (52) ITEX Group, (53) Lakewood Property Management, LLC, (54) Leslie Holleman and Associates, Inc., (55) Carpenter, Alyssa, (56) Lucas and Associates, LP, (57) Madhouse Development Services, (58) Mark-Dana Corporation, (59) Marque Real Estate Consultants, (60) Mears Development, (61) MGroup, LLC, (62) Miller Valentine Group, (63) National Church Residences, (64) New Hope Housing, (65) The Brownstone Group, (66) O-SDA Industries, (67) Palladium USA, (68) Prospera Housing Community Services, (69) Purple Martin Real Estate, (70) Saigebrook Development, (71) Stoneleaf Companies, (72) Allgeier, Dan

1. §11 - General Comment (24), (28)

COMMENT SUMMARY: Commenter (24) applauds the great efforts that staff have expended in working with stakeholders to craft the Draft 2017 QAP. Commenter states that many of the rules and changes contained in the proposed 2017 Multifamily Rules will advance this state's obligation to affirmatively further fair housing and to provide quality housing choices to low-income Texans who are dependent on affordable housing programs. Commenter continues that there are several changes that stand to impede this same obligation and are a regression from the 2016 QAP.

COMMENT SUMMARY: Commenter (28) pointed out several administrative corrections needed.

STAFF RESPONSE: Staff appreciates the support expressed by commenter (24) and provides responses in the specific areas of the rule commented upon.

Staff appreciates the corrections suggested by commenter (28) and has incorporated them throughout the rule as discussed, below.

BOARD RESPONSE: Accepted staff's recommendation.

2. §11.1 General (42), (54), (59)

COMMENT SUMMARY: Commenters (42) and (54) state that the language added to the end of section (b), regarding Due Diligence and Applicant Responsibility, raises procedural questions regarding appeal rights. Commenter asks if the Department intends to move away from issuing scoring notices and rely on the posting of application logs to communicate scoring decisions. Commenter points out that fewer logs were published during the last cycle than from the previous two, and only 3 were announced via Department listserv. Commenter recommends striking this language as it is ambiguous and unnecessary as there is an entire section related to Appeal rights in Subchapter G.

Commenter (59) asks staff to clarify what staff intends to publish to the Department's website that represents the "results of the evaluation process" since a scoring notice will no longer be considered Staff's summary of their assessments of an application.

STAFF RESPONSE: In response to commenters (42), (54), and (59), staff clarifies that the Department is not moving away from issuing scoring notices. As in years past, scoring notices will be issued when the scoring review of an application is complete, and revised scoring notices will be issued when appropriate. The added language clarifies that the scoring notice is a courtesy communication to the Applicant of the score that will appear on a future log at publication. Tex. Gov't Code §2306.67041 requires the Department to post online an application log that includes the application score. In posting such log, the Department provides information regarding the scoring of the application, which is one the appealable decisions indicated in Tex. Gov't Code §2306.6715 regarding appeals. Because Tex. Gov't Code §2306.6715(c) provides for appeal within seven days after publication of scoring results, staff will post the log on a regular basis during the review process. Staff believes that the language in this section should be clarified and has revised the rule accordingly.

(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 Tex. Gov't Code §2306.6715(c), an applicant is given until the later of the seventh day of the publication on the Department's website of a scoring log reflecting that applicant's score or the seventh day from the date of transmittal of a scoring notice; PROVIDED, however, that an applicant

may not appeal any scoring matter after the award of credits unless they are within the above-described time limitations AND have appeared at the meeting when the Department's Governing Board makes competitive tax credit awards and stated on the record that they have an actual or possible appeal that has not been heard. Appeal rights may be 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.

BOARD RESPONSE: Accepted staff's recommendation.

3. §11.2 - Program Calendar for Competitive Housing Tax Credits (19), (31), (36), (38), (44)

COMMENT SUMMARY: Commenters (19), (31), (36), and (44) state that the time frame for clearing a deficiency should not be reduced from five (5) days to three (3) days.

Commenter (38) points out that the Application Acceptance Period Begins on January 5, 2017 (a Thursday), and the Pre-Application Final Delivery Date is January 9, 2017 (a Monday). Commenter states that Developers should have the work week to work on the pre-applications and make sure that they are ready prior to the filing deadline.

STAFF RESPONSE: In response to commenters (19), (31), (36), and (44), staff agrees that the time frame for clearing a deficiency should not change. The language in this section and in §10.201(7) will revert to that of the 2016 QAP.

In response to commenter (38), the Application Acceptance Period marks the date on which Applicants may send their applications to the Department and does not mark the date one which an Applicant may start to prepare the Pre-application. Applicants are able (and encouraged) to begin preparing the Pre-application as soon as the application materials are posted on the Department's website. For Program Year 2016, the Pre-application materials were posted on December 4, 2015, giving Applicants access to the materials one month prior to the beginning of the Application Acceptance Period.

Staff recommends no changes based on this comment.

BOARD RESPONSE: Accepted staff's recommendation.

4. §11.3 - Housing De-Concentration Factors (61)

COMMENT SUMMARY: Commenter (61) states that to prevent over-concentration of tax credits in certain census tracts, the de-concentration and linear distance conditions for same year awards should apply statewide and not just in counties with a population in excess of one million people. Commenter suggests adding language to this section so that in urban areas, regardless of county population, any award is limited to a minimum linear distance de-concentration factor. Commenter proposes a rule that mandates a minimum one mile linear separation for same year development awards. Commenter suggests the following revision to item (d):

(d) Limitations on Developments in Certain Census Tracts. An Application that proposes the New Construction or Adaptive Reuse of a Development ~~proposed to~~ may not 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, regardless of whether 1) the units are existing at the time the application cycle begins, or 2) any multiple awards within the same program year causes the census tract to meet the 20% limit. The application that causes the 20% limit to be exceeded shall be deemed ineligible for an award of tax credits.

STAFF RESPONSE: In response to commenter (61), staff believes that these revisions represent sufficiently substantive changes from what was proposed that it could not be accomplished without re-publication for public comment. These ideas could be taken into consideration for drafting the 2018 QAP. Staff encourages commenter to suggest this revision during planning for the 2018 QAP.

Staff recommends no changes based on this comment.

BOARD RESPONSE: Accepted staff's recommendation.

5. §11.4 Tax Credit Request and Award Limits (40), (59), (62)

COMMENT SUMMARY: Commenter (40) states that under item (C), the existing language is ambiguous as it pertains to tax exempt bond financed transactions and requests §11.4(c)(1) not apply to 4% bond deals, particularly 4% bond deals that are preservation of existing affordable housing (project based Section 8 or existing Section 42). Commenter suggests the following revisions:

(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 seeking Competitive Housing Tax Credits 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 seeking Competitive Housing Tax Credits that are 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. For Tax-Exempt Bond Developments of existing affordable housing, either Section 42 or HUD-assisted, located in a QCT the 30 percent increase in Eligible Basis would still apply even if the QCT had in excess of 20 percent Housing Tax Credits Units per total household.

Commenter (59) requests that Applicants be given the opportunity to withdraw applications of their choosing if it appears that one or more members of a development team might violate the $3 million cap, instead of TDHCA selecting the Development(s) that most effectively satisfies the Department's goals in fulfilling set-aside priorities and are highest scoring in the regional allocation.

Commenter (62) states that the change in how guarantors are considered for credit cap should be removed and last year's language should be included. Commenter states that any entity with significant involvement in the development and ownership of the property should be considered under the credit cap rules.

STAFF RESPONSE: In response to commenters (20) and (40), staff believes that these revisions represent sufficiently substantive changes from what was proposed that it could not be accomplished without re-publication for public comment. These ideas could be taken into consideration for drafting the 2018 QAP. Staff encourages commenter to suggest this revision during planning for the 2018 QAP.

Staff recommends no changes based on this comment.

In response to commenter (59), staff clarifies that the Applicant can withdraw an Application at any time during the application process. The added language establishes a process for decision making if the Applicant has not withdrawn an Application, under which staff will select the Development(s) that most effectively satisfies the Department's goals in fulfilling set-aside priorities and are the highest scoring in the regional allocation.

Staff recommends no changes based on this comment.

In response to commenter (62), staff clarifies that the change in the language regarding the guarantor is to ensure that the credit cap is limited to those permanently involved in the development. General contractors and those providing construction financing may only be involved during construction. Staff believes that the entities considered under the credit cap rules are appropriately limited.

Staff recommends no changes based on this comment.

BOARD RESPONSE: Accepted staff's recommendation.

6. §11.5 - Competitive HTC Set-Asides (43)

COMMENT SUMMARY: Regarding item (3) At-Risk Set-Aside, commenter (43) states that there is a limit on the number of tax credits units for properties where affordable units are being relocated; however, for an at-risk development on same site, there is no limit on the number of tax credits units. Commenter recommends that the tax credit units should be limited to the same number of affordable units on the site, or perhaps not more than a minimum percentage of additional units.

STAFF RESPONSE: In response to commenter (43), staff believes that this revision represents a sufficiently substantive change from what was proposed that it could not be accomplished without re-publication for public comment. This idea could be taken into consideration for drafting the 2018 QAP. Staff encourages commenter to suggest this revision during planning for the 2018 QAP.

Staff recommends no changes based on this comment.

BOARD RESPONSE: Accepted staff's recommendation.

7. §11.6 - Competitive HTC Allocation Process (23), (42), (54), (58), (65)

COMMENT SUMMARY: Regarding item (2), commenters (42) and (54) state that the addition of this new language limits the Department's ability to allocate the entire credit ceiling in any given year. Commenters recommend striking this language.

Regarding item (3)(C), commenter (23) requests clarification on the point in the allocation process at which an award for the highest scoring development that is part of a concerted revitalization plan would be made, particularly in the case that there are revitalization developments in the At-Risk Set-Aside and in the subregion from the same city. Commenter requests clarification on which requirements of 10 TAC §11.9(d)(7) must the application meet.

Commenters (23), (54) and (65) state that subparagraph 11.6(3)(C)(ii) is missing statutory reference (2306.6711(g)).

Commenter (58) points out administrative corrections needed and requests that staff explain the resulting requirements if the last sentence is deleted from §11.6(3)(C)(i).

STAFF RESPONSE: In response to commenters (42) and (54), staff believes the added language is necessary to ensure that the next deal to be awarded from the waiting list can be fully funded.

Staff recommends no changes based on this comment.

In response to commenter (23), the recommendation for an award for such an application would be submitted for approval along with all other award recommendations. The status of applications that may meet the requirements of this subsection will be identified on each application log posted by staff. The requirement does not consider any revitalization developments in the At-Risk Set-Aside as item (C) pertains only to the initial allocation for the subregions. Until the set-aside requirement is met, award recommendations for the At-Risk Set-Aside take precedence over recommendations for the subregions. In no case would an award that would violate 10 TAC §11.3(a) (the "2 mile same year rule") be recommended.

Staff recommends no changes based on this comment.

In response to commenters (23), (54), (58) and (65), the application must meet all requirements of 10 TAC §11.9(d)(7), except the application does not have to score one additional point under §11.9(d)(7)(A)(ii)(III) or §11.9(d)(7)(B)(iv). Staff agrees that this scoring item should be clarified and has revised §11.9(d)(7) accordingly.

(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 Tex. Gov't Code, §2306.6711(h) and will publish such percentages on its website.

(ii) In accordance with Tex. Gov't Code, §2306.6711(g), in Uniform State Service Regions containing a county with a population that exceeds 1.7 million, the Board shall allocate competitive tax credits to the highest scoring development, if any, that is part of a concerted revitalization plan that meets the requirements of §11.9(d)(7) (except for §11.9(d)(7)(A)(ii)(III) and §11.9(d)(7)(B)(iv)), is located in an urban subregion, and is within the boundaries of a municipality with a population that exceeds 500,000.

In response to commenter (58), the language deleted from clause (i) has been added to item (C). The Department will continue to calculate the maximum percentage in accordance with Texas Gov't Code, §2306.6711(h) and publish such percentages on its website.

Staff recommends no changes based on this comment.

BOARD RESPONSE: Accepted staff's recommendation.

8. §11.7 Tie Breaker Factors (12), (20), (22), (25), (33), (35), (39), (40), (41), (42), (43), (44), (45), (49), (52), (54), (58), (59), (60), (63), (65)

COMMENT SUMMARY: Commenters (12), (20), (22), (33), (35), (40), (41), (42), (43), (49), (52), (54), (60), and (65) suggest removal of item (4). Commenters (12), (22), (40), (41), (42), and (43) state that having Educational Quality as two of the seven tie breakers seems unnecessary. Commenter (20) states that item (3) regarding Opportunity Index scoring is sufficient to capture the Department's preference for high opportunity without repeating a selection for Educational Quality.

Commenters (12), (22), (33), (40), (41), (42), (43) suggests that staff remove item (6).

Commenter (20) asks that item (6) regarding the poverty rate in a census tract become the last tie breaker.

Commenters (25) and (58) suggest not applying item (1) to applications in the At-Risk Set-Aside. Commenter (25) states that this addition creates an uneven playing field as at-risk applications compete state-wide and include both rural and urban applications.

Commenters (33), (45), (59), (63) suggest that staff remove item (1). Commenter (59) states that item (1) should be removed because Urban Core points only apply to developments in five cities. Commenter (63) states that item (1) creates an uneven playing field, especially in regards to at-risk developments that might be located in rural areas.

Commenters (35), (42), (49) and (54) state that as written, the rule presents problems for Applicants wishing to judge potential competition as there is no enforcement mechanism by which to require disclosure at Pre-application. Commenter (35) states that at the September Board meeting, public comment was made that Opportunity Index menu items above the point cap (items (3) and (4)) should be disclosed at Pre-Application. Commenter (42) suggests that the chosen menu items not be allowed to swing more than 4 items up or down at Full Application

Commenters (35), (42), (43), (54), (60), (65) recommend revision to item (3). Commenter (42) states that using one menu item to break a tie when another application may have a positive attribute that is not on the list is not a good policy. Commenter recommends limiting the number of above the point cap menu items that can be claimed on this tie break factor to 4 or more to incentivize finding High Opportunity sites.

(3) Applications having achieved the maximum Opportunity Index Score and have at least four (4) additional point items on the Opportunity index menu that they were unable to claim because of the 7-point cap on that item.

Commenter (39) supports the new Proximity to Urban Core scoring category and its rank as the first tie breaker.

Commenter (44) expresses support of the additions for tiebreaker factors. Commenter encourages staff to consider adding proximity to public transportation versus one of the two current Educational Quality tie breakers, as the property that is most accessible to public transportation is the project that will align with responsible development and broader appeal to the State's affordable housing residents living in urban areas.

Commenter (52) states that item (1) should be lowered to the 3rd tie breaker, item (3) should be the first tie-breaker, and item (5) should be removed.

Commenter (58) proposes the following tie breaker rubric:

(i) Applications having achieved a score on Proximity to the Urban Core (does not apply to Applications in the At-Risk Set-Aside)

(ii) Applications having achieved the highest score on the Opportunity Index

(iii) Applications having the most amenities on the Opportunity Index

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

(v) 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.

STAFF RESPONSE: In response to commenters (12), (20), (22), (33), (35), (40), (41), (42), (43), (49), (52), (54), (60), and (65), staff agrees that item (4) should be removed due to the lowered point value for the item. Staff has revised the rule accordingly.

In response to commenters (12), (22), (33), (40), (41), (42), (43), staff believes that when all scoring factors fail to break a tie, there must be some objective measures utilized to break the tie. Two such measures are included: the poverty rate and the distance from the nearest HTC Development. The poverty rate measure is an objective measure that directly affects the Development. If this measure fails to break the tie, the last tie breaker is the only measure that has the least effect on the Development.

Staff recommends no changes based on this comment.

In response to commenter (20), the last tie breaker is reserved for an item that has the least bearing on the actual development. In this case, that is the greatest linear distance from the nearest HTC assisted Development.

Staff recommends no changes based on this comment.

In response to commenters (25) and (58), staff clarifies that Proximity to the Urban Core will not apply to Applications in the At-Risk Set-Aside. Staff has revised the rule accordingly.

In response to commenters (33), (45), (59), (63), staff believes that item (1) represents a policy priority of the Department to encourage the placement of affordable housing in areas that are proximate to the urban core of major cities. As such, staff believes that it is an appropriate measure as the first tie breaker. This item will not apply to Applications in the At-Risk Set-Aside. Regarding items (4) and (6), as a result of public comment, item (4) has been removed from the list; however, staff believes that item (6) should remain. Staff has revised the rule accordingly.

In response to commenter (35), (42), (49) and (54), the 2017 Pre-Application will require that applicants disclose which Opportunity Index and Educational Quality items they intend to count for tie-breaker items.

Staff recommends no changes based on this comment.

In response to commenters (35), (42), (43), (54), (60), (65), staff believes that as written, the scoring item will provide incentive to the application that is able to claim the most items under Opportunity Index. Staff does not see the necessity of adding a lower limit. If there are items that the commenter believes should be included on the list, staff encourages commenter to suggest those items during planning for the 2018 QAP.

Staff recommends no changes based on this comment.

In response to commenter (39), staff appreciates the support expressed.

Staff recommends no changes based on this comment.

In response to commenter (44), staff believes that this revision represents sufficiently substantive changes from what was proposed that it could not be accomplished without re-publication for public comment. This idea could be taken into consideration for drafting the 2018 QAP. Staff encourages commenter to suggest this revision during planning for the 2018 QAP.

Staff recommends no changes based on this comment.

In response to commenter (52), staff believes that item (1) represents a policy priority of the Department to encourage the placement of affordable housing in areas that are proximate to the urban core of major cities. As such, staff believes that it is an appropriate measure as the first breaker. Regarding item (5), as a result of public comment, item (4), the other tie breaker item dealing with Educational Quality, has been removed from the list. Staff believes that as a result, item (5) should remain. Staff has revised the rule accordingly.

(1) Applications having achieved a score on Proximity to the Urban Core. This item does not apply to the At-Risk Set-Aside.

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

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

(6) 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.

In response to commenter (58), staff believes that this revision represents sufficiently substantive changes from what was proposed that it could not be accomplished without re-publication for public comment. This idea could be taken into consideration for drafting the 2018 QAP. Staff encourages commenter to suggest this revision during planning for the 2018 QAP.

Staff recommends no changes based on this comment.

BOARD RESPONSE: Accepted staff's recommendation.

9. §11.8 Pre-Application Requirements (20), (22), (32), (33) (40), (57), (58)

COMMENT SUMMARY: Commenters (20), (22), (33), (40) and (58) recommend that the disclosure requirement be removed from Pre-application. Commenter (20) states that the added requirement under (B) that applicants must disclose Undesirable Neighborhood Characteristics should be moved to full application as property sites, and particularly new construction sites, will not know all of the undesirable neighborhood characteristics at Pre-application. Commenter (58) states that developers need more time to investigate and identify Undesirable Neighborhood Characteristics than what the pre-application deadline currently allows.

Commenter (32) states that such disclosure was provided in the past and TDHCA staff was unable to respond to the voluminous request for waivers and review. Commenter suggests that unless adequate time can be dedicated by TDHCA staff to provide meaningful feedback and timely presentation to the Board if necessary, this threshold requirement adds undue burden to the developer should the Department disagree with the disclosure or lack thereof, which could subsequently result in inconsistency and subjective termination of applications.

Commenter (57) asks staff to clarify whether or not a townhome is still considered an eligible type of development.

STAFF RESPONSE: In response to commenters (20), (22), (32), (33), (40) and (58), staff believes that it may be impractical to require the disclosure of certain Undesirable Neighborhood Characteristics at Pre-application. Staff has revised the rule so that Applicants must only provide disclosure at Pre-Application for items that are easily identified, as shown below:

Pursuant to Tex. Gov't Code, §2306.6704(c) pre-applications will be terminated unless they meet the threshold criteria described in subsection (a) of this section and paragraphs (1) and (2) of this subsection:

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

(I) Disclosure of the following Undesirable Neighborhood Characteristics under §10.101(a)(4):

(i) 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.

(ii) 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.

In response to commenter (57), staff clarifies that a townhome that meets all accessibility requirements can be considered an eligible unit type.

Staff recommends no changes based on this comment.

BOARD RESPONSE: Accepted staff's recommendation.

10. §11.9(a) - General Information (59)

COMMENT SUMMARY: Commenter (59) asks staff to clarify what the repercussions would be if an Applicant fails to provide this disclosure. Also, commenter asks staff to specify what con-

stitutes evidence for providing this disclosure to the statewide elected and local officials or stakeholders.

STAFF RESPONSE: In response to commenter (59), staff clarifies that failure to make such disclosure 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 would be considered an incomplete notification. The disclosure must be included in any pre-application, Application or other materials provided.

Staff recommends no changes based on this comment.

BOARD RESPONSE: Accepted staff's recommendation.

11. §11.9(c)(3) - Tenant Services (19), (22), (25), (29), (40), (42), (44), (54), (60), (63), (64), (65)

COMMENT SUMMARY: Commenters (19), (25), (29), (44), (63) and (64) suggest the following revisions in order to ensure value for tenants:

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. . . .

(B) The Applicant certifies that the Development will have a dedicated Service Coordinator or Case Manager to 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. The Service Coordinator will proactively engage and assess residents' needs through direct communication and tailor services appropriately.

Commenters (19), (25), (44), (63), and (64) suggest the following additional scoring item:

A Development selecting these points will also provide:

(i) Minimum of 1 monthly program onsite provided by a local service provider, and

(ii) minimum of 3 local service providers engaged to provide services to residents, or

(iii) The applicant is a nonprofit organization and is itself providing services to residents of the Development. (1 point)

Commenters (22), (40), suggest that in the event that Educational Quality is removed as a separate point category, staff should reduce the total points available for this item from 11 points to 10 points for all development types based on the scoring parity bill.

Commenters (42), (43) (54), (60) (65) state that paragraph (B) is ambiguous and should therefore be removed from this section and added as an option under 10.101(7) in more clearly defined terms. Commenters (42) and (54) ask several questions seeking clarification regarding item (3)(B) and Commenter (54) further questions if services used to score under §10.101(7) could be used to score under §11.9(c)(3).

STAFF RESPONSE: In response to commenters (19), (25), (29), (44), (63) and (64), during planning meetings held by staff with the development community and other stakeholders (including advocates for tenants), there was overwhelming opposition to including the requirements that Developments have a dedicated service coordinator or case manager and that tenants must be assessed for case management services. Commenters stated that, in most cases, tenants that require case management services already receive those services from one or more providers. Further, if the services go unused, a Development may be sidled with dedicated staff that is not being utilized.

Staff recommends no changes based on this comment.

In response to commenters (19), (25), (44), (63), and (64), staff believes that this revision represents sufficiently substantive changes from what was proposed that it could not be accomplished without re-publication for public comment. This idea could be taken into consideration for drafting the 2018 QAP. Staff encourages commenter to suggest this revision during planning for the 2018 QAP.

Staff recommends no changes based on this comment.

In response to commenters (22) and (40), Educational Quality is not being removed as a separate point category; therefore the point value for this item will remain unchanged.

Staff recommends no changes based on this comment.

In response to commenters (42) and (54), staff has revised the rule as follows to provide greater clarity:

B) The Applicant certifies that the Development will contact local ~~service~~ nonprofit and governmental providers of services that would support the health and well-being of the Development's tenants, and will make Development community space available to them on a regularly-scheduled basis to provide outreach services and education to the tenants. Applicants may contact service providers on the Department list, or contact other providers that serve the general area in which the Development is located. (1 point)

In response to commenter (54), Staff understands that this scoring scenario is possible.

Staff recommends no changes based on this comment.

In response to commenters (42), (43) (54), (60) and (65), staff does not agree that item (B) should be moved to §10.101(7) as that section applies to services that the Applicant agrees to provide to tenants, while this section only requires outreach and dedicated space.

Staff recommends no changes based on this comment.

BOARD RESPONSE: Accepted staff's recommendation.

12. §11.9(c)(4) - Opportunity Index (11), (16), (19), (20), (22), (23), (24), (31), (32), (33), (36), (38), (39), (40), (42), (43), (44), (45), (48), (52), (53), (54), (55), (57), (58), (59), (65), (67), (71), (72)

ITEM (A) COMMENT SUMMARY: Commenters (11) and (16) state that due to the nature of economic and socioeconomic patterns in their cities, any scoring criteria that is ranked according to quartiles will yield uneven results. Commenters state that the existing criteria are adequate and request that any broad application of quartile and poverty rankings in rural areas be reconsidered.

Commenter (19) supports the increase of the poverty rate to 20% and allowing second and third quartile census tracts to score under this item as these changes will open new areas to locate housing.

Commenters (23), (31), (58) state that under item (A), the change from calculating quartiles by Metropolitan Statistical Area ("MSA") or County (if outside of an MSA) to by Region will be a huge shift for rural areas as some will now have no high opportunity census tracts, or the high opportunity census tracts

will be disproportionately urban. Commenter (31) requests that staff not change the calculation.

Commenter (24) states that the equalization of 1st, 2nd, and 3rd quartile tracts in scoring accompanied by a raising of the poverty threshold from 15 percent to the higher of 20 percent or the average for the state service region takes the QAP from rewarding deals in high opportunity tracts where few LIHTC developments are currently located to, poverty rate aside, placing three-fourths of census tracts in Texas on an equal playing field. Commenter states that given that property values, a major factor in development decisions, are likely to be lower in 3rd quartile tracts, it is reasonable to presume that there will be a significant shift in the locations of awards in the 2017 cycle away from the progress which has been made over the past several competitive cycles. Commenter states that with the addition of the Proximity to the Urban Core points which are weighted equally with Educational Quality, there is a further reduced incentive to pursue developments in these top quartile tracts. Commenter recommends that 3rd quartile tracts be eligible for a maximum of 6 points for the opportunity index scoring item.

Commenter (32) states that a 20% poverty rate limitation unfairly limits financing in certain neighborhoods. Commenter further states that including "without physical barriers...and the Development Site is no more than 2 miles from the boundary..." is the prime definition of the unlawful Redlining that blatantly violates the Fair Housing Act. Either a census tract is eligible or it isn't. Refusing the same financing across the highway or railroad tracks where minorities historically live is perpetuating racial discrimination. Commenter states that the physical barrier and distance language must be removed.

Commenter (45) states that there is a discrepancy in the total points a development site can receive between items (i) or (ii) under 11.9(c)(4)(A). Clause (i) qualifies for 2 points, whereas clause (ii) qualifies for 1 point. Commenter (45) asks staff to review this possible discrepancy.

Commenter (55) requests that under item (A)(i), staff further clarify what TDHCA means by "highway." Commenter (55) states that, according to both Merriam Webster and Wikipedia, 'highway' can be interpreted as any "public way," such as a local street. Commenter proposes that staff replace "highway" with "controlled access highway," which is more likely to create "non-contiguous" areas than local streets.

Commenters (20), (22), (33), (39), (40), (42), (43), (44), (45), (48), (54), (55), (58), (59), (60), (65), and (67) suggest revisions to item (A).

Commenter (20) suggests revisions to support the preservation of existing rural properties and new rural construction:

(A) A Proposed Development is eligible for up to two (2) 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. The requirements in (i) and (ii) do not apply to the USDA and the At-Risk Set-Asides.

(i)The Development Site is located in ~~a~~ an urban 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 an urban 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 points)

Commenters (22), (39), (40), suggest revisions to further clarify the item. Commenters suggest including aspects of the Educational Quality scoring item into the menu of items:

(A) A Proposed Development is eligible for up to two (2) 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. Rural developments and developments that are competing in the At-Risk and/or USDA set-asides can achieve the maximum score without meeting (i) or (ii) below.

(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, and the Development Site is no more than 2 miles from the boundary between the census tracts. and, (1 points)

Commenter (33) states that due to the manner in which the quartiles are assigned, rural communities would be at a significant disadvantage in meeting this criteria and providing needed new housing opportunities for the community. Commenter states that because rural areas do not have the transportation infrastructure in place that an urban/metro place has, residents in a rural community depend on personal transportation to reach amenities and services. Commenter suggests the following revisions:

(A) A Proposed Development is eligible for up to two (2) 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. Rural developments and developments that are competing in the At-Risk and/or USDA set-asides can achieve the maximum 7 points without meeting (i) or (ii) below.

Commenters (42), (43), (54), (60), and (65) suggest the following revisions:

(A) A proposed Development is eligible for up to two (2) 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 has:

an income rate in the two highest quartiles within the uniform service region; (2 points)

(ii) an income rate 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 first or second quartile census tracts. and, (1 point)

Commenters (48) and (58) request that rural developments just not be required to meet the criteria set forth in Clauses (A)(i) and (ii). Commenter (48) states that Clauses (A)(i) and (ii) exacerbate the "donut hole" effect, whereby in non-MSA rural areas, the ranking of quartiles and poverty rate for any given census tract is indirectly proportionate to the density of population within the county. Commenter (48) asks that staff consider language that exempts developments competing in the Rural Set Aside from poverty rates or quartile rankings, and just default to the already existing criteria where presence of and proximity to certain

amenities and services helps to define Rural high opportunity. Commenter (48) proposes the following rule:

For Developments located in a Rural Area, an Application may qualify to receive points through a combination of requirements in subclauses {i) - (xiii) of this subparagraph if the Development Site is located within a census tract that has a poverty rate below 20 percent.

Commenter (59) asks staff to clarify how it calculates the median poverty rate for a region. Commenter recommends using the median for all of the census tracts in a Region since this methodology give equal weight to more sparsely populated and smaller counties as large counties with high populations. Commenter asks TDHCA to continue to recognize that Regions 11 and 13 have higher median poverty rates, as it did in 2016. Commenter suggests the following language if the proposed Development Site is located in a census tract in Regions 11 or 13, in order to add more eligible 1st and 2nd quartile census tracts to Regions 11 and 13:

"...with a poverty rate of less than the greater of 20% (35% for Regions 11 and 13) or the median poverty rate for the region..."

Commenter (62) asks that TDHCA issue the data sets it will use to evaluate applications for Opportunity Index points as quickly as possible. Commenter proposes that this information be provided before October.

Commenter (67) believes that there is a significant difference between 1st quartile and 3rd quartile census tracts, and the scoring system for the Opportunity Index should reflect that. Commenter proposes that development sites located in 1st quartile census tracts qualify for an extra point under paragraph (A) of this section. Commenter also asks that the maximum number of opportunity index points be raised to eight (8) points. Commenter's proposed language seeking to privilege development sites in 1st quartile census tracts is as follows:

(A) A Proposed Development is eligible for a maximum of eight (8) 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 quartile~~s~~ 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 second quartile or the third quartile within the region, as long as the third quartile census tract 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 points)

ITEM (B) COMMENT SUMMARY: Commenter (23) requests clarification of what data source(s) can be used to obtain property crime rates.

Commenter (23) requests clarification of what constitutes a government-sponsored museum. Commenter (58) also asks that staff strike "government sponsored" as a descriptor of "museum," as there are very good and reputable privately funded museums.

Commenter (23) requests clarification of what constitutes a university, Commenter (31) asks staff to clarify if two-year colleges constitute a University of Community College campus.

Commenters (22), (31), (39), (40), (42), (44), (54), (58), (60) and (65) made comments regarding "accessible playground". Commenter (31) asks ask staff to clarify what TDHCA means by 'accessible playground', 'access', 'play equipment', especially from the perspective of the child and/or caregiver. Commenter (44) asks whether "accessible playground" means the equipment itself has to be accessible or the route to the playground must be accessible. Commenter expresses concern that if the 2010 ADA accessibility standard is used, older playgrounds in urban areas may not meet this requirement. Commenters (22), (39), (40), (42), (54), (60), and (65) recommend removing the accessible playground language in favor of a playground that is not accessible because the accessibility of a public path is difficult to prove and the term "accessible" is not specific and could mean compliance with a variety of laws dealing with accessibility. Commenter (57) asks if by "accessible" staff mean handicap ramps, sidewalks, crosswalks, or driveway without a sidewalk. Commenter (57) asks if staff mean a playground that is fairly easy to access, ore a playground equipped for handicapped children. Commenter (38) requests that staff clarify the definition of "accessible playground".

Commenter (42) recommends striking the square footage requirement as one million square feet limits this point item to only the largest shopping malls. Commenter also recommends striking "big-box" as this is not a defined term. Commenter recommends tying "adults 25 and older with associate's degrees or higher" to exceeding the statewide average, which per the commenter is 24.5% according to the 2014 American Community Survey. Commenter states that the phrase "government-sponsored" is vague and recommends substituting the word "nonprofit" to achieve the intended goal while using objective data point.

Commenters (57) and (58) ask staff to specify how it measures distances; does it mean "drivable" or "as the crow flies."

Commenters (31), (36), (52), (53), (57), and (58) request clarification regarding item (IX) proximity to concentrated retail. Commenter (31) states that "4 big-box national retail stores" is preferable to "at least 1 million square feet." Commenter further asks how staff determines the proximity of big box retail stores, and proposes the walkable standard of ¼ mile. Commenter (36) requests that staff allow retailers to be in scattered locations within 3 miles of subject site, rather than in one concentrated retail shopping center. Commenter (52) asks that staff reduce the square footage for a retail shopping center to 250,000 square feet. Commenter (53) states that tax appraisal district information does not always include square footages of buildings and is not available everywhere, particularly in rural counties. Commenters (53) and (58) state that the square footage of a retail shopping center seems difficult to verify and unnecessary due to online purchasing and his understanding that retail stores are getting smaller (like WalMart Express). Commenters (53), (57), (58) ask how national big box retail stores will be defined. Commenter (53) suggests that staff define this requirement in both urban and rural areas as a retail center with at least 3 stores that sell goods to the general public and are open at least from 10 a.m. to 5 p.m. Monday through Friday. Commenter (57) asks that the total square footage be reduced to at least 500,000 square feet, but still comprises four big-box retail stores.

Commenters (58) and (71) request that staff consider the distance to amenities in rural communities. Commenter (71) states that rural communities generally have amenities but usually located within the vicinity of downtown, while most new construction is located on the outskirts of town due to the availability of land. Commenter states that reducing the distance to these amenities restricts the physical size of a city that can be considered.

Commenter (72) requests that the distances to museums, indoor and outdoor recreation facilities and community, civic or service organizations in Rural areas be the same as in Urban areas.

Commenters (20), (22), (33), (39), (40), (42), (43), (44), (45), (48), (54), (55), (58), (59), (60), (65), (67) and (71) suggest revisions to item (B).

Commenter (20) suggests the following revisions:

An application that meets the foregoing criteria, and applications in the USDA and At-Risk Set-Asides, 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 clauses (I) through (XV) of this subparagraph.

(XV) For properties in the At-Risk or USDA Set-Aside, the Development Site is located within 1 mile of an elementary, middle and high school that meets 77 or higher on the 2016 TEA Index 1 score, or the average of the regional subregion score (1 point for each school up to 3 points).

(ii) For Developments located in a Rural Area, an Application may qualify to receive points through a combination of requirements in clauses (I) through (XIV) of this subparagraph.

(VI) The Development Site is located within 3 miles of a public park or outdoor recreation facility. (1 point)

(VII) The Development Site is located within 15 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 specialty stores, around a central plaza or a main street with 10 or more distinctly identifiable and separate businesses (3 points), or a retail shopping center containing 5 or more stores. (1point)

(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 20% or higher. (1 point)

(X) Development Site is within 3 miles of a government-sponsored, nonprofit, or privately sponsored museum (1 point)

(XI) Development Site is within 3 miles of an indoor recreation facility available to the public (1 point)

(XII) For existing properties in the At-Risk or USDA Set-Aside, Development Site is within 3 miles of a high school (1 point), elementary school (1 point) or middle school (1 point) with a rating of Met Standard rating.

(XIII) Development Site is within 3 miles 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)

(XIV) Development Site is within 3 miles of a movie theater, and at least 3 restaurants open to the public (1 point).

Commenters (22), (39), (40), suggest the following revisions:

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 clauses (1) through (15) of this subparagraph.

(I) The Development Site is located less than 1/2 mile on an accessible route from a public park with a 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 (meaning buses scheduled between 7 and 9 a.m. and 4 and 6 p.m., Monday through Friday) to employment and basic services (1 point)

(IX) The Development Site is located within 3 miles of a concentrated retail shopping center of at least 500,000 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 as tabulated by the 2010-2014 American Community Survey 5-year Estimate. (1 point)

(XI) Development Site is within 2 miles of a government or 501(c)(3) nonprofit-sponsored museum (1 point)

(XV) 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. (3 points)

(XVI) 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. (2 points)

(XVII) The Development Site is within the attendance zone of any one 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. Center.(1 point)

(ii) For Developments located in a Rural Area, an Application may qualify to receive points through a combination of requirements in clauses (1) through (13) of this subparagraph.

(I) The Development Site is located within 5 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)

(VII) The Development Site is located within 15 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 at least three retail establishments.(1point)

(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 20% or higher as tabulated by the 2010-2014 American Community Survey 5-year Estimate. (1 point)

(X) Development Site is within 5 miles of a government-sponsored museum (1 point)

(XI) Development Site is within 3 miles of an indoor recreation facility available to the public (1 point)

(XII) Development Site is within 3 miles of an outdoor recreation facility available to the public (1 point)

(XIII) Development Site is within 3 miles 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)

Commenter (33) suggests the following revisions:

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:

(ii) For Developments located in a Rural Area, an Application may qualify to receive points through a combination of requirements in clauses (1) through (13) of this subparagraph.

(I) The Development Site is located within 3 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)

(VII) The Development Site is located within 15 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 at least three retail establishments. (1point)

(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 20% or higher. (1 point)

(X) Development Site is within 2 miles of a nonprofit museum (1 point)

(XI) Development Site is within 3 miles of an indoor recreation facility available to the public (1 point)

(XII) Development Site is within 3 miles of an outdoor recreation facility available to the public (1 point)

(XIII) Development Site is within 3 miles 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)

Commenter (42) suggests the following revisions:

(B) An application that meets the foregoing criteria may qualify for additional 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:

(I) The Development site is located less than 1/2 mile from a public park with a playground (1 point);

(II) The Development Site is located less than ½ mile from Public Transportation with a route schedule that provides regular service to employment and basic services (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, as defined by neighborhoodscout.com (1 point);

(IX) The Development Site is located within 3 miles of a concentrated retail shopping center that includes at least 4 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 exceeds that of the State-wide average. (1 point);

(XI) Development site is within 2 miles of a non-profit museum (1 point);

(XV) Development Site is within the attendance zone of a high school (1 point), elementary school (1 point) or middle school (1 point) with a Met Standard rating.

(ii) For Developments located in a Rural Area:

(I) The Development site is located within 5 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);

(IV) The Development Site is located in a census tract with a property crime rate 26 per 1,000 or less, as defined by neighborhoodscout.com (1 point);

(VII) The Development Site is located within 15 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 at least 3 retail stores (1point);

(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 exceeds that of the State-wide average. (1 point);

(X) Development site is within 2 miles of a non-profit museum (1 point);

(XI) Development site is within 3 miles of an indoor recreation facility available to the public (1 point);

(XII) Development site is within 3 miles of an outdoor recreation facility available to the public (1 point); and

(XIII) Development site is within 3 miles 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).

(XIV) Development Site is within the attendance zone of a high school (1 point), elementary school (1 point) or middle school (1 point) with a rating of Met Standard rating.

Commenter (44) provides comments and/or requested clarification on the following items:

(II) Definition of "regular". Commenter suggests using the Federal Home Loan Bank of San Francisco's definition as service at least every 30 minutes between 7 and 9 a.m. and between 4 and 6 p.m., Monday through Friday.

(XII): Commenter suggests that "indoor recreation facility" be more fully described and recommends that staff add specific descriptors such as publicly operated and/or specific features the facility must offer, and whether fees are required.

(XIII) Commenter suggests that "outdoor recreation facility" be more fully described and recommends that staff add specific descriptors such as publicly operated and/or specific features the facility must offer, and whether fees are required.

(XIV) Commenter states that this item seems to duplicate items in §11.9(c)(3) Tenant Services. Commenter suggests for replacement a Public Community Garden or Farmer's Market, Proximity to full banking services (used by FHLB San Francisco), or Proximity to Fire, Police or Post Office (used by FHLB San Francisco)

Commenter (53) suggests the following revisions:

(I) The Development site is located within 4 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 8 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 6 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)

(V) The development site is located within 6 miles of a public library (1 point)

(VI) The development site is located within 6 miles of a public park (1 point)

(VII) The Development Site is located within 14 miles of a University or Community College campus (1 point)

(VIII) The Development Site is located within 10 miles of a retail shopping center with XX square feet of stores (1point)

(X) Development Site is within 5 miles of a nonprofit museum (1 point)

(XI) Development Site is within 3 miles of an indoor recreation facility available to the public (1 point)

(XII) Development Site is within 3 miles of an outdoor recreation facility available to the public (1 point)

(XIII) Development site is within 3 miles 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).

Commenters (54), (60), and (65) propose the following revisions:

An application that meets the foregoing criteria may qualify for additional points up 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

(I) The Development site is located less than 1/2 mile on an from a public park with an playground (1 point);

(II) The Development Site is located less than ½ mile from Public Transportation with a route schedule that provides regular service to employment and basic services (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, as defined by neighborhoodscout.com (1 point);

(IX) The Development Site is located within 3 miles of a concentrated retail shopping center that includes at least 4 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 exceeds that of the State-wide average. (1 point);

(XI) Development site is within 2 miles of a non-profit museum (1 point);

(ii) For Developments located in a Rural Area.

(I) The Development site is located within 5 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);

(IV) The Development Site is located in a census tract with a property crime rate 26 per 1,000 or less, as defined by neighborhoodscout.com (1 point);

(VII) The Development Site is located within 15 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 at least 3 retail stores (1point);

(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 exceeds that of the State-wide average. (1 point);

(X) Development site is within 2 miles of a non-profit museum (1 point);

(XI) Development site is within 3 miles of an indoor recreation facility available to the public (1 point);

(XII) Development site is within 3 miles of an outdoor recreation facility available to the public (1 point); and

(XIII) Development site is within 3 miles 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).

Commenter (58) notes that the wording for health care facilities is different for Urban and Rural Areas. In Urban, the item states, "The Development is located within 3 miles of either an emergency room or an urgent care facility." In Rural, the item states, "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)" Commenter asks that they be the same, and proposes the following language:

The Development is located within 4 miles of a health -related facility, such a full-service hospital, community health center, minor emergency center, emergency room or ~~an~~ urgent care facility.

Commenter (58) also recommends increasing rural distances by two miles for subclauses (XIV) - (XII).

(XIV) The Development Site is located within 5 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)

(XI) Development site is within 4 miles of a government-sponsored museum (1 point)

(XII) Development site is within 3 miles of an indoor recreation facility available to the public (1 point)

Commenter (67) proposes adding another scoring item under 4(B)(i) to reward development sites that already has the appropriate zoning in place to allow the proposed use of the development. Commenter offers the following language:

An application that meets the foregoing criteria may qualify for an additional six (6) 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:

(XVI) Development site is appropriately zoned for the proposed use by March 1, 2017 (1 point)

Commenter (71) suggests that the distance to the grocery store/pharmacy remain at 3 miles, the distance to a museum be 4-7 miles, the distance to a university or community college should be at least 11 miles (based on his data).

(I) The Development site is located within 3 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);

(VII) The Development Site is located within 11 miles of a University or Community College campus (1 point);

(X) Development site is within 4-7 miles of a non-profit museum (1 point);

ITEM (A) STAFF RESPONSE: In response to commenters (11), (16), (23), (31), and (58), it is understood that the quartiles will yield different results for different applications. Staff believes that expanding the quartiles so that they are regional provides an avenue for more applications to compete for points for this item.

Staff recommends no changes based on this comment.

Staff appreciates the support expressed by commenter (19).

In response to commenters (20), (22), (33), (39), (40), (48), (58), items (3)(A)(i) and (ii) are threshold items for meeting the requirement for Opportunity Index. All Applications must meet this threshold in order to score any points under this scoring item.

Staff recommends no changes based on this comment.

In response to commenters (22), (32), (39), and (40), staff does not agree that the language regarding physical barriers between the Development Site and amenities should be removed as there are instances where such a barrier makes the amenity inaccessible to those on the other side of the barrier. If an Applicant believes that a barrier between the census tracts should not be considered to make the amenity inaccessible, the Applicant should provide information in the application supporting this belief.

Staff recommends no changes based on this comment.

In response to commenter (24), staff believes that it is premature to conclude that the item as written will result in reduced incentive to pursue development in top quartile tracts. Staff welcomes commenter to provide further information during preparations for the 2018 QAP if this issue is relevant at the time.

Staff recommends no changes based on this comment.

In response to commenter (32), staff believes that it is premature to conclude that the item as written will result in limited financing in certain neighborhoods. Staff welcomes commenter to provide further information during preparations for the 2018 QAP if this issue is relevant at the time.

Staff recommends no changes based on this comment.

In response to commenter (42), staff has revised the rule to include the citation for neighborhoodscout.com and to clarify requirements for museums. Regarding the rest of the recommended revisions, staff believes that the revisions represent sufficiently substantive changes from what was proposed that it could not be accomplished without re-publication for public comment. This idea could be taken into consideration for drafting the 2018 QAP. Staff encourages commenter to suggest this revision during planning for the 2018 QAP.

In response to commenters (42), and (43), (54), (60) and (65), staff does not believe that it is appropriate to remove this measure from the rule, and staff did not receive comment regarding an acceptable adjustment. Staff believes that this is an appropriate measure as written.

Staff recommends no changes based on this comment.

In response to commenter (45), the most points an Applicant can receive for paragraph (A) under 11.9(c)(4) is seven (7) points. Clause (i) is preferable to Clause (ii) since it stipulates an income rate in the two highest quartiles, whereas the latter allows an income rate in the third quartile in a census tract contiguous with a first or second quartile census tracts. Thus, clause (i) warrants more points. An Applicant selecting Clause (ii) can still achieve

a total of seven (7) points by selecting six (6) items under paragraph (B).

Staff recommends no changes based on this comment.

In response to commenters (54), (60) and (65), the median rate among census tracts for adults age 25 and older with an Associate's Degree or higher is 27%. The statewide rate is approximately 33%. Staff believes this is an appropriate measure as written.

Staff recommends no changes based on this comment.

In response to commenter (55), staff agrees that highway should be better defined and has revised the rule accordingly:

(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. For purposes of this scoring item, a highway is a limited-access road with a speed limit of 50 miles per hour or more; and, (1 points)

In response to commenter (59), staff will calculate the median poverty rate for the region by taking the median of the poverty rates of all census tracts within the region. Regarding using a higher poverty rate for Regions 11 and 13, staff did not include that provision in the published draft, and staff believes that this revision represents sufficiently substantive changes from what was proposed that it could not be accomplished without re-publication for public comment. This idea could be taken into consideration for drafting the 2018 QAP. Staff encourages commenter to suggest this revision during planning for the 2018 QAP.

Staff recommends no changes based on this comment.

In response to commenter (62), staff cannot post the datasets it will use to evaluate applications until the Board adopts the rules at the Board meeting of November 10, 2016. Staff will post the rules and supporting information as soon after the board meeting as possible.

Staff recommends no changes based on this comment.

In response to commenter (67), staff believes that this revision represents sufficiently substantive changes from what was proposed that it could not be accomplished without re-publication for public comment. This idea could be taken into consideration for drafting the 2018 QAP. Staff encourages commenter to suggest this revision during planning for the 2018 QAP.

Staff recommends no changes based on this comment.

BOARD RESPONSE: Accepted staff's recommendation.

ITEM (B) STAFF RESPONSE: In response to commenter (20), items (3)(A)(i) and (ii) are threshold items for meeting the requirement for Opportunity Index. All Applications must meet this threshold to score any points under this scoring item. Regarding the suggested items (i)(XV), (ii)(XII) and (ii)(XIV), staff believes that the addition of menu items represents a sufficiently substantive change from what was proposed that it could not be accomplished without re-publication for public comment. This idea could be taken into consideration for drafting the 2018 QAP. Staff encourages commenter to suggest this revision during planning for the 2018 QAP. Regarding items (ii)(VI) and (ii)(XII), staff believes that there is a difference between a public park and an outdoor recreation facility. For example, a public park might not have a soccer field, but a soccer field would be considered an outdoor recreation facility.

Staff recommends no changes based on this comment.

In response to commenters (20), (22), (33), (39), (40), (42), (44), (53), (54), (58), (60), (65), and (71), staff agrees that revisions to this section are required and has revised the rule accordingly.

(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 clauses (I) through (XIII) 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, both of which meet 2010 ADA standards. (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. For purposes of this scoring item, regular is defined as scheduled service beyond 8 a.m. to 5 p.m., plus weekend service. (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 a health-related facility, such a full service hospital, community health center, minor emergency center, emergency room or urgent care facility. Physician specialty offices are not considered in this category. (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 as defined by neighborhoodscout.com. (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. To be considered a university for these purposes, the provider of higher education must have the authority to confer bachelor's degrees. Two-year colleges are considered Community Colleges. Universities and Community Colleges must have a physical location within the required distance; online-only institutions do not qualify under this item. (1 point)

(IX) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher is 27% or higher as tabulated by the 2010-2014 American Community Survey 5-year Estimate. (1 point)

(X) Development site is within 2 miles of a museum that is a government-sponsored or non-profit, permanent institution open to the public and is not an ancillary part of an organization whose primary purpose is other than the acquisition, conservation, study, exhibition, and educational interpretation of objects having scientific, historical, or artistic value. (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)

(ii) For Developments located in a Rural Area, an Application may qualify to receive points through a combination of requirements in clauses (I) through (XII) of this subparagraph.

(I) The Development site is located within 4 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 4 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, as defined by neighborhoodscout.com. (1 point)

(V) The development site is located within 4 miles of a public library (1 point)

(VI) The development site is located within 4 miles of a public park (1 point)

(VII) The Development Site is located within 15 miles of a University or Community College campus (1 point)

(VIII) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher is 27% or higher as tabulated by the 2010-2014 American Community Survey 5-year Estimate. (1 point)

(IX) Development site is within 4 miles of a museum that is a government-sponsored or non-profit, permanent institution open to the public and is not an ancillary part of an organization whose primary purpose is other than the acquisition, conservation, study, exhibition, and educational interpretation of objects having scientific, historical, or artistic value. (1 point)

(X) Development site is within 3 miles of an indoor recreation facility available to the public (1 point)

(XI) Development site is within 3 miles of an outdoor recreation facility available to the public (1 point)

(XII) Development site is within 3 miles 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)

In response to commenters (20), (22) (39), (40), (42), and (67) regarding suggested revisions and the addition of menu items, staff believes that the revisions represent sufficiently substantive changes from what was proposed that it could not be accomplished without re-publication for public comment. This idea could be taken into consideration for drafting the 2018 QAP. Staff encourages commenter to suggest the revisions during planning for the 2018 QAP.

Staff recommends no changes based on this comment.

In response to commenters (22) (39), (40) and (44), staff believes that the suggested definition of "regular service" does not consider persons who need transportation outside of what is referred to as "A shift". Staff would define "regular service" as scheduled service beyond 8 a.m. to 5 p.m., plus weekend service and has revised the rule accordingly.

In response to commenters (22), (31), (38), (39), (40), (42), (44), (54), (57), (58), (60), and (65), staff believes the availability of an accessible playground on an accessible route is a valuable community amenity and therefore should be considered in scoring. Playgrounds that are not accessible would be able to gain points through item (XIII).

Staff recommends no changes based on this comment.

In response to commenters (22), (31), (36), (39), (40), (42), (52), (53), (54), (57) and (58), (60), and (65), staff could find no consensus among the commenters to revise the scoring item regarding concentrated retail shopping. Staff has removed the item from the menu and may consider it for the 2018 QAP.

In response to commenters (42), (54), (60), (65) regarding items (i) and (ii), staff believes that as written there is clear definition of which scoring items pertain to Developments in Urban areas.

Staff recommends no changes based on this comment.

In response to commenter (44), regarding items (XII) and (XIII), "Recreational activities" are generally those done for pleasure and by choice. As such, it would be difficult to make an exhaustive list of everything recreation could include or what the facility must offer. Staff suggests that if commenter has questions about whether a specific recreational activity would count, commenter may contact staff for guidance. The activity does not have to publicly operated and may require fees. Staff does not agree that item (XIV) is duplicative of §11.9(c)(3). For this scoring item, the organization only needs to be within the required distance of the Development; for §11.9(c)(3), the Applicant must actively engage the organization to secure services for tenants.

Staff recommends no changes based on this comment.

In response to commenters (57) and (58), staff clarifies that distance is measured as linear distance, or "as the crow flies" from the closest points of the boundaries of the amenity and Development Site.

Staff recommends no changes based on this comment.

In response to commenters (58) and (71), staff believes that doubling the distances to amenities in rural areas across the board would not accomplish the Department's affordable housing location goals. Staff believes that it is more convenient for tenants to have a variety of amenities closer to the Development Site rather than farther away, and that the Development Site should be as close to the downtown area as possible. Staff has incorporated changes to the distance on some items in the rule.

Staff recommends no changes based on this comment.

In response to commenter (72), staff believes that it is appropriate for distances to amenities to be longer in rural areas than in urban areas as the concentration of people and development are different in rural areas. Often, some amenities are in the older part of the downtown area, and some are in the newer parts near major roads; or all the amenities are in the downtown area, and all new development is farther from downtown. Staff believes that even though the distances may be longer, they are reasonable distances that accomplish the Department's affordable housing location goals.

Staff recommends no changes based on this comment.

BOARD RESPONSE: Accepted staff's recommendation and directed staff to revise the description of the threshold items under Opportunity Index to clarify that the maximum score under this items is seven (7) points, no matter how the threshold is reached.

Staff revised the description to clarify that the maximum score under this item is seven (7) points.

13. §11.9(c)(5) - Educational Quality (8), (9), (18), (20), (22), (23), (24), (25), (30), (31), (33), (34), (35), (37), (39), (40), (41), (42), (43), (46), (47), (49), (54), (55), (58), (59), (60), (62), (65), (66), (67)

COMMENT SUMMARY: Commenters (8), (30), (34), (37), (46), and (47) state that most schools have some registration/application process and capacity or enrollment limit and suggests the following change for clarity:

Schools with an application process for admittance that include academic achievement or other potentially restrictive 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.

Commenters (8), (30), (34), (37), (46), and (47) suggest adding the following items to §11.9(c)(5)(A) - (E):

The Development Site is part of a concerted revitalization plan that meets the requirements in section 11.9(d)(7) and is within the attendance zone of an elementary school, a middle school, and a high school with an index 1 score that has improved for three consecutive years prior to application (5 points)

The Development Site is part of a concerted revitalization plan that meets the requirements in section 11.9(d)(7) and 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 that has improved for three consecutive years prior to application (3 points, or 2 points for a Supportive Housing Development)

Commenters (9) and (31) request that staff allow an applicant an opportunity to score the additional points under item (E) without first scoring points under items (A) - (D). Commenter (9) states that this item would effectively disqualify any site in Harlingen as the mean score for Region 11 is 73 and none of the high schools in Harlingen meet that score. Commenter states that this has the effect of pushing housing to suburban areas and neutralizing points for historic rehabilitation.

Commenter (18) states that Development Sites subject to an Elderly Limitation are exempt from schools as an undesirable neighborhood characteristic; therefore, these sites should not be subject to Educational Quality rating and should be awarded 5 points.

Commenter (20) states that the item should be stricken from the USDA and At-Risk Set-Asides as a result of the Supreme Court's decision in ICP v TDHCA, and that there is sufficient location criteria for existing properties under Opportunity Index.

Commenters (22), (35), (39), (40), (41), (42), (43), (49), (54), (58), (59), (60), and (65) suggest that this scoring provision should be deleted entirely but that aspects of it should be included in the Opportunity Index scoring. Commenters state that the testing and standards by which Texas schools are rated are flawed and unreliable.

Commenters (23) and (55) state that, as written, Supportive Housing appears to be eligible for five points, but that was not the case last year and does not appear to be the case based on the "Selection Criteria" table posted in the board book of July 28, 2016.

Commenter (24) recommends that there be no changes to this section from its current form in the 2017 draft. Commenter states that states that TEA metrics are the sole source of the objective measures that TDHCA has to work with. Commenter states that emphasizing school quality has contributed to the trend of awards to areas which haven't had affordable housing available, providing new housing choices to low-income Texans. Commenter does not agree with others who comment that school quality become one of the "menu items" under opportunity index.

Commenter (25) suggests that in Elderly and Supportive Housing projects serving only adults the residents do not benefit from proximity to a high performing school. Commenter recommends either placement of this criterion as an item in the Opportunity Index so that Elderly and Supportive Housing projects select it if they wish and not be penalized, or leave it in place and allow Supportive Housing projects to score just as highly as other developments.

Commenter (31) states that for subclause (3) of paragraph (E), staff recognize that not all extended day Pre-K programs are on the same premises as the elementary school. Commenter suggests changing this language to provide points if Pre-K is offered at all for the development site, regardless of the length of the day, and not required to be within the elementary school.

Commenter (33) suggests that this item has had significant impact on awards and not always to the benefit of the residents being served. Commenter states that education is an important factor that should be considered in the placement of housing, but it should not dwarf other factors that are just as important to residents. Commenter recommends placing items relating to education in the menu of items that are being considered when

determining a "good real estate transaction" under Opportunity Index.

Commenter (58) states that, if Educational Quality must remain a threshold item, staff revise paragraphs (A) - (D) to use the same criteria for evaluating schools. Currently, paragraph (D) only specifies statewide comparisons, while paragraphs (A) - (C) specify statewide and region comparisons.

Commenter (59) proposes revising Educational Quality as a menu item under §11.9(c) (4)(B), as this would promote dispersion of senior developments to locations with the appropriate amenities. Commenter has proposed the following scoring menu be added to §11.9(c)(4)(B):

(XV) 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 (3 points)

(XVI) 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. (2points)

(XVII) The Development Site is within the attendance zone of any one 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. (1point).

Commenter (62) asks that TDHCA issue the data sets it will use to evaluate applications for Education Quality points as quickly as possible. Commenter proposes that this information be provided before October. Commenter (62) specifies that schools' scores for subregions should be made available immediately.

Commenter (66) states that, as currently stated, Supportive Housing Developments receive an unfair advantage in this subdivision. Commenter shares in that the November 12, 2015 board book, staff wrote that Supportive Housing Developments would be limited to two (2) points under Educational Excellence. In the draft 2017 QAP, however, the proposed language allows Supportive Housing Developments to quality for three (3) points. Commenter says that Supportive Housing Developments already hold an unfair advantage over non-Supportive Housing Developments. Commenter references the three (3) additional points through Rent Levels of the Tenants and Tenant Service, the removal of size minimums, the fewer features required to score well, the permissibility of owner contributions to the development, and feasibility allowances under REA rules-all of which already extend advantages to Supportive Housing Developments. To maintain parity, Commenter recommends that staff limits points available to Supportive Housing Developments under the Educational Quality Scoring Item. If Education Quality is removed or minimized, Commenter asks that staff find another way to remove the three (3) point advantage of Supportive Housing Developments in order to maintain parity.

Commenter (67) states disagreement with TAAHP's suggestion to remove or minimize Educational Quality in the QAP. Commenter also disagrees with the suggestion from other developers that placing a new affordable housing development in an undesirable urban neighborhood is the economic driver to lift that neighborhood into renewal. Commenter (67) requests that Education Quality points as currently written remain the same.

STAFF RESPONSE: In response to the suggestion from commenters (8), (30), (34), (37), (46), and (47) staff does not agree that the suggested clarification achieves the same outcome as the original text. The suggested revision considers only the application process, while the original text considers the application in concert with other factors. In response to the second suggestion from commenters, staff believes this suggestion is a sufficiently substantive change from what was proposed that it could not be accomplished without re-publication for public comment. These ideas could be taken into consideration for drafting the 2018 QAP. Staff encourages commenters to suggest this revision during planning for the 2018 QAP.

Staff recommends no changes based on this comment.

In response to commenters (9) and (31), items (A) - (D) are threshold items for meeting the requirement under Educational Quality. All Applications must meet this threshold in order to score any points under this scoring item. Staff did revise the point structure for the scoring item:

Staff recommends no changes based on this comment.

In response to commenter (18), staff clarifies that regarding Educational Quality, Development Sites subject to an Elderly Limitation are exempt from the disclosure requirements of §10.101(a)(4)(B) regarding Undesirable Neighborhood Characteristics but are not exempt from the requirements of this section and will not be automatically awarded 5 points.

Staff recommends no changes based on this comment.

In response to commenter (20), staff has revised the point structure for the scoring item so the point item will have less impact for those Applications that do not score points under this item. Staff does not agree that this item should be deleted in its entirety and can find no policy reason for making the item not applicable to the USDA and At-Risk Set-Asides as Applications in the set-asides already compete on a similar basis.

Staff recommends no changes based on this comment.

In response to commenters (20), (22), (33), (35), (39), (40), (41), (42), (43), (49), (54), (58), (59), (60), and (65), staff does not agree that this item should be deleted in its entirety or moved to Opportunity Index; however, staff has revised the point structure for the scoring item:

(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 (3 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. (2 points, or 1 point 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. (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 two points under clauses (B) through- (D) above, one additional point may

be added if one or more of the features described in subclause (1) - (4) is present:

In response to commenters (23) and (55), staff agrees and has revised the rule accordingly:

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. Except for Supportive Housing Developments, an Application may qualify to receive up to three (3) points for a Development Site located within the attendance zones of public schools meeting the criteria as described in subparagraphs (A) - (E) of this paragraph, as determined by the Texas Education Agency. A Supportive Housing Development may qualify to receive no more than two (2) points for a Development Site located within the attendance zones of public schools meeting the criteria as described in subparagraphs (A) or (B) of this paragraph, as determined by the Texas Education Agency. 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.

In response to commenter (24), staff appreciates the comment. Rather than delete the scoring item entirely, staff has revised the point structure for the item.

Staff recommends no changes based on this comment.

In response to commenter (25), staff believes that only a small portion of Elderly Developments serve adults only. Only certain Elderly Limitation Developments are absolutely closed to families with children as most are open to the elderly and to disabled tenants. Staff has revised the point structure for the item including the scoring for Supportive Housing Developments.

Staff recommends no changes based on this comment.

In response to commenter (31), regarding item (E)(2), to determine the 4-year graduation rate, staff will refer to the TEA 2016 Index 4: Postsecondary Readiness Data table for the district found at http://tea.texas.gov/2016accountability.aspx. Regarding item (E)(3), staff's intent with extended pre-kindergarten is that there be pre-kindergarten provided beyond the required 7 hours of full day pre-kindergarten. The program does not have to be held at a campus for which the site is zoned, as school districts have designated campuses that the entire district may access. Programs that include restrictions such as limited participation with preference given to parents who work for the school system, or programs where participation is limited would be questionable as these programs are like magnet schools where attendance is limited. If commenter has a program that commenter would like for staff to review, commenter should contact staff. Staff agrees that item (E)(2) requires clarification and staff has revised the rule accordingly.

(E) If the Development Site is able to score one or two points under clauses (B) through- (D) above, one additional point may be added if one or more of the features described in subclause (1) - (4) is present:

(2) 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, based on the TEA 2016 Index 4: Postsecondary Readiness Data table for the district found at http://tea.texas.gov/2016accountability.aspx. (1 point)

In response to commenter (58), staff believes that item (D) is a separate and distinct scoring item and should not mirror items (A) - (C).

Staff recommends no changes based on this comment.

In response to commenter (62), data regarding schools' scores for subregions is posted on the TEA website at http://tea.texas.gov/2016accountability.aspx.

Staff recommends no changes based on this comment.

In response to commenter (66), staff has revised the point structure for the item including the scoring for Supportive Housing Developments.:

In response to commenter (67), staff agrees that this item should be not deleted in its entirety or moved to Opportunity Index; however, staff has revised the point structure for the scoring item.

Staff recommends no changes based on this comment.

BOARD RESPONSE: Accepted staff's recommendation.

14. §11.9(c)(6) - Underserved Area (18), (20), (22), (23), (24), (25), (35), (36), (38), (40), (45), (49), (55), (56), (57), (59), (61), (63), (67)

COMMENT SUMMARY: Commenters (18), (20), (22), (25), (36), (38), (40), (61), (63), (67) suggest adding the phrase "serving the same population" to items (C), (D) and (E).

(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 serving the same population 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 serving the same population 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 serving the same population within the past 15 years and continues to appear on the Department's inventory. This item will apply in cities with a population of 500,000 or more, and will not apply in the At-Risk Set-Aside (5 points).

Commenter (20) suggests the following revision to item (C):

(C) A census tract 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);

Commenters (22), (40), suggest adding the following options for scoring to the rule:

(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 serving the same population within the past 15 years (2 points);

(D) 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);

(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 serving the same population within the past 15 years. This item will apply in cities with a population of 500,000 or more, and will not apply in the At-Risk Set-Aside (4 points).

(F)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. This item will apply in cities with a population of 500,000 or more, and will not apply in the At-Risk Set-Aside (5 points).

Commenter (23) expressed concern about the accuracy of the inventory and census tract data. Commenter suggests that subparagraph C should be consistent with subparagraph E and refer to allocations that continue to appear on the Department's inventory.

Commenter (24) states that limiting part (E) of this scoring item to cities of 500,000 or more is a significant advantage available to qualifying proposals in large urban areas which smaller cities do not have. Commenter states that this item should not carry the same scoring weight as educational quality. Commenter states that scoring criteria should not place suburban areas at such a disadvantage given the current lack of affordable housing options in many of these areas. Commenter recommends that either lowering the population threshold for the 5-point underserved area item to 100,000 people or reducing the point award to a level below that of educational quality.

Commenters (31) and (61) state that the current language of paragraph (E) does not account for census tracts that straddle city boundaries. Therefore, commenter proposes using language that emphasizes incorporated areas, first and foremost, and any census tracts that share a boundary with those incorporated areas. Commenter (61) states that there are several census tracts that have both un-incorporated areas as well as incorporated areas.

Commenter (35) states that in order to further the goal of attracting affordable housing to urban centers, points under this item should only be eligible for sites within the corporate limits of a municipality. Commenter suggests the following revisions:

(C) A census tract within the boundaries of an incorporated area, not including the ETJ, 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);

(E)A census tract within the boundaries of an incorporated area, not including the ETJ, 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 in cities with a population of 500,000 or more, and will not apply in the At-Risk Set-Aside (5 points).

Commenter (38) requests that staff clarify the statement "A census tract within the boundaries of an incorporated area..." as some areas will have a census tract large enough that it will fall within the boundaries of an incorporated area and also outside the boundaries of an incorporated area.

Commenter (45) proposes completely removing paragraph (E), or reducing the possible points to two (2), whereas it currently grants five (5) points.

Commenter (49) states that the Extraterritorial Jurisdiction (ETJ) should not be considered part of an incorporated area in regards to paragraphs (C) and (E) of §11.9(c)(6).

Commenter (55) states that items (C), (D), and (E) have inconsistent language with regard to whether there is a development in the census tract that is currently active. Commenter proposes that these items only apply to developments that are subject to an active tax credit LURA and currently being monitored by TDHCA.

Commenters (57), (59) and (68) suggest that the population limitation in item (E) is problematic for moderately-sized cities. Commenters propose no threshold or lower thresholds for the population minimum.

Commenter (59) proposes that staff remove "within the boundaries of an incorporated area" requirement.

STAFF RESPONSE: In response to commenters (18), (20), (22), (25), (36), (40), (61), (63), (67), the purpose of the scoring item is to ensure that areas that are underserved by LIHTC-funded projects in general receive points for being underserved. Staff believes that differentiating among populations served does not meet the spirit or the intent of the scoring item.

Staff recommends no changes based on this comment.

In response to commenters (20) and (59), staff believes that removing the option for a census tract within an incorporated area from this scoring is not in keeping with the intent of this scoring item.

Staff recommends no changes based on this comment.

In response to commenters (22), (40), the suggestion to add scoring items is a sufficiently substantive change from what was proposed that it could not be accomplished without re-publication for public comment. These ideas could be taken into consideration for drafting the 2018 QAP. Staff encourages commenters to suggest this revision during planning for the 2018 QAP. Commenters did not give a reason for requesting that the option for

a census tract that does not have a Development subject to a LURA be removed. Staff does not agree that the item should be removed as the item offers an opportunity for different areas to qualify for points. Staff believes that removing the requirement that a Development continues to appear on the Department's inventory would make it difficult for the Department to objectively score the item.

Staff recommends no changes based on this comment.

In response to the first comment from commenter (23), staff works to ensure that all information provided to Applicants is accurate and encourages everyone to bring identified errors to staff's attention. However, pursuant to 10 TAC §11.1(b), "...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".

Staff recommends no changes based on this comment.

In response to the second comment from commenter (23), staff agrees and has revised the rule accordingly:

(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 and continues to appear on the Department's inventory (3 points);

In response to commenter (24), the scoring criteria for §11.9(c)(5) Educational Quality has been revised to reduce the maximum score. Staff does not believe that this item should have a lower point value than Educational Quality as this scoring item advances the Department's stated policy of the dispersion of affordable housing.

Staff recommends no changes based on this comment.

In response to commenters (31), (38) and (61), staff clarifies that "within the boundaries of an incorporated area" means that the entire census tract is completely within the boundaries of the incorporated area of a home rule or general law city as defined by Texas law. If any portion of the census tract is outside of the incorporated area, the census tract would not qualify for points under any item that includes this requirement.

Staff recommends no changes based on this comment.

In response to commenter (35), staff believes that the proposed rule includes appropriate incentives to encourage the development of affordable housing in urban centers.

Staff recommends no changes based on this comment.

In response to commenter (45), staff does not agree that the item should be removed as the item offers an opportunity for different areas to qualify for points and advances the Department's stated policy of the dispersion of affordable housing

Staff recommends no changes based on this comment.

In response to commenter (49), ETJ is defined in Texas Local Gov't Code Sec. §42.021. Extent of Extraterritorial Jurisdiction "(a) The extraterritorial jurisdiction of a municipality is the unincorporated area that is contiguous to the corporate boundaries of the municipality." Because ETJ by definition is an unincorporated area, sites in an ETJ would not be able to score points under this item.

Staff recommends no changes based on this comment.

In response to commenter (55), staff does not believe that items (C), (D), and (E) should only apply to developments that are subject to an active tax credit LURA as this scoring item advances the Department's stated policy of the dispersion of affordable housing.

Staff recommends no changes based on this comment.

In response to commenters (57), (59), (68), staff agrees that the population limitation in item (E) should be lowered to a level that captures cities that staff believes would most likely require attention regarding housing de-concentration. Staff has revised the rule accordingly:

(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 in cities with a population of 300,000 or more, and will not apply in the At-Risk Set-Aside (5 points).

BOARD RESPONSE: Accepted staff's recommendation.

15. §11.9(c)(7) - Tenant Populations with Special Housing Needs (22), (23), (27), (33), (40), (58), (62), (69)

COMMENT SUMMARY: Commenters (22), (33), (40), (62), (69), suggest reverting back to the language that was included in the 2016 QAP.

Commenter (23) and (58) state that it is premature to make participation in the 811 Program a threshold item. Commenter suggests that this should remain a scoring item where an applicant has the choice of participation until the program has been fully implemented and has some history of performance.

Commenter (27) states that inclusion of the Section 811 Program as a threshold item will result in developers being forced to make the project for which an application is submitted or an existing project with the developer's portfolio fall under the definition of "federally assisted housing" according to 42 U.S.C. 13641. Commenter states that making the Section 811 program a threshold criteria will remove the choice as to whether or not to accept the "federally assisted housing" designation and the requirements that accompany the designation such as Davis Bacon Wages, the Uniform Relocation Act (with additional cost burdens), etc. Commenter suggests that expanding the reach of the 811 program would be better achieved by imposing the threshold requirement on Direct Loan applications or others already choosing to receive funds that would designate the project as federally assisted.

Commenter (58) suggests revising the rule so that in order for a Development Site to be eligible for points under this item, the Site must be located in an Urban Region in one of the areas specified previously in clause (iv) for the same reasons that the 811 program is only required in certain MSAs. Commenter also proposes making the Section 811 Program a separate program that requires its own RFP process.

STAFF RESPONSE: In response to commenters (22), (23), (27), (33) and (40), (58), (62), and (69), staff believes that moving the Section 811 Project Rental Assistance Program to threshold, we are responding to stakeholder input that indicated this would be the preferred method to make use of the program. Staff is seeking more existing developments for the program and initially proposed a point incentive for existing developments. Stakeholders expressed that this would create an unfair advantage to established, experienced developers who already had developments located in the state (and in the eligible MSAs). By relocating Section 811 into 10 TAC §10.204, the program prioritizes access to existing developments, while still allowing Applicants who do not have existing developments to participate in the program. In addition, by opening participation to more programs, Texas is able to increase housing choice for extremely low-income persons with disabilities.

Staff recommends no changes based on this comment.

In response to commenter (58), staff believes this suggestion is a sufficiently substantive change from what was proposed that it could not be accomplished without re-publication for public comment. These ideas could be taken into consideration for drafting the 2018 QAP. Staff encourages commenters to suggest this revision during planning for the 2018 QAP.

Staff recommends no changes based on this comment.

BOARD RESPONSE: Accepted staff's recommendation.

16. §11.9(c)(8) - Proximity to the Urban Core (3), (5), (6), (7), (12), (14), (15) (18), (19), (21), (23), (24), (25), (32), (33), (36), (39), (41), (42), (43), (45), (51), (54), (55), (59), (60), (63), (65)

COMMENT SUMMARY: Commenters (3), (5), (6) (7), (15), (23), (25), (42), (43), (51), (54), (59), (60), (63), and (65) state that this item should not be a scoring factor for the At-Risk Set-Aside. Commenters (3), (5), (6) (7), and (15) expressed concern and strong opposition to having this item apply to the At-Risk Set-Aside because it excludes El Paso. Commenters state that this would effectively disqualify El Paso from the set-aside and request that the At-Risk Set-Aside be exempted from this item. Commenters (23), (51), (54), (59), (60), (63), and (65) state that because of its regional impact, urban areas would have an insurmountable scoring advantage in a statewide competition and

Commenters (12), (14), (19) (21), (39) and (41), support the new scoring item.

Commenter (14) is opposed to changing the item so that it does not apply to the At-Risk Set-Aside. Commenter states that At-Risk deals are already ineligible for full points under §11.9(c)(6) Underserved Areas and it would be unfair for deals to be ineligible for these points as well because the points are available to other urban deals.

Commenter (18) suggests revising the rule to include areas that have transit options that offer access 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, or if the Development Site is located less than ½ mile from a light rail station and is located within 8 miles of the main city Hall. 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)

Commenters (23), (51), (54), (59), (60), (63), and (65) question whether this item conflicts with the legislative purpose of the Regional Allocation Formula.

Commenter (24) states that this item should not carry the same scoring weight as educational quality. Commenter recommends that either lowering the population threshold for the 5-point underserved area item to 100,000 people or reducing the point award to a level below that of educational quality.

Commenters (24) and (59) state that limiting this scoring item to cities of 500,000 is problematic for smaller cities. Commenter (24) states that scoring criteria should not place suburban areas at such a disadvantage given the current lack of affordable housing options in many of these areas. Commenter (59) states that only five cities are eligible for these points, which would have the effect of concentrating developments instead of dispersing them. Commenter proposes the following language:

Proximity to the Urban Core. A development in a County with a population over

500,000, and in a City located in an Urban Area if the Development Site. This item will apply to only one development, if any, in a qualifying Urban Area and will not apply to the At-Risk Set-Aside. (5 points)

Commenter (32) states that Proximity to Urban Core should be located within seven (7) miles to allow more site availability with reasonably priced land that is more feasible for responsible use of the limited tax credit and program resources.

Commenter (33) recommends that should Educational Quality be removed, this section should be removed in its entirety, as this would give an advantage to Urban Core applications. Commenter states that with the Educational Quality and Proximity to Urban Core categories being removed together, urban core and outside the urban core can compete equally.

Commenter (36) states that Dallas and Fort Worth already have somewhat of a set aside for the top scoring application. Comment requests that staff remove this scoring item or limit the point value to 1 versus 5.

Commenter (39) supports the new Proximity to Urban Core scoring category and its rank as the first tie breaker.

Commenter (45) asks that this scoring item be removed since urban core development sites are already incentivized through House Bill 3535 and the urban prioritization of Community Revitalization Plan projects.

Commenter (55) states the purpose of section 11.9(c)(8) - Proximity to the Urban Core was to counterbalance the Educational Quality scoring item, so that urban areas with lower performing schools would remain competitive with suburban areas with higher performing schools. If staff deletes Educational Quality as a threshold item or moves it to a menu item, then staff should make a similar adjustment to this item, section 11.9(c)(8).

STAFF RESPONSE: In response to commenters (3), (5), (6) (7), (15), (23), (25), (42), (43), (51), (54), (59), (60), (63), and (65),

staff agrees that this scoring item should not apply to the At-Risk Set-Side and has revised the rule accordingly:

BOARD RESPONSE: Accepted staff's recommendation.

Proximity to the Urban Core. A Development in a City with a population over 300,000 may qualify for points under this scoring item. The Development Site ~~is~~ must be located within 4 miles of the main City Hall facility if the population of the city is more than 500,000, or within 2 miles of the main City Hall facility if the population of the city is 300,000 - 500,000. 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. This scoring item will not apply to the At-Risk Set-Aside. (5 points)

Staff appreciates the support expressed by commenters (12), (14), (19), (21), (39) and (41).

Staff recommends no changes based on this comment.

In response to commenter (14), urban deals in the At-Risk Set-Aside do not compete against urban deals in the subregions. Staff does not agree that changing the item so that it does not apply to the At-Risk Set-Aside would be unfair to urban deals in the set-aside. Staff believes that this change levels the playing field for applications in the set-aside in relation to this scoring item.

Staff recommends no changes based on this comment.

In response to commenter (18), staff believes this suggestion is a sufficiently substantive change from what was proposed that it could not be accomplished without re-publication for public comment. These ideas could be taken into consideration for drafting the 2018 QAP. Staff encourages commenters to suggest this revision during planning for the 2018 QAP.

Staff recommends no changes based on this comment.

In response to commenters (23), (51), (54), (59), (60), (63), and (65), staff believes that the scoring item does not conflict with the legislative purpose of the Regional Allocation Formula. The scoring item does not direct additional funding to any region or set-aside but simply provides points according to the location of a development within a region.

Staff recommends no changes based on this comment.

In response to commenters (24) and (55), the scoring criteria for §11.9(c)(5) Educational Quality has been revised to reduce the maximum score. Staff does not believe that this item should have a lower point value than Educational Quality as this scoring item advances the Department's stated policy of the dispersion of affordable housing.

Staff recommends no changes based on this comment.

In response to commenters (24), (36) and (59), staff agrees that the 500,000-population limitation plus the requirement for the county to have a population over 1 million is problematic for smaller cities and has revised the rule accordingly:

Proximity to the Urban Core. A Development in a City with a population over 300,000 may qualify for points under this scoring item. The Development Site ~~is~~ must be located within 4 miles of the main City Hall facility if the population of the city is more than 500,000, or within 2 miles of the main City Hall facility if the population of the city is 300,000 - 500,000. 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. This scoring item will not apply to the At-Risk Set-Aside. (5 points)

In response to commenters (32), (33), and (45), staff believes that the suggested revision is contrary to the stated policy of the Department and the purpose of the scoring item, which is to encourage the placement of affordable housing in areas that are proximate to the urban core of major cities.

Staff recommends no changes based on this comment.

BOARD RESPONSE: Accepted staff's recommendation.

17. §11.9(d)(2) Commitment of Development Funding by Local Subdivisions (42), (54)

COMMENT SUMMARY: Commenters (42) and (54) question why terms would be necessary on a de minimis contribution and recommend including statutory citation (2306.6725(e)).

STAFF RESPONSE: In response to commenters (42) and (54), the word "terms" as used here is not the same as when the term is used for documentation of a loan. The commitment of development funding must be reflected in the Application as a financial benefit to the Development, i.e. reported as a source of funds on the Sources and Uses Form and/or reflected in a lower cost in the Development Cost Schedule, such as a reduction in building permits fees. Whatever the form of the contribution, the letter from the Local Political Subdivision must describe value of the contribution, the form of the contribution, e.g. reduced fees or gap funding, and any caveats to delivering the contribution. Staff believes that the item requires clarification and staff agrees that statutory citation (2306.6725(e)) should be included. Staff has revised the rule accordingly:

(2) Commitment of Development Funding by Local Political Subdivision. (§2306.6725(a)(5)); (2306.6725(e)) 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. The commitment of development funding must be reflected in the Application as a financial benefit to the Development, i.e. reported as a source of funds on the Sources and Uses Form and/or reflected in a lower cost in the Development Cost Schedule, such as notation of a reduction in building permits and related costs. Documentation must include a letter from an official of the municipality, county, or other instrumentality with jurisdiction over the proposed Development stating they will provide a loan, grant, reduced fees or contribution of other value for the benefit of the Development. The letter must describe value of the contribution, the form of the contribution, e.g. reduced fees or gap funding, and any caveats to delivering the contribution. Once a letter is submitted to the Department it may not be changed or withdrawn.

BOARD RESPONSE: Accepted staff's recommendation.

18. §11.9(d)(5) - Community Support from State Representative (19), (22), (23), (24), (28), (31), (32), (33), (40), (42), (43), (54), (59), (60), (62), (65)

COMMENT SUMMARY: Commenter (19) states that if a state representative seat is vacated, developers should be allowed an extension to request a letter after the seat is filled.

Commenters (22), (40), (42), (43), (52), (54), (60), and (65) state that because this item has a 16-point swing between letters of opposition and support, allowing state representatives to change their position after developers have incurred significant expense

creates and unfair burden on the development community and suggests that the item not to be changed as indicated in the proposed rule.

Commenters (23), (28), (31), (32), (33), (59), (62), state that new language adds another avenue for communities with a "not in my back yard" kind of stance to adversely impact the scoring process. Commenter (23) recommends that the Department sanction an applicant who misrepresents items in the application or that Representatives pursue legal options if an applicant lies or misrepresents information to the official. Commenter (28) states that this encourages behind-the-scenes activities that are not healthy for the program. Commenter (32) states that allowing rescission of a letter after submission provides for "NIMBYism", which is a violation of the Fair Housing Act. Commenter (62) states that the new language opens the door for corruption.

Commenters (24) and (28) state that the burden should be upon the representative to get the information and facts they need to make their decision. Commenter (24) states that changes to this item stand to make it easy for state representatives to effectively veto LIHTC developments. Commenter (28) states that the State Representatives should perform some due diligence and be comfortable with the proposal before issuing a letter of support and if an Applicant has truly provided false information, there is a mechanism in the threshold criteria to address that situation with a different procedure and remedy.

STAFF RESPONSE: In response to commenters (19), (22), (23), (24), (28), (31), (32), (33), (40), (42), (43), (52), (54), (59), (60), (62), and (65), staff agrees that the rule requires revision and has revised the rule accordingly:

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 then provides an additional letter to the Department, on or before April 3, 2017, supported by substantiating or corroborating evidence such as copies of communications or contemporaneous notes about verbal communications, stating that in their estimation a material factual representation made to them to secure their original letter has proven to have been inaccurate or misleading and therefore insufficient to serve as 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 for this scoring item. 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 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.

BOARD RESPONSE: Accepted staff's recommendation.

19. §11.9(d)(6) - Input from Community Organizations (22), (40)

COMMENT SUMMARY: Commenters (22), (40), recommend a new scoring category for additional letter in the event that the application gets zero points under Local Government Support and suggests the following revisions to the rule:

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. Additionally, the Application may receive up to four (4) additional points if it claims less than 17 points under §11.7(d)(1). No more than eight (8) 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.

STAFF RESPONSE: In response to commenters (22) and (40), staff believes that these revisions represent sufficiently substantive changes from what was proposed that it could not be accomplished without re-publication for public comment. These ideas could be taken into consideration for drafting the 2018 QAP. Staff encourages commenters to suggest this revision during planning for the 2018 QAP.

Staff recommends no changes based on this comment.

BOARD RESPONSE: Accepted staff's recommendation.

20. §11.9(d)(7) - Concerted Revitalization Plan (4), (8), (9), (10), (12), (13), (17), (18), (20), (22), (23), (25), (30), (31), (32), (34), (37), (39), (40), (41), (42), (43), (46), (47), (48), (54), (58), (59), (60), (62), (63), (65)

COMMENT SUMMARY: Commenters (4), (9) and (31) propose tying Concerted Revitalization Plans ("CRP") to Qualified Census Tracts ("QCT"). Commenter (4) suggests that staff amend (7)(A) to allow Qualified Census Tracts ("QCT") in Concerted Revitalization Plans ("CRP") to compete regardless of population size which is more in line with Chapter 42 of the Internal Revenue Code. Commenter (9) requests that staff amend the rule to award full CRP points for a development in a QCT regardless of population or in a QCT in a jurisdiction of at least 50,000.

Commenters (4), (9), (10), (12), (22), (31), (39), (40), (41), (43), (54), (58), (59), (60), and (65), commented on the 100,000-population limit. Commenter (4) states that the proposed rules arbitrarily limit a downtown revitalization area to only cities with a population of 100,000 or more, disqualifying any rural or mid-sized city. Commenter (10) states that the federal Office of Management and Budget ("OMB") defines a Metropolitan Statistical Area ("MSA") as an area that has at least one core urbanized area of 50,000 or more population plus adjacent territory that has a high degree of social and economic integration with that core as measured by commuting ties. Commenter requests that staff lower the population requirement to 50,000 to coincide with

the MSA definition. Commenter (42) states that with this population limitation, all of Region 4 would be ineligible for points under this scoring criterion. Commenter states that if a limitation must be included it should be 25,000 or more. Commenters (54), (58), (59), (60), (65) state that if a population limit must be included, they recommend 25,000 or more people as the limit. Commenters (31) and (59) state that the population threshold of 100,000 limits cities' goal and ability to revitalize their towns and should therefore be removed. Commenter (59) states that the requirement that a Development be in a city with a population of 100,000 or more significantly reduces the number of cities in Urban Areas with active revitalization efforts underway in targeted areas of their city from qualifying for these points. Commenters (12), (22), (31), (39), (40), (41), (54), (58), (59), (60), and (65) recommend deleting the language entirely.

Commenters (8), (34), (46), and (47) point out that the assigned point value is inconsistent with other information in the rule as (A)(i) says six (6) points and (A)(ii) says seven points.

Commenters (8), (17), (18), (20), (30), (31), (34), (37), (42), (46), (47), (48), and (59), state that meeting the Opportunity Index threshold requirements under §11.9(c)(4)(A) should not be required in order to score points under items (A)(ii)(III) and (B)(iv).

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 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:

(ii) Up to seven (7) points will be awarded based on:

(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), but for the criteria found in §11.9(c)(4)(A) and subparagraphs §11.9(c)(4)(A)(i) and §11.9(c)(4)(A)(ii).

Commenters (12), (13), (20), (22), (25), (39), (40), (41), (42) and (63) state that properties previously funded by HUD, should be added to the list of eligible properties for clauses (i) and (ii). Commenter (63) specifically mentions HUD 202 developments at risk of being lost.

(B) For Developments located in a Rural Area.

(i) Applications will receive 4 points for the rehabilitation or demolition and reconstruction in a 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, HUD, 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, HUD, 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.

Commenters (12), (22), (39), (40), and (41), state that the TDHCA definition for a CRP is extremely codified making it difficult to achieve points under the scoring item. Commenter suggests the following revisions to the rule to open up areas that are truly undergoing revitalization:

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.

(i) An Application may qualify to receive 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. 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:

(IV) The adopted plan must have a sufficient, documented and committed budget to accomplish its purposes on its established timetable. The funding for the budgeted expenses must either be identified in the plan or have already been spent in full or in part such that the problems identified within the plan will have been sufficiently mitigated and addressed within 5 years of being placed into service.

(ii) Up to seven (7) points will be awarded based on:

(II) Applications may receive (2) points in addition to those under subclause (I) of this clause if the Development is explicitly identified in a letter from 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. If multiple Applications submit letters under this subclause from the same Governing Body, none of the Applications shall be eligible for the additional points.

Commenter (13) suggests that the item be open to HUD-approved plans such as a demolition/disposition approval or the Choice Neighborhoods program. Commenter also suggests that the points be limited to QCTs. Commenter states that if HUD approves a plan, then the requirement for a resolution should be removed, and that the requirement that funding must have been previously committed to the plan is too restrictive. Commenter states that a letter from a city official or HUD that a site is a revitalizing area should suffice for these points.

Commenters (17) and (59) state that it seems duplicative to grant 2 points to a development that is explicitly identified since we now have a set-aside requiring an award to the highest scoring revitalization development. Commenter (17) recommends deleting the item, and commenter (59) proposes deleting the item and relocating the two (2) points to the preceding item which requests

a letter from the appropriate local official providing documentation of measurable improvements within the revitalization area:

(ii) Up to seven (7) points will be awarded based on:

(I) Applications will receive six (6) 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

Commenters (17), (32) and (59) suggest the following revision. Commenter (32) states that requiring the CRP to "include the limited availability of safe, decent, affordable housing" prevents real plans that have been duly adopted from being considered.

(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....and prioritized. These may include the following:

Commenters (20), (25), (42), and (54) suggest the following revisions to section (B) of the rule to make it open to more viable preservation solutions:

(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 of 50 or more units in a rural area that is currently leased at 85% or greater by low income households and which was initially constructed prior to 1985; or for a development of less than 50 units in a rural area that is currently leased at 80% or greater by low income households and which was initially constructed prior to 1985, as either public housing or as affordable housing with support from USDA, HUD, 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. The requirements in §11.9(c)(4)(A) do not apply to the USDA and the At- Risk Set-Asides.

(ii) Applications will receive 3 points for the rehabilitation of a development in a rural area that is currently leased at 85% or greater by low income households and which was initially constructed prior to 1985 as either public housing or as affordable housing with support from USDA, HUD, 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. Any property that has less than 85% occupancy for a property of 50 or more units, or 80% occupancy for a property of less than 50 units, may petition the TDHCA Board for a waiver of this rule in order to rehab an existing property(s).

(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 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). The requirements in §11.9(c)(4)(A) do not apply to the USDA and the At- Risk Set-Asides.

Commenter (23) states that new language required in the plan is too prescriptive and does not seem to match what staff of the Board says they want to see in the plans. Commenter recommends the following revisions:

(IV) The adopted plan must have sufficient, documented and committed budget to accomplish its purposes on its established timetable. This funding for the budgeted expenses must be identified in the plan, such that the problems identified within the plan will have been sufficiently mitigated and addressed within 5 years of the Development being placed in service.

Commenter (31) suggests the following revision to (A)(ii)(III):

Applications will receive (1) point in addition to those under sub clause (I) and (II) if the development is in a location that meets 4 factors under Opportunity Index 11.9 (c)(4).

Commenter (48) states that the chances are slim of finding an RD 515 that is in a town with a CRP that will qualify; is built prior to 1980 (he states that only 18% of the RD 515 portfolio was built before 1980); is over 90% occupied; and is in a 1st or 2nd quartile census tract. Commenter suggests moving the built by date to 1985 and moving the occupancy requirement to 85%. Commenter states that if the property would otherwise qualify for Concerted Revitalization Plan points then quartile 3 or 4 should be acceptable as the first and second quartile areas are outside of town. Commenter suggests that location in a first or second quartile census tract need not be applicable to At-Risk applications to get points under Opportunity Index.

Commenter (62) states that points for rehabilitation and demolition/reconstruction developments should be removed from clauses (i), (ii), and (iii) of (7)(B). Commenter worries that the current language incentivizes replacing existing units rather than creating new and quality affordable units.

STAFF RESPONSE: In response to commenters (4), (9) and (31), §11.4(C), the rules allow for a 30 percent increase in eligible basis for developments located in QCTs. Staff believes that this item is in line with Chapter 42 of the Internal Revenue Code without an allowance for CRPs in QCTs. Staff believes that the full requirements of the CRP must be satisfied for an application to be awarded full points under this item. Simply having a Development Site located within a QCT does not guarantee that the application will meet all the requirements.

Staff recommends no changes based on this comment.

In response to commenters (4), (9), (10), (12), (22), (31), (39), (40), (41), (43), (54), (58), (59), (60), and (65), staff agrees that the 100,000-population limit could be problematic for smaller cities with CRPs and has removed the restriction:

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:

Staff appreciates the correction suggested by commenters (8), (34), (46), and (47) and has revised the rule accordingly.

(i) An Application may qualify to receive 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:

In response to commenters (8), (17), (18), (20), (30), (31), (34), (37), (42), (46), (47), (48), and (59), staff clarifies that meeting the Opportunity Index threshold requirements under §11.9(c)(4)(A) is not required to score an extra point under items (A)(ii)(III) and (B)(iv). Staff has revised the rule to clarify this issue:

(ii) Up to seven (7) points will be awarded based on:

(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), except for the criteria found in §11.9(c)(4)(A) and subparagraphs §11.9(c)(4)(A)(i) and §11.9(c)(4)(A)(ii).

In response to commenters (12), (13), (20), (22), (25), (39), (40), (41), (42) and (63), staff agrees that HUD programs should be included and has revised the rule accordingly:

(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 85% or greater by low income households and which was initially constructed prior to 1985 as either public housing or as affordable housing with support from USDA, HUD, 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 85% or greater by low income households and which was initially constructed prior to 1985 as either public housing or as affordable housing with support from USDA, HUD, 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.

In response to commenters (12), (13), (22), (39), (40), and (41), staff believes that the requirements for a resolution and for budgeted and appropriated funding should remain to evidence the local jurisdiction's acceptance of and commitment to the plan.

Staff recommends no changes based on this comment.

In response to commenter (13), staff believes that the full requirements of the Community Revitalization Plan ("CRP") must be satisfied for an application to be awarded full points under this item. The HUD-approved plans may be acceptable if they meet the requirements of the point item. Staff believes that limiting the point item to QCTs would limit the dispersion of affordable housing, which is a policy priority for the Department.

Staff recommends no changes based on this comment.

In response to commenters (17), (23), (32) and (59), staff agrees that the plan may not include the language prescribed in the proposed rule and has revised the rule accordingly:

(A) For Developments located in an Urban Area:

(i) An Application may qualify to receive 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 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 may include the following: . . .

(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. The letter must also discuss how the improvements will result in the area being appropriate for the development of safe, decent, affordable housing; and

In response to commenters (17) and (59), the CRP requirement included in §11.6(3)(C)(ii) requires that an application meets the requirements of this subsection. Staff believes this includes the two points for a development that is explicitly identified in a resolution.

Staff recommends no changes based on this comment.

In response to commenters (20), (25), (42), and (54), staff believes that the recommendations to limit item (B)(i) to Developments with 50 or more units, to add the option for a development of less than 50 units in a rural area that is currently leased at 80% or greater, that any property that has less than 85% occupancy for a property of 50 or more units, or 80% occupancy for a property of less than 50 units, may petition the TDHCA Board for a waiver of this rule in order to rehab an existing property(s), and that staff remove the requirement that 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 represent sufficiently substantive changes from what was proposed that it could not be accomplished without re-publication for public comment. These ideas could be taken into consideration for drafting the 2018 QAP. Staff encourages commenters to suggest this revision during planning for the 2018 QAP. Staff has no objection to changing the leasing requirement to 85%, changing the initial construction date to 1985, and including HUD programs. Staff has determined that applicants do not have to meet the Opportunity Index threshold requirements to score points for concerted revitalization. Staff believes it is not necessary to add language exempting the At-Risk and USDA Set-Asides from the requirement. Staff has revised the rule accordingly:

(B) For Developments located in a Rural Area.

(i) Applications will receive 4 points for the rehabilitation or demolition and reconstruction of a development in a rural area that is currently leased at 85% or greater by low income households and which was initially constructed prior to 1985 as either public housing or as affordable housing with support from USDA, HUD, 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 85% or greater by low income households and which was initially constructed prior to 1985 as either public housing or as affordable housing with support from USDA, HUD, 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).

In response to commenter (23), staff believes that the suggested revision would remove the assurance that there is a local financial commitment to the revitalization area. Staff believes that extending the time frame for when revitalization efforts must be completed to within 5 years after the Development is placed into service would further weaken the jurisdiction's commitment to the revitalization and would be problematic for scoring and monitoring purposes should the revitalization not be completed.

Staff recommends no changes based on this comment.

In response to commenter (31), staff agrees that the item requires clarification and has revised the rule accordingly:

Applications will receive (1) point in addition to those under sub clause (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).

In response to commenter (48), staff believes that the option (A)(ii) of this item, which allows for a development to be in a census tract that is in the third quartile but contiguous to a census tract in the first or second quartile, gives applicants the ability to locate developments in areas of opportunity. Further, staff believes that by offering a menu of amenities from which to choose, point differentials are more easily managed. Staff has no objection to revising the rule to require that a development be built prior to 1985 and have 85% occupancy and has revised the rule accordingly:

(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.

(B) For Developments located in a Rural Area.

(i) Applications will receive 4 points for the rehabilitation or demolition and reconstruction of a development in a rural area that is currently leased at 85% or greater by low income households and which was initially constructed prior to 1985 as either public housing or as affordable housing with support from USDA, HUD, 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 85% or greater by low income households and which was initially constructed prior to 1985 as either public housing or as affordable housing with support from USDA, HUD, 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.

STAFF RESPONSE: In response to commenter (62), staff believes that the QAP should provide some incentives for the preservation of existing units through rehabilitation and demolition/reconstruction. Staff does not believe that points for these activities should be removed from clauses (i), (ii), and (iii) of (7)(B).

Staff recommends no changes based on this comment.

BOARD RESPONSE: Accepted staff's recommendation.

21. §11.9(e)(2) - Cost of Development per Square Foot (13), (19), (22), (23), (25), (35), (36), (39), (40), (42), (43), (52), (54), (58), (60), (63), (66), (69), (70)

COMMENT SUMMARY: Commenter (19) supports the revisions to the scoring item.

Commenters (13), (22), (23), (35), (39), (40), (42), (43), (49), (54), (60), (65), (66), (69), and (70) suggest the following revisions to clarify the rule. Commenter (58) also requests that items can be voluntary excluded from Eligible Basis:

An Application may qualify to receive up to twelve (12) points based on either the Building Cost per square foot of the proposed Development voluntarily included in eligible basis ("Eligible 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, Eligible Building Costs will exclude structured parking or commercial space that is not included in Eligible Basis, and Eligible Hard Costs 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.

(B) Applications proposing New Construction or Reconstruction will be eligible for twelve (12) points if one of the following conditions is met:

(i) The Eligible Building Cost per square foot is less than $72.80 per square foot;

(ii) The Eligible Building Cost per square foot is less than $78 per square foot, and the Development meets the definition of a 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 Eligible Building Cost per square foot is less than $78 per square foot;

(ii) The Eligible Building Cost per square foot is less than $83.20 per square foot, and the Development meets the definition of a 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 Eligible Building Cost is less than $93.60 per square foot; or

Commenters (25) and (63) applaud TDHCA for increasing the cost per square foot of hard cost by 4% and states that the allowance remains well below the actual cost to house seniors, who require buildings with elevators, interior hallways and common space; all with costs that are not included in the Net Rentable calculation. Commenters recommend that developments electing to coordinate with local service providers under Tenant Services and have appropriate community space for services be allowed to add an additional 50 square feet per unit; or that any development serviced by elevators and includes social service offices or a service coordinator office and includes common area for providers to deliver services be allowed an additional 50 square feet per unit.

Commenter (36) states that staff should increase Building Cost per square foot by 8% versus 4% due to large construction cost increases in Texas.

Commenter (52) proposes the following revisions to encourage Historic Preservation projects:

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 Costs 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 or Adaptive Reuse involving Historic Preservation, 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:

(v) the Development is Adaptive Reuse involving Historic Preservation

(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 $135 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 $150 per square foot.

Commenter (58) proposes a 5th conditional clause for High Cost Developments:

(v) the Development qualifies for five (5) points under subsection (c)(8) of this section related to proximity to the Urban Core.

STAFF RESPONSE: Staff appreciates the support expressed by commenter (19).

Staff recommends no changes based on this comment.

In response to commenters (13), (22), (23), (35), (39), (40), (42), (43), (52), (54), (60), (65), (66), (69) and (70), Staff agrees with commenters that "voluntarily included in eligible basis" should apply to both Building Costs and Hard Costs, not just Hard Costs. Staff's goal is to solicit real estimates of cost. The proposed 2017 QAP provides the option to limit Hard Costs claimed as Eligible for scoring. Staff agrees with commenters that the same logic should be extended to Building Costs to promote the same outcome, assuming Applicant selects that option. To clarify these changes, Staff has defined "Eligible Building Costs" within this rule. Staff has revised the rule accordingly.

(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 Eligible Building Cost or the Eligible Hard Costs per square foot of the proposed Development voluntarily included in eligible basis as originally submitted in the Application. For purposes of this scoring item, Eligible Building Costs will be defined as Building Costs includable in Eligible Basis for the purposes of determining a Housing Credit Allocation. Eligible Building Costs will exclude structured parking or commercial space that is not included in Eligible Basis, and Eligible Hard Costs 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 Develop-

ment, 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 voluntary Eligible Building Cost per square foot is less than $72.80 per square foot;

(ii) The voluntary Eligible 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 voluntary Eligible Hard Cost per square foot is less than $93.60 per square foot; or

(iv) The voluntary 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 voluntary Eligible Building Cost per square foot is less than $78 per square foot;

(ii) The voluntary Eligible 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 voluntary Eligible Hard Cost per square foot is less than $98.80 per square foot; or

(iv) The voluntary 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 voluntary Eligible Building Cost is less than $93.60 per square foot; or

(ii) The voluntary 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 voluntary 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 voluntary 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 voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than $135.20 per square foot.

In response to commenters (25), (52), (58) and (63), staff believes that these revisions represent sufficiently substantive changes from what was proposed that it could not be accomplished without re-publication for public comment. These ideas could be taken into consideration for drafting the 2018 QAP. Staff encourages commenters to suggest this revision during planning for the 2018 QAP.

Staff recommends no changes based on this comment.

In response to commenter (36), staff did not find, and the commenter did not provide, evidence to suggest that building costs in Texas have risen by eight percent in Texas since publication of the 2016 QAP.

Staff recommends no changes based on this comment.

In response to commenter (52), regarding the recommendation to increase the allowable cost per square foot for Adaptive Reuse involving Historic Preservation, staff believes that commenter's proposed revision is a substantive change staff's original revision and that it cannot be accomplished without re-publication for public comment. Staff reminds commenter that Eligible Hard Costs per square foot for Adaptive Reuse involving Historic Preservation has been raised by 4% for the 2017 QAP. Staff believes that the increase for this type of construction should reflect the 4% increase in other development cost sections. Staff encourages commenter to suggest this revision during planning for the 2018 QAP.

Staff recommends no changes based on this comment.

BOARD RESPONSE: Accepted staff's recommendation.

22. §11.9(e)(3) - Pre-application Participation (20), (22), (28), (40), (42), (43), (54), (58), (60), (65)

COMMENT SUMMARY: Commenters (20), (22), (40) and (58) suggest removing the requirement that Undesirable Neighborhood Characteristics be disclosed at Pre-application from the rule and keeping the requirement that such disclosures be made at full Application. Commenters state that it is difficult to vet all aspects of a neighborhood prior to pre-application and that losing these points based on something the applicant missed prior to is an undue burden. Commenter suggests removing the requirement that Undesirable Neighborhood Characteristics be disclosed at Pre-application from the rule and keeping the requirement that such disclosures be made at full Application.

Commenter (28) suggests the following clarification for item (F) to account for the possibility of a change in an elected public official:

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, other than by reason of a change in elected public officials;

Commenters (42), (43), (54), (60) and (65) state that the current language should not be changed. Commenters (42) and (54) state that if an Applicant submits a Pre-App with one piece of property, but then submit a Full Application with an entirely different piece of property, but the two pieces happen to share a boundary, that should be considered a completely new application.

STAFF RESPONSE: In response to commenters (20), (22), (40), and (58), staff believes that it may be impractical to require the disclosure of certain Undesirable Neighborhood Characteristics at Pre-application. Staff has revised the rule so that Applicants must only provide disclosure at Pre-Application for the items below. Staff has revised the rule accordingly.

(G) The Development Site does not have the following Undesirable Neighborhood Characteristics as described in 10 TAC §10.101(a)(4) that were not disclosed with the pre-application:

(i) 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.

(ii) 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.

In response to commenter (28), staff does not believe that the suggested revision is necessary as the notification requirement in the scoring item pertains only to notifications triggered by changes in the Development Site. Requirements for the notification of newly elected (or appointed) officials are covered under 10 TAC §10.203.

Staff recommends no changes based on this comment.

In response to commenters (42), (43), (54), (60) and (65), staff agrees and has revised the rule to remove the added language.

BOARD RESPONSE: Accepted staff's recommendation.

23. §11.9(e)(4) - Leveraging of Private, State, and Federal Resources (22), (23), (25), (32), (35), (36), (38), (40), (42), (43), (49), (52), (54), (58), (59), (63), (65), (66), (69), (70)

COMMENT SUMMARY: Commenters (22), (23), (25), (32), (35), (38), (40), (42), (43), recommend not changing the percentages to ensure the quality and feasibility of Developments.

Commenter (36) recommends not changing the percentages as it is necessary to obtain these 3 points to have a competitive application, especially with senior living, and the change in percentage would require too many market rate units at rental rates that are not achievable in a mixed income environment.

COMMENT SUMMARY: Commenters (49), (52), (54), (58), (59), (60), (63), (65), (66), (69), and (70) also state that leveraging percentages remain at the 2016 level. Commenter (70) states that the percentage reduction is devastating to deals and creates less financially sound developments.

STAFF RESPONSE: In response to commenters (22), (23), (25), (32), (35), (36), (38), (40), (42), (43), staff agrees and has revised the rule accordingly:

"(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 eight (8) percent of the Total Housing Development Cost (3 points); or

(iii) If the Housing Tax Credit funding request is less than nine (9) percent of the Total Housing Development Cost (2 points); or

(iv) If the Housing Tax Credit funding request is less than ten (10) percent of the Total Housing Development Cost (1 point)."

BOARD RESPONSE: Accepted staff's recommendation.

24. §11.9(e)(6) - Historic Preservation (1), (2), (9), (17), (26), (36), (59)

COMMENT SUMMARY: Commenters (1), (2), (9) and (36) state that the proposal that a project that qualifies for points under Historic Preservation loses points if located in an area served by a school not having high Educational Quality scores would have a negative effect on the 84th Legislature's intent that the rehabilitation and adaptive reuse of certified historic structures is a priority for Texas through the LIHTC process, as established in SB 1316 and codified in Tex. Gov't Code §2306.6725(a)(6).

Commenters (17) and (59) recommend the following revisions to incentivize historic preservation and the use of historic tax credit leveraging.

At least ten 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.

Commenter (26) states that vacant and underused historic buildings can be efficiently repurposed as affordable housing, becoming dynamic catalysts for the revitalization of historic downtowns. Commenter encourages TDHCA to give priority consideration to the scoring of applications for historic structures.

STAFF RESPONSE: In response to commenters (1), (2), (9) and (36), the requirement that an application that includes the Rehabilitation or Adaptive Reuse of a Historic Structure meet certain Educational Quality scoring item (10 TAC §11.9(c)(5)) requirements was not included in the published proposed rule. Staff notes that in revising the rule for publication in the draft, removal of the education scoring provision inadvertently removed the score for this subsection. Staff will make a technical correction and add language describing this as a five (5) point item.

Staff recommends no changes based on this comment.

In response to commenters (17) and (59), staff believes that this revision represents sufficiently substantive changes from what was proposed that it could not be accomplished without re-publication for public comment. These ideas could be taken into consideration for drafting the 2018 QAP. Staff encourages commenters to suggest this revision during planning for the 2018 QAP.

Staff recommends no changes based on this comment.

In response to commenter (26), staff believes that such consideration cannot be given as priority consideration to the scoring of applications is prescribed by Tex. Gov't Code §2306.6710(b)(1).

Staff recommends no changes based on this comment.

STAFF RESPONSE: In response to commenter (36), the requirement that an application that includes the Rehabilitation or Adaptive Reuse of a Historic Structure meet certain Educational Quality scoring item (10 TAC §11.9(c)(5)) requirements was not included in the published proposed rule.

Staff recommends no changes based on this comment.

BOARD RESPONSE: Accepted staff's recommendation.

25. §11.9(e)(8) - Funding Request Amount (52)

COMMENT SUMMARY: Commenter (52) states that a developer should not be penalized by 1 point for producing an excess number of affordable units if the market study supports the number of units proposed in a new development. Commenter states that if a developer asks for a higher amount than a competitor, but his/her application provides for a more affordable units on a percentage basis than a competitor requesting a lesser amount, it may not be in the best interest to award the developer producing fewer affordable units 1 additional point over a competitor who is better leveraging the tax credits

STAFF RESPONSE: In response to commenter (52), staff believes that this revision represents a sufficiently substantive change from what was proposed that it could not be accomplished without re-publication for public comment. These ideas could be taken into consideration for drafting the 2018 QAP. Staff encourages commenter to suggest this revision during planning for the 2018 QAP.

Staff recommends no changes based on this comment.

BOARD RESPONSE: Accepted staff's recommendation.

26. §11.9(f) Point Adjustments (58)

COMMENT SUMMARY: Commenter (58) states that the paragraphs in this section are not numbered properly, and that they should be correctly referenced.

STAFF RESPONSE: In response to commenter (58), staff appreciates the suggested correction and has revised the rule accordingly.

(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.

BOARD RESPONSE: Accepted staff's recommendation.

27. §11.10- Third Party Request for Administrative Deficiency for Competitive HTC Applications (22), (23), (40), (59)

COMMENT SUMMARY: Commenters (22) and (40) state that staff sometimes makes errors and it is important that these errors be caught during the third party request for administrative deficiency process.

Commenter (23) requests that the Development community continues to have the right to point out mistakes on the part of competing applicants, as well as Department staff as the added language "seems to indicate that staff mistakes cannot be a part of this review." Commenter requests that the Department use the same process previously used for Challenges, including posting of all information received from both the Requestor, applicant, and staff determinations in a timely manner.

Commenter (59) requests that staff remove the requirement that the requester send a copy of the request and supporting information directly to the Applicant at the same time it is provided to the Department:

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. 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. 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.

STAFF RESPONSE: In response to commenters (22), (23), (40), and (59), staff believes that allowing an applicant to question the review of a competitor's application is tantamount to an appeal of staff's determination, which is prohibited by Tex. Gov't Code §2306.6715(b), which states that An applicant may not appeal a decision made under §2306.6710, Evaluation and Underwriting of Applications, regarding an application filed by another applicant. Staff will ensure that all information received from the requester and the applicant, as well as staff determinations, is posted online in a timely manner. Staff has revised the rule as follows:

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. 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 credi-

ble evidence that, if confirmed, would substantiate the deficiency request. Assertions not accompanied by supporting documentation susceptible to confirmation will not be considered. Staff shall provide to the Board a written report summarizing each third party request for administrative deficiency and the manner in which it was addressed. Interested persons may provide testimony on this report before the Board's takes any formal action to accept the report. The results of a RFAD may not be appealed by the Requestor.

In response to commenters (59), staff believes that in order to ensure that each applicant his aware of the request at the time it is submitted, the requester must inform the applicant.

Staff recommends no changes based on this comment.

BOARD RESPONSE: Accepted staff's recommendation.

The Board approved the final order adopting the new 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan on November 10, 2016.

STATUTORY AUTHORITY. The new sections are adopted 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 adopted rule affects no other code, article or statute.

§11.1. General.

(a) Authority. This chapter applies to the awarding and allocation by the Texas Department of Housing and Community Affairs (the "Department") of 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 Tex. Gov't Code, Chapter 2306, Subchapter DD, the Department is assigned responsibility for this activity. As required by Internal Revenue Code (the "Code"), §42(m)(1), the Department has developed this Qualified Allocation Plan (QAP) and it has been duly approved to establish the procedures and requirements relating to an award and allocation of 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 Tex. Gov't 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 Tex. Gov't Code §2306.6715(c), an applicant is given until the later of the seventh day of the publication on the Department's website of a scoring log reflecting that applicant's score or the seventh day from the date of transmittal of a scoring notice; provided, however, that an applicant may not appeal any scoring matter after the award of credits unless they are within the above-described time limitations and have appeared at the meeting when the Department's Governing Board makes competitive tax credit awards and stated on the record that they have an actual or possible appeal that has not been heard. Appeal rights may be 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 Tex. Gov't 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: 10 TAC §11.2

§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 Tex. Gov't 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 Tex. Gov't 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 Tex. Gov't 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 accordance with Tex. Gov't Code, §2306.6711(g), in Uniform State Service Regions containing a county with a population that exceeds 1.7 million, the Board shall allocate competitive tax credits to the highest scoring development, if any, that is part of a concerted revitalization plan that meets the requirements of §11.9(d)(7) (except for §11.9(d)(7)(A)(ii)(III) and §11.9(d)(7)(B)(iv)), 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 Urban subregion, calculate the maximum percentage in accordance with Tex. Gov't Code, §2306.6711(h) and will publish such percentages on its website. This process will continue until the funds remaining are insufficient to award the next highest scoring Application 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. This item does not apply to the At-Risk Set-Aside.

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

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

(6) 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 Tex. Gov't Code, §2306.6704(c) pre-applications will be terminated unless they meet the threshold criteria described in subsection (a) of this section and paragraphs (1) and (2) of this subsection:

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

(A) Site Control meeting the requirements of §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 the following Undesirable Neighborhood Characteristics under §10.101(a)(4).:

(i) 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.

(ii) 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.

(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 Tex. Gov't 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 nonprofit and governmental providers of services that would support the health and well-being of the Department's tenants, and will make Development community space available to them on a regularly-scheduled basis to provide outreach services and education to the tenants. Applicants may contact service providers on the Department list, or contact other providers that serve the general area in which the Development is located. (1 point)

(4) Opportunity Index. The Department may refer to locations qualifying for points under this scoring item as high opportunity areas in some materials. A Development is eligible for a maximum of seven (7) Opportunity Index Points.

(A) A proposed Development is eligible for up to two (2) 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. For purposes of this scoring item, a highway is a limited-access road with a speed limit of 50 miles per hour or more; and, (1 points)

(B) An application that meets the foregoing criteria may qualify for additional points (for a maximum of 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 clauses (I) through (XIII) 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, both of which meet 2010 ADA standards. (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. For purposes of this scoring item, regular is defined as scheduled service beyond 8 a.m. to 5 p.m., plus weekend service. (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 a health-related facility, such a full service hospital, community health center, minor emergency center, emergency room or urgent care facility. Physician specialty offices are not considered in this category. (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 as defined by neighborhoodscout.com, or local data sources. (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. To be considered a university for these purposes, the provider of higher education must have the authority to confer bachelor's degrees. Two-year colleges are considered Community Colleges. Universities and Community Colleges must have a physical location within the required distance; online-only institutions do not qualify under this item. (1 point)

(IX) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher is 27% or higher as tabulated by the 2010-2014 American Community Survey 5-year Estimate. (1 point)

(X) Development site is within 2 miles of a museum that is a government-sponsored or non-profit, permanent institution open to the public and is not an ancillary part of an organization whose primary purpose is other than the acquisition, conservation, study, exhibition, and educational interpretation of objects having scientific, historical, or artistic value. (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)

(ii) For Developments located in a Rural Area, an Application may qualify to receive points through a combination of requirements in clauses (I) through (XII) of this subparagraph.

(I) The Development site is located within 4 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 4 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, as defined by neighborhoodscout.com, or local data sources. (1 point)

(V) The development site is located within 4 miles of a public library (1 point)

(VI) The development site is located within 4 miles of a public park (1 point)

(VII) The Development Site is located within 15 miles of a University or Community College campus (1 point)

(VIII) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher is 27% or higher as tabulated by the 2010-2014 American Community Survey 5-year Estimate (1 point)

(IX) Development site is within 4 miles of a museum that is a government-sponsored or non-profit, permanent institution open to the public and is not an ancillary part of an organization whose primary purpose is other than the acquisition, conservation, study, exhibition, and educational interpretation of objects having scientific, historical, or artistic value. (1 point)

(X) Development site is within 3 miles of an indoor recreation facility available to the public (1 point)

(XI) Development site is within 3 miles of an outdoor recreation facility available to the public (1 point)

(XII) Development site is within 3 miles 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. Except for Supportive Housing Developments, an Application may qualify to receive up to three (3) points for a Development Site located within the attendance zones of public schools meeting the criteria as described in subparagraphs (A) - (E) of this paragraph, as determined by the Texas Education Agency. A Supportive Housing Development may qualify to receive no more than two (2) points for a Development Site located within the attendance zones of public schools meeting the criteria as described in subparagraphs (A) or (B) of this paragraph, as determined by the Texas Education Agency. 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 (3 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. (2 points, or 1 point 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.(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 two points under clauses (B) through- (D) above, one additional point may be added if one or more of the features described in subclause (1) - (4) 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, based on the TEA 2016 Index 4: Postsecondary Readiness Data table for the district found at http://tea.texas.gov/2016accountability.aspx. (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 §11.9(c)(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 and continues to appear on the Department's inventory (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 (or has received a tax credit award but not yet reached the point where its LURA must be recorded); (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 in cities with a population of 300,000 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 va-

cant 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 City with a population over 300,000 may qualify for points under this item. The Development Site must be located within 4 miles of the main City Hall facility if the population of the city is more than 500,000, or within 2 miles of the main City Hall facility if the population of the city is 300,000 - 500,000. 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. This scoring item will not apply to the At-Risk Set-Aside. (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. The commitment of development funding must be reflected in the Application as a financial benefit to the Development, i.e. reported as a source of funds on the Sources and Uses Form and/or reflected in a lower cost in the Development Cost Schedule, such as notation of a reduction in building permits and related costs. Documentation must include a letter from an official of the municipality, county, or other instrumentality with jurisdiction over the proposed Development stating they will provide a loan, grant, reduced fees or contribution of other value for the benefit of the Development. The letter must describe value of the contribution, the form of the contribution, e.g. reduced fees or gap funding, and any caveats to delivering the contribution. Once a letter is submitted to the Department it may not be changed or withdrawn.

(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 Tex. Gov't 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 Tex. Gov't Code, §2306.004(23-a) and includes at least two separate residential households;

(iii) certification that no person required to be listed in accordance with Tex. Gov't Code §2306.6707 with respect to the Development to which the Application requiring their listing relates participated in any way in the deliberations of the Neighborhood Organization, including any votes taken;

(iv) certification that at least 80 percent of the current membership of the Neighborhood Organization consists of home-

owners 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 support or opposition, or an existing Neighborhood Organization provides no statement of either support, opposition or neutrality, which will be viewed as the equivalent of neutrality or lack of objection;

(v) four (4) points for areas where no Neighborhood Organization is in existence, equating to neutrality or lack of objection, or where the Neighborhood Organization did not meet the explicit requirements of this section; 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. 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. Neutral letters or letters that do not specifically refer to the Development or specifically express support or opposition will receive zero (0) points. A letter that does not directly express support but expresses it indirectly by inference (e.g. "the local jurisdiction supports the Development and I support the local jurisdiction") will be treated as a neutral letter.

(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 lim-

ited 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:

(i) An Application may qualify to receive 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 if development of the plan and budget were delegated the resolution of delegation and other evidence in the form of certifications by authorized persons confirming the adoption of the plan and budget, 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 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. The letter must also discuss how the improvements will lead to an appropriate area for the placement of housing; 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; and

(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), except for the criteria found in §11.9(c)(4)(A) and subparagraphs §11.9(c)(4)(A)(i) and §11.9(c)(4)(A)(ii).

(B) For Developments located in a Rural Area.

(i) Applications will receive 4 points for the rehabilitation or demolition and reconstruction of a development in a rural area that is currently leased at 85% or greater by low income households and which was initially constructed prior to 1985 as either public housing or as affordable housing with support from USDA, HUD, 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

85% or greater by low income households and which was initially constructed prior to 1985 as either public housing or as affordable housing with support from USDA, HUD, 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)(B), except for the criteria found in §11.9(c)(4)(A) and subparagraphs §11.9(c)(4)(A)(i) and §11.9(c)(4)(A)(ii)..

(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 Eligible Building Cost or the Eligible Hard Costs per square foot of the proposed Development voluntarily included in eligible basis as originally submitted in the Application. For purposes of this scoring item, Eligible Building Costs will be defined as Building Costs includable in Eligible Basis for the purposes of determining a Housing Credit Allocation. Eligible Building Costs will exclude structured parking or commercial space that is not included in Eligible Basis, and Eligible Hard Costs 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 voluntary Eligible Building Cost per square foot is less than $72.80 per square foot;

(ii) The voluntary Eligible 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 voluntary Eligible Hard Cost per square foot is less than $93.60 per square foot; or

(iv) The voluntary 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 voluntary Eligible Building Cost per square foot is less than $78 per square foot;

(ii) The voluntary Eligible 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 voluntary Eligible Hard Cost per square foot is less than $98.80 per square foot; or

(iv) The voluntary 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 voluntary Eligible Building Cost is less than $93.60 per square foot; or

(ii) The voluntary 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 voluntary 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 voluntary 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 voluntary 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) - (G) 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 Application is at least in part the Development Site at pre-application, and the census tract number listed at pre-application is the same at Application. The site at full Application may not require notification to any person or entity not required to have been notified at pre-application;

(G) The Development Site does not have the following Undesirable Neighborhood Characteristics as described in 10 TAC §10.101(a)(4) that were not disclosed with the pre-application:

(i) 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.

(ii) 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.

(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 eight (8) percent of the Total Housing Development Cost (3 points); or

(iii) If the Housing Tax Credit funding request is less than nine (9) percent of the Total Housing Development Cost (2 points); or

(iv) If the Housing Tax Credit funding request is less than ten (10) 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 Tex. Gov't Code, §2306.6726 and the Department's rules including §10.407 of this title (relating to Right of First Refusal) and §10.408 of this title (relating to Qualified Contract Requirements).

(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, 2015.

(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. 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. Staff shall provide to the Board a written report summarizing each third party request for administrative deficiency and the manner in which it was addressed. Interested persons may provide testimony on this report before the Board's takes any formal action to accept the report. The results of a RFAD may not be appealed by the Requestor.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 9, 2016.

TRD-201606440
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 29, 2016
Proposal publication date: September 23, 2016
For further information, please call: (512) 475-2973

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PART 5. OFFICE OF THE GOVERNOR, ECONOMIC DEVELOPMENT AND TOURISM OFFICE

CHAPTER 184. SPORTS AND EVENTS TRUST FUND

The Office of the Governor, Economic Development and Tourism Office (OOG) repeals Title 10, Subchapter A (Major Events Trust Fund), §§184.100 - 184.106; and Subchapter B (Events Trust Fund), §§184.200 - 184.206, and adopts new rules in Title 10, Subchapter A (Authority and Applicability, Purpose, Construction of Rules and General Definitions), §§184.1 - 184.4; Subchapter B (Major Events Reimbursement Program Definitions, Eligibility, Participation and Deadlines), §§184.10 - 184.13; Subchapter C (Events Trust Fund Program Definitions, Eligibility, Participation and Deadlines), §§184.20 - 184.23; Subchapter D (Required Reports), §§184.30 - 184.33; Subchapter E (Disbursement Process), §§184.40 - 184.45; and Subchapter F (Event Support Contracts), §§184.50 - 184.51, with changes to the proposed text as published in the July 22, 2016, issue of the *Texas Register* (41 TexReg 5312). The new rules will replace the repealed rules, which implement and govern the Events Trust Fund and Major Events Trust Fund (renamed in 2015 as the "Major Events Reimbursement Program" pursuant to H.B. 26, 84th Regular Legislative Session). The rules are adopted in order to implement and administer the transfer of programs, including the Major Events Reimbursement Program (MERP), Events Trust Fund (ETF), and Motor Sports Racing Trust Fund (MSRTF), from the Comptroller of Public Accounts to the OOG pursuant to S.B. 633, 84th Regular Legislative Session. The rules will also ensure the efficient administration of the MERP, ETF, and MSRTF, which are established in Article 5190.14 of the Texas Revised Civil Statutes. The new rules become effective on January 1, 2017.

SUBSTANTIVE MODIFICATIONS

The OOG has modified proposed definitions of "site selection organization" in Rule 184.10(5), "endorsing county" in Rule 184.20(2), and "endorsing municipality" in Rule 184.20(3) to match the statutory definitions of those terms. The OOG has modified proposed Rule 184.11(a)(5) so that when the OOG determines the incremental increase in tax receipts for a major event that is scheduled to be held each year for a period of years, it will be calculated as if the event did not occur in the prior year. This change brings the rule in line with Article 5190.14, §5A(a-1)(4). The OOG has modified proposed Rule 184.21(b) so that an applicant may not submit in a state fiscal year, rather than a rolling 12-month period, more than 10 events to the program for which the OOG determines that the amount of the incremental increase in tax receipts is less than $200,000. The OOG has modified Rule 184.43(a)(3) to clarify that internal billing documentation can be used to support a disbursement request where appropriate. The OOG has modified Rule 184.44 to allow reimbursement for food costs that are directly related to the conduct of the event and that are provided on-site at the event to event participants or other personnel necessary to the conduct of the event. Rule 184.44 will also be modified to permit reimbursement for limited travel costs and for non-monetary prizes and awards given to event participants.

COMMENTS

The OOG received ten written public comments, each requesting changes to the proposed rules. Among the commenters are representatives of the Texas Hotel & Lodging Association, Hillco Partners, Angelou Economics, Houstonfirst, the Arlington Convention & Visitors Bureau, the Harris County- Houston Sports Authority, the National Cutting Horse Association, the City of Fort

Worth, and twenty-three other Texas cities. One comment was submitted outside the designated comment period and will not be addressed.

COMMENT SUMMARY: Four commenters request that Rule 184.30(b) be changed to permit an increase in the amount of a trust fund disbursement for an endorsing entity if the actual attendance at an event is significantly higher than the estimated attendance.

OOG RESPONSE: The OOG declines to modify Rule 184.30(b) in response to this comment because it lacks the authority to authorize an increase in the amount of a disbursement based on attendance. Article 5190.14, §§5A(y) & 5C(t) expressly authorize the OOG to reduce the amount of a disbursement if the actual event attendance is significantly lower than the estimated attendance, but no statutory authority exists to increase the amount of a disbursement if the actual event attendance is significantly higher than the estimated attendance.

COMMENT SUMMARY: Five commenters object to the requirement that an endorsing entity pay event-related costs upfront and then seek reimbursement for those costs from their respective trust fund. The commenters claim this requirement conflicts with Article 5190.14, §§5A(k) & 5C(k).

OOG RESPONSE: The OOG declines to modify the rules in response to this comment. House Bill 26, 84th Regular Legislative Session, changed the name of the "Major Events Trust Fund" to the "Major Events *Reimbursement* Program" (emphasis added). This change was made to "clarify what the program was meant to do and how it works." *See* House Research Org., Bill Analysis, Tex. H.B. 26, 84th Leg., R.S. (2015). This is indicative of the legislature's intent to use a payment method based on reimbursement. The OOG acknowledges that the names of the ETF and MSRTF were not changed by the Legislature, though an attempt was made to do so by the Senate when considering House Bill 26. *See* Senate Comm. on Nat. Res. & Econ. Dev., Bill Analysis, Tex. C.S.H.B. 26, 84th Leg., R.S. (2015). Nevertheless, the OOG does not discern a legislative intent to allow upfront costs for the ETF and MSRTF based on the Legislature's failure to pass the Senate's proposed changes to the fund names. *See El Chico Corp. v. Poole,* 732 S.W.2d 306, 314 (Tex. 1987) ("While failure to enact a bill may arguably be some evidence of intent, other reasons are equably inferable. Lack of time for consideration, opposition by a particular member or committee chair, efforts of special interest groups, or any other unidentified extraneous factor may, standing alone or combined together, act to defeat a legislative proposal regardless of the legislature's collective view of the bill's merits"). Furthermore, to require a reimbursement payment method for the MERP, but not the ETF and MSRTF, would result in the inefficient administration of the program, which the Legislature has instructed the OOG to avoid. The OOG also does not believe that the proposed rules conflict with the contingency clause language in Article 5190.14, §§5A(k) & 5C(k). The statute prohibits the OOG from considering a contingency clause in an event support contract as relieving an applicant's obligation to pay a particular cost under the contract. Requiring a payment method based on reimbursement does not diminish the effectiveness of contingency clauses in event support contracts. For example, if reimbursement is ultimately denied for a cost for which there is a contingency clause, the applicant can still enforce the contingency clause by seeking a return of its payment of the cost to the site selection organization.

COMMENT SUMMARY: Seven commenters request that Rule 184.45(a)(7)(D) be modified so that the cost of conducting an economic impact study for an event could be eligible for reimbursement.

OOG RESPONSE: The OOG declines to modify Rule 184.45(a)(7)(D) in response to this comment. The purpose of the program generally is to reimburse some of an applicant's costs for preparing and conducting an eligible event. *See* Texas Revised Civil Statutes, Article 5190.14, §2. The cost of conducting an economic impact study is not a cost related to the preparation and conduct of an event, but rather an administrative cost of participating in the trust fund program. Furthermore, the program does not require an applicant to hire a third party to conduct the economic impact study.

COMMENT SUMMARY: One commenter requests that Rule 184.45(a)(7)(E)-(G) be modified so that the cost of preparing a pre-event attendance estimate or post-event attendance verification, conducting any pre-event or post-event survey, and responding to requests for information relating to participation in the program could be eligible for reimbursement.

OOG RESPONSE: The OOG declines to modify Rule 184.45(a)(7)(E)-(G) in response to this comment. The purpose of the program generally is to reimburse some of an applicant's costs for preparing and conducting an eligible event. *See* Texas Revised Civil Statutes, Article 5190.14, §2. The cost of preparing a pre-event attendance estimate or post-event attendance verification, conducting any pre-event or post-event survey, and responding to requests for information are not costs related to the preparation and conduct of an event, but rather are administrative costs of participating in the trust fund program.

COMMENT SUMMARY: Six commenters request that Rule 184.45(a)(5)-(6) be modified so that the cost of event-related food and travel could be eligible for reimbursement.

OOG RESPONSE: The OOG accepts this comment. The OOG will modify the rules by adding Rule 184.44(21) and altering Rule 184.45(a)(5) in order to permit reimbursement of the cost of food that is directly related to the conduct of the event and that is provided on-site at the event to event participants or other personnel necessary to the conduct of the event. The cost of food may not exceed $36 per person/per day, which is the standard state employee reimbursement rate set by the Comptroller of Public Accounts. Under the rules, food is still generally unallowable except in the narrow circumstance described above. Examples of allowable food costs under the modified rule are providing an on-site meal to event referees or to event volunteers that directly assist in the conduct of the event. The OOG will also modify the rules by adding Rule 184.44(23) and altering Rule 184.45(a)(6) in order to permit reimbursement of certain travel costs. Specifically, the rules will permit reimbursement for an event participant's, coach's, referee's, judge's, or other similar person's lodging, automobile mileage, rental car, and airfare costs that are directly related to the conduct of the event. Such costs for members or employees of the site selection organization are not subject to reimbursement under this provision. The rules will set maximum reimbursement rates for these costs, based on the reimbursement rates for state employees set by the Comptroller of Public Accounts. Travel costs are still generally unallowable except in the narrow circumstances described above.

COMMENT SUMMARY: One commenter requests that Rule 184.45(a)(4) be modified so that the cost of event-related alcoholic beverages could be eligible for reimbursement.

OOG RESPONSE: The OOG declines to modify Rule 184.45(a)(4) in response to this comment. The OOG believes it is inappropriate to use program trust funds to reimburse alcohol expenses.

COMMENT SUMMARY: Two commenters request that Rule 184.45(a)(8) be modified so that the cost of prizes and awards for event participants could be eligible for reimbursement.

OOG RESPONSE: The OOG accepts this comment. The proposed rules will be modified by adding Rule 184.44(22) and amending Rule 184.45(a)(8)(A) in order to allow reimbursement for the cost of a non-monetary prize or other form of award for participation or competitive performance in an event that is reasonable and customary for that event. The cost of gifts or any monetary awards, including cash and gift cards/certificates, are still unallowable.

COMMENT SUMMARY: One commenter requests that Rule 184.44 be modified so that the cost of implementing an approved event attendance verification methodology could be eligible for reimbursement.

OOG RESPONSE: The OOG declines to modify Rule 184.44 in response to this comment. The purpose of the program generally is to reimburse some of an applicant's costs for preparing and conducting an eligible event. *See* Texas Revised Civil Statutes, Article 5190.14, §2. The cost of implementing an approved event attendance verification methodology is not a cost related to the preparation and conduct of an event, but rather an administrative cost of participating in the trust fund program.

COMMENT SUMMARY: Six commenters request that Rule 184.30(a)(3) be modified to allow more methodologies for determining an event's attendance, including on-site attendee surveys and vehicle counters.

OOG RESPONSE: The OOG declines to accept this comment. As proposed, the rule lists five generally allowable methodologies for determining an event's attendance: (1) ticket sales count; (2) turnstile count; (3) ticket scan count; (4) convention registration check-in count; and (5) participant totals. These five methodologies have generally proven to be reliable methods for determining an event's attendance. However, the rule also includes a provision that allows an endorsing entity to use any unlisted methodology, including on-site attendee surveys and vehicle counters, provided that the endorsing entity seeks and receives permission from the OOG to use that particular methodology prior to the event. The OOG believes that in order to efficiently administer the program, it must retain discretion to approve particular methodologies based on the merits of the methodology and the nature of the event for which it is to be used (i.e. one methodology may be appropriate for one type of event and inappropriate for another event). Therefore, the only allowable methodologies are those described above. The OOG will clarify this by removing the word "include" in Rule 184.30(a)(3) and inserting the word "are." *See* Tex. Att'y Gen. Op. No. GA-733 (2009) ("The term 'include' is a term of enlargement that does not limit a series of terms to only the terms listed, and does not create a presumption that components not expressed are excluded.") (internal quotations omitted).

COMMENT SUMMARY: Four commenters request that the proposed definition of "highly competitive selection process" in Rule 184.4(7) be changed to remove the requirement that a site selection organization must intend to considered sites for the event outside of Texas on a competitive basis *in the future* in order to qualify for the program.

OOG RESPONSE: The OOG declines to modify Rule 184.4(7) in response to this comment. The term "highly competitive selection process" is used in Article 5190.14 but is not defined in that statute. The OOG believes its proposed definition to be reasonable and within its authority to clarify ambiguous statutory terms. *See Zimmer US, Inc. v. Combs,* 368 S.W.3d 579, 587 (Tex. App.-Austin 2012, no pet.) (deferring to Comptroller's reasonable interpretation of ambiguous tax statute). The proposed definition is based on the definition in current Rules 184.100(8) and 184.200(8). The requirement that applicants intend to consider sites for their events outside of Texas on a competitive *and prospective* basis is designed to ensure that trust funds are used to lure events to Texas that may not otherwise come and to keep events that realistically may be moved to another state in the future. Furthermore, the proposed definition would not exclude certain annual events that are held in different states each year. Such events can fit within the proposed definition.

COMMENT SUMMARY: Two commenters request that the proposed definition of "professional services" in Rule 184.4(16) be changed to reflect the definition of the term used in Attorney General Opinions JM-1038 (1989), JM-940 (1988), and MW-344 (1981).

OOG RESPONSE: The OOG declines to modify Rule 184.4(16) in response to this comment. The definition of "professional services" used by the Attorney General in the opinions referenced above is based on the general dictionary definition of the term. The OOG specifically chose not to utilize that general definition because it is too broad for the program and could result in all professional services being eligible for reimbursement (subject to compliance with other applicable rules). The OOG has determined that those professional services specifically listed in Rule 184.4(16) are sufficiently related to the preparation or conduct of an event, and thus proper for reimbursement under the program. The rule permits applicants to seek reimbursement for other professional services, provided that the applicant can justify to the satisfaction of the OOG that the services are reasonably necessary (or desirable, as authorized in the MERP and MSRTF) for the preparation or presentation of the event.

COMMENT SUMMARY: Four commenters request that Rule 184.11(a)(5) be changed to match the statutory language used in Article 5190.14, §5A(a-1)(4).

OOG RESPONSE: The OOG accepts this comment. Rule 184.11(a)(5) will be modified to incorporate language used in Article 5190.14, §5A(a-1)(4).

COMMENT SUMMARY: Two commenters request that Rule 184.42 be changed in order to provide a more objective standard by which deadline extension requests will be considered by the OOG.

OOG RESPONSE: The OOG declines to modify Rule 184.42 in response to this comment. The inclusion of objective standards by which extension requests will be considered could limit the OOG's discretion to grant an extension. The OOG believes that, in the interest of the efficient administration of the program, it should retain maximum discretion in determining whether to grant an extension. This is best accomplished on a case-by-case basis.

COMMENT SUMMARY: Four commenters request that Rule 184.44(9)-(10) be changed to allow an applicant to seek reimbursement for event-related expenses incurred by another entity, such as a site selection organization.

OOG RESPONSE: The OOG declines to modify Rule 184.44(9)-(10) in response to this comment. Under Article 5190.14, §§5A(k) & 5C(k), disbursements may only be made "for a purpose for which a local organizing committee, an endorsing municipality, or an endorsing county or this state is obligated under an" event support contract. Costs incurred by a third party for which the local organizing committee, endorsing municipality, or endorsing county are not obligated under an event support contract are not eligible for reimbursement.

COMMENT SUMMARY: Two commenters request that the OOG provide definitions for the terms "fiscally irresponsible" and "not supportive of program objectives," as those terms are used in Rule 184.45(b).

OOG RESPONSE: The OOG declines to modify the rules in response to this comment. Proposed Rule 184.45(b) incorporates current Rules 184.106(c) and 184.205(c), which permit the OOG to deny a disbursement if it determines that the cost is fiscally irresponsible or not supportive of program objectives. The application of the current rules has not resulted in any problematic issues in the administration of the program, and the OOG does not anticipate such issues in the future. The rule allows the OOG to maintain strict control over disbursements, which is in line with the statutory mandate to efficiently administer the program.

COMMENT SUMMARY: Two commenters request that the OOG clarify the deadline requirements in Rules 184.22(i) and 184.23(b).

OOG RESPONSE: The OOG accepts this comment. Rules 184.22(i) and 184.23(b) implement Article 5190.14, §5C(b) and (c-1). Subsection (c-1) of that statute requires the OOG to determine the incremental increase in tax receipts attributable to an event within 30 days of receiving an endorsing entity's completed request for participation in the program and other requisite information needed to make that determination. However, subsection (b) of the statute also mandates that the determination be made not later than three months before the event. The OOG will modify Rule 184.23(b) to include a reference to the 30 day deadline outlined in Article 5190.14, §5C(b).

COMMENT SUMMARY: One commenter requests that the rules be changed to permit applicants to seek reimbursement for certain costs even if the costs are not directly supported by the event support contract.

OOG RESPONSE: The OOG declines to modify the rules in response to this comment. Article 5190.14, §§5A(k) & 5C(k) only permit disbursements for a purpose for which a local organizing committee, an endorsing municipality, or an endorsing county or the state is obligated under an event support contract.

COMMENT SUMMARY: One commenter requests that the OOG delete Rule 184.45(a)(14), which prohibits an applicant from obtaining reimbursement for the cost of conducting usual and customary maintenance of an event facility.

OOG RESPONSE: The OOG declines to modify Rule 184.45(a)(14) in response to this comment. Article 5190.14, §5C(k-1)(3) prohibits ETF disbursements for the purpose of conducting usual and customary maintenance of a facility.

COMMENT SUMMARY: Rule 184.21(b) generally provides that, during any 12-month period, an applicant may not submit more than 10 events for reimbursement under the ETF program for which the OOG determines that the amount of the incremental increase in tax receipts is less than $200,000. One commenter requests that the rule be changed from a rolling 12-month period to a set 12-month timeframe (i.e. calendar year or fiscal year).

OOG RESPONSE: The OOG accepts this comment. Rule 184.21(b) will be modified so that the 12-month period mirrors the state fiscal year.

COMMENT SUMMARY: Proposed Rule 184.30(a) requires applicants to submit to the OOG an event attendance certification, which must include actual attendance numbers, an estimate of the number of non-Texas resident attendees, and the source and methodology used to determine those numbers. One commenter states that providing such information to the OOG would be challenging because that level of detailed information is too difficult to obtain.

OOG RESPONSE: The OOG declines to modify Rule 184.30(a) in response to this comment. Article 5190.14, §§5A(i) & 5C(i) require the local organizing committee, endorsing municipality, or endorsing county to submit attendance figures and an estimate of the number of non-Texas resident attendees. Furthermore, the methodology used to identify those numbers will be easily identifiable under proposed Rule 184.30(a)(3).

COMMENT SUMMARY: One commenter states that Rule 184.50(c), which requires costs to be clearly identifiable in the event support contract, could limit applicants' ability to recover costs associated with providing complimentary hotel rooms and other facilities to site selection organizations.

OOG RESPONSE: The OOG declines to modify Rule 184.50(c) in response to this comment. Requiring that costs be clearly identified in an event support contract is designed to implement Article 5190.14, §§5A(k) & 5C(k), which permit disbursements only for a purpose for which a local organizing committee, an endorsing municipality, or an endorsing county or the state is obligated under an event support contract. The rule was not intended to, and will not necessarily result in, the denial of reimbursement for providing hotel rooms at no cost. In such a scenario, an event support contract that identifies the normal room rate that would be charged for the complimentary rooms could be sufficient. The OOG has also modified Rule 184.43(a)(3) to clarify that internal billing documentation may be submitted to support the cost of providing complimentary hotel rooms.

COMMENT SUMMARY: One commenter is supportive of the repeal of current Rule 184.202(i), which had required a reduction of the estimated incremental tax revenue for an event if that event had been held in Texas within the past 5 years. But the commenter requests that the proposed rules be changed to allow future amounts of estimated incremental tax revenue for an event to be based on the full reimbursement level and not on a reduced amount under the current rule.

OOG RESPONSE: The OOG declines to modify the rules in response to this comment. Under the proposed language, estimated incremental tax revenue will not be reduced as specified in current Rule 184.202(i). Therefore, the proposed rules will not result in the scenario described by the commenter.

COMMENT SUMMARY: One commenter is supportive of the 7 year retention period established in Rule 184.41(b).

OOG RESPONSE: The OOG agrees and has maintained the proposed language of Rule 184.41(b).

COMMENT SUMMARY: One commenter requests that Rules 184.12(a)(4) be changed to permit applicants to submit the requisite economic impact study 45-60 days after an event.

OOG RESPONSE: The OOG declines to modify Rule 184.12(a)(4) in response to this comment. The OOG utilizes economic impact studies to help determine the estimated economic impact of the event. Under Article 5190.14, §§5A(b-1) and 5C(b), that determination must occur prior to the event.

COMMENT SUMMARY: One commenter requests a rule that would allow event sanction fees to be eligible for reimbursement from the MERP trust fund within 45 days of the event.

OOG RESPONSE: The OOG declines to modify the proposed rules in response to this comment. The OOG believes that it is more efficient to process all disbursements for a single event together, which gives OOG staff the opportunity to analyze the event and all event costs as a whole, giving them a better perspective of the event.

COMMENT SUMMARY: One commenter requests that spending at an event be determined by a survey of event attendees.

OOG RESPONSE: The determination of event spending is not addressed in the proposed rules. The OOG considers this to be a request for agency action outside the rulemaking process rather than a direct comment on the proposed rules. The OOG will take the request under advisement. No changes will be made to the proposed rules in response to this comment.

COMMENT SUMMARY: One commenter states that the OOG should determine event spending based on the unique aspects of each event and that event's attendees rather than using an average of spending at all MERP events.

OOG RESPONSE: The determination of event spending is not addressed in the proposed rules. The OOG considers this to be a request for agency action outside the rulemaking process rather than a direct comment on the proposed rules. The OOG will take the request under advisement. No changes will be made to the proposed rules in response to this comment.

COMMENT SUMMARY: One commenter requests that event-related hotel spending be determined by a survey of hotels within the market area.

OOG RESPONSE: The determination of event-related hotel spending is not addressed in the proposed rules. The OOG considers this to be a request for agency action outside the rulemaking process rather than a direct comment on the proposed rules. The OOG will take the request under advisement. No changes will be made to the proposed rules in response to this comment.

COMMENT SUMMARY: One commenter requests that major event-related expenditures occurring within a 12 month period beginning 2 months before an event and ending 10 months after the event be eligible for reimbursement from the trust fund.

OOG RESPONSE: The proposed rules do not address a timeline for allowable costs under the MERP program. The OOG considers this to be a request for agency action outside the rulemaking process rather than a direct comment on the proposed rules. The OOG will take the request under advisement. No changes will be made to the proposed rules in response to this comment.

COMMENT SUMMARY: One commenter states that if a force majeure condition impacts attendance at an event, data from the previous year's event should be considered when determining the event's economic impact.

OOG RESPONSE: The OOG declines to modify the rules in response to this comment. Article 5190.14, §§5A(y) & 5C(t) require the applicant to provide and the OOG to consider *actual* event attendance figures. However, if a force majeure condition results in significantly lower attendance at an event, the OOG may choose not to reduce the amount of disbursement under Rule 184.30(b).

COMMENT SUMMARY: Five commenters request that the definition of "endorsing municipality" in Rule 184.20(3) be changed to track the statutory definition of the same term in Article 5190.14, §5C(a)(2). Four of the commenters also request that the definitions of "endorsing county" in §184.20(2), "event support contract" in §184.4(5), and "site selection organization" in §184.10(5) be changed to track the statutory definitions of the same terms.

OOG RESPONSE: The OOG partially accepts this comment and will modify Rules 184.10(5) and 184.20(2)-(3) so that the definitions of "site selection organization," "endorsing municipality," and "endorsing county" will match the statutory definitions of the same terms. The OOG declines to modify the proposed definition of "event support contract" in Rule 184.4(5). The proposed definition incorporates the broad definition of the same term in Article 5190.14, §§5A(a)(3), 5B(a)(3), 5C(a)(4), but the proposed definition also provides clarification on what must be included in the contract and an illustrative list of documents that are not considered event support contracts. The proposed definition supplements, and does not conflict with, the statutory definition.

COMMENT SUMMARY: Two commenters request assurance from the OOG that the cost of leased livestock at a particular event, which is included in the event support contract, is an allowable expense.

OOG RESPONSE: The OOG will not determine whether a particular expense in a hypothetical scenario is eligible for reimbursement as that would require a factual analysis. However, if the cost of leased livestock is supported by the event support contract and is directly attributable to the preparation or conduct of the event, then the cost may be eligible for reimbursement under Rule 184.44(18).

COMMENT SUMMARY: One commenter asks whether Rule 184.44(4) will require applicants to disclose the amount of an event sanction fee when applying to the program.

OOG RESPONSE: Rule 184.44(4) will require that the amount of an event sanction fee be listed in the program application.

SUBCHAPTER A. AUTHORITY AND APPLICABILITY, PURPOSE, CONSTRUCTION OF RULES AND GENERAL DEFINITIONS

10 TAC §§184.1 - 184.4

The rules are adopted under Texas Revised Civil Statutes, Article 5190.14, §§3A, 5A(v) and 5C(p), which requires the Office of the Governor to adopt rules to ensure the efficient administration of the trust funds established under Article 5190.14, including rules related to application and receipt requirements.

Cross Reference to Statute

Article 5190.14, as amended by Senate Bills 293 & 633 and House Bill 26, 84th Regular Legislative Session.

§184.1. Authority and Applicability.

(a) Authority for this Chapter is provided in Texas Revised Civil Statutes, Article 5190.14, Sections 3A, 5A(v) and 5C(p).

(b) A request to participate in the Major Events Reimbursement Program, Events Trust Fund Program, or Motor Sports Racing Trust Fund Program that is submitted to the Office prior to the effective date of these rules is governed by the applicable rules in effect at the time the request is received by the Office.

(c) The effective date of these rules is January 1, 2017.

§184.2. Purpose.

(a) The purpose of the Major Events Reimbursement Program is to reimburse local governments and local organizing committees for certain eligible costs associated with conducting major events specifically referenced in Texas Revised Civil Statutes, Article 5190.14, Section 5A, provided that all statutory and administrative requirements are satisfied.

(b) The purpose of the Events Trust Fund Program is to reimburse local governments and local organizing committees for certain eligible costs associated with conducting eligible events under Texas Revised Civil Statutes, Article 5190.14, Section 5C, provided that all statutory and administrative requirements are satisfied.

(c) The purpose of the Motor Sports Racing Trust Fund Program is to reimburse local governments and local organizing committees for certain eligible costs associated with conducting specific motor sports racing events under Texas Revised Civil Statutes, Article 5190.14, Section 5B, provided that the event is sanctioned by the Automobile Competition Committee for the United States, held at a temporary event venue, and that all statutory and administrative requirements are satisfied.

§184.3. Construction of Rules.

(a) The Office shall administer the Major Events Reimbursement Program, the Events Trust Fund Program, and the Motor Sports Racing Trust Fund program in a manner consistent with the requirements in Texas Revised Civil Statutes, Article 5190.14, and that statute shall control over any conflicting provision of these administrative rules.

(b) Unless otherwise provided by law or this chapter, the rules applicable to the Events Trust Fund Program shall also be applicable in the same manner to the Motor Sports Racing Trust Fund Program.

(c) The Chief of Staff of the Office of the Governor or his designee may, in their sole discretion, waive any provision of this chapter upon a finding that the public interest would be furthered by granting a waiver. Any such waiver must be consistent with applicable statutory law.

§184.4. General Definitions.

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

(1) Applicant--An endorsing county, endorsing municipality, or local organizing committee that is eligible to participate in the Major Events Reimbursement Program, Events Trust Fund Program, or Motor Sports Racing Trust Fund Program. The term includes one or more endorsing counties and/or endorsing municipalities acting collectively or in conjunction with a local organizing committee. The term may also include a local government corporation that meets the requirements of Texas Revised Civil Statutes, Article 5190.14, Section 12.

(2) Day--As used in this chapter, all references to "day" mean a calendar day.

(3) Direct cost--Any cost that is directly attributable to the preparation or presentation of an event. The term does not include:

(A) any indirect, administrative, or overhead cost;

(B) any cost that is recouped or refunded by other parties or from event related revenue relating to the same expense or obligation; or

(C) any cost that is not directly attributable to an event.

(4) Estimate--The Office's determination of the amount of incremental increase in tax receipts that are directly attributable to the preparation or presentation of an event eligible to be deposited in the trust fund for an eligible event.

(5) Event support contract--A contract by and between a site selection organization and a local organizing committee, an endorsing municipality, or an endorsing county setting out the representations and assurances of the parties with respect to the selection of a site in this state for the location of an event, and the requirements and costs necessary (or desirable, as authorized by Texas Revised Civil Statutes, Article 5190.14, Section 5A(h) or 5B(h)) for the preparation or presentation of an event. The term includes a joinder agreement or joinder undertaking as defined by Texas Revised Civil Statutes, Article 5190.14. The term does not include a request for bid, request for proposal, bid response, or a selection letter from a site selection organization except as those documents may be incorporated by reference into the event support contract.

(6) Events Trust Fund--The fund established by the Office for the event pursuant to Texas Revised Civil Statutes, Article 5190.14, Section 5C(d).

(7) Highly competitive selection process--A process in which the site selection organization has considered sites for the event outside of Texas on a competitive basis and intends to do so in the future.

(8) Host fee or sanction fee--A cost charged by a site selection organization under an event support contract for the cost of hosting or authorizing the event.

(9) Internal billing--Costs incurred under an event support contract by a local organizing committee, an endorsing municipality, or an endorsing county for the costs of services or facilities provided for the event by an endorsing municipality or endorsing county, including, but not limited to, facility rentals and charges for police, fire, or emergency medical services.

(10) Local organizing committee--A nonprofit corporation or its successor in interest that:

(A) has been authorized by an endorsing municipality, endorsing county, or more than one endorsing municipality or county acting collectively to pursue an application and bid with a site selection organization for selection as the site of an event; or

(B) with the authorization of an endorsing municipality, endorsing county, or more than one endorsing municipality or county acting collectively, has executed an agreement with a site selection organization regarding a bid to host an event.

(11) Local share--The contribution to the fund made by or on behalf of an endorsing municipality or endorsing county pursuant to Texas Revised Civil Statutes, Article 5191.14, Section 5A(d), 5A(d-1), 5B(d), 5C(d), or 5C(d-1).

(12) Major Events Reimbursement Program Trust Fund--The trust fund established by the Office for the event pursuant to Texas Revised Civil Statutes, Article 5190.14, Section 5A(d).

(13) Market area--The geographic area within which the Office determines there is a reasonable likelihood of measurable eco-

nomic impact directly attributable to the preparation for or presentation of the event and related activities.

(14) Motor Sports Racing Trust Fund-- The fund established by the Office for the event pursuant to Texas Revised Civil Statutes, Article 5190.14, Section 5B(d).

(15) Office--The Economic Development and Tourism Office within the Office of the Governor.

(16) Professional services--The services of a licensed accountant, architect, attorney, professional engineer, landscape architect, land surveyor, physician, nurse, or real estate appraiser. The term does not include the services of other types of licensed professionals unless otherwise determined by the Office to be reasonably necessary (or desirable, as authorized by Texas Revised Civil Statutes, Article 5190.14, Section 5A(h) or 5B(h)) for the preparation or presentation of an approved event.

(17) Proof of payment--An official banking statement, check copy, credit card receipt, or other document required by the Office to support or document a requested disbursement from the trust fund that reflects the transmission, transfer, or payment of funds related to an event, which may be redacted of information related to transactions and balances not pertaining to the event.

(18) Publicly owned property-- Any property that is owned by a governmental unit as defined by Texas Civil Practices and Remedies Code, Section 101.001(3).

(19) Travel--Includes lodging, mileage, rental car expense, airfare, toll fares, parking and meals that are incurred while a person travels.

(20) Trust fund--The fund created by the Texas Comptroller of Public Accounts, at the direction of the Office, and designated as either the Major Events Reimbursement Program Fund, Events Trust Fund, or Motor Sports Racing Trust Fund for the event.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 8, 2016.

TRD-201606398
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Office of the Governor, Economic Development and Tourism Office
Effective date: January 1, 2017
Proposal publication date: July 22, 2016
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SUBCHAPTER B. MAJOR EVENTS REIMBURSEMENT PROGRAM DEFINITIONS, ELIGIBILITY, PARTICIPATION AND DEADLINES

10 TAC §§184.10 - 184.13

Statutory Authority

The rules are adopted under Texas Revised Civil Statutes, Article 5190.14, Sections 3A, 5A(v) and 5C(p), which requires the Office of the Governor to adopt rules to ensure the efficient administration of the trust funds established under Article 5190.14, including rules related to application and receipt requirements.

Cross Reference to Statute

Article 5190.14, as amended by Senate Bills 293 & 633 and House Bill 26, 84th Regular Legislative Session.

§184.10. Definitions.

The following words and terms, when used in this chapter in the context of the Major Events Reimbursement Program, shall have the following meanings:

(1) Cost--An Applicant's direct expenses and obligations necessary or desirable for the preparation or presentation of an event and related activities under an event support contract that are not recouped from or refunded by other parties.

(2) Endorsing county--A county that contains a site selected by a site selection organization for one or more events, or a county that:

(A) does not contain a site selected by a site selection organization for an event;

(B) is included in the market area for the event as designated by the Office; and

(C) is a party to an event support contract.

(3) Endorsing municipality--A municipality that contains a site selected by a site selection organization for one or more events, or a municipality that:

(A) does not contain a site selected by a site selection organization for an event;

(B) is included in the market area for the event as designated by the Office; and

(C) is a party to an event support contract.

(4) Event--This term has the same meaning as assigned by Texas Revised Civil Statutes, Article 5190.14, Section 5A(a)(4).

(5) Site selection organization-- An entity expressly listed in Texas Revised Civil Statutes, Article 5190.14, Section 5A(a)(5).

§184.11. Eligibility.

(a) An event is eligible for participation in the Major Events Reimbursement Program only if:

(1) the event and the site selection organization for the event are identified in Texas Revised Civil Statutes, Article 5190.14, Sections 5A(a)(4) and (5);

(2) a site selection organization selects a site in Texas through a highly competitive process after considering one or more sites that are not located in this state, for the event to be held one time or, for an event scheduled to be held each year for a period of years under an event support contract, one time each year for the period of years;

(3) a site selection organization selects a site in this state as:

(A) the sole site for the event; or

(B) the sole site for the event in a region composed of this state and one or more adjoining states;

(4) the event will not be held more than one time in any year; and

(5) the Office determines that the incremental increase in tax receipts equals or exceeds $1 million per year for the event, provided that for an event scheduled to be held each year for a period of years under an event support contract, the incremental increase in tax receipts shall be calculated as if the event did not occur in the prior year.

(b) The requirements of subsections (a)(2) of this section do not apply to an event as described by Texas Revised Civil Statutes, Article 5190.14, Section 5A(a-2).

(c) An Applicant cannot receive disbursements for the same event under both the Major Events Reimbursement Program and the Events Trust Fund Program. Nothing contained herein prohibits the submission of an application for the Events Trust Fund Program for events that are ineligible as a matter of law to participate in the Major Events Reimbursement Program.

§184.12. Request to Participate in the Major Events Reimbursement Program.

(a) A request to establish a trust fund for the Major Event Reimbursement Program must contain:

(1) a complete and signed application;

(2) documentation from the endorsing municipality or endorsing county requesting participation in the trust fund program and signed by a person authorized to bind the municipality or county;

(3) a signed letter from the site selection organization selecting the site in Texas that includes all the information necessary to establish that the site was selected through a highly competitive selection process; and

(4) an economic impact study or other data sufficient for the Office to make the determination of the estimated incremental increase in tax revenue directly attributable to the preparation or presentation of the event, including any data for any related activities.

(A) the economic impact study and other data submitted should contain detailed information on the direct expenditures for the event in the requested market area relating to the economic activity of attendees and other persons associated with the event during a reasonable time prior to the event, during the event, and within a reasonable time immediately after the event. The study may also include information on event expenditures if available.

(B) any other data or information addressing the secondary economic impact for the event in the requested market area during the ten months immediately following the last day of the event must be stated separately from data listed in subparagraph (A) of this paragraph such that the data for each can be easily distinguished. If the applicant fails to include information listed in this subparagraph, the Office's determination of the amount of incremental tax receipts will be based solely on the submitted data.

(C) all economic impact studies and other data submitted by the applicant shall address only the incremental increase in tax receipts for the tax types identified in Texas Revised Civil Statutes, Article 5190.14, Section 5A(b)(1)-(5). Information regarding other actual or estimated economic impacts will not be considered by the Office.

(D) any economic impact study submitted shall include a certification from the person(s) who prepared the study for the application, attesting to the accuracy of the information provided.

(b) The request for participation and the economic impact report should propose the applicant's desired market area and include information to support the choice of market area. The Office shall make the final determination establishing the market area. An endorsing municipality or endorsing county that has been selected as the site for the event must be included in the market area for the event.

(c) The request for participation and the economic impact report should include a list of all event activities proposed to be included in the estimate and must include data for each activity, including, at a minimum:

(1) projected attendance figures;

(2) a description of the methodology that will be used for determining the total actual attendance at the event;

(3) the projected spending of attendees; and

(4) any anticipated expenditure information related to the activity.

(d) The request for participation must be accompanied by a certification provided by an authorized representative from each endorsing municipality, endorsing county, and local organizing committee (if applicable) attesting to the accuracy of the information provided.

(e) The Office is not required to review or act on a request for participation that does not contain all items in subsections (a) - (d) of this section.

(f) A request for participation must be submitted not earlier than one year and not later than 45 days before the date the event begins. Requests submitted outside this time frame shall not be reviewed.

(g) The Office may issue guidance to establish, interpret, or clarify requirements for the submission of requests to participate in the Major Events Reimbursement Program. Compliance with any such guidance shall be required by the Applicant. Any such guidance must be consistent with all applicable statutes and this chapter.

(h) All requests and required documentation must be submitted electronically to: eventsfund@gov.texas.gov.

(i) The Office shall make a determination of the amount of incremental increase in tax receipts not later than the 30th day after the date the Office receives the completed request for participation and all related information required by this section.

§184.13. Major Events Reimbursement Program Deadlines.

(a) Application Deadline. Applications for participation in the Major Events Reimbursement Program must be submitted not earlier than one year, and not later than 45 days, before the first day of the event.

(b) Determination Deadline. Not later than the 30th day after the date the Office receives a completed request for participation and all required information, the Office will make a determination of whether the event meets the eligibility requirements of Texas Revised Civil Statutes, Article 5190.14 for the establishment of a Major Events Reimbursement Program Fund, and a determination of the amount of incremental increase in tax receipts, as determined by the Office, that is directly attributable to the preparation or presentation of the event.

(c) Event Support Contract Submission. Before the first date of the event, the applicant shall submit an event support contract and other documentation required by section 184.31 of this chapter. If the event support contract is not timely submitted, the Office may deem the Applicant ineligible for disbursements from the trust fund established for the event.

(d) Attendance Certification Deadline. The applicant shall submit the attendance certification and supporting documentation required by section 184.30 of this chapter not later than 45 days after the last date of the event. If the attendance documentation for the event

is not timely submitted, the Office may deem the applicant ineligible for disbursements from the trust fund established for the event.

(e) Local Share Submission. Not later than 90 days after the last day of the event, the applicant shall remit to the Office the local share contribution to the fund made by or on behalf of an endorsing municipality or endorsing county pursuant to Texas Revised Civil Statutes, Article 5191.14, Section 5A(d) or (d-1). The local share cannot be submitted on a weekend or state holiday. If the local share is not timely submitted, the trust fund established for the event will be closed.

(f) Disbursement Request Submission. The applicant shall submit all requests for disbursements from the trust fund and supporting documentation no later than 180 days after the last day of the event. Any disbursement requests that are not timely submitted may be ineligible for reimbursement from the trust fund established for the event.

(g) A local organizing committee, endorsing municipality, or endorsing county must provide an annual audited financial statement if requested by the Office no later than the end of the fourth month after the date the period covered by the financial statement ends.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 8, 2016.

TRD-201606399
James Person
Assistant General Counsel
Office of the Governor, Economic Development and Tourism Office
Effective date: January 1, 2017
Proposal publication date: July 22, 2016
For further information, please call: (512) 936-0275

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SUBCHAPTER C. EVENTS TRUST FUND PROGRAM DEFINITIONS, ELIGIBILITY, PARTICIPATION AND DEADLINES

10 TAC §§184.20 - 184.23

Statutory Authority

The rules are adopted under Texas Revised Civil Statutes, Article 5190.14, Sections 3A, 5A(v) and 5C(p), which requires the Office of the Governor to adopt rules to ensure the efficient administration of the trust funds established under Article 5190.14, including rules related to application and receipt requirements.

Cross Reference to Statute

Article 5190.14, as amended by Senate Bills 293 & 633 and House Bill 26, 84th Regular Legislative Session.

§184.20. Definitions.

The following words and terms, when used in this Chapter in the context of the Events Trust Fund Program, shall have the following meanings:

(1) Cost--An applicant's direct expenses and obligations necessary for the preparation or presentation of an event and related activities under an event support contract that are not recouped from or refunded by other parties.

(2) Endorsing county--A county that contains within its boundaries a site selected by a site selection organization for one or more events.

(3) Endorsing municipality--A municipality that contains within its boundaries a site selected by a site selection organization for one or more events.

(4) Event--An event or a related series of events held in this state for which a local organizing committee, endorsing county, or endorsing municipality seeks approval from a site selection organization to hold the event at a site in this state. The term includes any activities related to or associated with the event.

(5) Direct spending--The amount of incremental increase in tax receipts for the 30-day period that ends one day after the last date of the event that are directly attributable to spending related to the preparation or presentation of an event.

(6) Site selection organization--An entity that conducts or considers conducting an eligible event in this state.

§184.21. Eligibility.

(a) An event is eligible for participation in the Events Trust Fund Program only if:

(1) a site selection organization selects a site in Texas through a highly competitive process after considering one or more sites that are not located in this state, for the event to be held one time or, for an event scheduled to be held each year for a period of years under an event support contract, one time each year for the period of years;

(2) a site selection organization selects a site in this state as:

(A) the sole site for the event; or

(B) the sole site for the event in a region composed of this state and one or more adjoining states; and

(3) the event that is held not more than one time in this state or an adjoining state in any year.

(b) During any state fiscal year (September 1 - August 31), an applicant may not submit more than 10 events, only three of which may be nonsporting events, for reimbursement under the Events Trust Fund Program for which the Office determines that the amount of the incremental increase in tax receipts is less than $200,000. A sporting event is an event whose primary purpose, as determined by the Office, is the conduct of recreational or competitive athletic or physical activities, including individual, team, equestrian, or automotive competitions.

(c) An applicant cannot receive disbursements for the same event under both the Major Events Reimbursement Program and the Events Trust Fund Program. Nothing contained herein prohibits the submission of an application for the Events Trust Fund Program for events that are ineligible as a matter of law for participation in the Major Events Reimbursement Program.

§184.22. Request to Establish a Trust Fund.

(a) A request to establish a trust fund for the Events Trust Fund Program must contain:

(1) a complete and signed application;

(2) documentation from the endorsing municipality or endorsing county requesting participation in the trust fund program and signed by a person authorized to bind the municipality or county;

(3) a signed letter from the site selection organization selecting the site in Texas that includes all the information necessary to

establish that the site was selected through a highly competitive selection process; and

(4) an economic impact study or other data sufficient for the Office to make the determination of the estimated incremental increase in tax revenue directly attributable to the preparation or presentation of the event, including any data for any related activities.

(A) the economic impact study and other data submitted must contain detailed information on the direct expenditures and direct spending data for the event for the requested market area.

(B) all economic impact studies and other data submitted by the applicant shall address only the incremental increase in tax receipts for the tax types identified in Texas Revised Civil Statutes, Article 5190.14, Section 5C(b)(1)-(5). Information regarding other actual or estimated economic impacts will not be considered by the Office.

(C) any economic impact study submitted shall include a certification from the person(s) who prepared the study for the application, attesting to the accuracy of the information provided.

(b) The request for participation and the economic impact report should propose the applicant's desired market area and include information to support the choice of market area. The Office shall make the final determination establishing the market area. An endorsing municipality or endorsing county that has been selected as the site for the event must be included in the market area for the event.

(c) The request for participation and the economic impact report should include a list of all event activities proposed to be included in the estimate and must include data for each activity, including, at a minimum:

(1) projected attendance figures;

(2) a description of the methodology that will be used for determining the total actual attendance at the event;

(3) the projected spending of attendees; and

(4) any anticipated expenditure information related to the activity.

(d) The request for participation must be accompanied by a certification provided by an authorized representative from each endorsing municipality, endorsing county, and local organizing committee (if applicable) attesting to the accuracy of the information provided.

(e) The Office is not required to review or act on a request for participation that does not contain all items in subsections (a) - (d) of this section.

(f) A request for participation must be submitted not later than 120 days before the date the event begins. Requests submitted outside this time frame shall not be reviewed.

(g) The Office may issue guidance to establish, interpret, or clarify requirements for the submission of requests to participate in the Events Trust Fund Program. Compliance with any such guidance shall be required by the Applicant. Any such guidance must be consistent with all applicable statutes and this chapter.

(h) All requests and required documentation must be submitted electronically to: eventsfund@gov.texas.gov.

(i) The Office shall make a determination of the amount of incremental increase in tax receipts not later than the 30th day after the date the Office receives the completed request for participation and all related information required by this section, and not later than three months before the date of the event.

§184.23. Events Trust Fund Program Deadlines.

(a) Application Deadline. Applications for participation in the Events Trust Fund Program should be submitted no later than 120 days before the first day of the event in order to permit the Office to timely determine the amount of incremental increase in tax by not later than three months before the date of the event.

(b) Determination Deadline. No later than the 30th day after the date the Office receives a completed request for participation and all required information, the Office will make a determination of whether the event meets the eligibility requirements of Texas Revised Civil Statutes, Article 5190.14 for the establishment of an event trust fund, and a determination of the amount of incremental increase in tax receipts, as determined by the Office, that is directly attributable to the preparation or presentation of the event. The determination must be made no later than three months before the date of the event.

(c) Event Support Contract Submission. Before the first date of the event, the applicant shall submit an event support contract and other documentation required by section 184.31 of this chapter. If the event support contract is not timely submitted, the Office may deem the applicant ineligible for disbursements from the trust fund established for the event.

(d) Attendance Certification Deadline. The applicant shall submit the attendance certification and supporting documentation required by Section 184.30 not later than 45 days after the last date of the event. If the attendance documentation for the event is not timely submitted, the Office may deem the applicant ineligible for disbursements from the trust fund established for the event.

(e) Local Share Submission. Not later than 90 days after the last day of the event, the applicant shall remit to the Office the local share contribution to the fund made by or on behalf of an endorsing municipality or endorsing county pursuant to Texas Revised Civil Statutes, Article 5191.14, Section 5B(d), 5C(d) or 5C(d-1). The local share cannot be submitted on a weekend or state holiday. If the local share is not timely submitted, the trust fund established for the event will be closed.

(f) Disbursement Request Submission. The applicant shall submit all requests for disbursements from the trust fund and supporting documentation by not later than 180 days after the last day of the event. Any disbursement requests that are not timely submitted may be ineligible for reimbursement from the trust fund established for the event.

(g) A local organizing committee, endorsing municipality, or endorsing county must provide an annual audited financial statement if requested by the Office no later than the end of the fourth month after the date the period covered by the financial statement ends.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 8, 2016.

TRD-201606400
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Effective date: January 1, 2017
Proposal publication date: July 22, 2016
For further information, please call: (512) 936-0275

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SUBCHAPTER D. REQUIRED REPORTS

10 TAC §§184.30 - 184.33

Statutory Authority

The rules are adopted under Texas Revised Civil Statutes, Article 5190.14, Sections 3A, 5A(v) and 5C(p), which requires the Office of the Governor to adopt rules to ensure the efficient administration of the trust funds established under Article 5190.14, including rules related to application and receipt requirements.

Cross Reference to Statute

Article 5190.14, as amended by Senate Bills 293 & 633 and House Bill 26, 84th Regular Legislative Session.

§184.30. Attendance Certification.

(a) Not later than 45 days after the last day of the approved event, an attendance certification based on a methodology acceptable to the Office signed by the person who signed the original request for participation or their successor under §184.12 (for the Major Events Reimbursement Program) or §184.22 (for the Events Trust Fund Program) of this chapter as applicable. The certification must include:

(1) total actual attendance at the event;

(2) the estimated number of attendees at the approved event that are not residents of Texas; and

(3) the verifiable source and methodology for such numbers. Approved attendance methodologies are:

(A) ticket sales count;

(B) turnstile count;

(C) ticket scan count;

(D) convention registration check-in count;

(E) participant totals; or

(F) another methodology that is approved by the Office in its sole discretion prior to the first day of the event.

(b) If the actual attendance figures are significantly lower than the estimated attendance numbers, the Office may reduce the amount of a disbursement for an endorsing entity under the trust fund in proportion to the discrepancy and in proportion to the amount contributed to the fund by the entity. Actual attendance at an event is considered significantly lower than estimated attendance when the difference is 25% or greater.

§184.31. Submission of Event Support Contract.

Before the first date of the event, the Applicant shall submit to the Office a complete and fully executed copy of the event support contract, any amendment to the contract, and any incorporated documentation.

§184.32. Other Information Required by the Office.

(a) Upon request of the Office, the applicant must provide to the Office any additional information, including financial information, or other information held by the applicant that the Office considers necessary to verify event related expenditures or to administer the program.

(b) If the applicant fails or refuses to timely provide any information required by statute or this section, the Office may deem the applicant ineligible for disbursements from the trust fund established for the event.

§184.33. Post Event Report Information for Major Events Reimbursement Program.

Upon request of the Office, an applicant to the Major Events Reimbursement Program must provide to the Office any information the Office finds necessary to comply with the post event reporting requirements in Texas Revised Civil Statutes, Article 5190.14, Section 5A(w).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 8, 2016.

TRD-201606401
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Effective date: January 1, 2017
Proposal publication date: July 22, 2016
For further information, please call: (512) 936-0275

SUBCHAPTER E. DISBURSEMENT PROCESS

10 TAC §§184.40 - 184.45

Statutory Authority

The rules are adopted under Texas Revised Civil Statutes, Article 5190.14, Sections 3A, 5A(v) and 5C(p), which requires the Office of the Governor to adopt rules to ensure the efficient administration of the trust funds established under Article 5190.14, including rules related to application and receipt requirements.

Cross Reference to Statute

Article 5194.10, as amended by Senate Bills 293 & 633 and House Bill 26, 84th Regular Legislative Session.

§184.40. Disbursements for Event Costs.

(a) Disbursements from the trust fund established for the event shall be issued by the Office to reimburse only allowable direct costs that are directly attributable to the preparation or presentation of the approved event related to:

(1) preparing for and conducting an event in this state in accordance with the event support contract;

(2) the construction, improvement, or renovation of facilities to the extent authorized by law that are directly attributable to fulfilling obligations of the event support contract and that are reasonably necessary (or desirable, as authorized by Texas Revised Civil Statutes, Article 5190.14, Section 5A(h) or 5B(h)) for the conduct of the event as required by the site selection organization; or

(3) paying the principal of and interest on notes issued by an endorsing municipality or endorsing county under Texas Revised Civil Statutes, Article 5190.14, Section 5A(g), 5B(g) or 5C(g) as applicable.

(b) Disbursements from the trust fund may not be used to make payments to an applicant or any other entity that are not directly attributable to allowable costs as set forth in §184.44 (Allowable Costs). Disbursements are subject to verification or audit prior to or after payment by the Office to ensure compliance.

(c) The Office may issue guidance to establish, interpret, or clarify requirements for the disbursement requests for trust fund programs. Compliance with any such guidance shall be required by the applicant. Any such guidance must be consistent with all applicable statutes and this chapter.

§184.41. Documentation Required to Initiate Disbursement Process.

(a) To initiate the disbursement process, the applicant must electronically submit to the Office the following required documentation in a format required by the Office no later than 180 days after the last date of the event:

(1) a signed disbursement request in the form prescribed by the Office;

(2) a general explanation of the costs the disbursement request represents in the form prescribed by the Office;

(3) copies of any publications, printed materials, signage, or advertising to support any costs relating to those items that are included in the disbursement request;

(4) copies of the invoices, receipts, contracts, proof of payment, and other documents supporting the costs included in the disbursement request;

(A) Estimates of expenditures, proposals, or purchase orders will not be accepted to support the reimbursement of a cost unless accompanied by invoices or other documentation to support that the related cost was actually incurred;

(B) Acceptable forms of documentation must show itemized costs that are directly attributable to the event, including the invoice date and the date(s) the goods were delivered or the services performed. Allowable costs attributable to event staff shall include documentation sufficient to support how such costs were calculated and shall include the description of the work performed, the dates of service, rate of pay, and the number of hours worked per day, and an accounting of any overtime pay, if applicable;

(5) if an Applicant seeks reimbursement for expenses incurred by another entity because of an obligation specified in the event support contract, copies of the invoice(s) sent by the entity to the Applicant for the expenses, and proof of the payment to the vendor;

(6) for a request submitted by a local organizing committee, documentation showing the prior approval of the disbursement request by each contributing endorsing municipality and/or endorsing county;

(7) a statement indicating whether any disbursement information provided to the Office is confidential and exempt from public disclosure under the Texas Public Information Act (Government Code, Chapter 552), including the legal citation of the exception claimed; and

(8) a spreadsheet of event expenses.

(b) An applicant shall retain all records related to an event for at least seven (7) years following the last day of the event. Such records must be made available to the Office upon request.

§184.42. Extension of Time to Submit Disbursement Documentation. If the applicant is unable to provide all the information required for a completed disbursement request by the 180th day after the last date of the event, the Office may extend the period of time for requesting disbursement upon the receipt of a timely request for an extension from the Applicant. Any such requests from the applicant must be submitted to the Office by the 180th day after the last date of the event and must be accompanied by a narrative justification for the proposed extension of time. The Office is not required to act on any request for an extension of time, and any extension granted is within the discretion of the Office.

§184.43. Disbursement of Trust Funds.

(a) The Office will only consider a disbursement request that:

(1) is supported by an event support contract;

(2) requests reimbursement for payments or obligations for allowable costs; and

(3) is complete, supported by proof of payment or internal billing documentation, and includes all event reimbursement costs being sought by the applicant for disbursement.

(b) The Office may request additional supporting documentation or justification regarding any costs submitted for a disbursement. The Office, at its sole discretion, may withhold disbursements for event costs pending the receipt of any information the Office considers necessary to appropriately document the applicant's entitlement to reimbursement.

(c) The Office shall not make any disbursements for event costs until all reporting requirements under Subchapter D (Required Reports) of this chapter are satisfied.

(d) Upon disbursement of all reimbursement payments, any unexpended balance remaining in the trust fund will be returned to each endorsing entity in proportion to the local share contributed by the entity, and any unexpended state share shall be returned to the Comptroller of Public Accounts.

(e) A disbursement made from the trust fund by the Office in satisfaction of an applicant's obligation shall be satisfied proportionately from the state and local share in the trust fund in the proportion of 6.25:1 of state funds to local share notwithstanding any agreements to the contrary made by an Applicant.

(f) If the Office determines, based on information obtained from verifiable sources, including any monitoring, inspection, review or audit conducted by the Office or its authorized representatives, that the applicant received a disbursement in excess of the amount to which the applicant is entitled under applicable statutes and this chapter, or that the applicant provided erroneous information that resulted in an overstatement of the estimated incremental tax receipt increase for an event, then the Office may withhold, offset, recoup, or otherwise require the return of any excess disbursement amounts.

§184.44. Allowable Costs.

The following costs are supportive of the trust fund program goals and are generally allowable to the extent that such costs are supported by the event support contract and not otherwise unallowable in accordance with §184.45:

(1) planning for or conducting the event in accordance with the event support contract;

(2) the cost of any structural improvement or fixture for an event, as authorized by Texas Revised Civil Statutes, Article 5190.14, Sections 5A(k) or 5C(k).

(3) financing costs for event sites;

(4) fees charged by a site selection organization, which must be paid as a condition to holding an event, including hosting fees, sanction fees, participation fees, or bid fees, provided that the amount of all such fees is clearly stated in the application for participation in the trust fund program;

(5) performance bonds or insurance required for hosting the event;

(6) temporary maintenance to property impacted by the conduct of the event that is directly related to the preparation or presentation of the event;

(7) costs that are necessary (or desirable, as authorized by Texas Revised Civil Statutes, Article 5190.14, Section 5A(h) or 5B(h)) for the public health or safety of people or animals involved in hosting, attending, or participating in the event, including:

(A) water;

(B) security;

(C) professional fire marshal or engineer requirements for event facilities and other event related property or equipment;

(D) portable restrooms, trash receptacles, and other types of sanitation necessities;

(E) shade;

(F) lighting and sound equipment required for security or public safety;

(G) traffic planning and management;

(H) severe weather planning and mitigation;

(I) way-finding signage or staff;

(J) barriers;

(K) permits and professional or consulting services necessary (or desirable, as authorized by Texas Revised Civil Statutes, Article 5190.14, Section 5A(h) or 5B(h)) for acquiring permits;

(L) stand-by services, such as stand-by medical services;

(M) "Americans with Disabilities Act" (ADA) accommodations and compliance;

(N) public health or safety command center expenses;

(O) credentials; and

(P) costs needed for police, fire, and other emergency operations staff.

(8) event facility costs, including:

(A) cost to rent an event facility, including any internal billing, if the terms of the event support contract require the Applicant to either reimburse the site selection organization for the cost to rent a facility, or to provide the facility at no cost to the site selection organization; and

(B) the purchase or rental of seating or other furnishings, supplies and equipment that are reasonable and necessary (or desirable, as authorized by Texas Revised Civil Statutes, Article 5190.14, Section 5A(h) or 5B(h)) to conduct the event;

(9) an applicant's event staffing costs incurred for services directly attributable to conducting the event that are performed within a reasonable time prior to the event, during the event, and within a reasonable time after the event, including:

(A) hourly pay or overtime for personnel attributable to public health or safety for the event;

(B) compensation of non-health and safety staff hired or contracted specifically to meet the objectives of an approved event; or

(C) compensation for referees, score keepers, timers, and other similar officials required to meet the objectives of an approved event;

(10) an applicant's professional service costs for fulfilling specific obligations of the event support contract, including for:

(A) preparing event-related documents unless otherwise unallowable under §184.45 (Unallowable Costs);

(B) fulfilling specific obligations of the event support contract; or

(C) consulting on soliciting, preparing for, or hosting the event;

(11) market-area transportation and/or parking services, but excluding personal travel, within a reasonable time prior to the event, during the event, or within a reasonable time after the event that have not otherwise been compensated or recovered from event-related revenue earned from providing the transportation and/or parking;

(12) temporary signs and banners;

(13) advertising for the event which:

(A) occurs prior to or during the event;

(B) includes the event name and date, or event name and location; and

(C) are the Applicant's obligations in the event support contract;

(14) promotional items that are created specifically to promote the event to the extent that the per-unit costs of such items are nominal in value;

(15) production costs directly associated with the production of the main event, including staging, rigging, sound and lighting systems;

(16) uniforms for event staff that are created specifically for the event;

(17) costs directly attributable to inclement weather occurring immediately before, during, or immediately after an event, except costs of damages or lost revenue;

(18) any other direct costs resulting from requirements of the event support contract that are not otherwise unallowable by state law or regulations, including §184.45 (Unallowable Costs), and which are determined by the Office to be directly attributable to the preparation or presentation of the event;

(19) costs directly attributable to the performance of the national anthem of the United States or a foreign nation at the event;

(20) cost of a photographer or videographer that documents the event;

(21) food, the provision of which is directly related to the conduct of the event and that is provided on-site at the event to event participants or other personnel necessary to the conduct of the event (e.g. referees, judges, volunteers). The Office will only reimburse food costs up to $36 per person/per day;

(22) the cost of a non-monetary prize or other form of award for participation or competitive performance in an event that is reasonable and customary for that event; and

(23) the cost of an event participant's, coach's, referee's, judge's, or other similar person's lodging, automobile mileage, rental car, and commercial airfare that is directly related to the conduct of the event, provided that the participant, coach, referee, judge, or other similar person does not reside in the event market area. The Office will only reimburse:

(A) lodging and automobile mileage costs up to the allowable rates for state employees, found at: https://fmx.cpa.texas.gov/fmx/travel/textravel/rates/current.php (last visited on September 20, 2016);

(B) rental car costs up to the regular published rates for a standard full-size vehicle; and

(C) airfare costs up to the regular published rates for coach-class airfare on a commercial airline.

§184.45. Unallowable Costs.

(a) Disbursements for the following costs are prohibited, regardless of their inclusion in an event support contract:

(1) any tax listed in Texas Revised Civil Statutes, Article 5190.14;

(2) gifts of any kind, including tips, gratuities, or honoraria;

(3) grants to any person, entity, or organization;

(4) alcoholic beverages;

(5) food not specifically authorized in §184.44(21);

(6) travel not specifically authorized in §184.44(23);

(7) costs related to an applicant's application or participation in the trust fund program, including, but not limited to:

(A) representing any entity, including an applicant or related party, in front of the legislature for any reason;

(B) representing any entity, including an applicant or related party, in front of the Office for the purpose of applying to or seeking reimbursement from the trust fund;

(C) preparing an application to the reimbursement program, a disbursement request, or other event-related documents;

(D) preparing a pre-event or post-event economic impact study;

(E) preparing a pre-event attendance estimate or post-event attendance verification;

(F) conducting any pre-event or post-event survey; or

(G) costs associated with responding to requests for information relating to participation in the program, including requests for information from the Office, the Texas State Auditor's Office, or pursuant to the requirements of the Texas Public Information Act (Chapter 552, Texas Government Code).

(8) expenses related to:

(A) monetary compensation for participation or competitive performance in an event, including, but not limited to, cash, gift cards, or pre-paid service certificates;

(B) gaming;

(C) raffles; or

(D) giveaways that do not meet the requirements of §184.44(14) (allowable costs for promotional items);

(9) costs for any personal items and services;

(10) costs for entertainment, hospitality, appearance or talent fees, and "VIP" expenses, except as permitted under §184.44(19) of this chapter;

(11) reimbursement of any cost not incurred, such as for lost profit or for an exchange-in-kind or product;

(12) damages of any kind;

(13) any cost or expense of or related to constructing an arena, stadium, or convention center;

(14) any cost or expense related to conducting usual and customary maintenance of a facility;

(15) any amount in excess of 5.0% of the cost of any structural improvement made or fixture for an event that is added to a site that is privately owned property where the improvement or fixture is expected to derive most of its value in subsequent uses of the site for future events;

(16) costs that are not direct costs;

(17) any costs, the reimbursement of which, could result in a payment to and/or from a party with an inappropriate conflict of interest, as determined by the Office;

(18) the amount of any host fees or sanction fees charged by a site selection organization as a prerequisite to holding an event that is in excess of the amount stated in the application for participation in the trust fund program; or

(19) costs of any particular expense or obligation that was recouped or refunded, or that will be recouped or refunded from another entity under the event support contract or from event related revenue relating to the same expense or obligation, the reimbursement of which could result a net surplus to the applicant.

(b) The Office may deny a disbursement for any event, cost, expense, or obligation the Office deems fiscally irresponsible or not supportive of program objective.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 8, 2016.

TRD-201606402
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Assistant General Counsel
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Effective date: January 1, 2017
Proposal publication date: July 22, 2016
For further information, please call: (512) 936-0275

SUBCHAPTER F. EVENT SUPPORT CONTRACTS

10 TAC §184.50, §184.51

Statutory Authority

The rules are adopted under Texas Revised Civil Statutes, Article 5190.14, Sections 3A, 5A(v) and 5C(p), which requires the Office of the Governor to adopt rules to ensure the efficient administration of the trust funds established under Article 5190.14, including rules related to application and receipt requirements.

Cross Reference to Statute

Article 5190.14, as amended by Senate Bills 293 & 633 and House Bill 26, 84th Regular Legislative Session.

§184.50. Requirements for Event Support Contracts.

(a) An event support contract is required for any event that is participating in the Major Events Reimbursement Program, Events Trust Fund Program, or Motor Sports Racing Trust Fund Program. The parties to an event support contract shall include, at a minimum, the site selection organization and the applicant.

(b) The event support contract must establish the applicant's role and obligation in the preparation or presentation of the event, and shall set out the representations and assurances of the parties with respect to the selection of a site in this state for the location of an event, and the requirements and costs necessary (or desirable, as authorized by Texas Revised Civil Statutes, Article 5190.14, Section 5A(h) or 5B(h)) for the preparation or presentation of an event. The Office will not consider a disbursement request that is for a cost that is not supported by an event support contract.

(c) Any costs included in the event support contract that are anticipated to be paid, recovered, refunded, or offset from event-related revenue should be clearly identified.

(d) The event support contract should clearly identify any costs that are intended to be reimbursed from the event trust fund for structural improvements or fixtures for an event site where the improvement or fixture is expected to derive most of its value in subsequent uses of the site for future events.

(e) The applicant's obligations must be sufficiently described in the event support contract to allow the Office to determine the eligibility of event costs for reimbursement in accordance with Rule 184.44 (Allowable Costs). In order for the Office to make a disbursement for a cost, the event support contract must specify which types of goods, services, fixtures, equipment, facility or other property improvements, or temporary maintenance that are required to conduct the event.

(f) All requirements of the site selection organization must be set forth in the event support contract, and must be reasonable and necessary (or desirable, as authorized by Texas Revised Civil Statutes, Article 5190.14, Section 5A(h) or 5B(h)) for the preparation or presentation of the event.

§184.51. Contract Guidelines.

(a) In considering whether to make a disbursement from the trust fund, the Office will not consider a contingency clause in an event support contract as relieving an applicant's obligation to pay a cost under the contract, as mandated by Texas Revised Civil Statutes, Article 5190.14, Sections 5A(k) and 5C(k).

(b) The event support contract must not create or shift obligations or liabilities from the endorsing municipality, endorsing county, local organizing committee, or another party to the Office.

(c) The Office will not consider for reimbursement any cost that is identified in an event support contract in terms which are overly broad or too general in nature, such terms include:

(1) blanket "catch-all" terms, such as "any necessary fixtures or improvements;"

(2) references in terms such as "etc." or "miscellaneous" or "as needed" or "other;" and

(3) terms that reference the Office's decision making authority, such as "any expense allowed by Office" or "any expense allowed by statute."

(d) Regardless of whether a cost is included in an event support contract, the Office will only consider making a disbursement for direct costs that are allowable in accordance with §184.44 (Allowable Costs).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 8, 2016.

TRD-201606403
James Person
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Effective date: January 1, 2017
Proposal publication date: July 22, 2016
For further information, please call: (512) 936-0275

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SUBCHAPTER A. SPORTS AND EVENTS TRUST FUND

10 TAC §§184.100 - 184.106

Statutory Authority

The repeal is adopted under Texas Revised Civil Statutes, Article 5190.14, §§3A, 5A(v) and 5C(p), which requires the Office of the Governor to adopt rules to ensure the efficient administration of the trust funds established under Article 5190.14, including rules related to application and receipt requirements.

Cross Reference to Statute

Article 5194.10, as amended by Senate Bills 293 & 633 and House Bill 26, 84th Regular Legislative Session.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 8, 2016.

TRD-201606404
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Effective date: January 1, 2017
Proposal publication date: July 22, 2016
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SUBCHAPTER B. EVENTS TRUST FUND

10 TAC §§184.200 - 184.206

Statutory Authority

The repeal is adopted under Texas Revised Civil Statutes, Article 5190.14, §§3A, 5A(v) and 5C(p), which requires the Office of the Governor to adopt rules to ensure the efficient administration of the trust funds established under Article 5190.14, including rules related to application and receipt requirements.

Cross Reference to Statute

Article 5190.14, as amended by Senate Bills 293 & 633 and House Bill 26, 84th Regular Legislative Session.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 8, 2016.

TRD-201606405
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Effective date: January 1, 2017
Proposal publication date: July 22, 2016
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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 129. STUDENT ATTENDANCE
SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING TRUANCY PREVENTION MEASURES AND SANCTIONS

19 TAC §§129.1041, 129.1043, 129.1045, 129.1047

The Texas Education Agency (TEA) adopts new §§129.1041, 129.1043, 129.1045, and 129.1047, concerning truancy prevention measures and sanctions. Section 129.1041 is adopted without changes to the proposed text as published in the September 16, 2016 issue of the *Texas Register* (41 TexReg 7236) and will not be republished. Sections 129.1043, 129.1045, and 129.1047 are adopted with changes to the proposed text as published in the September 16, 2016 issue of the *Texas Register* (41 TexReg 7236). The adopted new rules outline minimum standards, best practices, and sanctions related to truancy prevention measures in accordance with Texas Education Code (TEC), §25.0915, as amended by House Bill (HB) 2398, 84th Texas Legislature, 2015.

REASONED JUSTIFICATION. HB 2398, 84th Texas Legislature, 2015, amended the TEC, §25.0915, requiring school districts to adopt truancy prevention measures designed to address student conduct related to truancy in the school setting and minimize the need for referrals to truancy court.

Beginning with the 2015-2016 school year, the TEC, §25.0915, requires that if a student fails to attend school without excuse on three or more days or parts of days within a four-week period, the school district must initiate truancy prevention measures. In addition, schools are required to employ a truancy prevention facilitator or juvenile case manager or designate an existing district employee or juvenile case manager to implement the truancy prevention measures.

Finally, the TEC, §25.0915, requires that the TEA adopt rules to create minimum standards for truancy prevention measures, establish a set of best practices, and provide for sanctions for a school district found to be out of compliance with the statute.

Adopted new 19 TAC Chapter 129, Subchapter BB, reflects the requirements in the TEC, §25.0915, as follows.

Section 129.1041, Definitions, specifies that, for the purposes of the subchapter, the definition of a school district includes an open-enrollment charter school. Although TEC, §25.0915, does not specifically reference charter schools, the entire statutory scheme of compulsory attendance enforcement is applicable to charter schools since they have their own attendance officers pursuant to either TEC, §25.088 or §25.090. All attendance officers are required under TEC, §25.091, to implement truancy prevention measures under TEC, §25.0915.

Section 129.1043, Minimum Standards, identifies the minimum standards for a district's truancy prevention measures. In response to public comment, the section was modified at adoption to add a new paragraph outlining procedures for attendance issues related to a student with a disability.

Section 129.1045, Best Practices, outlines the TEA's suggested best practices for truancy prevention measures. In response to public comment, the section was modified at adoption to add language to encourage districts to identify existing programs to help prevent students' attendance barriers and make that information available to staff, students, and parents; specify that any new resources, programs, or services should be targeted to gaps in services identified during the needs assessment; state that school districts should ensure that appropriate personnel meet to contribute to the needs assessment, discuss opportunities to work together, and identify strategies to coordinate both internally and externally to address students' attendance barriers; and require school districts to consider offering before school, after school, and/or Saturday prevention or intervention programs or services. The section was also modified at adoption to add a requirement that school districts consider offering an optional flexible school day program.

Section 129.1047, Sanctions, specifies which sanctions the commissioner could impose for districts found to be out of compliance with TEC, §25.0915, and adopted new Chapter 129, Subchapter BB. In response to public comment, the section was modified at adoption to ensure that the rule is sufficient to allow for the imposition of sanctions related to any statutory or rule violation, including those arising from a submitted complaint.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began September 16, 2016, and ended October 17, 2016. Following is a summary of public comments received and corresponding agency responses regarding proposed new 19 TAC Chapter 129, Student Attendance, Subchapter BB, Commissioner's Rules Concerning Truancy Prevention Measures and Sanctions.

§129.1043, Minimum Standards.

Comment: Texas Appleseed, Disability Rights Texas, and the National Center for Youth Law commented that minimum standards should include guidance to school districts on complying with federal and state law obligations to students with disabilities.

Agency Response: The agency agrees and has modified the proposed rule by adding a new paragraph outlining procedures for attendance issues related to a student with a disability.

§129.1045, Best Practices.

Comment: Texas Appleseed, Disability Rights Texas, and the National Center for Youth Law commented that best practices should include language that encourages school districts to identify existing programs within the districts and their communities that may both prevent students' attendance barriers and intervene with students at risk of truancy; make these services and programs easily available to staff, students, and families; use new prevention and intervention programs to target gaps in services; state that school districts should ensure that appropriate personnel meet to contribute to the needs assessment, discuss opportunities to work together, and identify strategies to coordinate both internally and externally to address students' attendance barriers; and include Saturday prevention or intervention programs.

Agency Response: The agency agrees and has modified the proposed rule by adding language to encourage districts to identify existing programs to help prevent students' attendance barriers and make that information available to staff, students, and parents; specify that any new resources, programs, or services should be targeted to gaps in services identified during the needs assessment; state that school districts should ensure that appropriate personnel meet to contribute to the needs assessment, discuss opportunities to work together, and identify strategies to coordinate both internally and externally to address students' attendance barriers; and require school districts to consider offering before school, after school, and/or Saturday prevention or intervention programs or services.

§129.1047, Sanctions.

Comment: Texas Appleseed, Disability Rights Texas, and the National Center for Youth Law commented that sanctions should include a complaint process that a parent or advocate may initiate if a school or district is not complying with requirements for prevention and intervention services as well as a timeline within which TEA must respond to such a complaint.

Agency Response: The agency disagrees that the rule should contain provisions for a separate complaint process that is specifically related to truancy prevention measures. As proposed, the rule provided for the imposition of any available sanction authorized under applicable statutory and rule provisions. The procedures for filing a complaint with the TEA are posted on the TEA website and are available to any person wishing to utilize the complaint process. A separate, prescriptive complaint process related specifically to truancy prevention measures creates a duplicative responsibility on the TEA. However, the proposed rule has been modified to ensure that the rule is sufficient to allow for the imposition of sanctions related to any statutory or rule violation, including those arising from a submitted complaint.

STATUTORY AUTHORITY. The new sections are adopted under the Texas Education Code (TEC), §25.0915, which requires school districts to adopt truancy prevention measures to address student conduct related to truancy. TEC, §25.0915(f), requires the commissioner of education to adopt rules to create minimum standards for truancy prevention measures adopted by school districts and establish a set of best practices for truancy prevention measures. TEC, §25.0915(g), requires the commissioner to adopt rules to provide for sanctions for a district found to be not in compliance with truancy prevention measures.

CROSS REFERENCE TO STATUTE. The new sections implement the Texas Education Code, §25.0915.

§129.1043. Minimum Standards.

The minimum standards for the truancy prevention measure(s) implemented by a school district under Texas Education Code, §25.0915, include:

(1) identifying the root cause of the student's unexcused absences and actions to address each cause;

(2) maintaining ongoing communication with students and parents on the actions to be taken to improve attendance;

(3) establishing reasonable timelines for completion of the truancy prevention measure; and

(4) establishing procedures to notify the admission, review, and dismissal committee or the Section 504 committee of attendance issues relating to a student with a disability and ensure that the committee considers whether the student's attendance issues warrant an evaluation, a reevaluation, and/or modifications to the student's individualized education program or Section 504 plan, as appropriate.

§129.1045. Best Practices.

(a) A school district shall consider the following best practices for truancy prevention measures.

(1) Develop an attendance policy that clearly outlines requirements related to truancy in accordance with Texas Education Code (TEC), Chapter 25, Subchapter C, and communicate this information to parents at the beginning of the school year.

(2) Create a culture of attendance that includes training staff to talk meaningfully with students and parents about the attendance policy and the root causes of unexcused absences.

(3) Create incentives for perfect attendance and improved attendance.

(4) Educate students and their families on the positive impact of school attendance on performance.

(5) Provide opportunities for students and parents to address causes of absence and/or truancy with district staff and link families to relevant community programs and support.

(6) Develop collaborative partnerships, including planning, referral, and cross-training opportunities, between appropriate school staff, attendance officers, program-related liaisons, and external partners such as court representatives, community and faith-based organizations, state or locally funded community programs for truancy intervention or prevention, and law enforcement to assist students.

(7) Determine root causes of unexcused absences and review campus- and district-level data on unexcused absences to identify systemic issues that affect attendance.

(8) Use existing school programs such as Communities In Schools, 21st Century Community Learning Centers, Restorative Discipline, and Positive Behavior Interventions and Supports (PBIS) to provide students and their parents with services.

(9) At the beginning of each school year, conduct a needs assessment and identify and list, or map, services and programs available within the school district and the community that a school, a student, or a student's parent or guardian may access to address the student's barriers to attendance and make the information available to staff, students, and parents. The information must include, but is not limited to:

(A) services for pregnant and parenting students;

(B) services for students experiencing homelessness;

(C) services for students in foster care;

(D) federal programs including, but not limited to, Title 1, Part A, of the Elementary and Secondary Education Act;

(E) state programs including, but not limited to, State Compensatory Education programs;

(F) dropout prevention programs and programs for "at risk" youth;

(G) programs that occur outside of school time;

(H) counseling services;

(I) tutoring programs and services available at no or low cost;

(J) mental health services;

(K) alcohol and substance abuse prevention and treatment programs;

(L) mentoring programs and services;

(M) juvenile justice services and programs;

(N) child welfare services and programs;

(O) other state or locally funded programs for truancy prevention and intervention; and

(P) other supportive services that are locally available for students and families through faith-based organizations, local governments, and community-based organizations.

(10) After identifying and listing, or mapping, services available in the district and community, school districts should target any new resources, programs, or services to gaps in services identified during the needs assessment.

(11) School districts should ensure that personnel, including truancy prevention facilitators or juvenile case managers, attendance officers, McKinney-Vento liaisons, foster care liaisons, Title IX coordinators, 504 coordinators, pregnancy and parenting coordinators, dropout prevention coordinators, special education staff, and other appropriate student services personnel, meet to contribute to the needs assessment, discuss opportunities to work together, and identify strategies to coordinate both internally and externally to address students' attendance barriers.

(b) In determining services offered to students identified in TEC, §25.0915(a-3), a school district shall consider:

(1) offering an optional flexible school day program and evening and online alternatives;

(2) working with businesses that employ students to help students coordinate job and school responsibilities; and

(3) offering before school, after school, and/or Saturday prevention or intervention programs or services that implement best and promising practices.

§129.1047. Sanctions.

(a) An aggrieved party may file a written complaint with the Texas Education Agency (TEA) regarding an allegation that a school district has failed to comply with the provisions set forth in Texas Education Code (TEC), §25.0915, or this subchapter related to truancy prevention measures.

(b) TEA may request that a school district provide documentation regarding its compliance with required truancy prevention measures in response to a complaint filed with the TEA. If, after a review of this documentation or a school district's failure to provide this documentation, TEA determines that the school district is not in compliance with required truancy prevention measure provisions, TEA may issue a preliminary report of its findings to the school district in accordance with §157.1122 of this title (relating to Notice).

(c) A school district may request in writing an informal review of TEA's preliminary report of findings in accordance with §157.1123 of this title (relating to Informal Review). Following the informal review, or if no informal review is requested by the deadline, a final report will be issued.

(d) The commissioner of education may implement any sanction listed in TEC, §39.102(a), against a school district found to be out of compliance with TEC, §25.0915, or this subchapter.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606555
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Effective date: January 1, 2017
Proposal publication date: September 16, 2016
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PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 228. REQUIREMENTS FOR EDUCATOR PREPARATION PROGRAMS

19 TAC §§228.2, 228.10, 228.15, 228.17, 228.20, 228.30, 228.35, 228.40, 228.50, 228.60, 228.70

The State Board for Educator Certification (SBEC) adopts amendments to 19 TAC §§228.2, 228.10, 228.20, 228.30, 228.35, 228.40, 228.50, 228.60, and 228.70 and new 19 TAC §228.15 and §228.17, concerning requirements for educator preparation programs (EPPs). The amendments to §§228.2, 228.10, 228.20, and 228.35 are adopted with changes to the proposed text as published in the August 26, 2016, issue of the *Texas Register* (41 TexReg 6318). The amendments to §§228.30, 228.40, 228.50, 228.60, and 228.70 and new §228.15 and §228.17 are adopted without changes to the proposed text as published in the August 26, 2016, issue of the *Texas Register* (41 TexReg 6318) and will not be republished. The SBEC rules in 19 TAC Chapter 228 establish requirements for EPPs to prepare candidates to teach Texas schoolchildren. The adopted amendments to 19 TAC §§228.2, 228.10, 228.20, 228.30, 228.35, 228.40, 228.50, 228.60, and 228.70 and new 19 TAC §228.15 and §228.17 include changes as the result of recent legislative changes, SBEC input, stakeholder input, and input received from staff at the Texas Education Agency (TEA). Chapter 228 encompasses all the requirements that each EPP must provide to prospective teachers to ensure they are prepared sufficiently.

REASONED JUSTIFICATION. The Texas Education Code (TEC), §21.031, states that the SBEC is established to oversee all aspects of the certification and continuing education of public school educators and to ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state. The TEC, §21.049, authorizes the SBEC to propose rules providing for educator certification programs as an alternative to traditional EPPs.

At the January 2015 SBEC work session, the SBEC members received three presentations on educator quality as it pertains to EPPs in the state of Texas. The Texas Teaching Commission, the Council for the Accreditation of Educator Preparation, and the National Council on Teacher Quality provided state and national perspectives on educator quality in relation to Texas EPPs.

SBEC members provided feedback to TEA staff on those presentations. Specifically, as it relates to 19 TAC Chapter 228, the SBEC requested policy options that focus on raising EPP standards, improving teacher preparation programs, and new and improved ways to train better teachers.

TEA staff conducted an SBEC work session on June 9, 2016, to provide the SBEC with a shared understanding of the preparation process, to discuss current issues related to educator preparation and teacher quality, and to capture SBEC's perspective on preparation so that TEA staff could provide the desired support in preparation for possible rule changes. The TEA staff also convened three face-to-face stakeholder meetings in December 2015 and June 2016 to gather input on the proposed revisions to 19 TAC Chapter 228, Requirements for Educator Preparation Programs. The proposed rules reflected input received from the SBEC, TEA staff, and TEA staff-convened stakeholder meetings, but also included additional changes since the draft rule text was shared at the December 2015, April 2016, and June 2016 SBEC meetings. Following is a description of the adopted revisions.

§228.2, Definitions

This section defines key terms that share common meaning across several certification and educator preparation rules within the Texas Administrative Code (TAC). The SBEC's goal is to ensure there is a common understanding of frequently used terms resulting in accurate and effective communication and alignment throughout the state between EPPs, school districts, educators, candidates for certification, and other stakeholders.

The definition of *field supervisor* was amended to define more clearly the criteria an EPP must use in hiring a field supervisor. The current definition only requires a field supervisor applicant to hold a current certification to observe candidates, monitor their performance, and provide constructive feedback to improve their effectiveness as educators. The amendment clarifies that a field supervisor must have at least three years of experience as an accomplished educator as shown by student learning. Evidence of student learning includes evaluations that include evidence of student learning, campus or district reports that include evidence of student learning, and/or letters of recommendation that include evidence of student learning. The amendment clarifies that a field supervisor must hold a current certification in the certification class in which supervision is provided. A field supervisor with experience as a principal and who holds a current certificate that is appropriate for a principal assignment may supervise principal, classroom teacher, master teacher, and reading specialist candidates. A field supervisor with experience as a superintendent and who holds a current certificate that is appropriate for a superintendent assignment may supervise superintendent, principal, classroom teacher, master teacher, and reading specialist candidates. If an individual is not currently certified, the amendment clarifies that an individual must hold at least a master's degree in the academic area or field related to the certification class for which supervision is being provided and comply with the same number, content, and type of continuing professional education requirements for the certification class for which supervision is being provided. The amendment clarifies that a field supervisor cannot be employed by the same school where the candidate being supervised is completing his or her clinical teaching, internship, or practicum. The amendment also clarifies that a field supervisor cannot also serve as a candidate's mentor, cooperating teacher, or site supervisor. Because the field supervisor fulfills an essential role in preparing educators, creating and clarifying criteria for the selection of field supervisors improves the preparation of educators and provides consistency among preparation programs.

The definition of *post-baccalaureate program* was amended to differentiate it from the definition of *alternative certification program.* The amendment clarifies that a post-baccalaureate program at an institution of higher education (IHE) provides educator preparation for individuals who are seeking a degree beyond a bachelor's degree along with certification as an educator. The amendment clarifies that an alternative certification program at an IHE provides educator preparation for individuals who are only seeking certification as an educator and not another degree. By amending the definition in this way, consumer information regarding the performance of EPPs will be more accurate.

The definitions of *accredited institution of higher education, benchmarks, certification category,certification class, classroom teacher, contingency admission, formal admission, initial certification, intern certificate, probationary certificate, school day,* and *school year* were added. These additional definitions are necessary to provide clarity to new terms that are being adopted and existing terms.

The definitions of *alternative certification program, candidate, clock hours,* and *educator preparation program* were amended to align these definitions with other chapters in the TAC. The definitions of *clinical teaching, internship,* and *practicum* were amended to reflect adopted revisions in 19 TAC Chapter 228. The definition of *field-based experience* was also amended to clarify that field-based experiences are a requirement for the classroom teacher class of certificate and that observations of classrooms are the minimum requirement for field-based experiences. Because field-based experiences fulfill an essential role in preparing educators, clarifying the minimum criteria as opposed to "active engagement in instructional activities or educational activities under supervision" that is required by the TEC, §21.051(b), improves the preparation of educators and provides consistency among preparation programs.

The definition of *cooperating teacher* was amended to define the responsibilities of the cooperating teacher. The responsibilities of the cooperating teacher (those assigned to assist candidates during clinical teaching) will be similar to those of a mentor (those assigned to assist candidates during internship) and a site supervisor (those assigned to assist candidates during practicum). The responsibilities include guiding, assisting, and supporting a candidate during the candidate's clinical teaching in areas such as planning, classroom management, instruction, assessment, working with parents, obtaining materials, and district policies. The definitions of *cooperating teacher, mentor,* and *site supervisor* were also amended to require EPPs and school or district administrators to collaboratively select the individuals and requires the individuals to be accomplished educators as shown by student learning. Evidence of student learning includes evaluations that include evidence of student learning, campus or district reports that include evidence of student learning, and/or letters of recommendation that include evidence of student learning. The amendment requires individuals to have at least three years of experience and requires an individual serving as a cooperating teacher and mentor to be currently certified in the certification category for the clinical teaching or internship assignment. The amendment requires a site supervisor to be currently certified in the certification class for the practicum assignment. Because the cooperating teacher, mentor, and site supervisor fulfill essential roles in preparing educators, creating and clarifying criteria for

the selection of individuals for these roles improves the preparation of educators and provides consistency among preparation programs.

The definition of *late hire* was amended to reflect more accurately when an individual is considered a late hire and to decrease the number of candidates who are serving as a classroom teacher during an internship who have not completed the pre-internship requirements of coursework and field-based experiences. Candidates are currently considered a late hire if they are admitted to an EPP and hired by a school or district after June 15. Late hire candidates are not required to complete the 80 hours of coursework and 30 hours of field-based experiences prior to being hired as a classroom teacher. Candidates who do not qualify as a late hire will not be able to be hired as a classroom teacher under an intern or probationary certificate but may be hired by the school or district under an emergency permit, school district teaching permit, or as a substitute teacher. Because coursework and field-based experiences are essential components in preparing educators, changing the late hire date to limit the number of candidates hired as classroom teachers who have not completed the pre-internship requirements of coursework and field-based experiences improves the recruiting, admission, and preparation practices of EPPs and the hiring practices of schools and districts.

The definition of *professional certification* was removed because all of the certification classes, including the classroom teacher class, are considered a part of the education profession. The definition of *teacher of record* was also removed because of the use of the term *classroom teacher* throughout 19 TAC Chapter 228. Because *classroom teacher* is a broader term than *teacher of record,* all candidates seeking a classroom teacher certificate will be prepared to be a *teacher of record* even though a particular assignment as a classroom teacher may not require an individual to be responsible for evaluating student achievement and assigning grades.

In response to public comment, language was amended in 19 TAC §228.2(12), (23), and (30) to allow training for cooperating teachers, mentors, and site supervisors to be completed within three weeks of the cooperating teacher, mentor, or site supervisor being assigned to a candidate participating in clinical teaching, an internship, or a practicum. The previous language in the proposal required training to be completed prior to an assignment. By amending the language in this way, EPPs and school districts have more flexibility in providing the required training to the cooperating teachers, mentors, and site supervisors who have been selected to guide, assist, and support candidates. In response to public comment, language was also amended in 19 TAC §228.2(22) to specify that an individual is considered as a late hire if the individual has not been accepted into an EPP before the 45th day before the first day of instruction and who is hired for a teaching assignment by a school after the 45th day before the first day of instruction. The previous language in the proposal specified the late hire date as July 10. By amending the language in this way, the late hire designation is more consistent and fair.

§228.10, Approval Process

The new entity approval process has been amended to include all the requirements of 19 TAC Chapter 227, Provisions for Educator Preparation Candidates; 19 TAC Chapter 229, Accountability System for Educator Preparation Programs; and 19 TAC Chapter 230, Professional Educator Preparation and Certification, as well as specific sections of 19 TAC Chapter 228. These amendments update the new entity approval process with the current expectations for EPPs. The updated program approval components will also be used to inform continuing entity approval reviews for existing EPPs.

The new entity approval process has also been amended to include a post-approval visit. The post-approval process is a current practice that allows TEA staff to confirm that a new EPP is implementing the approved program components.

The continuing entity approval process has been amended to include a figure that describes the evidence an EPP is expected to maintain for a period of five years regarding its compliance with EPP standards and requirements. The amendment also includes a requirement that EPPs ensure the security of information that is being maintained. Creating a figure that describes the evidence an EPP is expected to maintain regarding its compliance with EPP standards and requirements provides clarity and consistency of what is expected for new program approvals and continuing entity approval reviews. Creating a requirement to ensure the security of information that is being maintained by the EPP improves the safekeeping of confidential information and information that may be required to be provided as part of a continuing entity approval review.

Since published as proposed, several changes were made to the figure in 19 TAC §228.10(b)(1). Under Component II: Admission, the evidence listed for 19 TAC §227.10(e) was changed from "approved vendor" to "approved entity" so that an approved EPP may evaluate foreign transcripts for out-of-country candidates. This reflects the changes to 19 TAC §227.10(e) that the SBEC adopted effective October 18, 2016. Under Component III: Curriculum, the evidence listed for 19 TAC §228.40(a) was changed to combine the second and third examples into one example to minimize redundant examples of evidence. Under Component IV: Coursework, Training, Program Delivery, and Ongoing Support, the evidence listed for 19 TAC §228.35(g) was changed to move "field supervisor logs" after the first example of evidence, allowing either of the first two examples to be acceptable evidence. This provides more flexibility for programs to demonstrate compliance with this rule. Also under Component IV: Coursework, Training, Program Delivery, and Ongoing Support, the evidence listed for 19 TAC §228.35(g) and (h), relating to initial contact by a field supervisor, was amended so that both sets of evidence are the same. This provides consistency for field supervisors who provide support for classroom teacher candidates and field supervisors who provide support for candidates seeking certification in a certification class other than classroom teacher. In addition, under Component IV: Coursework, Training, Program Delivery, and Ongoing Support, the evidence listed for adopted 19 TAC §228.35(a)(4) was retained and amended to allow coursework and training for late hire candidates to be provided by their school district or campus. Under Component VIII: Certification Procedures, the evidence listed for 19 TAC §§241.20, 239.20, 239.60, 239.84, and 239.93 was changed from "official service record" to "service record" so that copies of official service records or documents produced by school districts that are similar to official service records can be used as evidence. This provides more flexibility for programs to demonstrate compliance with this rule.

In response to public comment, several changes were made to the figure in 19 TAC §228.10(b)(1). Under Component II: Admission, the evidence listed for 19 TAC §227.10(a)(7) was amended to more clearly describe how an interview or other screening instrument should be evaluated as part of the admission process.

The previous language in the proposal would have required an interview or other screening instrument to use a rubric with a cut score to evaluate a candidate. By amending the language to require a cut score or rubric that includes descriptions of levels of performance quality based on a coherent set of criteria, the description of the evidence is clearer and more appropriate. Under Component IV: Coursework, Training, Program Delivery, and Ongoing Support, the evidence listed for adopted 19 TAC §228.35(a)(3) was amended so that attendance policies that require a certain level of attendance for a passing grade can be used to demonstrate that a candidate has completed coursework and training prior to completing an EPP. The previous language in the proposal would have required EPPs to maintain attendance records for each candidate. By amending the language in this way, EPPs have more flexibility to demonstrate compliance with this rule. Under Component IV: Coursework, Training, Program Delivery, and Ongoing Support, the evidence listed for adopted 19 TAC §228.35(b)(1) was amended to clarify that candidate reflections of field-based experiences may be written or videotaped. The previous language in the proposal did not specify how the reflections needed to be demonstrated. This provides more flexibility for programs to demonstrate compliance with this rule. Under Component IV: Coursework, Training, Program Delivery, and Ongoing Support, the evidence listed for adopted 19 TAC §228.35(e)(4) and (5) was amended to clarify that a statement of eligibility will only be required as evidence for a candidate participating in an internship. The previous language in the proposal would have required a statement of eligibility for clinical teaching assignments. By amending the language in this way, EPPs are provided with more clarity to demonstrate compliance with this rule. Under Component IV: Coursework, Training, Program Delivery, and Ongoing Support, the evidence listed for adopted 19 TAC §228.2(12), (23), and (30) was amended to allow a form signed by a campus or district administrator attesting that a cooperating teacher, mentor, or site supervisor meets the certification, experience, and accomplishment as an educator criteria. The previous language in the proposal would have required EPPs to maintain copies of service records, certificates, and evidence of accomplishment as an educator. By amending the language in this way, EPPs have less redundancy to demonstrate compliance with this rule. Under Component IV: Coursework, Training, Program Delivery, and Ongoing Support, the evidence listed for adopted 19 TAC §228.35(h) was amended to remove "field supervisor logs" as an example of evidence of field supervisors meeting certification, degree, and experience requirements. By amending the language in this way, EPPs have less redundancy to demonstrate compliance with this rule.

The continuing entity approval process was amended to include the EPP risk model and risk factors in adopted 19 TAC §228.10(b)(3) in accordance with TEC, §21.0454, as added by House Bill (HB) 2205, 84th Texas Legislature, Regular Session, 2015. These risk factors determine the need for discretionary continuous approval reviews and the type of five-year continuous approval reviews.

§228.15, Program Consolidation or Closure

New 19 TAC §228.15 was added to describe the procedures an EPP needs to follow for closure or consolidation. The adopted new rule is based on the procedures that TEA staff is currently using for EPPs that are closing or consolidating. The adopted new rule requires an EPP that is closing or consolidating to submit a letter on official letterhead to TEA staff signed by the legal authority of the EPP that contains a formal statement of consolidation or closing with an effective date of August 31 for consolidation or closure. The adopted new rule requires an EPP to contact candidates currently in the EPP with notification of consolidation or closure and the steps candidates must take in relation to their program status. The adopted new rule requires an EPP to maintain evidence of attempts to notify each candidate and requires an EPP to provide and update a representative's name, electronic mail address, and telephone number that is valid for five years after the EPP's closure to provide access to candidate records and responses to former candidate's questions and/or issues. If an EPP is consolidating, the candidate records transfer to the new EPP. The adopted new rule requires an EPP to complete required SBEC and TEA actions such as required submissions of information, surveys, and other accountability data, removal of security accesses, and reconciliation of certification recommendations. The adopted new rule prevents the chief operating officer, legal authority, or a member of the governing body of an EPP who fails to comply with the consolidation or closure procedures from being eligible to be recommended to the SBEC for approval as an EPP and prevents the chief operating officer, legal authority, or a member of the governing body of an EPP that closes voluntarily due to pending TEA or SBEC action or involuntarily due to SBEC action from being eligible to be recommended to the SBEC for approval as an EPP. The adopted new rule also allows TEA staff to recommend that the SBEC impose sanctions affecting the new EPP's accreditation status if an EPP is consolidating and fails to comply with the consolidation procedures. Adding this section to 19 TAC Chapter 228 provides clear and consistent rules for programs to follow when closing or consolidating and provides support for candidates in programs that are closing or consolidating.

§228.17, Change of Ownership

New 19 TAC §228.17 was added to define a change in ownership of an EPP as any agreement to transfer the control of an EPP. The control of an EPP is considered to have changed: in the case of ownership by an individual, when more than half of the EPP has been sold or transferred; in the case of ownership by a partnership or a corporation, when more than half of the owning partnership or corporation has been sold or transferred; or in the case of ownership by a board of directors, officers, shareholders, or similar governing body, when more than 50% of the ownership has changed.

In order for an EPP with new ownership to continue preparing educators, the new owners of the EPP must notify TEA staff of the ownership change in writing within 10 days of the change in ownership. Adding this section to 19 TAC Chapter 228 provides clear and consistent rules for programs to follow when transferring ownership.

§228.20, Governance of Educator Preparation Programs

The adopted amendment relating to governance of EPPs decreases the minimum number of times an advisory committee must meet each academic year from two to one and clarifies that the EPP must inform each member of the advisory committee of the roles and responsibilities of the committee. The amendment allows EPPs more flexibility in how the advisory committee assists in the design, delivery, evaluation, and major policy decisions of the EPP.

The adopted amendment also clarifies how an EPP may amend its program. To make changes to its program, an EPP will submit notification of a proposed amendment on a letter signed by the EPP's legally authorized agent or representative that explains the amendment, details the rationale for changes, and includes

documents relevant to the amendment. If the EPP is rated "accredited" or "accredited-not rated," this notice must be sent to TEA staff 60 days prior to the EPP implementing the changes. If the EPP is not rated "accredited" or "accredited-not rated," this notice must be sent to TEA staff 120 days prior to the EPP implementing the changes, and the changes must be approved by TEA staff. The amendment creates a clear and efficient process for EPPs to amend program components.

This section was also amended to require each EPP to develop and implement a calendar of program activities that must include a deadline for accepting candidates into a program cycle to assure adequate time for admission, coursework, training, and field-based experience requirements prior to a clinical teaching or internship experience. This amendment provides applicants to an EPP with more information as to the expectations for adequate educator preparation.

In response to public comment, language was amended in 19 TAC §228.20(g) to require EPPs to develop and implement a calendar of program activities for candidates who are enrolled after a published admission deadline so that applicants are aware of what is required to be prepared for a clinical teaching or internship assignment. By amending the language in this way, all candidates will be informed of program expectations prior to being admitted to an EPP.

§228.30, Educator Preparation Curriculum

Because the educator preparation curriculum serves as the basis of the coursework and training that fulfills an essential role in preparing educators, 19 TAC §228.30 was amended to improve the preparation of educators and provide consistency among preparation programs. This section was amended to clarify which of the existing curriculum requirements are for all classes of certificates and which requirements are appropriate for a specific class of certificate. The curriculum requirements for the classroom teacher class of certificate was also amended to include the English Language Proficiency Standards and, for certificate fields that include early childhood, the Prekindergarten Guidelines.

Curriculum requirements for all classes of certificates were added to include the information required by the TEC, §21.044, as amended by HB 2012, 83rd Texas Legislature, Regular Session, 2013; and the TEC, §21.0453, as added by HB 2318, 83rd Texas Legislature, Regular Session, 2013. These requirements include the skills that educators are required to possess, the responsibilities that educators are required to accept, and the high expectations for students; the importance of building strong classroom management skills; and the framework for teacher and principal evaluation. Curriculum requirements were added to include mental health, substance abuse, and youth suicide training as required by the TEC, §21.044, as amended by Senate Bill (SB) 674, 84th Texas Legislature, Regular Session, 2015. A curriculum requirement for the principal class of certificate was also added to include the skills and competencies captured in the Texas administrator standards as indicated in 19 TAC §149.2001, Principal Standards. This aligns the principal class requirements with the classroom teacher class requirements that include the skills and competencies captured in the Texas administrator standards as indicated in 19 TAC §149.1001, Teacher Standards.

The TEC, §21.044, as amended by HB 2205, 84th Texas Legislature, Regular Session, 2015, requires all programs that provide training in certification areas that require a bachelor's degree to include training on the instruction of dyslexia. Changes to 19 TAC Chapter 228 are not necessary because the current rules as written comply with the change in law.

§228.35, Preparation Program Coursework and/or Training

Section 228.35 was amended to clarify which of the existing coursework and training requirements are for all classes of certificates and which requirements are appropriate for a specific class of certificate. The coursework and training provisions for all classes were amended to clarify that coursework and training must adequately prepare candidates for educator certification and that coursework and training must be sustained, rigorous, intensive, interactive, candidate focused, and performance based.

Since published as proposed, the provision that allows up to 50 hours of an EPP's coursework and/or training to be provided by a school district or campus was retained as new 19 TAC §228.35(a)(4) and amended to apply to candidates who are considered late hires. The coursework and/or training provided by a school district or campus needs to meet the criteria for staff development that is described in the TEC, §21.451. The coursework and/or training provided by a school district or campus also needs to be directly related to the certificate being sought. Because a late hire candidate must complete pre-internship coursework and training within 90 school days from the beginning of an internship assignment, allowing a portion of these hours to be provided by the school district or campus in which a candidate is employed provides a more reasonable expectation for a candidate who is considered a late hire. For candidates who are not considered late hires, EPPs may require additional hours beyond the minimum requirement of 300 hours and allow school district or campus staff development to count toward these additional hours.

In accordance with the Texas Occupations Code, §55.007, a provision was added that allows an EPP to substitute prior or ongoing service, training, or education for educator certification requirements so that military service members and military veterans may credit verified military service, training, or education toward training, education, work experience, or related requirements for educator certification. The provision for candidates who are not military service members or military veterans was also amended to substitute prior or ongoing service, training, or education if the service, training, or education was provided by an approved EPP or an accredited IHE within the past five years and is directly related to the certification being sought. This amendment provides flexibility to EPPs and candidates while providing consistency among EPPs.

Because many EPPs are already either offering or planning to offer coursework and training online, a requirement was added for EPPs that offer coursework and/or training online to meet standards for online coursework and training. EPPs at public and private universities must already meet Texas Higher Education Coordinating Board (THECB) standards for online coursework and training. Requiring EPPs to meet online accreditation or certification standards improves the preparation of educators participating in online coursework and training and provides consistency among preparation programs offering online coursework and training.

The coursework and training provisions for the classroom teacher class of certificate were amended to clarify that an EPP must provide a minimum of 300 hours of coursework and training. The number of coursework hours required before clinical

teaching or an internship was also increased from 80 to 150 hours and the content of these hours includes 10 proficiencies that are based on the performance standards described in 19 TAC §149.1001, Teacher Standards. The coursework and training requires candidates to demonstrate proficiency in areas specified in adopted 19 TAC §228.35(b)(2).

The proposal to increase the hours and provide more specificity of the coursework and training improves the quality of educator preparation for candidates who are hired as a classroom teacher under an internship and candidates who are working directly with students in the capacity of a clinical teacher. The coursework and training requirement will be equivalent to 10 semester credit hours at an accredited IHE. The content of the coursework and training requirement will be similar to the performance standards to be used to inform the training, appraisal, and professional development of all teachers. The proposals are based on the direction provided by SBEC members and input from a variety of stakeholders.

The EPP delivery provisions have been amended to clarify that an EPP must direct a candidate's participation in a field-based experience. The field-based experience provisions have also been amended so that the standards are similar for onsite experiences and those experiences provided by use of electronic transmission or other video or technology-based method. Because field-based experiences fulfill an essential role in preparing educators, clarifying these provisions improves the preparation of educators and provides consistency among preparation programs.

The clinical teaching provisions have been amended to increase the 12-week clinical teaching experience to 14 weeks of at least 65 full days and increasing the 24-week clinical teaching experience to 28 weeks of at least 130 half days. By increasing the minimum standards for the length of clinical teaching, the amendment improves the preparation of educators by providing clinical teachers with more opportunities to develop their knowledge and skills. The clinical teaching provisions have also been amended to require candidates to experience a full range of professional responsibilities that include the first several weeks of the school year through field-based experiences and/or clinical teaching. This amendment allows candidates to observe how critical routines and procedures are established during the first part of the year.

In response to public comment, language was amended in 19 TAC §228.35(e)(2)(F) to clarify that the start of the school year is defined as the first 15 instructional days of the school year. By amending the language in this way, EPPs and schools will have more flexibility with determining when candidates need to observe how critical routines and procedures are established during the first part of the year.

The proposal also provides language that allows the SBEC to approve an EPP request for an exception to the clinical teaching options described in rule. An exception request must include an alternative option that adequately prepares candidates for educator certification and ensures the educator is effective in the classroom. An exception request must include the rationale and support for the alternative option, a full description and methodology of the alternative option, a description of the controls to maintain the delivery of equivalent and quality support for clinical teaching, and a description of the ongoing monitoring and evaluation process to ensure EPP objectives are met. By allowing an exception to the existing clinical teaching options, an innovative program can be allowed to pursue flexible and creative designs to accommodate the unique characteristics and needs of different regions of the state as well as the diverse population of potential educators.

The internship provisions have been amended to clarify that a candidate must hold an intern or probationary certificate while participating in an internship and must meet the requirements and conditions, including the subject matter knowledge requirement, to be eligible for an intern or probationary certificate. The clarification addresses the adopted changes in 19 TAC Chapter 230 regarding the creation of an intern certificate.

In response to public comment, language was amended in 19 TAC §228.35(e)(2)(C)(ii) to clarify that the beginning date of an internship is the first day of instruction with students. By amending the language in this way, when an internship begins will be clearer so that the appropriate support can be provided by the mentor and field supervisor.

The internship provisions were amended to allow for an additional internship assignment of less than a full day under conditions specified in adopted 19 TAC §228.35(e)(2)(C)(iii). This amendment provides more flexibility for EPPs to meet the needs of schools and districts.

The internship provisions have also been amended to clarify that an EPP may recommend an additional internship year if the EPP certifies that the first internship was not successful, the EPP has developed a plan to address any deficiencies identified by the candidate and the candidate's field supervisor, and the EPP implements the plan during the additional internship. An EPP may also recommend an additional internship year if the EPP certifies that the first internship was successful and that the candidate is making satisfactory progress toward completing the EPP before the end of the additional internship. The amendment also defines an internship as successful when the field supervisor and supervising campus administrator recommend to the EPP that the candidate should be recommended for a standard certificate. The amendment provides clear and consistent rules for programs to follow regarding recommending additional internships for candidates.

The internship provisions have also been amended to clarify that an EPP must provide ongoing support to a candidate for the full term of the initial or additional internship, unless, prior to the expiration of that term a standard certificate is issued to the candidate during an additional internship; the candidate resigns, is non-renewed, or is terminated from the school assignment; or the candidate withdraws, is discharged, or is released from the EPP.

The amendment also clarifies how a candidate, an EPP, an employing school or district, and the TEA must be notified if a candidate resigns, is non-renewed, or is terminated from the school assignment or withdraws, is discharged, or is released from the EPP. The amendment provides clear and consistent rules for providing ongoing support for candidates and improves communication between candidates, EPPs, schools and districts, and TEA staff in the event of a resignation, termination, withdrawal, release, or discharge.

The Head Start Program provisions have been amended to clarify that an internship or clinical teaching experience for certificates that include early childhood may be completed at a Head Start Program that meets the requirements. This amendment addresses any future changes to the Early Childhood-Grade 6 certificate.

The internship, clinical teaching, and practicum provisions have been amended to prohibit an assignment in a setting where the candidate has an administrative role over or is related to the mentor, cooperating teacher, or site supervisor. This amendment addresses inappropriate supervisory relationships. The amendment also clarifies that a practicum assignment must take place in an actual school setting rather than a distance education learning lab or virtual school setting. This amendment aligns the practicum requirement with the existing requirements for clinical teaching and internships.

The practicum provisions have been amended to clarify that an intern or probationary certificate may be issued to a candidate in a certification class other than classroom teacher if the candidate meets the requirements of the EPP and the candidate meets the requirements and conditions, including the subject matter knowledge requirement, for the intern or probationary certificate. The clarification addresses the adopted changes in 19 TAC Chapter 230 regarding the probationary certificate.

The practicum provisions have also been amended to clarify that an EPP may recommend an additional practicum if the EPP certifies that the first practicum was not successful, the EPP has developed a plan to address any deficiencies identified by the candidate and the candidate's field supervisor, and the EPP implements the plan during the additional practicum. An EPP may also recommend an additional practicum if the EPP certifies that the first practicum was successful and that the candidate is making satisfactory progress toward completing the EPP before the end of the additional practicum. The amendment defines a practicum as successful when the field supervisor and supervising campus administrator recommend to the EPP that the candidate should be recommended for a standard certificate. The amendment provides clear and consistent rules for programs to follow regarding recommending additional practicums for candidates.

The mentor, cooperating teacher, and site supervisor provision has been amended to require that a site supervisor who is trained by the EPP be assigned to a practicum candidate. The amendment also allows a regional education service center (ESC) to provide the required mentor, cooperating teacher, and/or site supervisor training. The amendment aligns the requirements for the site supervisor with those that are in rule for the mentor and cooperating teacher. The amendment also provides EPPs with more flexibility to ensure that mentors, cooperating teachers, and site supervisors have had the required training. This provision has also been amended to allow the EPP and campus or district administrator to assign an individual who most closely meets the cooperating teacher, mentor, or site supervisor criteria if an individual who meets the criteria is not available. The EPP and campus or district administrator must document the reason for selecting an individual that does not meet the criteria. The amendment provides flexibility in selecting cooperating teachers, mentors, or site supervisors.

The provisions for ongoing support for teacher candidates have been amended to emphasize collaboration among the field supervisor, candidate, cooperating teacher, mentor, and supervising campus administrator. This amendment underscores the joint responsibility of EPPs, schools, and districts to develop, deliver, and evaluate educator preparation. The amendment requires supervision provided on or after September 1, 2017, to be provided by a field supervisor who has completed TEA-approved observation training. This amendment provides consistency among programs and aligns the supervision of candidates with the criteria used by schools and districts to develop and support teachers. The amendment requires an individualized pre-conference and an individualized and synchronous post-observation conference for each formal observation. This amendment is supported by systems of support such as the Texas Teacher Evaluation and Support System (T-TESS). The amendment allows a formal observation by a field supervisor that was conducted in collaboration with school or district personnel to meet the requirements for ongoing support. The amendment requires the field supervisor to provide a copy of the written observation feedback to the cooperating teacher or mentor, but only requires the field supervisor to provide a copy of the written observation feedback to the candidate's supervising campus administrator for an internship. This amendment identifies the most appropriate members of the collaboration team who need to receive a copy of the written observation feedback. Because a candidate participating in an internship is a classroom teacher, it is appropriate for the candidate's campus supervisor to receive a copy of the written observation feedback.

The ongoing support for teacher candidate provisions have also been amended to increase the number of observations for a 28-week half-day clinical teaching experience from three to four. The amendment increases the number of observations from three to five for an internship under an intern certificate or an additional internship under a probationary certificate due to an unsuccessful internship. The amendment requires three observations for an internship under a probationary certificate unless the probationary certificate was an extension due to an unsuccessful internship. For an internship under an intern certificate or an additional internship under a probationary certificate due to an unsuccessful internship that involves more than one certification category that cannot be taught concurrently during the same period of the school day, the amendment requires three observations to be provided for each assignment. For a first-year internship under a probationary certificate or an internship under a probationary certificate where the candidate has already had a successful internship experience, the amendment requires two observations for each assignment. For each type of assignment, the amendment clarifies when initial contacts and formal observations need to occur to provide consistency among EPPs. The amendment increases the level of support at EPPs that currently provide a minimum of three observations and comports with the SBEC's request for policy options that focus on raising EPP standards, improving teacher preparation programs, and new and improved ways to train better teachers.

In response to public comment, language was amended in 19 TAC §228.35(g)(7) to specify when observations need to occur during an all-level clinical teaching assignment in more than one location. A minimum of two formal observations will need to occur during the first half of the assignment and a minimum of one observation will need to occur during the second half of the assignment. By amending the language in this way, field supervisor support during all-level clinical teaching assignments will be more appropriate.

Language has also been amended to address the ongoing support for school counselor, school librarian, principal, superintendent, educational diagnostician, reading specialist, and master teacher candidate provisions to emphasize collaboration between the field supervisor, candidate, and site supervisor. This amendment underscores the joint responsibility of EPPs, schools, and districts to develop, deliver, and evaluate educator preparation. The amendment requires supervision provided on or after September 1, 2017, to be provided by a field supervisor who has completed TEA-approved observation training. This

amendment provides consistency among programs and aligns the supervision of candidates with the criteria used by schools and districts to develop and support teachers. The amendment requires an individualized pre-conference and an individualized and synchronous post-observation conference for each formal observation. This amendment is supported by systems of support such as the T-TESS. The amendment also requires the field supervisor to provide a copy of the written observation feedback to the site supervisor. The amendment also requires at least one of the observations to be conducted by the field supervisor on the candidate's site in a face-to-face setting. If a formal observation is not conducted on the candidate's site in a face-to-face setting, the observation may be provided by use of electronic transmission or other video or technology-based method. As EPPs continue to investigate and research the use of video-based observations, the amendment clarifies that at least one of the formal observations be on the candidate's site so that the field supervisor can have a better understanding of the environment in which the candidate is serving his or her practicum. The amendment also clarifies when initial contacts and formal observations need to occur to provide consistency among EPPs.

The exemption provisions have been amended to allow a candidate who was employed by a school or district as a Junior Reserve Officer Training Corps (JROTC) instructor before the person was enrolled in an EPP or is employed as a JROTC instructor while the person is enrolled in an EPP to be exempt from any student teaching, internship, or field-based experience program requirement, as required by the TEC, §21.0487(c)(2)(B), as added by SB 1309, 84th Texas Legislature, Regular Session, 2015.

§228.40, Assessment and Evaluation of Candidates for Certification and Program Improvement

Section 228.40 was amended to clarify that unless a candidate demonstrates content knowledge on a content certification examination prior to being admitted to an EPP, an EPP is responsible for providing coursework and training that adequately prepares a candidate to pass the content certification examination(s) required for certification. If an EPP admits a candidate under the 12 or 15 semester credit criteria, the EPP must provide the coursework and training necessary for the candidate to pass the content certification examination(s) required for certification. If an EPP admits a candidate under the content certification examination criteria and the content certification examination used for admission is the same content certification examination used for certification, the EPP is not responsible for providing the coursework and training necessary for the candidate to pass the content certification examination(s) required for certification. The amendment adds language to allow an EPP to prepare a candidate and grant test approval for a classroom teacher certificate category other than the category for which the candidate was initially admitted to the EPP if the candidate requests the new category in writing. This amendment provides more flexibility for schools and districts to hire interns who have met the subject matter requirement for an intern or probationary certificate. The amendment clarifies that an EPP shall determine the readiness of each candidate to take the appropriate certification examination(s). The current rule only requires an EPP to determine readiness for the Pedagogy and Professional Responsibilities examination. Because candidates are now limited to how many times they can attempt a certification examination, this provision provides a higher level of support to candidates. The amendment clarifies that an EPP shall not grant test approval for a certification examination until a candidate has been contingently or formally admitted into a program. This amendment aligns with the admission language in 19 TAC Chapter 227. The amendment also clarifies that an EPP must continuously evaluate the design and delivery of the approved program components based on performance data, scientifically-based research practices, and the results of internal and external feedback and assessments. Because the current rule only requires EPPs to evaluate their curriculum, this amendment improves all aspects of preparation.

§228.50, Professional Conduct

Section 228.50 was amended to include requiring an EPP to ensure that candidates and individuals preparing candidates understand the Educators' Code of Ethics. This amendment fosters a better understanding of the Educators' Code of Ethics by candidates and individuals preparing candidates.

§228.60, Implementation Date

Section 228.60 was amended to remove language related to the temporary teaching certificate. The removal of the temporary teaching certificate from 19 TAC Chapter 230 may be found in the Adopted Rules section of this issue of the *Texas Register.*

§228.70, Complaints and Investigations Procedures

Section 228.70 was amended to clarify that a mentor, cooperating teacher, site supervisor, or administrator must be employed or have been employed at a site that serves as a site for clinical teaching, internship, or practicum experiences to be eligible to file a complaint against an EPP. This amendment further defines the jurisdiction of SBEC to investigate complaints that are directly related to an EPP. The TEC, §21.0455, as added by HB 2205, 84th Texas Legislature, Regular Session, 2015, requires the SBEC to propose rules necessary to establish a process for a candidate for teacher certification to direct a complaint against an EPP to the TEA. HB 2205 also requires an EPP to notify candidates for teacher certification of this complaint process. Changes to 19 TAC Chapter 228 are not necessary because the current rules as written comply with the change in law.

SUMMARY OF COMMENTS AND BOARD RESPONSES. The public comment period on the proposal began August 26, 2016, and ended September 26, 2016. The SBEC also provided an opportunity for registered oral and written comments at the October 7, 2016, meeting in accordance with the SBEC board operating policies and procedures. Following is a summary of the public comments received and corresponding board responses regarding the proposed revisions to 19 TAC Chapter 228.

Comment: Educate Texas, an individual from Texas State University (TSU), YES Prep Public Schools (YPPS), an individual from The University of Texas at Austin (UT-Austin), and iteachTEXAS commented on the proposed amendment to 19 TAC §228.2(12), (16), (23), and (30) that would clarify the definitions for cooperating teacher, field supervisor, mentor, and site supervisor. Educate Texas and YPPS commented that the proposed rule would set clear qualifications for EPP support staff. Educate Texas recommended that there needs to be flexibility for support staff in rural or small districts. The individual from TSU commented that the minimum requirements should be raised so that student teachers have adequate supervision by well-qualified faculty. The individual from TSU recommended requiring certification in the same certification field, experience teaching in the same certification area, and training that addresses specific pedagogy for the certification field. The individual from UT-Austin

commented that the requirement for a cooperating teacher, mentor, or site supervisor to be trained prior to being assigned to a clinical teacher, intern, or practicum candidate was not reasonable. The individual from UT-Austin recommended that the training be required within the first three weeks of the assignment. iteachTEXAS commented that the requirement for all field supervisors to be accomplished educators as shown by student learning is subjective and should be removed.

Board Response: As the comments relate to the need for clear qualifications for EPP support staff, the SBEC agreed.

As the comments relate to allowing flexibility in the selection of EPP support staff, the SBEC agreed. Language is included in 19 TAC §228.35(f) that allows an EPP and campus or district administrator to assign an individual who most closely meets the criteria for cooperating teacher, mentor, or site supervisor and the documenting of the reason for selecting an individual that does not meet the criteria. Language is also included in 19 TAC §228.2(16) that allows an alternative for a field supervisor who does not have a current certificate in the certification class in which supervision is provided.

As the comments relate to requiring standards for EPP faculty, the SBEC disagreed. Section 228.20(c) requires the governing body and chief operating officer of an entity approved to deliver educator preparation to provide sufficient support to enable the EPP to meet all standards set by the SBEC and be accountable for the quality of the EPP. EPPs should continue to have the flexibility to set their own standards for their faculty at this time.

As the comments relate to requiring training of a cooperating teacher, mentor, or site supervisor prior to being assigned to a clinical teacher, intern, or practicum candidate, the SBEC agreed and approved language that requires training within the first three weeks of the assignment.

As the comments relate to removing the requirement for a field supervisor to be an accomplished educator as shown by student learning, the SBEC disagreed. Due to the importance of the field supervisor in the preparation of an educator, selecting field supervisors who are accomplished educators is essential to a quality program. Figure: 19 TAC §228.10(b)(1) provides several examples of what an EPP could use to determine accomplishment as an educator as shown by student learning.

Comment: Raise Your Hand Texas (RYHT), Educate Texas, YPPS, and iteachTEXAS commented on proposed 19 TAC §228.2(22) that would move the late hire date from June 15 to July 10. RYHT commented that moving the late hire date will ensure a larger proportion of beginning teachers will have had access to field-based experiences, as well as foundational coursework, before entering the classroom, and more closely reflects what most school districts would actually consider a late hire. iteachTEXAS and YPPS commented that the change in the late hire date offers little opportunity for individuals entering the program in late June to complete the required coursework, training, and field-based experiences. YPPS and Educate Texas recommended changing the late hire date to the 45th day before the first day of instruction to provide flexibility to schools and districts that have an earlier start date than the fourth Monday in August.

Board Response: The SBEC agreed with the comments in support of changing the late hire date to the 45th day before the first day of instruction and disagreed with the comments in support of keeping the late hire date at June 15. The 45th day before the first day of instruction is the date by which educators under a contract with another school or district may resign from their contract without any penalties. Options for field-based experiences in classrooms are limited after this date and the ability of a candidate to complete required pre-internship coursework that is sustained, rigorous, interactive, student-focused, and performance-based between this date and the start of school is unlikely. Candidates who do not qualify as a late hire will not be able to be hired as a classroom teacher under an intern or probationary certificate but may be hired by the school or district under an emergency permit, school district teaching permit, waiver, exception, and other options. Because coursework and field-based experiences are essential components in preparing educators, changing the late hire date to limit the number of candidates hired as classroom teachers who have not completed the pre-internship requirements of coursework and field-based experiences improves the recruiting, admission, and preparation practices of EPPs and the hiring practices of schools and districts.

The SBEC changed the late hire date from June 15 to the 45th day before the first day of instruction.

Comment: An individual from UT-Austin commented on proposed 19 TAC §228.2(25) that would define a post-baccalaureate program as an EPP at an institution of higher education (IHE) that is designed to recommend individuals for certification who already hold at least a bachelor's degree and are seeking an additional degree. The individual from UT-Austin commented that the proposed definition change is inappropriate because there are significant differences in program types and failure to distinguish between program types will render data analysis about the performance of program types meaningless. The individual from UT-Austin recommended that the SBEC consider developing a more detailed category system for certification programs that recognizes and distinguishes more program design features that are likely to be significant factors affecting quality in teacher preparation.

Board Response: The SBEC disagreed. The SBEC adopted effective October 18, 2016, as part of the amendments to 19 TAC Chapter 227, the definition of a post-baccalaureate program that is adopted in 19 TAC §228.2(25). By amending the definition, the definitions in both chapters will be the same and applicants, candidates, EPPs, and the SBEC will be able to distinguish between alternative certification and post-baccalaureate programs at IHEs.

Comment: Two individuals from TSU, three individuals from UT-Austin, Educate Texas, and one individual from Texas Wesleyan University (TWU) commented on proposed Figure: 19 TAC §228.10(b)(1) that describes the evidence an EPP would need to maintain for a period of five years regarding its compliance with SBEC standards and requirements. The individuals from TSU and TWU commented that new requirements would require EPP staff to spend more time with paperwork than supervising and mentoring candidates. The individuals from UT-Austin commented that efforts to be more prescriptive of EPP structure and process would result in less innovative program designs, less efficient program delivery, and more administrative work and cost. Educate Texas commented that changes should be made where it is appropriate to reduce the paperwork burden on EPPs.

The individuals commented that some examples of evidence were redundant, inflexible, not aligned with similar rules, or unclear. To address redundancy, the individuals from UT-Austin recommended combining evidence of assessments to measure progress, under Component III: Curriculum, for 19 TAC

§228.40(a); removing the field supervisor as evidence of the assignment of a field supervisor, under Component IV: Coursework, Training, Program Delivery, and Ongoing Support, for 19 TAC §228.35(g); and removing the clinical teaching log as evidence of completion of clinical teaching, under Component IV: Coursework, Training, Program Delivery, and Ongoing Support, for 19 TAC §228.35(e)(2)(A) and (B).

To address redundancy, two individuals from UT-Austin and the individual from TWU recommended replacing "time in and out" with "length of observation" as evidence of field supervisor observation, under Component IV: Coursework, Training, Program Delivery, and Ongoing Support, for 19 TAC §228.35(b)(1).

To address flexibility, two individuals from UT-Austin recommended, under Component IV: Coursework, Training, Program Delivery, and Ongoing Support adding "course syllabi that notes the initial contact with the field supervisor and the candidate is made during the first class" as evidence of the initial contact for 19 TAC §228.35(g) and (h); removing "official" from the term "official service records" so that informal service records are acceptable evidence for the various TAC requirements that require creditable years of service; adding "attendance policies that require a certain level of attendance for a passing grade" as evidence of completion of coursework and training for 19 TAC §228.35(a)(3); and adding "video/commentary from observers" as evidence of a candidate's reflection of an observation.

To address flexibility, two individuals from UT-Austin, the individual from TWU, and one individual from TSU recommended adding "a form signed by the campus or district administrator attesting that the cooperating teachers and mentors meet the certification, experience, and accomplishment as an educator criteria" as evidence of EPP support personnel for 19 TAC §228.2(12) and (23).

To address alignment, two individuals from UT-Austin recommended amending the evidence, under Component II: Admission, for 19 TAC §227.10(e) so that it aligns with changes recently adopted in 19 TAC Chapter 227 that allows out-of-country transcripts to be reviewed by eligible EPPs; and amending the evidence, under Component IV: Coursework, Training, Program Delivery, and Ongoing Support, in 19 TAC §228.35(g) and (h) so that the evidence of the first contact by the supervisor with a teacher and non-teacher candidate is similar.

To address clarity, two individuals from UT-Austin recommended either removing the reference to rubrics or removing the cut-score requirement of a rubric as evidence of an interview or other screening instrument, under Component II: Admission, for 19 TAC §227.10(a)(7); and adding language, under Component IV: Coursework, Training, Program Delivery, and Ongoing Support, for 19 TAC §228.35(e)(4) and (5) to clarify that a statement of eligibility form is only required for an internship.

Board Response: As the comments relate to the evidence of compliance with standards and requirements resulting in less innovative program designs, less efficient program delivery, and more administrative work and cost, the SBEC disagreed. Many of the examples of evidence are what EPPs have already been doing or were suggested to TEA staff throughout the rulemaking process to make the figure less redundant, more flexible, more aligned, and clearer. Creating a figure that describes the evidence an EPP is expected to maintain regarding its compliance with EPP standards and requirements will provide clarity and consistency of what is expected for new program approvals and continuing entity approval reviews.

As the comments relate to redundancy, the SBEC agreed with the recommendations to combine evidence of assessments to measure progress, under Component III: Curriculum, for 19 TAC §228.40(a) and remove the field supervisor as evidence of the assignment of a field supervisor, under Component IV: Coursework, Training, Program Delivery, and Ongoing Support, for 19 TAC §228.35(g) and (h). The SBEC disagreed with removing the clinical teaching log as evidence of completion of clinical teaching, under Component IV: Coursework, Training, Program Delivery, and Ongoing Support, for 19 TAC §228.35(e)(2)(A) and (B). The clinical teaching list is for all of the clinical teaching placements. The clinical teaching log is confirmation from the cooperating teacher that the candidate participated in the clinical teaching assignment. The SBEC also disagreed with replacing "time in and out" with "length of observation" as evidence of field supervisor observation, under Component IV: Coursework, Training, Program Delivery, and Ongoing Support, for 19 TAC §228.35(b)(1). The "time in and out" evidence has been used by TEA staff to identify discrepancies with programs providing the observations required for accreditation that are described in 19 TAC §229.4(a)(4)(A).

As the comments relate to flexibility, the SBEC agreed with all of the recommendations. Under Component IV: Coursework, Training, Program Delivery, and Ongoing Support, the SBEC modified language in Figure: 19 TAC §228.10(b)(1), to include additional changes for the evidence related to 19 TAC §228.35(g) and (h); 19 TAC §228.2(12), (23) and (30); 19 TAC §228.35(a)(3); 19 TAC §228.35(b)(1); and the various TAC requirements that require creditable years of service in Chapters 239, 241, and 242.

As the comments relate to alignment and clarity, the SBEC agreed with all of the recommendations and modified language in Figure: 19 TAC §228.10(b)(1) for the evidence related to 19 TAC §227.10(e); 19 TAC §228.35(g) and (h); 19 TAC §227.10(a)(7); and 19 TAC §228.35(e)(4) and (5).

Comment: An individual from UT-Austin commented on proposed 19 TAC §228.10(b)(3) that would require TEA staff to use several risk factors to determine the need for discretionary continuing entity approval reviews and the type of five-year continuing entity approval reviews. The individual from UT-Austin commented that the risk-based model should be used to focus attention on programs that have shown evidence of concern or risk based on the quality of program completers. The individual from UT-Austin recommended allowing EPPs with outstanding performance within the past five years to use existing internal and external reports, accreditation, performance, and consumer information data and other data as evidence for five-year continuing entity approval reviews.

Board Response: The SBEC agreed that a risk-based model needs to be used to determine the need for discretionary continuing entity approval reviews and the type of five-year continuing entity approval reviews. The SBEC determined that there needs to be more focus on supporting EPPs so that they can meet performance standards rather than determining compliance with standards and requirements. The SBEC disagreed that more specificity needs to be added to the rule in regards to the process TEA staff will use to determine the need for discretionary reviews and the type of five-year reviews. TEA staff will continue to use the complaint process described in 19 TAC §228.70 as well as reviews of EPP data that are described in 19 TAC §229.3 to determine the need for discretionary reviews. TEA staff will also

continue working with stakeholders to determine the most appropriate types of five-year reviews.

Comment: An individual from Enabled Advocacy commented on proposed 19 TAC §228.10(b)(3)(B) that would take into consideration whether an EPP meets the accountability standards under the Texas Education Code (TEC), §21.045, when TEA staff are determining the need for discretionary continuing entity approval reviews and the type of five-year continuing entity approval reviews. The individual from Enabled Advocacy commented that the TEC reference calls for the SBEC to propose rules to establish accountability standards. The individual from Enabled Advocacy recommended that the SBEC articulate precise minimum standards for teacher preparation program performance for each category of data required to be collected.

Board Response: As the comments relate to articulating precise minimum standards for teacher preparation program performance for each category of data required to be collected, the SBEC disagreed and provided the following clarification. The SBEC considered the adoption of performance standards for three of the five minimum accountability standards that are referenced in the TEC, §21.045, in 19 TAC Chapter 229. While the SBEC can set performance standards for each category of data required to be collected, the SBEC approved the language related to accountability, performance, and consumer information as proposed.

Comment: iteachTEXAS commented on proposed 19 TAC §228.20(g) that would require EPPs to develop and implement a calendar of program activities that must include a deadline for accepting candidates into a program cycle. iteachTEXAS commented that this requirement would restrict an EPP's ability to work with school districts who need to hire educators throughout the year.

Board Response: The SBEC agreed. EPPs need to disclose program information to applicants so that they are aware of what is required to be prepared for a clinical teaching or internship assignment. The SBEC approved additional language to 19 TAC §228.20(g) that requires EPPs to develop and implement a calendar of program activities for candidates who are enrolled after the deadline.

Comment: An individual from Enabled Advocacy commented on proposed 19 TAC §228.30(c)(3) that would add curriculum requirements to include mental health training as required by the TEC, §21.044, as amended by Senate Bill 674, 84th Texas Legislature, Regular Session, 2015. The individual commented that the proposed rule does not include all of the language from the TEC regarding effective strategies for teaching and intervening with students with mental or emotional disorders, including de-escalation techniques and positive behavioral interventions and supports. The individual recommends adding the language from the TEC into the rule.

Board Response: The SBEC disagreed and offered the following clarification. The rule references the TEC statute that includes the additional language regarding effective strategies for teaching and intervening with students with mental or emotional disorders. Adding the language to the TAC rule would be redundant and unnecessary.

Comment: An individual from UT-Austin commented on proposed 19 TAC §228.35(a)(5) that would allow an EPP to substitute a candidate's prior or ongoing service, training, or education if the service, training, or education was provided by an approved EPP or an accredited IHE within the past five years and is directly related to the certification being sought. The individual from UT-Austin encouraged the adoption of the proposed change.

Board Response: The SBEC agreed because this amendment provides flexibility to EPPs and candidates while providing consistency among EPPs.

Comment: iteachTEXAS and Quality ACT commented on proposed 19 TAC §228.35(a)(6) that would require an EPP that offers coursework and/or training online to meet or be making progress in meeting criteria set for accreditation, quality assurance, and/or compliance with an approved accrediting organization, certification organization, or the THECB. Quality ACT commented that the two options available to non-IHE EPPs were not cost effective. Quality ACT also commented that all courses, including face-to-face instruction, should be accredited. iteachTEXAS commented that EPPs seeking accreditation with the Council for the Accreditation of Educator Preparation (CAEP) must show how they have incorporated into their online programs the International Society for Technology in Education (ISTE) standards. iteachTEXAS recommended that CAEP be added to the list of entities that would accredit or certify that an EPP offers high-quality online coursework and/or training.

Board Response: The SBEC disagreed. Because many EPPs are already either offering or planning to offer online coursework and/or training, this amendment improves the preparation of educators participating in online coursework and training and provide consistency among preparation programs offering online coursework and training. Courses that are not offered online will continue to be reviewed by TEA staff through the continuing entity approval review process. The ISTE standards are intended to guide educators in the use of technology in teaching and learning, including the design and development of digital age learning experiences and assessments, the use of model digital age work and learning, and the promotion of model digital citizenship and responsibility. The ISTE standards do not address the quality of online course design and online components.

Comment: iteachTEXAS and YPPS commented on proposed 19 TAC §228.35(b)(2) that would increase the number of hours of coursework and training required before a clinical teaching or internship assignment from 80 to 150. iteachTEXAS commented that increasing the amount of coursework and training required prior to an internship creates a significant burden on candidates and school districts. YPPS commented that increasing the amount of coursework and training required prior to an internship would limit the amount of time in the summer that a candidate could complete the hours, more coursework and training would need to be offered online, and fewer candidates would be eligible for internships.

Board Response: The SBEC disagreed. Campuses with higher percentages of minority, economically disadvantaged, and at-risk students are disproportionately served by teachers participating in internships under probationary certificates. The rule actions to increase the hours and provide more specificity of the coursework and training improves the quality of educator preparation for candidates who will be hired as a classroom teacher under an internship and candidates who will be working directly with students in the capacity of a clinical teacher. The coursework and training requirements will be equivalent to 10 semester credit hours at an accredited IHE. The content of the coursework and training requirement will be similar to the performance standards that are used to inform the training, appraisal, and professional development of all teachers. The

rule actions are based on the direction provided by the SBEC and input from a variety of stakeholders. Candidates will be informed about the requirements for certification through the calendar of program activities in 19 TAC §228.20(g). School districts also retain considerable flexibility of hiring candidates who have not completed pre-internship requirements through emergency permits, school districts teaching permits, waivers, exceptions, and other options.

Comment: RYHT commented on proposed 19 TAC §228.35(e)(1)(B) that would require field-based experience provided by use of electronic transmission or other video or technology-based method to be similar for onsite experiences. RYHT commented that clarifying standards for electronically provided field-based experience would help ensure this work meaningfully affects teacher development by providing for more authentic experiences in relevant courses tied to opportunities for reflection.

Board Response: The SBEC agreed that the rule meaningfully affects teacher development by providing for more authentic experiences in relevant courses tied to opportunities for reflection.

Comment: YPPS commented on proposed 19 TAC §228.35(e)(1)(A) and (B) that would require an EPP to direct the field-based experiences that teacher certification candidates must participate in before clinical teaching or an internship. YPPS commented that this requirement would result in additional programming to ensure candidates are engaging in rigorous and authentic instruction in high-caliber classrooms.

Board Response: The SBEC agreed that the rules meaningfully affect teacher development by providing for more authentic field-based experiences tied to opportunities for reflection.

Comment: Three individuals from TSU and two individuals from UT-Austin commented on the proposed amendment to 19 TAC §228.35(e)(2)(A) that would increase the clinical teaching requirement from 12 to 14 weeks. Two of the individuals from TSU commented that increasing clinical teaching to 14 weeks would provide more time for student teachers to build their skills, but it would shorten the timeline for EPPs and school districts to find appropriate placements. All three of the individuals from TSU commented that the increase would decrease the amount of time a student can work during the school year. The individuals from UT-Austin commented that extending clinical teaching to 14 weeks will cause issues with IHEs in the fall semester because it is shorter than the spring semester and starts after school districts begin their school years, it would be a burden on clinical teachers with summer jobs and housing needs, and it would extend beyond the end of fall semester when grades are due. The individuals from UT-Austin also commented that changes should be based on proposed deficiencies and research evidence.

Board Response: The SBEC disagreed with maintaining the clinical teaching requirement at 12 weeks. For 2014, the U.S. Department of Education reported national data from teacher preparation providers. This data suggests that the average clinical teaching assignment is 18 weeks with the mode being 20 weeks. By increasing the minimum standards for the length of clinical teaching by two weeks, the amendment improves the preparation of educators by providing clinical teachers with more opportunities to develop their knowledge and skills.

As the comments relate to issues within and between organizations, the SBEC disagreed. EPPs can minimize selection, training, and assignment issues through improved collaboration with school districts. EPPs at IHEs can also minimize grading issues through improved collaboration within their organization.

As the comments relate to classes at an EPP at an IHE starting after a school district, the SBEC disagreed. According to the "Common Calendar" published by the THECB, a semester normally shall include 15 weeks for instruction and one week for final examinations. The first class day for fall semester is aligned with the fourth Monday in August, the earliest date a school district may begin instruction for students for a school year. The "Common Calendar" also allows a public university or community, technical, or state college to begin its fall semester within seven days of the date without the need to request a waiver from the THECB. Clinical teaching assignments will not be required to start on the first day of school, but 19 TAC §228.35(e)(2)(F) requires EPPs to ensure that teacher candidates experience a full range of professional responsibilities that include the first weeks of a school year.

As the comments relate to a decrease in the amount of time a student can work during the school year, the SBEC disagreed. While clinical teachers may not be able to work as much during the school year because of the increase in the length of clinical teaching, the long-term benefit of better prepared teachers who will remain in the profession longer outweighs a potential short-term loss of income.

Comment: RYHT commented on the proposed amendment to 19 TAC §228.35(e)(2)(A) that would increase the clinical teaching requirement from 12 to 14 weeks. RYHT recommended increasing the clinical preparation required for a standard certificate to the national average of 18 weeks.

Board Response: The SBEC agreed that there needs to be an increase in the amount of clinical preparation that is required for a standard certificate, but did not agree that the requirement needed to be raised all the way to the national average at this time. The increase from 12 to 14 weeks is an incremental step toward meeting or exceeding the national average of 18 weeks. To support the goal of improving teacher pre-service training, one of the action items that is included in the TEA Strategic Plan for 2017-2021 is to incentivize and support clinical residency models that place teacher candidates in the classrooms of experienced and effective teachers to learn best practices. The results of this action item will be shared with the SBEC at a future meeting so that the results can inform additional changes to the clinical teaching standards.

Comment: Educate Texas and nine individuals from Lamar University (LU) commented on the proposed amendment to 19 TAC §228.35(e)(2)(A) that would require one formal observation of a candidate participating in a practicum to be on the candidate's site in a face-to-face setting. Comments from the nine individuals from LU included there is no empirical evidence that face-to-face onsite observations are more effective than a video field observation model; the video field observation model promotes 21st century learning and the change in rule would deny access to 21st century tools; the video field observation model provides thorough feedback to candidates and opportunities for candidates to review and reflect; the cost of sending field supervisors will increase tuition and limit accessibility to educator certification programs; and meeting with a professor on campus would be burdensome.

Educate Texas commented that in-person observations should be required so that candidates receive proper feedback and build relationships with EPP staff.

Board Response: As the comments relate to requiring in-person observations so that candidates receive proper feedback and build relationships with EPP staff, the SBEC agreed.

As the comments relate to empirical evidence, the SBEC disagreed. While there may be limited empirical evidence that face-to-face onsite observations are more effective than a video field observation model, there is also limited empirical evidence that video field observation models are more effective than face-to-face onsite observations. One of the guiding principles that was discussed with the SBEC at their June 2015 workshop was that quantitative data could not be the sole determining driver of decision making because reason and logic matter. The SBEC encouraged EPPs to continue investigating and researching the use of video-based observations.

As the comments relate to 21st century tools, the SBEC disagreed. The approved change in rule will not deny candidates or EPPs from promoting or accessing 21st century tools because if a formal observation is not conducted on the candidate's site in a face-to-face setting, the observation may be provided by use of electronic transmission or other video or technology-based method.

As the comments relate to feedback and reflection, the SBEC disagreed. While a video field observation model may provide thorough feedback to candidates and opportunities for candidates to review and reflect, requiring at least one of the formal observations to be on the candidate's site will allow the field supervisor to have a better relationship with the candidate and a better understanding of the environment in which the candidate is serving his or her practicum.

As the comments relate to additional costs, the SBEC disagreed. The SBEC understands that there will be an additional cost to EPPs that are not currently providing at least one onsite and face-to-face formal observation; however, the benefits of better field supervision costs should be minimal if EPPs are able to employ qualified field supervisors in regions where candidates are participating in practicums.

As the comments relate to on-site meetings with field supervisors, the SBEC disagreed. While the adopted rule requires one formal observation to be onsite and face-to-face, the pre- and post-conferences between the field supervisor and candidate are not required to be onsite and face-to-face.

Comment: RYHT commented on the proposed amendment to 19 TAC §228.35(e)(2)(C) that defines internships. RYHT commented that an EPP should have an acceptable record of performance before it can place teachers as the teacher of record using intern and probationary certificates. EPPs without an acceptable record of performance would be limited to placing candidates in clinical teaching assignments. RYHT recommended that if an EPP has a current rating of "Accredited-Warned" or "Accredited-Probation," the EPP cannot recommend candidates for an internship.

Board Response: While the SBEC agreed that EPPs without a rating of "Accredited" may need to be prohibited from certain preparation activities, the SBEC also recognized that the adopted rule actions in this chapter are the first step in a series of changes necessary to ensure the highest level of educator preparation.

Comment: iteachTEXAS and YPPS commented on proposed 19 TAC §228.35(e)(2)(C)(ii) that would define the beginning and ending date for an internship as the first and last day of instruction with students based on the school calendar of the school or district in which the internship takes place. iteachTEXAS and YPPS commented that this rule could be interpreted to mean that an internship can only start on the first day of school. iteachTEXAS and YPPS recommended removing language that bases the internship on the school calendar.

Board Response: The SBEC agreed. The intent of the rule was to clarify that an internship begins with the first day of instruction with students, no matter when the teacher candidate begins the internship. For example, many teacher candidates hired before the beginning of the school year are required to attend professional development with their school district before the school year begins. To avoid confusion between candidates and field supervisors, the SBEC clarified the start of the internship. Because the last day of an internship will depend on the school calendar and whether other factors such as maternity leave, military leave, illness, or late hire date are involved, the SBEC amended language in 19 TAC §228.35(e)(2)(C)(ii) to identify only the beginning date for an internship.

Comment: iteachTEXAS commented on proposed 19 TAC §228.35(e)(2)(C)(iv) that would require a candidate to hold an intern or probationary certificate while participating in an internship. iteachTEXAS commented that the implementation of the tiered certification system might increase the number of emergency permits issued, which may result in high turnover of temporary personnel and an increase in parental notification of non-certified teachers. iteachTEXAS recommends that an emergency permit should be allowed to count towards a portion of an internship.

Board Response: The SBEC disagreed. The rule action to require a candidate to hold an intern or probationary certificate while participating in an internship raise the standard for what it takes to be considered a certified educator. Allowing a portion of an internship to be completed without participating in the required coursework, training, field-based experiences, and certification examination requirements would set a lower standard than what is currently in rule. Parents need to be notified when their children are being taught by uncertified teachers who have not demonstrated basic competencies in the subject matter that they will be teaching and have not completed targeted coursework that addresses performance standards required of beginning teachers. When a school district requests an emergency permit, the school district verifies that it will maintain a support system, assign a trained mentor, and provide release time as needed to assist the individual serving on an emergency permit. The current and amended rule also allow an EPP to provide support to candidates beyond what is required during clinical teaching and internship assignments.

Comment: iteachTEXAS commented on proposed 19 TAC §228.35(e)(2)(C)(iv)(II) and (IV) that would require an EPP to notify certain parties when it has been notified by a candidate that the candidate is withdrawing from the EPP or that the candidate has resigned, been non-renewed, or been terminated by the school or district in which the candidate was participating in an internship. iteachTEXAS commented that it is unlikely that a candidate who resigns, is terminated, or is non-renewed by a school district will notify the EPP within one day of the notice from the school district. iteachTEXAS recommends the removal of the one-day notice mandate from the candidate to the program or clarify that no regulatory action will be taken against the EPP for non-compliance of a candidate.

Board Response: The SBEC disagreed. The rule is sufficiently clear that the EPP is not responsible for notifying other parties if the EPP is not notified by the candidate of a resignation, non-renewal, termination, or withdrawal.

Comment: Three individuals from UT-Austin commented on proposed 19 TAC §228.35(e)(2)(D) that would allow an EPP to apply for an exception to the clinical teaching rules. One individual encouraged adoption of the proposed change to allow an exception to the clinical teaching rules, and the other two individuals were thankful for the opportunity to request an exception to the clinical teaching rules.

Board Response: The SBEC agreed with allowing an innovative program to pursue flexible and creative designs to accommodate the unique characteristics and needs of different regions of the state as well as the diverse population of potential educators.

Comment: Two individuals from Texas Lutheran University (TLU), four individuals from TSU, ACT-San Antonio, and two individuals from UT-Austin commented on proposed 19 TAC §228.35(e)(2)(F) that would require candidates to experience a full range of professional responsibilities that include the first several weeks of the school year through field-based experiences and/or clinical teaching. While most of the individuals commented that the proposed rule was good in theory, an excellent idea, or would result in better prepared teachers, the individuals also commented that there might be issues related to district procedures that may not allow clinical teaching assignments to begin on the first day of school; housing and food service may not be available for candidates that need to start a clinical teaching assignment before the start of the IHE year; candidates may miss IHE classes that are scheduled during the Kindergarten-Grade 12 school day; background checks that may delay the start of an assignment; and liability issues for candidates who begin clinical teaching assignments before they are enrolled in an IHE for the semester.

An individual from TLU and the individuals from UT-Austin commented that the phrase "start of the school year" needed to be clarified. The individuals from UT-Austin recommended defining the start of the school year as the first three weeks of school.

Board Response: The SBEC agreed with the comments related to defining the start of the school year and amended language to define the start of the school year as the first 15 instructional days of the school year in 19 TAC §228.35(e)(2)(F). While this clarification will resolve many of the issues that were included in the comments, collaboration and communication within and between EPPs and schools districts will need to improve so that clinical teachers will have more opportunities to observe how critical routines and procedures are established during the start of the school year.

Comment: Commit!, Educate Texas, RYHT, Texas Teachers, and Education Career Alternatives Program (ECAP) commented on 19 TAC §228.35(g) that would require different levels of support to teacher candidates based on the teacher candidates' demonstration of basic knowledge of pedagogy and professional responsibilities (PPR) (classroom management, code of ethics, etc.) on the PPR certification examination. Commit! commented that the additional support would provide regular, substantive teacher observations and feedback to incoming and novice teachers. Educate Texas commented that the rule would provide differing types of support to teachers as they are working on mastering the required skills. RYHT commented that the rule strengthens the support teachers receive during the internship experience. Texas Teachers commented that it was in support of increasing the number of field supervisor visits a beginning teacher is required to receive from the EPP during the first year in the classroom. ECAP commented that if a person were hired as a long-term substitute, the person would not be supported by an EPP.

Board Response: As the comments relate to increasing the level of support for a teacher candidate participating in an internship under an intern certificate from three to five formal observations, the SBEC agreed. The rule will require teacher candidates to receive additional support that is based on their level of preparation through formal observations by a field supervisor.

As the comments relate to the level of support individuals can receive from an EPP if they are employed as a long-term substitute, the SBEC disagreed. While an individual who is hired as a long-term substitute will not meet the eligibility requirements for an internship under an intern or probationary certificate, the current and amended rule allow an EPP to provide support to candidates before they participate in an internship.

Comment: YPPS commented on proposed 19 TAC §228.35(g)(1) and (3) that would require a field supervisor to provide five 45-minute formal observations to a teacher candidate participating in an internship under an intern certificate. YPPS commented that five 45-minute formal observations may not meet the needs of first-year teachers who may need more frequent touchpoints. YPPS recommended that a certain number of total observation minutes be required.

Board Response: The SBEC disagreed. Five 45-minute formal observations over the course of a school year is the minimum amount of support that is to be provided by a field supervisor. Field supervisors are required to provide informal observations and coaching as appropriate.

Comment: iteachTEXAS commented on proposed 19 TAC §228.35(g)(5) that would require three observations in each assignment for teacher candidates who are seeking certification in more than one category during the same internship. iteachTEXAS commented that this requirement creates a regulatory burden and increased cost to candidates.

Board Response: The SBEC disagreed. Instead of requiring five observations in each assignment, the rule will require three observations for each assignment, resulting in six observations instead of ten observations. When a candidate meets all of the eligibility requirements for a standard certificate, there would be a cost savings to the candidate because the EPP will be allowed to recommend two certificates in different categories at the same time. While this cost savings may not totally offset the cost of an additional observation, the long-term benefit of better prepared teachers who will remain in the profession longer outweighs a minimal increase in the cost of preparation.

Comment: An individual from Baylor University commented on proposed 19 TAC §228.35(g)(7) that would require one formal observation during the first third of a clinical teaching assignment, one formal observation during the second third of a clinical teaching assignment, and one formal observation during the last third of a clinical teaching assignment. The individual commented that this requirement was not appropriate for an all-level clinical teaching assignment where the teacher candidate spends half of the assignment at one level and the second half of the assignment at a different level. The individual recommended that at least two formal observations occur during the first half of

the assignment and the third formal observation occurs during the second half of the assignment.

Board Response: The SBEC agreed and amended language for all-level clinical teaching assignments that include more than one level. The language requires a minimum of two formal observations to be provided during the first half of the assignment and a minimum of one formal observation to be provided during the second half of the assignment.

Comment: iteachTEXAS commented on proposed 19 TAC §228.35(g) and (h) that would require field supervisors to participate in TEA-approved observation training. iteachTEXAS recommended the removal of the TEA-approved observation training from the proposed rule since all training is already approved by the SBEC and/or TEA, making the TEA-approved observation training requirement redundant.

Board Response: The SBEC disagreed with removing the TEA-approved observation training from the rule. While EPPs may qualify to become TEA-approved providers of field supervisor training for their own field supervisors or field supervisors from other programs, other entities may also be approved to offer the training.

Comment: An individual from TSU and Texas Teachers commented on the proposed amendment to 19 TAC §228.60 that would require candidates to participate in program requirements that are in effect on the date candidates are admitted to an EPP. Texas Teachers commented that while it supports the increased pre-internship coursework requirement and the increased number of observations for internships, the implementation date should be delayed to July 2017 to allow EPPs to develop meaningful quality training and the logistical challenges of changing support structures during the middle of the year. TSU commented that a more feasible effective date of July or August 2017 would allow EPPs to develop a robust infrastructure to support new rules and communicate changes to teacher candidates, advisors, and faculty.

Board Response: When a candidate is admitted to an EPP, only the rules that are in effect on that date are the rules that are applicable to the candidate.

As the comments relate to delaying the implementation date of the increased number of formal observations, the SBEC disagreed. The rules that require five observations reference the rule actions in 19 TAC Chapter 230, which will have an effective date of September 1, 2017. Any candidate admitted after the effective date of the revisions to 19 TAC Chapter 228 and issued a probationary certificate before September 1, 2017, will be required to have three formal observations.

As the comments relate to delaying the implementation date of the 150 hours of coursework and training required before an internship, the SBEC disagreed. The content of the 150 hours of coursework is based on the Texas Teachers Standards, which have been a required component of EPP curriculum since October 2014. A candidate admitted after the effective date of the revisions to 19 TAC Chapter 228 and hired under a probationary certificate for the spring 2017 semester will be considered a late hire. A late hire candidate will be required to complete the 150 hours within the first 90 instructional days of the internship assignment and up to 50 of the hours could be provided by the school or district. If the assignment does not include 90 instructional days, the coursework could be completed during summer 2017.

Comment: An individual from Dallas Baptist University (DBU), Educate Texas, RYHT, and Commit! provided general comments regarding raising the standards for educator preparation. The individual from DBU commented in opposition of the proposed changes because it would create a financial burden on student teachers and universities. Educate Texas commented that it was in favor of candidate-focused and performance-based coursework and training. RYHT commented that the creation of clear and strong standards for EPPs would go a long way toward improving the quality of Texas' teacher workforce. Commit! commented that it was in support of the recommendations to update program requirements because it is critical to give new and beginning teachers additional supports to enable their effectiveness in the classroom.

Board Response: As the comments relate to the rule changes creating a financial burden for student teachers and universities, the SBEC disagreed. The fiscal impact to student teachers and universities is limited to the requirement that field supervisors participate in TEA-approved observation training by September 1, 2017. The costs associated with additional formal observations will not apply to clinical teachers, and the costs associated with standards for online coursework already apply to universities.

As the comments relate to supporting the raising of standards, the SBEC agreed.

Comment: YPPS commented on proposed 19 TAC §228.40(b) that would require an EPP to ensure that each candidate is adequately prepared to pass the appropriate content certification examination(s) required for certification. YPPS commented as to what "adequately prepared" meant.

Board Response: The SBEC provided the following clarification. At the minimum, adequately prepared will mean that the EPP is meeting the performance standard for the results of certification examinations described in 19 TAC Chapter 229.

The State Board of Education (SBOE) took no action on the review of the proposed revisions to 19 TAC Chapter 228 at the November 18, 2016, SBOE meeting.

STATUTORY AUTHORITY. The amendments and new sections are adopted under the Texas Education Code (TEC), §21.031, which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; the TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; the TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the TEC, §21.044(a), which requires the SBEC to propose rules establishing training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program; the TEC, §21.044(b), which requires a person seeking certification that requires a bachelor's degree to receive training in dyslexia; the TEC, §21.044(c-1), which requires a person seeking certification that requires a bachelor's degree to receive training

in mental health, substance abuse, and suicide prevention; the TEC, §21.044(g), which requires each EPP to provide certain information related to performance of the EPP, the importance of building strong classroom management skills, the framework for teacher and principal evaluation, the skills that educators are required to possess, the responsibilities that educators are required to accept, and the high expectations for students; the TEC, §21.0443, which states that the SBEC shall propose rules to establish standards to govern the approval or renewal of approval of EPPs and certification fields authorized to be offered by an EPP. To be eligible for approval or renewal of approval, an EPP must adequately prepare candidates for educator certification and meet the standards and requirements of the SBEC. The SBEC shall require that each EPP be reviewed for renewal of approval at least every five years. The SBEC shall adopt an evaluation process to be used in reviewing an EPP for renewal of approval; the TEC, §21.045(a), which states that the board shall propose rules establishing standards to govern the continuing accountability of all EPPs; the TEC, §21.0453, which states that the SBEC may propose rules as necessary to ensure that all EPPs provide candidates with accurate information; the TEC, §21.0454, which states the SBEC shall propose rules necessary to develop a set of risk factors to use in assessing the overall risk level of each EPP; the TEC, §21.0455, which states the SBEC shall propose rules necessary to establish a process for a candidate for teacher certification to direct a complaint against an EPP to the agency; the TEC, §21.048(a), which requires the SBEC to propose rules prescribing comprehensive examinations for each class of certificate issued by the SBEC; the TEC, §21.0487(c)(2)(B), which requires the SBEC to propose rules to establish requirements under which a person's employment by a school district as a Junior Reserve Officer Training Corps instructor before the person was enrolled in an EPP or while the person is enrolled in an EPP is applied to satisfy any student teaching, internship, or field-based experience program requirement; the TEC, §21.049, which authorizes the SBEC to propose rules providing for educator certification programs as an alternative to traditional EPPs; the TEC, §21.050(a), which states that a person who applies for a teaching certificate for which SBEC rules require a bachelor's degree must possess a bachelor's degree received with an academic major or interdisciplinary academic major, including reading, other than education, that is related to the curriculum as prescribed under the TEC, Chapter 28, Subchapter A; the TEC, §21.050(c), which states that a person who receives a bachelor's degree required for a teaching certificate on the basis of higher education coursework completed while receiving an exemption from tuition and fees under the TEC, §54.363, may not be required to participate in any field experience or internship consisting of student teaching to receive a teaching certificate; and the TEC, §21.051, which provides a requirement that before a school may employ a certification candidate as a teacher of record, the candidate must have completed at least 15 hours of field-based experience in which the candidate is actively engaged at an approved school in instructional or educational activities under supervision. These rules are authorized or required by the statutory provisions described above.

CROSS REFERENCE TO STATUTE. The adopted amendments and new sections implement the TEC, §§21.031; 21.041(b)(1) and (2); 21.044(a), (b), (c-1), and (g); 21.0443; 21.045(a); 21.0453; 21.0454; 21.0455; 21.048(a); 21.0487(c)(2)(B); 21.049; 21.050(a) and (c); and 21.051.

§228.2. Definitions.

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

(1) Academic year--If not referring to the academic year of a particular public, private, or charter school or institution of higher education, September 1 through August 31.

(2) Accredited institution of higher education--An institution of higher education that, at the time it conferred the degree, was accredited or otherwise approved by an accrediting organization recognized by the Texas Higher Education Coordinating Board.

(3) Alternative certification program--An approved educator preparation program, delivered by entities described in §228.20(a) of this title (relating to Governance of Educator Preparation Programs), specifically designed as an alternative to a traditional undergraduate certification program, for individuals already holding at least a bachelor's degree from an accredited institution of higher education.

(4) Benchmarks--A record similar to a transcript for each candidate enrolled in an educator preparation program documenting the completion of admission, program, certification, and other requirements.

(5) Candidate--An individual who has been formally or contingently admitted into an educator preparation program; also referred to as an enrollee or participant.

(6) Certification category--A certificate type within a certification class; also known as certification field.

(7) Certification class--A certificate, as described in §230.33 of this title (relating to Classes of Certificates), that has defined characteristics; also known as certification field.

(8) Classroom teacher--An educator who is employed by a school or district and who, not less than an average of four hours each day, teaches in an academic instructional setting or a career and technical instructional setting. This term does not include an educational aide or a full-time administrator.

(9) Clinical teaching--A supervised educator assignment through an educator preparation program at a public school accredited by the Texas Education Agency (TEA) or other school approved by the TEA for this purpose that may lead to completion of a standard certificate; also referred to as student teaching.

(10) Clock-hours--The actual number of hours of coursework or training provided; for purposes of calculating the training and coursework required by this chapter, one semester credit hour at an accredited institution of higher education is equivalent to 15 clock-hours. Clock-hours of field-based experiences, clinical teaching, internship, and practicum are actual hours spent in the required educational activities and experiences.

(11) Contingency admission--Admission as described in §227.15 of this title (relating to Contingency Admission).

(12) Cooperating teacher--For a clinical teacher candidate, an educator who is collaboratively assigned by the educator preparation program (EPP) and campus administrator; who has at least three years of teaching experience; who is an accomplished educator as shown by student learning; who has completed cooperating teacher training by the EPP within three weeks of being assigned to a clinical teacher; who is currently certified in the certification category for the clinical teaching assignment for which the clinical teacher candidate is seeking certification; who guides, assists, and supports the candidate during the candidate's clinical teaching in areas such as planning, classroom management, instruction, assessment, working with parents, obtaining

materials, district policies; and who reports the candidate's progress to that candidate's field supervisor.

(13) Educator preparation program--An entity that must be approved by the State Board for Educator Certification to recommend candidates in one or more educator certification classes.

(14) Entity--The legal entity that is approved to deliver an educator preparation program.

(15) Field-based experiences--Introductory experiences for a classroom teacher certification candidate involving, at the minimum, reflective observation of Early Childhood-Grade 12 students, teachers, and faculty/staff members engaging in educational activities in a school setting.

(16) Field supervisor--A currently certified educator, hired by the educator preparation program, who preferably has advanced credentials, to observe candidates, monitor their performance, and provide constructive feedback to improve their effectiveness as educators. A field supervisor shall have at least three years of experience and current certification in the class in which supervision is provided. A field supervisor shall be an accomplished educator as shown by student learning. A field supervisor with experience as a principal and who holds a current certificate that is appropriate for a principal assignment may supervise principal, classroom teacher, master teacher, and reading specialist candidates. A field supervisor with experience as a superintendent and who holds a current certificate that is appropriate for a superintendent assignment may supervise superintendent, principal, classroom teacher, master teacher, and reading specialist candidates. If an individual is not currently certified, an individual must hold at least a master's degree in the academic area or field related to the certification class for which supervision is being provided and comply with the same number, content, and type of continuing professional education requirements described in §232.11 of this title (relating to Number and Content of Required Continuing Professional Education Hours), §232.13 of this title (relating to Number of Required Continuing Professional Education Hours by Classes of Certificates), and §232.15 of this title (relating to Types of Acceptable Continuing Professional Education Activities). A field supervisor shall not be employed by the same school where the candidate being supervised is completing his or her clinical teaching, internship, or practicum. A mentor, cooperating teacher, or site supervisor, assigned as required by §228.35(e) of this title (relating to Preparation Program Coursework and/or Training), may not also serve as a candidate's field supervisor.

(17) Formal admission--Admission as described in §227.17 of this title (relating to Formal Admission).

(18) Head Start Program--The federal program established under the Head Start Act (42 United States Code, §9801 et seq.) and its subsequent amendments.

(19) Initial certification--The first Texas certificate in a class of certificate issued to an individual based on participation in an approved educator preparation program.

(20) Intern certificate--A type of certificate as specified in §230.36 of this title (relating to Intern Certificates) that is issued to a candidate who has pass all required content certification examinations and is completing initial requirements for certification through an approved educator preparation program.

(21) Internship--A paid supervised classroom teacher assignment for one full school year at a public school accredited by the Texas Education Agency (TEA) or other school approved by the TEA for this purpose that may lead to completion of a standard certificate. An internship is successful when the field supervisor and supervising campus administrator recommend to the EPP that the candidate should be recommended for a standard certificate.

(22) Late hire--An individual who has not been accepted into an educator preparation program before the 45th day before the first day of instruction and who is hired for a teaching assignment by a school after the 45th day before the first day of instruction or after the school's academic year has begun.

(23) Mentor--For an internship candidate, an educator who is collaboratively assigned by the campus administrator and the educator preparation program (EPP); who has at least three years of teaching experience; who is an accomplished educator as shown by student learning; who has completed mentor training by an EPP within three weeks of being assigned to the intern; who is currently certified in the certification category in which the internship candidate is seeking certification; who guides, assists, and supports the candidate during the internship in areas such as planning, classroom management, instruction, assessment, working with parents, obtaining materials, district policies; and who reports the candidate's progress to that candidate's field supervisor.

(24) Pedagogy--The art and science of teaching, incorporating instructional methods that are developed from scientifically-based research.

(25) Post-baccalaureate program--An educator preparation program, delivered by an accredited institution of higher education and approved by the State Board for Educator Certification to recommend candidates for certification, that is designed for individuals who already hold at least a bachelor's degree and are seeking an additional degree.

(26) Practicum--A supervised educator assignment at a public school accredited by the Texas Education Agency (TEA) or other school approved by the TEA for this purpose that is in a school setting in the particular class for which a certificate in a class other than classroom teacher is sought.

(27) Probationary certificate--A type of certificate as specified in §230.37 of this title (relating to Probationary Certificates) that is issued to a candidate who has passed all required certification examinations and is completing requirements for certification through an approved educator preparation program.

(28) School day--If not referring to the school day of a particular public or private school, a school day shall be at least seven hours (420 minutes) each day, including intermissions and recesses.

(29) School year--If not referring to the school year of a particular public or private school, a school year shall provide at least 180 days (75,600 minutes) of instruction for students.

(30) Site supervisor--For a practicum candidate, an educator who has at least three years of experience in the aspect(s) of the certification class being pursued by the candidate; who is collaboratively assigned by the campus or district administrator and the educator preparation program (EPP); who is currently certified in the certification class in which the practicum candidate is seeking certification; who has completed training by the EPP within three weeks of being assigned to a practicum candidate; who is an accomplished educator as shown by student learning; who guides, assists, and supports the candidate during the practicum; and who reports the candidate's progress to the candidate's field supervisor.

(31) Texas Education Agency staff--Staff of the Texas Education Agency assigned by the commissioner of education to perform the State Board for Educator Certification's administrative functions and services.

(32) Texas Essential Knowledge and Skills (TEKS)--The kindergarten-Grade 12 state curriculum in Texas adopted by the State Board of Education and used as the foundation of all state certification examinations.

§228.10. Approval Process.

(a) New entity approval. An entity seeking initial approval to deliver an educator preparation program (EPP) shall submit an application and proposal with evidence indicating the ability to comply with the provisions of this chapter, Chapter 227 of this title (relating to Provisions for Educator Preparation Candidates), Chapter 229 of this title (relating to Accountability System for Educator Preparation Programs), and Chapter 230 of this title (relating to Professional Educator Preparation and Certification). The proposal will be reviewed by the Texas Education Agency (TEA) staff and a pre-approval site visit will be conducted. The TEA staff shall recommend to the State Board for Educator Certification (SBEC) whether the entity should be approved. A post-approval site visit will be conducted after the first year of the EPP's operation.

(1) The proposal shall include the following program approval components:

(A) ownership and governance of the EPP;

(B) criteria for admission to the EPP;

(C) EPP curriculum;

(D) EPP coursework and/or training, including ongoing support during clinical teaching, internship, and practicum experiences;

(E) certification procedures;

(F) assessment and evaluation of candidates for certification and EPP improvement;

(G) professional conduct of EPP staff and candidates;

(H) EPP complaint procedures; and

(I) required submissions of information, surveys, and other accountability data.

(2) The proposal shall also include identification of the classes and categories of certificates proposed to be offered by the entity.

(b) Continuing entity approval. An entity approved by the SBEC under this chapter shall be reviewed at least once every five years; however, a review may be conducted at any time at the discretion of the TEA staff.

(1) At the time of the review, the entity shall submit to the TEA staff a status report regarding its compliance with existing standards and requirements for EPPs. An EPP is responsible for establishing procedures and practices sufficient to ensure the security of information against unauthorized or accidental access, disclosure, modification, destruction, or misuse prior to the expiration of the retention period. Evidence of compliance is described in the figure provided in this paragraph.

Figure: 19 TAC §228.10(b)(1)

(2) Unless specified otherwise, the entity must retain evidence of compliance described in the figure in paragraph (1) of this subsection for a period of five years.

(3) TEA staff shall, at the minimum, use the following risk factors to determine the need for discretionary reviews and the type of five-year reviews:

(A) a history of the program's compliance with state law and board rules, standards, and procedures, with consideration given to:

(i) the seriousness of any violation of a rule, standard, or procedure;

(ii) whether the violation resulted in an action being taken against the program;

(iii) whether the violation was promptly remedied by the program;

(iv) the number of alleged violations; and

(v) any other matter considered to be appropriate in evaluating the program's compliance history;

(B) whether the program meets the accountability standards under Texas Education Code, §21.045; and

(C) whether a program is accredited by other organizations.

(c) Approval of clinical teaching for an alternative certification program. An alternative certification program seeking approval to implement a clinical teaching component shall submit a description of the following elements of the program for approval by the TEA staff on an application in a form developed by the TEA staff that shall include, at a minimum:

(1) general clinical teaching program description, including conditions under which clinical teaching may be implemented;

(2) selection criteria for clinical teachers;

(3) selection criteria for cooperating teachers;

(4) description of support and communication between candidates, cooperating teachers, and the alternative certification program;

(5) description of program supervision; and

(6) description of how candidates are evaluated.

(d) Addition of certificate categories and classes.

(1) An EPP that is rated "accredited," as provided in §229.4 of this title (relating to Determination of Accreditation Status), may request additional certificate categories be approved by TEA staff, by submitting an application in a form developed by the TEA staff that shall include, at a minimum, the curriculum matrix; a description of how the standards for Texas educators are incorporated into the EPP; and documentation showing that the program has the staff knowledge and expertise to support individuals participating in each certification category being requested. The curriculum matrix must include the standards, framework competencies, applicable Texas Essential Knowledge and Skills, course and/or module names, and the benchmarks or assessments used to measure successful program progress.

(2) An EPP rated "accredited " and currently approved to offer a certificate for which the SBEC is changing the grade level of the certificate may request to offer the preapproved category at different grade levels by submitting an application in a form developed by the TEA staff that shall include, at a minimum, a modified curriculum matrix that includes the standards, course and/or module names, and the benchmarks or assessments used to measure successful program progress. The requested additional certificate categories must be within the classes of certificates for which the EPP has been previously approved by the SBEC.

(3) An EPP that is not rated "accredited" may not apply to offer additional certificate categories or classes of certificates.

(4) An EPP that is rated "accredited" may request the addition of a certificate class that has not been previously approved by the SBEC, but must present a full proposal on an application in a form developed by the TEA staff for consideration and approval by the SBEC.

(e) Addition of program locations. An EPP that is rated "accredited," may open additional locations, provided the program informs the SBEC of any additional locations at which the program is providing educator preparation 60 days prior to providing educator preparation at the location. Additional program locations must operate in accordance with the program components under which the program has been approved to operate.

(f) Contingency of approval. Approval of an EPP by the SBEC, including each specific certificate class and category, is contingent upon approval by other lawfully established governing bodies such as the Texas Higher Education Coordinating Board, boards of regents, or school district boards of trustees. Continuing EPP approval is contingent upon compliance with superseding state and federal law.

§228.20. Governance of Educator Preparation Programs.

(a) Preparation for the certification of educators may be delivered by an institution of higher education, regional education service center, public school district, or other entity approved by the State Board for Educator Certification (SBEC) under §228.10 of this title (relating to Approval Process).

(b) The preparation of educators shall be a collaborative effort among public schools accredited by the Texas Education Agency (TEA) and/or TEA-recognized private schools; regional education service centers; institutions of higher education; and/or business and community interests; and shall be delivered in cooperation with public schools accredited by the TEA and/or TEA-recognized private schools. An advisory committee with members representing as many as possible of the groups identified as collaborators in this subsection shall assist in the design, delivery, evaluation, and major policy decisions of the educator preparation program (EPP). The approved EPP shall inform each member of the advisory committee of the roles and responsibilities of the advisory committee and shall meet a minimum of once during each academic year.

(c) The governing body and chief operating officer of an entity approved to deliver educator preparation shall provide sufficient support to enable the EPP to meet all standards set by the SBEC and shall be accountable for the quality of the EPP and the candidates whom the program recommends for certification.

(d) All EPPs must be implemented as approved by the SBEC as specified in §228.10 of this title.

(e) An EPP that is rated "accredited" or "accredited-not rated" may amend its program, provided the program informs TEA staff of any amendments 60 days prior to implementing the amendments. An EPP must submit notification of a proposed amendment to its program on a letter signed by the EPP's legally authorized agent or representative that explains the amendment, details the rationale for changes, and includes documents relevant to the amendment.

(f) An EPP that is not rated "accredited" or "accredited-not rated" may amend its program, provided the program informs TEA staff of any amendments 120 days prior to implementing the amendments. An EPP must submit notification of a proposed amendment on a letter signed by the EPP's legally authorized agent or representative that explains the amendment, details the rationale for changes, and includes documents relevant to the amendment. The EPP will be notified in writing of the approval or denial of its proposal within 60 days following the receipt of the notification by the TEA staff.

(g) Each EPP must develop and implement a calendar of program activities that must include a deadline for accepting candidates into a program cycle to assure adequate time for admission, coursework, training, and field-based experience requirements prior to a clinical teaching or internship experience. If an EPP accepts candidates after the deadline, the EPP must develop and implement a calendar of program activities to assure adequate time for admission, coursework, training, and field-based experience requirements prior to a clinical teaching experience or prior to or during an internship experience.

§228.35. Preparation Program Coursework and/or Training.

(a) Coursework and/or training for candidates seeking initial certification in any certification class.

(1) An educator preparation program (EPP) shall provide coursework and/or training to adequately prepare candidates for educator certification and ensure the educator is effective in the classroom.

(2) Coursework and/or training shall be sustained, rigorous, intensive, interactive, candidate-focused, and performance-based.

(3) All coursework and/or training shall be completed prior to EPP completion and standard certification.

(4) With appropriate documentation such as certificate of attendance, sign-in sheet, or other written school district verification, 50 clock-hours of training may be provided by a school district and/or campus that is an approved TEA continuing professional education provider to a candidate who is considered a late hire. The training provided by the school district and/or campus must meet the criteria described in the Texas Education Code (TEC), §21.451 (Staff Development Requirements) and must be directly related to the certificate being sought.

(5) Each EPP must develop and implement specific criteria and procedures that allow:

(A) military service member or military veteran candidates to credit verified military service, training, or education toward the training, education, work experience, or related requirements (other than certification examinations) for educator certification requirements, provided that the military service, training, or education is directly related to the certificate being sought; and

(B) candidates who are not military service members or military veterans to substitute prior or ongoing service, training, or education, provided that the experience, education, or training is not also counted as a part of the internship, clinical teaching, or practicum requirements, was provided by an approved EPP or an accredited institution of higher education within the past five years, and is directly related to the certificate being sought.

(6) Coursework and training that is offered online must meet, or the EPP must be making progress toward meeting, criteria set for accreditation, quality assurance, and/or compliance with one or more of the following:

(A) Accreditation by the Distance Education Accrediting Commission;

(B) Program Design and Teaching Support Certification by Quality Matters;

(C) Chapter 4, Subchapter P, of this title (relating to Approval of Distance Education Courses and Programs for Public Institutions); or

(D) Chapter 7 of this title (relating to Degree Granting Colleges and Universities Other than Texas Public Institutions).

(b) Coursework and/or training for candidates seeking initial certification in the classroom teacher certification class. An EPP shall provide each candidate with a minimum of 300 clock-hours of coursework and/or training. Unless a candidate qualifies as a late hire, a candidate shall complete the following prior to any clinical teaching or internship:

(1) a minimum of 30 clock-hours of field-based experience. Up to 15 clock-hours of this field-based experience may be provided by use of electronic transmission or other video or technology-based method; and

(2) 150 clock-hours of coursework and/or training that allows candidates to demonstrate proficiency in:

(A) designing clear, well-organized, sequential, engaging, and flexible lessons that reflect best practice, align with standards and related content, are appropriate for diverse learners and encourage higher-order thinking, persistence, and achievement;

(B) formally and informally collecting, analyzing, and using student progress data to inform instruction and make needed lesson adjustments;

(C) ensuring high levels of learning, social-emotional development, and achievement for all students through knowledge of students, proven practices, and differentiated instruction;

(D) clearly and accurately communicating to support persistence, deeper learning, and effective effort;

(E) organizing a safe, accessible, and efficient classroom;

(F) establishing, communicating, and maintaining clear expectations for student behavior;

(G) leading a mutually respectful and collaborative class of actively engaged learners;

(H) meeting expectations for attendance, professional appearance, decorum, procedural, ethical, legal, and statutory responsibilities;

(I) reflect on his or her practice; and

(J) effectively communicating with students, families, colleagues, and community members.

(c) Coursework and/or training for candidates seeking initial certification in a certification class other than classroom teacher. An EPP shall provide coursework and/or training to ensure that the educator is effective in the assignment. An EPP shall provide a candidate with a minimum of 200 clock-hours of coursework and/or training that is directly aligned to the educator standards for the applicable certification class.

(d) Late hire provisions. A late hire for a school district teaching position may begin employment under an intern or probationary certificate before completing the pre-internship requirements of subsection (b) of this section, but shall complete these requirements within 90 school days of assignment.

(e) Educator preparation program delivery. An EPP shall provide evidence of ongoing and relevant field-based experiences throughout the EPP in a variety of educational settings with diverse student populations, including observation, modeling, and demonstration of effective practices to improve student learning.

(1) For initial certification in the classroom teacher certification class, each EPP shall provide field-based experiences, as defined in §228.2 of this title (relating to Definitions), for a minimum of 30 clock-hours. The field-based experiences must be completed prior to assignment in an internship or clinical teaching.

(A) Field-based experiences must include 15 clock-hours in which the candidate, under the direction of the EPP, is actively engaged in instructional or educational activities that include:

(i) authentic school settings in a public school accredited by the Texas Education Agency (TEA) or other school approved by the TEA for this purpose;

(ii) instruction by content certified teachers;

(iii) actual students in classrooms/instructional settings with identity-proof provisions;

(iv) content or grade-level specific classrooms/instructional settings; and

(v) written reflection of the observation.

(B) Up to 15 clock-hours of field-based experience may be provided by use of electronic transmission or other video or technology-based method. Field-based experience provided by use of electronic transmission or other video or technology-based method must include:

(i) direction of the EPP;

(ii) authentic school settings in an accredited public or private school;

(iii) instruction by content certified teachers;

(iv) actual students in classrooms/instructional settings with identity-proof provisions;

(v) content or grade-level specific classrooms/instructional settings; and

(vi) written reflection of the observation.

(2) For initial certification in the classroom teacher certification class, each EPP shall also provide at least one of the following:

(A) clinical teaching for a minimum of 14 weeks (no less than 65 full days), with a full day being 100% of the school day; or

(B) clinical teaching for a minimum of 28 weeks (no less than 130 half days, with a half day being 50% of the school day; or

(C) internship for a minimum of one full school year for the classroom teacher assignment or assignments that match the certification category or categories for which the candidate is prepared by the EPP.

(i) An EPP may permit an internship of up to 30 school days less than the minimum if due to maternity leave, military leave, illness, or late hire date.

(ii) The beginning date for an internship is the first day of instruction with students in the school or district in which the internship takes place.

(iii) An internship assignment shall not be less than an average of four hours each day in the subject area and grade level of certification sought. An EPP may permit an additional internship assignment of less than an average of four hours each day if:

(I) the primary assignment is not less than an average of four hours each day in the subject area and grade level of certification sought;

(II) the EPP is approved to offer preparation in the certification category required for the additional assignment;

(III) the EPP provides ongoing support for each assignment as prescribed in subsection (g) of this section;

(IV) the EPP provides coursework and training for each assignment to adequately prepare the candidate to be effective in the classroom; and

(V) the employing school or district notifies the candidate and the EPP in writing that an assignment of less than four hours will be required.

(iv) A candidate must hold an intern or probationary certificate while participating in an internship. A candidate must meet the requirements and conditions, including the subject matter knowledge requirement, prescribed in §230.36 of this title (relating to Intern Certificates) and §230.37 of this title (relating to Probationary Certificates) to be eligible for an intern or probationary certificate.

(v) An EPP may recommend an additional internship if:

(I) the EPP certifies that the first internship was not successful, the EPP has developed a plan to address any deficiencies identified by the candidate and the candidate's field supervisor, and the EPP implements the plan during the additional internship; or

(II) the EPP certifies that the first internship was successful and that the candidate is making satisfactory progress toward completing the EPP before the end of the additional internship.

(vi) An EPP must provide ongoing support to a candidate as described in subsection (g) of this section for the full term of the initial and any additional internship, unless, prior to the expiration of that term:

(I) a standard certificate is issued to the candidate during any additional internship under a probationary certificate;

(II) the candidate resigns, is non-renewed, or is terminated by the school or district. A candidate must provide the EPP the official notice of resignation or termination within one business day after receipt of the notice from the employing school or district. Within one business day after receipt of the official notice of resignation or termination, an EPP must notify a candidate in writing that the EPP will provide TEA with notice about the resignation or termination and that the intern certificate will be inactivated by the TEA 30 calendar days from the effective date of the resignation or termination. Within one business day after providing the notice to a candidate, an EPP must email the TEA a copy of the notice to the candidate and a copy of the official notice of the resignation or termination;

(III) the candidate is discharged or is released from the EPP. An EPP must notify a candidate in writing that the candidate is being discharged or released, that the EPP will provide the employing school or district with notice of the discharge or release, that the EPP will provide TEA with notice about the resignation or termination, and that the intern certificate will be inactivated by the TEA 30 calendar days from the effective date of the discharge or release. Within one business day after providing a candidate with notice of discharge or release, an EPP must provide written notification to the employing school or district of the withdrawal, discharge, or release. Within one business day of providing notice to the employing school or district, an EPP must email the TEA a copy of the notice of discharge or release and a copy of the notice to the employing school or district; or

(IV) the candidate withdraws from the EPP. A candidate must notify the EPP in writing that the candidate is withdrawing from the EPP. Within one business day after receipt of the withdrawal notice, an EPP must notify a candidate in writing that the EPP will provide the employing school or district with notice of the withdrawal, that the EPP will provide TEA with notice about the withdrawal, and that the intern certificate will be inactivated by the TEA 30 calendar days from the effective date of the withdrawal. Within one business day after providing a candidate with notice of discharge or release, an EPP must provide written notification to the employing school or district of the withdrawal, discharge, or release. Within one business day of providing notice to the employing school or district, an EPP must email the TEA a copy of the notice of withdrawal and a copy of the notice to the employing school or district.

(D) An EPP may request an exception to the clinical teaching option described in this subsection. An exception must include an alternate requirement that will adequately prepare candidates for educator certification and ensure the educator is effective in the classroom. The request for an exception must be submitted in a form developed by the TEA staff which shall include:

(i) the rationale and support for the alternate clinical teaching option;

(ii) a full description and methodology of the alternate clinical teaching option;

(iii) a description of the controls to maintain the delivery of equivalent, quality education; and

(iv) a description of the ongoing monitoring and evaluation process to ensure that EPP objectives are met.

(E) Exception requests will be reviewed by TEA staff, and the TEA staff shall recommend to the State Board for Educator Certification (SBEC) whether the exception should be approved.

(F) Candidates need to experience a full range of professional responsibilities that shall include the start of the school year. The start of the school year is defined as the first 15 instructional days of the school year. If these experiences cannot be provided through clinical teaching, they must be provided through field-based experiences.

(3) An internship or clinical teaching experience for certificates that include early childhood may be completed at a Head Start Program with the following stipulations:

(A) a certified teacher is available as a trained mentor;

(B) the Head Start program is affiliated with the federal Head Start program and approved by the TEA;

(C) the Head Start program teaches three- and four-year-old students; and

(D) the state's prekindergarten curriculum guidelines are being implemented.

(4) An internship or clinical teaching experience must take place in an actual school setting rather than a distance learning lab or virtual school setting.

(5) An internship or clinical teaching experience shall not take place in a setting where the candidate:

(A) has an administrative role over the mentor or cooperating teacher; or

(B) is related to the field supervisor, mentor, or cooperating teacher by blood (consanguinity) within the third degree or by marriage (affinity) within the second degree.

(6) For certification in a class other than classroom teacher, each EPP shall provide a practicum for a minimum of 160 clock-hours whereby a candidate must demonstrate proficiency in each of the educator standards for the certificate class being sought.

(A) A practicum experience must take place in an actual school setting rather than a distance learning lab or virtual school setting.

(B) A practicum shall not take place in a setting where the candidate:

(i) has an administrative role over the site supervisor; or

(ii) is related to the field supervisor or site supervisor by blood (consanguinity) within the third degree or by marriage (affinity) within the second degree.

(C) An intern or probationary certificate may be issued to a candidate for a certification class other than classroom teacher who meets the requirements and conditions, including the subject matter knowledge requirement, prescribed in §230.37 of this title.

(i) A candidate for an intern or probationary certificate in a certification class other than classroom teacher must meet all requirements established by the recommending EPP, which shall be based on the qualifications and requirements for the class of certification sought and the duties to be performed by the holder of a probationary certificate in that class.

(ii) An EPP may recommend an additional practicum under a probationary certificate if:

(I) the EPP certifies that the first practicum was not successful, the EPP has developed a plan to address any deficiencies identified by the candidate and the candidate's field supervisor, and the EPP implements the plan during the additional practicum; or

(II) the EPP certifies that the first practicum was successful and that the candidate is making satisfactory progress toward completing the EPP before the end of the additional practicum.

(D) A practicum is successful when the field supervisor and the site supervisor recommend to the EPP that the candidate should be recommended for a standard certificate.

(7) Subject to all the requirements of this section, the TEA may approve a school that is not a public school accredited by the TEA as a site for field-based experience, internship, clinical teaching, and/or practicum.

(A) All Department of Defense Education Activity (DoDEA) schools, wherever located, and all schools accredited by the Texas Private School Accreditation Commission (TEPSAC) are approved by the TEA for purposes of field-based experience, internship, clinical teaching, and/or practicum.

(B) An EPP may file an application with the TEA for approval, subject to periodic review, of a public school, a private school, or a school system located within any state or territory of the United States, as a site for field-based experience. The application shall be in a form developed by the TEA staff and shall include, at a minimum, evidence showing that the instructional standards of the school or school system align with those of the applicable Texas Essential Knowledge and Skills (TEKS) and SBEC certification standards.

(C) An EPP may file an application with the TEA for approval, subject to periodic review, of a public or private school located within any state or territory of the United States, as a site for an internship, clinical teaching, and/or practicum required by this chapter. The application shall be in a form developed by the TEA staff and shall include, at a minimum:

(i) the accreditation(s) held by the school;

(ii) a crosswalk comparison of the alignment of the instructional standards of the school with those of the applicable TEKS and SBEC certification standards;

(iii) the certification, credentials, and training of the field supervisor(s) who will supervise candidates in the school; and

(iv) the measures that will be taken by the EPP to ensure that the candidate's experience will be equivalent to that of a candidate in a Texas public school accredited by the TEA.

(D) An EPP may file an application with the TEA for approval, subject to periodic review, of a public or private school located outside the United States, as a site for clinical teaching, internship, or practicum required by this chapter. The application shall be in a form developed by the TEA staff and shall include, at a minimum, the same elements required in subparagraph (C) of this paragraph for schools located within any state or territory of the United States, with the addition of a description of the on-site program personnel and program support that will be provided and a description of the school's recognition by the U.S. State Department Office of Overseas Schools.

(f) Mentors, cooperating teachers, and site supervisors. In order to support a new educator and to increase educator retention, an EPP shall collaborate with the campus or district administrator to assign each candidate a mentor during the candidate's internship, assign a cooperating teacher during the candidate's clinical teaching experience, or assign a site supervisor during the candidate's practicum. If an individual who meets the certification category and/or experience criteria for a cooperating teacher, mentor, or site supervisor is not available, the EPP and campus or district administrator shall assign an individual who most closely meets the criteria and document the reason for selecting an individual that does not meet the criteria. The EPP is responsible for providing mentor, cooperating teacher, and/or site supervisor training that relies on scientifically-based research, but the program may allow the training to be provided by a school, district, or regional education service center if properly documented.

(g) Ongoing educator preparation program support for initial certification of teachers. Supervision of each candidate shall be conducted with the structured guidance and regular ongoing support of an experienced educator who has been trained as a field supervisor. Supervision provided on or after September 1, 2017, must be provided by a field supervisor who has completed TEA-approved observation training. The initial contact, which may be made by telephone, email, or other electronic communication, with the assigned candidate must occur within the first three weeks of assignment. For each formal observation, the field supervisor shall participate in an individualized pre-observation conference with the candidate, document educational practices observed; provide written feedback through an individualized, synchronous, and interactive post-observation conference with the candidate; and provide a copy of the written feedback to the candidate's cooperating teacher or mentor. Neither the pre-observation conference nor the post-observation conference need to be onsite. For candidates participating in an internship, the field supervisor shall provide a copy of the written feedback to the candidate's supervising campus administrator. Formal observations by the field supervisor conducted through collaboration with school or district personnel can be used to meet the requirements of this subsection. Informal observations and coaching shall be provided by the field supervisor as appropriate. In a clinical teaching experience, the field supervisor shall collaborate with the candidate and cooperating teacher throughout the clinical teaching experi-

ence. For an internship, the field supervisor shall collaborate with the candidate, mentor, and supervising campus administrator throughout the internship.

(1) Each formal observation must be at least 45 minutes in duration, must be conducted by the field supervisor, and must be on the candidate's site in a face-to-face setting.

(2) An EPP must provide the first formal observation within the first third of all clinical teaching assignments and the first six weeks of all internship assignments.

(3) For an internship under an intern certificate or an additional internship described in subsection (e)(2)(C)(v)(I) of this section, an EPP must provide a minimum of three formal observations during the first half of the internship and a minimum of two formal observations during the last half of the internship.

(4) For a first-year internship under a probationary certificate or an additional internship described in subsection (e)(2)(C)(v)(II) of this section, an EPP must provide a minimum of one formal observation during the first third of the assignment, a minimum of one formal observation during the second third of the assignment, and a minimum of one formal observation during the last third of the assignment.

(5) If an internship under an intern certificate or an additional internship described in subsection (e)(2)(C)(v)(I) of this section involves certification in more than one certification category that cannot be taught concurrently during the same period of the school day, an EPP must provide a minimum of three observations in each assignment. For each assignment, the EPP must provide at least two formal observations during the first half of the internship and one formal observation during the second half of the internship.

(6) For a first-year internship under a probationary certificate or an additional internship described in subsection (e)(2)(C)(v)(II) of this section that involves certification in more than one certification category that cannot be taught concurrently during the same period of the school day, an EPP must provide a minimum of one formal observation in each of the assignments during the first half of the assignment and a minimum of one formal observation in each assignment during the second half of the assignment.

(7) For a 14-week, full-day clinical teaching assignment, an EPP must provide a minimum of one formal observation during the first third of the assignment, a minimum of one formal observation during the second third of the assignment, and a minimum of one formal observation during the last third of the assignment. For an all-level clinical teaching assignment in more than one location, a minimum of two formal observations must be provided during the first half of the assignment and a minimum of one formal observation must be provided during the second half of the assignment.

(8) For a 28-week, half-day clinical teaching assignment, an EPP must provide a minimum of two formal observations during the first half of the assignment and a minimum of two formal observations during the last half of the assignment.

(h) Ongoing educator preparation program support for certification in a certification class other than classroom teacher. Supervision of each candidate shall be conducted with the structured guidance and regular ongoing support of an experienced educator who has been trained as a field supervisor. Supervision provided on or after September 1, 2017, must be provided by a field supervisor who has completed TEA-approved observation training. The initial contact, which may be made by telephone, email, or other electronic communication, with the assigned candidate must occur within the first quarter of the assignment. For each formal observation, the field supervisor shall participate in an individualized pre-observation conference with the candidate; document educational practices observed; provide written feedback through an individualized, synchronous, and interactive post-observation conference with the candidate; and provide a copy of the written feedback to the candidate's site supervisor. Neither the pre-observation conference nor the post-observation conference need to be onsite. Formal observations conducted through collaboration with school or district personnel can be used to meet the requirements of this subsection. Informal observations and coaching shall be provided by the field supervisor as appropriate. The field supervisor shall collaborate with the candidate and site supervisor throughout the practicum experience.

(1) Formal observations must be at least 135 minutes in duration in total throughout the practicum and must be conducted by the field supervisor.

(2) At least one of the formal observations must be on the candidate's site in a face-to-face setting.

(3) If a formal observation is not conducted on the candidate's site in a face-to-face setting, the formal observation may be provided by use of electronic transmission or other video or technology-based method. A formal observation that is not conducted on the candidates' site in a face-to-face setting must include a pre- and post-conference.

(4) An EPP must provide a minimum of one formal observation within the first third of the practicum, one formal observation within the second third of the practicum, and one formal observation within the final third of the practicum.

(i) Exemptions.

(1) Under the TEC, §21.050(c), a candidate who receives a bachelor's degree required for a teaching certificate on the basis of higher education coursework completed while receiving an exemption from tuition and fees under the TEC, §54.363, is exempt from the requirements of this chapter relating to field-based experience, internship, or clinical teaching.

(2) Under the TEC, §21.0487(c)(2)(B), a candidate's employment by a school or district as a Junior Reserve Officer Training Corps instructor before the person was enrolled in an EPP or while the person is enrolled in an EPP is exempt from any clinical teaching, internship, or field-based experience program requirement.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 7, 2016.

TRD-201606372
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Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Effective date: December 27, 2016
Proposal publication date: August 26, 2016
For further information, please call: (512) 475-1497

CHAPTER 229. ACCOUNTABILITY SYSTEM FOR EDUCATOR PREPARATION PROGRAMS

The State Board for Educator Certification (SBEC) adopts amendments to 19 TAC §§229.1-229.9 and repeal of 19 TAC §229.21, concerning the accountability system for ed-

ucator preparation programs (EPPs). The amendments to §§229.1-229.8 and repeal of 19 TAC §229.21 are adopted without changes to the proposed text as published in the August 26, 2016 issue of the *Texas Register* (41 TexReg 6338) and will not be republished. The amendment to §229.9 is adopted with changes to the proposed text as published in the August 26, 2016 issue of the *Texas Register* (41 TexReg 6338). The SBEC rules in 19 TAC Chapter 229 establish the process used for issuing annual accreditation ratings for all EPPs. The adopted amendments to 19 TAC §§229.1-229.9 and repeal of 19 TAC §229.21 include changes as the result of recent legislative changes, SBEC input, stakeholder input, and input received from staff at the Texas Education Agency (TEA).

REASONED JUSTIFICATION. The Texas Education Code (TEC), §21.045, states that the SBEC shall propose rules establishing standards to govern the approval and continuing accountability of all EPPs. At the January 2015 SBEC work session, the SBEC members received three presentations on educator quality as it pertains to EPPs in the state of Texas. The Texas Teaching Commission, the Council for the Accreditation of Educator Preparation, and the National Council on Teacher Quality provided state and national perspectives on educator quality in relation to Texas EPPs. SBEC members provided feedback to TEA staff on those presentations. Specifically, as it relates to 19 TAC Chapter 229, the SBEC requested policy options that focus on raising EPP standards, improving teacher preparation programs, and new and improved ways to train better teachers. The TEA staff also convened three stakeholder meetings in December 2015 and three stakeholder meetings in June 2016 to gather input on the proposed revisions to 19 TAC Chapter 229.

General Provisions and Purpose of Accountability System for Educator Preparation Programs

Language was amended in 19 TAC §229.1(a) to replace *certification field* with *certification class or category* This aligns the language used in 19 TAC Chapters 227, 228, 230, and 233.

Definitions

The definitions of *accredited institution of higher education* and *site supervisor* were added for clarity and alignment between other chapters in the TAC. The definitions of *candidate, clinical teaching, cooperating teacher, educator preparation program, field supervisor, internship,* and *practicum* were amended for clarity and alignment between other chapters in the TAC. The definitions of *completer* and *educator preparation program data* were amended for clarity, the definition of *campus-based mentor* was replaced by *mentor* for clarity and alignment between other chapters in the TAC, and the definitions of *alternative certification program, institutional report,* and *scaled score* were removed because the terms are not referenced in the chapter.

The definition of *certification field* was replaced by *certification category* and *certification class* so that the definitions align with 19 TAC Chapters 227, 228, 230, and 233. The definitions include "also referred to as certification field" so that the common term for categories and classes can continue to be used by TEA staff and EPPs. To align the definitions across all chapters, these adopted changes are made in 19 TAC §229.2 with conforming changes made throughout the chapter.

In accordance with the TEC, §21.045(a)(5), as amended by House Bill (HB) 2205, 84th Texas Legislature, Regular Session, 2015, a definition of *new teacher* was added as the first year of employment as a classroom teacher under a standard certificate after completing an EPP. In accordance with the TEC, §21.0441, as added by HB 2205, 84th Texas Legislature, Regular Session, 2015, a definition of *incoming class* was added.

The definition of *beginning teacher* was amended to clarify that it means a classroom teacher with less than three years of experience and is used for the purpose of implementing the TEC, §21.045(a)(3), in this chapter. The definition of *first-year teacher* was also amended to clarify that it is used for the purpose of implementing the TEC, §21.045(a)(2), in this chapter.

The definition of pass rate was moved to the determination of accreditation status section. In addition, the definitions have been renumbered accordingly.

Required Submissions of Information, Surveys, and Other Data

In accordance with the TEC, §21.045(a)(5), as amended by HB 2205, 84th Texas Legislature, Regular Session, 2015, and the TEC, §21.0441, as added by HB 2205, 84th Texas Legislature, Regular Session, 2015, language in 19 TAC §229.3(a), (e), and (f) was amended and added to clarify who is required to provide data and when the data is required to be submitted. These subsections were also amended to clarify that the data and information required to be provided is set forth in subsections (e) and (f).

In accordance with the TEC, §21.045, as amended by HB 2205, 84th Texas Legislature, Regular Session, 2015, and §21.0452, as amended by HB 2205, 84th Texas Legislature, Regular Session, 2015, the figure in 19 TAC §229.3(f)(1) was replaced to clarify data that is required to be collected and reported.

The collection and reporting of new annual performance report data includes the results of teacher satisfaction surveys; data related to field supervision of candidates completing clinical teaching and internships; the number of teachers employed under standard certificates within one year of completing an EPP; the amount of time required by candidates employed as beginning teachers under probationary certificates to be issued standard certificates; the ratio of field supervisors to candidates completing clinical teaching or an internship; and any other information necessary to assess effectiveness of the program on the basis of teacher retention and success criteria such as the performance of candidates on all examinations approved by an EPP and the percentage of applicants who are admitted to a program.

The collection and reporting of new consumer information data includes for each semester, the average ratio of field supervisors to candidates completing clinical teaching and internships; the percentage of teachers employed under a standard teaching certificate within one year of completing an EPP; and the results of teacher satisfaction surveys.

Determination of Accreditation Status

In accordance with the TEC, §21.045(a), as amended by HB 2205, 84th Texas Legislature, Regular Session, 2015, language in 19 TAC §229.4(a) was amended to include disaggregation of EPP accountability indicators by race. Language in 19 TAC §229.4(a)(4) was amended to include candidates completing clinical teaching in the performance standards related to field supervision. Section 229.4(5) was added to include the teacher satisfaction survey indicator into rule. The performance standard will be set after the teacher satisfaction survey is piloted during the 2016-2017 academic year. Language in 19 TAC §229.4(d) and (e) was also amended to align with the accreditation indicators in subsection (a) and include race as a way to disaggregate EPP candidates.

The current definition of pass rate and the performance standard of 80% on all certification examinations in 19 TAC §229.4(a)(1) continues to be used for accreditation purposes for the 2016-2017 academic year. A new pass rate is used for accreditation purposes after the 2016-2017 academic year. This pass rate includes, for each academic year, the percent of candidates who passed an examination that was approved by the EPP and required for the certification field in which the EPP is preparing or has prepared the candidate within the first two attempts. The amended definition also includes examination attempts that may occur in the academic years while a candidate is enrolled or after a candidate has completed a program. The amended definition creates a higher and more transparent standard for this accreditation indicator.

A separate performance standard was also set for the results of Pedagogy and Professional Responsibilities (PPR) and non-PPR examinations after the 2016-2017 academic year. The performance standard for PPR examinations will use the new pass rate, set at 80% for the 2016-2017 academic year, for reporting purposes only. Beginning with the 2017-2018 academic year, the performance standard will be set at 85% for the 2017-2018 academic year and 90% for the 2018-2019 academic year and beyond. The performance standard for the non-PPR examination will also use the new pass rate, set at 70% for the 2016-2017 academic year, for reporting purposes only. Beginning with the 2017-2018 academic year, the performance standard also increases by 5% until it reaches 90% for the 2020-2021 academic year and beyond. As required by the TEC, §21.045(a)(1), the results of certification examinations are required to be used as part of the accreditation status of an EPP. Separating PPR examination results from non-PPR examination results provides more transparency in the accountability system. Lowering the performance standard below the current standard of 80% and considering 2016-2017 as a reporting year provides EPPs time to evaluate and make changes to their programs before the performance standards are used for accreditation purposes. Incrementally raising the standard by 5% each year is a similar method for raising the performance standard to what the SBEC has done in the past. Raising the performance standard beyond the current standard of 80% to 90% comports with the SBEC's request for policy options that focus on raising EPP standards and improving teacher preparation programs.

Language in 19 TAC §229.4(a)(2) was amended to set a performance standard for the results of a principal survey of first-year teachers. The performance standard was defined as the percentage of first-year teachers who were appraised as sufficiently prepared or well prepared. The performance standard is 70% for the 2016-2017 academic year and used for reporting purposes only. Beginning with the 2017-2018 academic year, the performance standard increases by 5% until it reaches 90% for the 2020-2021 academic year and beyond. The use of first-year teacher performance data is required by the TEC, §21.045(a)(2), and the adopted performance standards are based on the results of SBEC-approved surveys that have been piloted for several years. Incrementally raising the standard by 5% each year is a similar method for raising the performance standard to what the SBEC has done in the past. Raising the performance standard to 90% comports with the SBEC's request for policy options that focus on raising EPP standards and improving teacher preparation programs.

Language in 19 TAC §229.4(a)(4) was amended to set the performance standards for the frequency, duration, and quality of field supervision of clinical teachers and intern teachers. The performance standard for the frequency and duration of field supervision was defined as the percentage of candidates who were observed by their field supervisor according to the requirements described in 19 TAC §228.35. For accreditation purposes, the performance standard for the frequency and duration of field supervision was set at 95% for the 2016-2017 academic year for internship observations. For reporting purposes, the performance standard for the frequency and duration of field supervision was set at 95% for the 2016-2017 academic year for internship and clinical teaching observations. For accreditation purposes, the performance standard for the frequency and duration of field supervision was set at 95% for the 2017-2018 academic year and beyond for internship and clinical teaching observations. The performance standard for the quality of field supervision will be based on an exit survey of candidates when they complete an EPP. The performance standard was defined as the percentage of candidates who rate the field supervision as "frequently" or "always or almost always" providing the required components of structural guidance and ongoing support. The performance standard was set at 85% for the 2016-2017 academic year and used for reporting purposes only. The performance standard increases to 90% for the 2017-2018 academic year and beyond. The use of field supervision data is required by the TEC, §21.045(a)(4), and the adopted performance standards are based on the results of surveys that have been piloted for several years. Incrementally raising the standard by 5% each year is a similar method for raising the performance standard to what the SBEC has done in the past. Raising the performance standard to 90% comports with the SBEC's request for policy options that focus on raising EPP standards and improving teacher preparation programs.

In accordance with the TEC, §21.045(a), as amended by HB 2205, 84th Texas Legislature, Regular Session, 2015, language in 19 TAC §229.4(g) was amended to include disaggregation of EPP accountability indicators by race. Because the TEC, §21.045(a), requires the SBEC to propose rules that disaggregate EPP performance data by race, ethnicity, and gender, current 19 TAC §229.4(g)(2) was removed and 19 TAC §229.4(g)(1) and adopted subsection (g)(2), (3), and (4) were amended to include groups disaggregated by race, ethnicity, and gender if the group contains more than 10 candidates. This is a decrease from the current small group exception of 20, but a small group size of 10 provides more transparency as to how EPPs are preparing candidates of different genders, races, and ethnicities. A small group size of 10 is also used for the kindergarten-Grade 12 accountability system. The small group exception will not be applied to compliance with the frequency and duration of field supervisor observations. Language in adopted subsection (g)(3) and (4) was amended to clarify how two- and three-year cumulated group performance is calculated. Language was amended in 19 TAC §229.4(g) to remove certification field as a disaggregated group for accreditation status determination but retains language in 19 TAC §229.5(c) so that approval to offer a certification class or category may be revoked if performance standards are not met by the EPP for three consecutive years. Language was also amended in adopted subsection (g)(5) to clarify that the SBEC, rather than TEA staff, may modify sanctions assigned to an EPP.

Accreditation Sanctions and Procedures

Language in 19 TAC §229.5(c)-(e) was amended to replace *certification field* with *certification class or category.* This aligns the language used in 19 TAC Chapters 227, 228, 230, and 233. Language in 19 TAC §229.5(d) was amended to set the

2016-2017 academic year as the first year that candidate performance in an individual certification class or category is used for determining whether an EPP has failed to meet performance standards for three consecutive years. This allows EPPs to be held accountable under provisions that are clearer. To provide more consistency and clarity, language was also amended in 19 TAC §229.5(e) to align the small group exception and cumulating rules for individual certification classes and categories with the accreditation status determination rule in 19 TAC §229.4(g).

Continuing Approval

In accordance with the TEC, §21.0443(b), as amended by HB 2205, 84th Texas Legislature, Regular Session, 2015, language in 19 TAC §229.6(a) was amended so that the continuing approval review indicators are congruent with those that are in the program approval process section of 19 TAC Chapter 228. In accordance with the TEC, §21.0443(c), as amended by HB 2205, 84th Texas Legislature, Regular Session, 2015, language was amended in 19 TAC §229.6(b) so that TEA staff makes a recommendation for continuing approval of an EPP and the SBEC makes the final decision for continuing approval of an EPP. In accordance with the TEC, §21.0451(a), as amended by HB 2205, 84th Texas Legislature, Regular Session, 2015, language in 19 TAC §229.6(b) was also amended to add failure to comply with the TEC, Chapter 21, as a reason why TEA staff shall propose a recommendation to the SBEC relating to an EPP's approval to recommend candidates for educator certification.

Informal Review of Texas Education Agency Recommendations

The TEC, §21.0451, as amended by HB 2205, 84th Texas Legislature, Regular Session, 2015, provides for a contested case hearing for an EPP if the SBEC seeks to revoke the EPP's accreditation. Changes to the rule were not necessary to implement this requirement because the rule is already written in such a way to be in compliance with the change in law.

Language was amended in 19 TAC §229.7(a) to replace *certification field* with *certification class or category.* This aligns the language used in 19 TAC Chapters 227, 228, 230, and 233. Language in 19 TAC §229.7(c) was amended to allow the designee of an EPP's chief operating officer to make the request for an informal review. This provides EPPs with flexibility in responding to a proposed recommendation for an order or a change in accreditation status. Clarifying language was added in 19 TAC §229.7(c)(2) so that EPPs have a better understanding of what they are responding to in an informal review request. The adopted change of *shall* to *may* in 19 TAC §229.7(c)(3) provides flexibility for EPPs in their informal review request responses. Cross references to other SBEC rules were also updated.

Contested Cases for Accreditation Revocation

Language was amended in 19 TAC §229.8(a) and (c) to replace *certification field* with *certification class or category.* This aligns the language used in 19 TAC Chapters 227, 228, 230, and 233. In accordance with the Texas Government Code, Chapter 2003, language in 19 TAC §229.8(b) was amended to remove a sentence that allows the provision to prevail in the event that there is a conflict with the rule or practice of the SOAH. Section 229.8(c) was also amended to clarify that the finality of an order from the SBEC is made under the provisions of the Administrative Procedure Act.

Fees for Educator Preparation Program Approval and Accountability

The TEC, §21.041(d), allows the SBEC to propose rules to adopt fees to provide for the administrative cost of approving, renewing the approval of, and appropriately ensuring the accountability of EPPs. Language was amended in 19 TAC §229.9(2) and (3) to clarify that the fees for continuing and discretionary approval reviews are assessed when a site visit is required for a review. These amendments revise the fees to more adequately cover the cost of onsite reviews. Section 229.9(6) was added to establish a fee for reviewing requests for out-of-state and out-of-country school sites for field-based experiences, clinical teaching, internships, and practicums. This fee will adequately cover the administrative cost of these types of reviews. In addition, 19 TAC §229.9(7) was added to establish a fee to adequately cover the costs of administering the accreditation, annual performance, and consumer information requirements for EPPs as required by the TEC, §21.045 and §21.0452. This fee will be collected in the fall of each academic year based on the number of candidates an EPP admitted the prior academic year. The revenue from the fees adequately covers the cost of the personnel, hardware, and contracted services that are required to develop and maintain the internal and external systems needed to collect, analyze, and report data. The fee was set at $55 per admitted candidate for the 2016-2017 and 2017-2018 academic years and $35 per admitted candidate for the 2018-2019 academic year and beyond. TEA staff will provide annual updates to the SBEC on the revenues and expenditures related to this new fee as well as any recommendations to lower or raise the fee to adequately cover costs related to Accountability System for Educator Preparation Programs technology systems.

In response to public comment, language was amended in 19 TAC §229.9(7) to delay the collection of the ASEP technology fee from admitted EPP candidates until March 15, 2017. This delay in implementation allows EPPs to work with their governing boards and chief operating officers to adopt the fee in their own policies. By delaying the implementation of the ASEP technology fee, fees for the 2016-2017 academic year are only collected for candidates who are admitted to an EPP on or after March 15, 2017, through August 31, 2017.

Transitional Provisions

Section §229.21 was repealed because updated transitional provisions have been added to language in 19 TAC §229.4 and §229.5.

SUMMARY OF COMMENTS AND BOARD RESPONSES. The public comment period on the proposal began August 26, 2016, and ended September 26, 2016. The SBEC also provided an opportunity for registered oral and written comments at the October 7, 2016 meeting in accordance with the SBEC board operating policies and procedures. Following is a summary of the public comments received and corresponding board responses regarding the proposed revisions to 19 TAC Chapter 229.

Comment: Raise Your Hand Texas (RYHT) and an individual from The University of Texas at Austin (UT-Austin) commented on proposed Figure: 19 TAC §229.3(f)(1). RYHT and the individual from UT-Austin commented that valuable information collected through this process needs to be provided to decision makers in a way that improves the likelihood it will be used by policymakers, EPPs, prospective teachers, and school districts. RYHT recommended adding a requirement for Texas Education Agency (TEA) staff to publish a performance report for each EPP containing all of the information included in Figure: 19 TAC §229.3(f)(1) and, where possible, comparing this information to the state average and to beginning teachers placed on simi-

larly situated campuses for each indicator. RYHT recommended adding additional short-term information on teacher retention so that one-, three-, and five-year rates are captured. RYHT also recommended including information from the most recent academic year and that the report be available on the TEA website. The individual from UT-Austin recommended comparing the acceptance rate with the completion rate in a way that highlights the variety of candidates who are admitted to and complete an EPP.

Board Response: The SBEC agreed that the accreditation, annual performance, and consumer information data that are required by statute and rule should be accessible on the TEA website so that it can be used by policymakers, EPPs, prospective teachers, and school districts. By December 2016, TEA staff will publish on the TEA website static performance reports for each EPP containing all of the information included in Figure: 19 TAC §229.3(f)(1) and, where applicable, comparing this information to the state average. These published reports will be accompanied by an accountability manual that describes how each performance indicator was calculated. By summer 2017, TEA staff plans to publish on the TEA website dynamic performance reports for each EPP containing all of the information included in Figure: 19 TAC §229.3(f)(1) and, where applicable, comparing this information to the state average.

Comment: RYHT, an individual from Texas State University (TSU), Educate Texas, an individual from UT-Austin, and Commit! commented on the proposed amendment to 19 TAC §229.4(a). RYHT and the individual from UT-Austin commented that the creation of transparent outcomes-based accountability would go a long way toward improving the quality of Texas' teacher workforce. The individual from TSU commented that we must continue to raise our standards because current standards do not ensure adequate teacher quality. Educate Texas and Commit! commented that teacher satisfaction and principal surveys will provide feedback to EPPs that will be used for continual improvement. Commit! recommended that the principal survey be aligned with in-district teacher assessment measures.

Board Response: The SBEC agreed and will work with stakeholders to align the principal and teacher satisfaction surveys with the Texas Teacher Standards, standards that are to be used to inform the training, appraisal, and professional development of teachers.

Comment: Educate Texas and RYHT commented on proposed 19 TAC §229.4(a)(1)(A) - (B). RYHT commented that setting required pass rates for both content and pedagogy examinations and then increasing those expectations over time raises the standards for teacher education in Texas. Educate Texas commented that while the statute requires the use of examination results and there needs to be a way to distinguish quality, these measures may serve as a disincentive to work with teacher candidates that are more likely to face challenges in testing.

Board Response: As the comments relate to setting required pass rates for both content and pedagogy examinations and then increasing those expectations over time, the SBEC agreed.

As the comments relate to this performance standard serving as a disincentive to work with teacher candidates that are more likely to face challenges in testing, the SBEC disagreed. The performance standards were set at a reasonable level. Using 2015-2016 data, the percentage of candidates passing all content certification examinations within two attempts was 90%. The percentage of candidates passing the PPR examination within the first attempt was 93%. By changing the way results of certification examinations are calculated from candidates who have completed an EPP to individuals who have been admitted to an EPP, EPPs can better track the results of their candidates to determine areas that are in need of improvement. TEA staff and the certification examination vendor will also continue to provide support to EPPs and individuals.

Comment: Two individuals from TSU, one individual from the Texas A&M University System (TAMUS), YES Prep Public Schools (YPPS), and Education Career Alternatives Program (ECAP) commented on proposed 19 TAC §229.4(a)(1)(B). The individuals from TSU and ECAP commented that if the performance standard for certification examinations are set at two attempts, programs might not allow students to progress to certification if they fail on the first attempt. One individual from TSU and YPPS commented about the difference between the proposed performance standard for EPPs and the five-time limit for individuals. The other individual from TSU commented that the performance standard may disproportionately affect bilingual education, speech, and social studies candidates and EPPs may lose accreditation if performance standards are not met after three years. The individual from TAMUS commented that without a certain period for reporting scores, it would be more difficult for university-based EPPs to support and stay connected with students. ECAP commented that a large majority of EPPs disagreed with setting the performance standard at two attempts.

Board Response: As the comments relate to programs not allowing candidates to progress to certification if candidates do not pass a certification examination within the first attempt, the SBEC disagreed. EPPs should improve their preparation process so that they are able to meet the performance standards rather than change their preparation process to limit the number of candidates who will need more than one attempt to pass a certification examination.

As the comments relate to the five-time limit for individuals, the SBEC provided the following clarification. The five-time limit was put in place by statute and allows an individual up to five attempts on a certification examination before the individual must request a waiver from the SBEC to attempt a certification examination again. If the performance standard was set at the percentage of candidates who pass a certification examination within five attempts, there would be no meaningful differentiation among EPPs.

As the comment relates to the performance standard disproportionately affecting certain certification fields, the SBEC disagreed. Using 2014-2015 data, the percentage of candidates passing bilingual education, speech, and social studies certification examinations within two attempts was 84%, 75%, and 78%, respectively. Because these are average percentages across all EPPs, many EPPs performed better than the average. In addition, EPPs have several years before the performance standards reach the 75%, 80%, and 85% thresholds so EPPs have time to improve their programs to meet the performance standards.

As the comments relate to the potential loss of accreditation, the SBEC agreed. The purpose of the accountability performance indicators is to determine the annual accreditation status of EPPs. If an EPP is not able to address deficiencies with the support of TEA staff, technical assistance, professional services, and/or the appointment of a monitor, an EPP may be assigned a "Not Accredited-Revoked" rating by the SBEC in as few as two years.

As the comments relate to the period of time for reporting scores, the SBEC disagreed. The Legislative Budget Board already has a performance standard for public universities that measures the percentage of an institution's undergraduate teacher education program graduates who become certified to teach no later than the end of the fiscal year following the year of graduation from the program. This measure is used to provide an indicator of the effectiveness of an undergraduate teacher education program.

As the comments relate to EPPs disagreeing with the performance standard being set at two attempts, the SBEC agreed. Input from a variety of stakeholders was collected throughout the rulemaking process, including EPPs, school districts, and organizations that represent teachers and school districts. While the consensus of EPPs was not to set the standard at two attempts, this opinion was not shared by all stakeholders.

Comment: RYHT and Commit! commented on the proposed amendment to 19 TAC §229.4(a)(3). RYHT commented that student outcomes needed to be incorporated into the EPP accountability system in a timely manner. Commit! commented that the EPP accountability system needs to be updated to provide transparency. Commit! recommended adding outcomes-based accountability that measures teacher effectiveness and student learning. RYHT recommended specifying that a measure of student performance, including an analysis of growth in student performance, for each EPP be published no later than the 2017-2018 school year, using 2016-2017 data, and that the data be used to determine accountability ratings beginning in the 2018-2019 school year, using 2017-2018 data.

Board Response: While the SBEC agreed that student outcomes need to be incorporated into the EPP accountability system in a timely manner, the SBEC also recognized that the proposed rule actions in this chapter are the first steps in a series of changes necessary to ensure the highest level of educator preparation. To support the goal of improving teacher pre-service training, one of the action items that is included in the TEA Strategic Plan for 2017-2021 is to establish and implement a more rigorous teacher preparation and certification process that uses performance metrics and student achievement data to evaluate teacher preparation program effectiveness by August 2018.

Comment: One individual from TAMUS, YPPS, one individual from Dallas Baptist University (DBU), four individuals from TSU, and an individual commented on proposed 19 TAC §229.9(7).The individuals from TSU, YPPS, and another individual commented that the Accountability System for Educator Preparation Programs (ASEP) technology fee would add to the financial burden of students, and two of the individuals from TSU noted that the proposed rule actions provide EPPs with a short timeline to determine how to make the first annual payment. The individual from TAMUS commented that the fee should not be based on the number of admitted candidates because not every admitted candidate becomes certified and that the additional costs administered by the university would not be in the best interest of students. The individual from TAMUS recommended that TEA administer and collect the ASEP technology fee when candidates apply for their standard certificate. The individual from DBU opposed the change because it will be a financial burden on student teachers and universities. YPPS recommended seeking an alternative revenue source.

Board Response: As the comments relate to the ASEP technology fee adding to the financial burden of students, the SBEC disagreed. The cost to implement the ASEP, which includes accreditation, annual performance, and consumer information data, must be adequately covered by an increase in fees. While there would be a small increase to the cost of being admitted to an EPP, applicants, students, graduates, and EPPs would benefit from a fully implemented ASEP.

As the comments relate to the recommendation to add the ASEP technology fee to the cost of the standard certificate or other source, the SBEC disagreed. As part of its report to the 83rd Texas Legislature, Regular Session, 2013, the Sunset Advisory Commission recommended an evaluation of the SBEC fee structure for educator certification and EPPs and that adjustments be made to ensure that the fees in rule more adequately cover costs and are equitable across fee payers. The accountability, performance, and consumer information data would benefit a wide range of individuals because it collects and reports data from the number of EPP applicants to the number of EPP completers who are retained in the profession after five years. Assessing the fee on a larger number of admitted candidates rather than a smaller number of certified candidates would result in a lower fee per individual.

As the comments relate to a short timeline for EPPs to determine how to make the first annual payment, the SBEC agreed and modified language in 19 TAC §229.9(7) to delay the implementation date until March 15, 2017. This delay in implementation would allow EPPs to work with their governing boards and chief operating officers to adopt the fee in their own policies. By delaying the implementation of the ASEP technology fee, fees for the 2016-2017 academic year would only be collected for candidates who are admitted to an EPP on or after March 15, 2017, through August 31, 2017.

Comment: ACT-San Antonio commented on proposed 19 TAC §229.4(a)(1)(B) that would include individuals who completed an EPP in the pass rate for the EPP. ACT-San Antonio commented that it was not clear which examination results would be included in the pass rate.

Board Response: The SBEC provided the following clarification. Only results from examinations that were approved by the EPP and required for initial certification in the class or category for which the individual served his or her clinical teaching, internship, or practicum would be included in the pass rate.

The State Board of Education (SBOE) took no action on the review of the proposed revisions to 19 TAC Chapter 229 at the November 18, 2016 SBOE meeting.

19 TAC §§229.1 - 229.9

STATUTORY AUTHORITY. The amendments are adopted under the Texas Education Code (TEC), §21.041(a), which allows the State Board for Educator Certification (SBEC) to adopt rules as necessary for its own procedures; the TEC, §21.041(b)(1), which states that the SBEC shall propose rules that provide for the regulation of educators and the general administration of TEC, Chapter 21, Subchapter B, in a manner consistent with TEC, Chapter 21, Subchapter B; the TEC, §21.041(d), which allows the SBEC to propose a rule adopting a fee for the approval or renewal of approval of an educator preparation program (EPP), or for the addition of a certificate or field of certification to the scope of a program's approval. A fee imposed may not exceed the amount necessary, as determined by the SBEC, to provide for the administrative cost of approving, renewing the approval of, and appropriately ensuring the accountability of EPPs; the TEC, §21.0441(c) and (d), which requires the SBEC to adopt rules setting certain admission requirements for EPPs;

the TEC, §21.0443, which states that the SBEC shall propose rules to establish standards to govern the approval or renewal of approval of EPPs and certification fields authorized to be offered by an EPP. To be eligible for approval or renewal of approval, an EPP must adequately prepare candidates for educator certification and meet the standards and requirements of the SBEC. The SBEC shall require that each EPP be reviewed for renewal of approval at least every five years. The SBEC shall adopt an evaluation process to be used in reviewing an EPP for renewal of approval; the TEC, §21.045, which states that the board shall propose rules establishing standards to govern the continuing accountability of all EPPs; the TEC, §21.0451, which states that the SBEC shall propose rules for the sanction of EPPs that do not meet accountability standards and shall annually review the accreditation status of each EPP. The costs of technical assistance required under TEC, §21.0451(a)(2)(A), or the costs associated with the appointment of a monitor under TEC, §21.0451(a)(2)(C), shall be paid by the sponsor of the EPP; and the TEC, §21.0452, which states that to assist persons interested in obtaining teaching certification in selecting an EPP and assist school districts in making staffing decisions, the SBEC shall make certain specified information regarding educator programs in this state available to the public through the SBEC's Internet website. These rules are authorized or required by the statutory provisions described above.

CROSS REFERENCE TO STATUTE. The adopted amendments implement the TEC, §§21.041(a), (b)(1), and (d), 21.0441(c) and (d), 21.0443, 21.045, 21.0451, and 21.0452.

§229.9. Fees for Educator Preparation Program Approval and Accountability.

An educator preparation program requesting approval and continuation of accreditation status shall pay the applicable fee from the following list.

(1) New educator preparation program application and approval (nonrefundable)--$9,000.

(2) Five-year continuing approval review visit pursuant to §228.10(b) of this title (relating to Approval Process)--$4,500.

(3) Discretionary continuing approval review visit pursuant to §228.10(b) of this title--$4,500.

(4) Addition of new certification category or addition of clinical teaching--$500.

(5) Addition of each new class of certificate--$1,000.

(6) Applications for out-of-state and out-of-country school sites for field-based experiences, clinical teaching, internships, and practicums--$500.

(7) Accountability System for Educator Preparation Programs technology fee:

(A) on or after March 15, 2017, and before September 1, 2017--$55 per admitted candidate; and

(B) for the 2017-2018 academic year--$55 per admitted candidate; and

(C) for the 2018-2019 academic year and beyond--$35 per admitted candidate.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 7, 2016.

TRD-201606373
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Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Effective date: December 27, 2016
Proposal publication date: August 26, 2016
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19 TAC §229.21

STATUTORY AUTHORITY. The repeal is adopted under the Texas Education Code (TEC), §21.041(a), which allows the State Board for Educator Certification (SBEC) to adopt rules as necessary for its own procedures; the TEC, §21.041(b)(1), which states that the SBEC shall propose rules that provide for the regulation of educators and the general administration of TEC, Chapter 21, Subchapter B, in a manner consistent with TEC, Chapter 21, Subchapter B; the TEC, §21.041(d), which allows the SBEC to propose a rule adopting a fee for the approval or renewal of approval of an educator preparation program (EPP), or for the addition of a certificate or field of certification to the scope of a program's approval. A fee imposed may not exceed the amount necessary, as determined by the SBEC, to provide for the administrative cost of approving, renewing the approval of, and appropriately ensuring the accountability of EPPs; the TEC, §21.0441(c) and (d), which requires the SBEC to adopt rules setting certain admission requirements for EPPs; the TEC, §21.0443, which states that the SBEC shall propose rules to establish standards to govern the approval or renewal of approval of EPPs and certification fields authorized to be offered by an EPP. To be eligible for approval or renewal of approval, an EPP must adequately prepare candidates for educator certification and meet the standards and requirements of the SBEC. The SBEC shall require that each EPP be reviewed for renewal of approval at least every five years. The SBEC shall adopt an evaluation process to be used in reviewing an EPP for renewal of approval; the TEC, §21.045, which states that the board shall propose rules establishing standards to govern the continuing accountability of all EPPs; the TEC, §21.0451, which states that the SBEC shall propose rules for the sanction of EPPs that do not meet accountability standards and shall annually review the accreditation status of each EPP. The costs of technical assistance required under TEC, §21.0451(a)(2)(A), or the costs associated with the appointment of a monitor under TEC, §21.0451(a)(2)(C), shall be paid by the sponsor of the EPP; and the TEC, §21.0452, which states that to assist persons interested in obtaining teaching certification in selecting an EPP and assist school districts in making staffing decisions, the SBEC shall make certain specified information regarding educator programs in this state available to the public through the SBEC's Internet website. These rules are authorized or required by the statutory provisions described above.

CROSS REFERENCE TO STATUTE. The adopted repeal implements the TEC, §§21.041(a), (b)(1), and (d), 21.0441(c) and (d), 21.0443, 21.045, 21.0451, and 21.0452.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 7, 2016.

TRD-201606374
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State Board for Educator Certification
Effective date: December 27, 2016
Proposal publication date: August 26, 2016
For further information, please call: (512) 475-1497

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CHAPTER 230. PROFESSIONAL EDUCATOR PREPARATION AND CERTIFICATION
SUBCHAPTER A. GENERAL PROVISIONS
19 TAC §230.1

The State Board for Educator Certification (SBEC) adopts amendments to 19 TAC §§230.1, 230.11, 230.13, 230.31, 230.33, 230.35, 230.37, 230.41, 230.53, 230.71, 230.73, 230.75, 230.77, 230.79, 230.81, 230.83, 230.91, 230.93, 230.97, 230.101, 230.105, 230.111, and 230.113; new 19 TAC §§230.36, 230.63, 230.65, 230.104, and 230.107; and repeal of 19 TAC §230.15 and §230.39, concerning professional educator preparation and certification. The amendments to §§230.1, 230.11, 230.13, 230.31, 230.33, 230.35, 230.41, 230.53, 230.73, 230.75, 230.77, 230.79, 230.81, 230.83, 230.91, 230.93, 230.97, 230.105, 230.111, and 230.113; new §§230.36, 230.63, 230.65, 230.104, and 230.107; and repeal of §230.15 and §230.39 are adopted without changes to the proposed text as published in the August 26, 2016, issue of the *Texas Register* (41 TexReg 6351) and will not be republished. The amendments to §§230.37, 230.71, and 230.101 are adopted with changes to the proposed text as published in the August 26, 2016, issue of the *Texas Register* (41 TexReg 6351). The SBEC rules in 19 TAC Chapter 230 are currently organized as follows: Subchapter A, General Provisions; Subchapter B, General Certification Requirements; Subchapter D, Types and Classes of Certificates Issued; Subchapter E, Educational Aide Certificate; Subchapter F, Permits; Subchapter G, Certificate Issuance Procedures; and Subchapter H, Texas Educator Certificates Based on Certification and College Credentials from Other States or Territories of the United States. The subchapters provide for rules that establish guidelines and procedures for certification requirements, fees, permits, educational aides, and assignment criteria relating to professional educator preparation and certification. Chapter 230 serves as a foundation for the practices and procedures related to educator preparation and certification. The seven subchapters include key definitions relevant to educator preparation and certification; provide general eligibility, recommendation and issuance requirements for various types of certificates; outline testing requirements for certification; identify certificate application fees; and confirm the overall process for individuals already certified in other states or countries to obtain Texas certification. The adopted amendments to 19 TAC §§230.1, 230.11, 230.13, 230.31, 230.33, 230.35, 230.37, 230.41, 230.53, 230.71, 230.73, 230.75, 230.77, 230.79, 230.81, 230.83, 230.91, 230.93, 230.97, 230.101, 230.105, 230.111, and 230.113; new 19 TAC §§230.36, 230.63, 230.65, 230.104, and 230.107; and repeal of 19 TAC §230.15 and §230.39 result from SBEC board input, stakeholder input, and input received from staff at the Texas Education Agency (TEA).

REASONED JUSTIFICATION. The Texas Education Code (TEC), §21.031, states that the SBEC is established to oversee all aspects of the certification and continuing education of public school educators and to ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state.

At the January 2015 SBEC work session, the SBEC members received three presentations on educator quality as it pertains to educator preparation programs (EPPs) in the state of Texas. The Texas Teaching Commission, the Council for the Accreditation of Educator Preparation, and the National Council on Teacher Quality provided state and national perspectives on educator quality in relation to Texas EPPs. SBEC members provided feedback to TEA staff on those presentations. Specifically, as it related to 19 TAC Chapter 230, the SBEC requested policy options that focused on raising EPP standards, improving teacher preparation programs, and new and improved ways to train better teachers.

TEA staff conducted an SBEC work session on June 9, 2016, to provide the Board with a shared understanding of the preparation process, to discuss current issues related to educator preparation and teacher quality, and to capture SBEC's perspective on preparation so that TEA could provide the desired support in preparation for possible rule changes.

The TEA staff also convened three face-to-face stakeholder meetings in December 2015 and June 2016, to gather input on the proposed revisions to 19 TAC Chapter 230, Professional Educator Preparation and Certification, Subchapter A, General Provisions; Subchapter B, General Certification Requirements; Subchapter D, Types and Classes of Certificates Issued; Subchapter E, Educational Aide Certificate; Subchapter F, Permits; Subchapter G, Certificate Issuance Procedures; and Subchapter H, Texas Educator Certificates Based on Certification and College Credentials from Other States or Territories of the United States. The adopted revisions reflect input received from the SBEC, TEA staff, and TEA staff-convened stakeholder meetings, but also includes additional changes since the draft rule text was shared at the December 2015, April 2016, and June 2016 SBEC meetings.

Following is a description of the adopted revisions.

Subchapter A, General Provisions

The purpose of Subchapter A, General Provisions, is to define key terms that share common meaning across several certification and educator preparation rules within the Texas Administrative Code.

The adopted amendment to 19 TAC §230.1 reflects the addition of terms relevant to general requirements for educator preparation and certification and the removal of terms not applicable to Chapter 230. The goal is to ensure there is common understanding of frequently used terms so that there is accurate and effective communication and alignment throughout the state between EPPs, school districts, educators, candidates for certification, and other stakeholders.

In 19 TAC §230.1, definitions were added for *candidate, certification class, charter school, intern certificate, probationary certificate, standard certificate, teacher,* and *Texas Essential Knowledge and Skills;* removed for *field supervision, high-quality professional development, internship, mentor, State Board for Educator Certification,* and *Texas Education Agency staff;*

and amended for *accredited institution of higher education, certificate, classroom teacher, continuing professional education, educator, educator preparation program, initial certification* and *teacher of record.*

Subchapter B, General Certification Requirements

The purpose of Subchapter B, General Certification Requirements, is to outline general certification requirements applicable to all individuals regardless of the route taken to obtain Texas certification.

Language in 19 TAC §230.11(b)(5)(B) was amended to clarify that the English language proficiency requirement can be satisfied for individuals coming from territories of the United States, if English was the primary language of instruction at the university where the degree was earned. Regardless of their route to Texas certification, all individuals unable to provide a letter from their university confirming the primary language of instruction was English will be required to take and pass the Test of English as a Foreign Language--Internet Based Test (TOEFL-ibt). Subsection (b)(7)(F) was removed since 19 TAC §230.39, Temporary Teacher Certificate, was repealed in Subchapter D.

Language in 19 TAC §230.13(a)(2) and (b)(3) was amended to clarify that standard certificate applications must be completed and recommended by the EPP by the application and issuance deadlines for the certificate.

Section 230.15 was repealed because provisions for the military community are addressed in 19 TAC Chapter 234, Military Service Members, Military Spouses, and Military Veterans, effective August 28, 2016.

Subchapter D, Types and Classes of Certificates Issued

The purpose of Subchapter D, Types and Classes of Certificates Issued, is to identify types and classes of certificates issued in Texas. This subchapter also identifies some of the temporary credentials issued as individuals complete requirements to obtain a five-year Texas standard certificate.

Language in 19 TAC §230.31(a)(2) and (3) was retained to confirm that prior to September 1, 1999, provisional certificates were issued for all classroom teacher subject areas and professional certificates were issued for areas other than classroom teacher; however, both of these certificate types remain valid for life unless suspended, surrendered in lieu of revocation, or revoked by lawful authority as referenced in subsection (b).

To better reflect certification requirements, educational aide was moved from the list of types of classes of certificates in §230.33(b) to the list of types of certificates in §230.31(a)(8). Adopted subsection (d) was added to reflect the change from a five-year validity period to a two-year validity period for the educational aide certificate. TEA staff discussed potential changes to the educational aide certificate with the SBEC during the December 2015, February 2016, and April 2016 meetings. While the SBEC acknowledges the important role of the educational aide and that the certificate should remain in place, the validity period of the certificate was shortened. TEA staff ran data for the 2014-2015 school year that confirmed a total of 227,910 educational aide certificates were issued. Of those, 153,789 certificates were valid for life, while 74,121 educational aide certificates were issued as standard certificates that must currently be renewed every five years. While there were a large number of educational aide certificates issued, employment data from school year 2014-2015 show approximately 53,791 educational aides were actively employed. Of those 53,791 educational aides, only 8,044 (or 18%) had been employed for over two years.

The shortening of the validity period of the educational aide certificate addresses the challenge the TEA faces allocating limited resources to the investigation and prosecution of individuals possessing only educational aide certificates that are either in inactive status and/or are not otherwise being utilized by the individual as a condition of employment by a Texas school district. A significant number of cases involving educational aides (paraprofessionals) accused of wrongdoing result in defaults when filed at the State Office of Administrative Hearings (SOAH). Over the course of five recent SBEC meetings, 65 defaults were issued for educational aides making up 39% of the defaults issued. The investigation and prosecution of defaults require the same or more resources as non-default cases. Shortening the validity period for the educational aide certificate focuses TEA investigative and prosecutorial resources only on those who are actively using the educational aide certificate in a Texas public school.

Adopted new 19 TAC §230.36 establishes a new intern certificate. The concept of the intern certificate was first presented to the SBEC at the April 2016 meeting and was originally intended to replace the probationary certificate. At the time, TEA staff recommended that candidates pass all required examinations (content and pedagogy) for the certification area prior to issuance of the intern certificate to ensure that a teacher of record has demonstrated minimal competence in both pedagogy and content prior to placement in a classroom with only minimal supervision. District and EPP representatives expressed concerns about future plans to increase the testing requirements for issuance of the intern certificate. During the June 2016 SBEC work session and meeting, TEA staff presented a tiered licensure process for certification through an EPP that better reflects the candidate's progress toward full certification and the level of support the candidate receives. This two-tiered licensure structure for EPP candidates included an intern certificate, where prior to issuance, successful completion of all content examinations was required; and a probationary certificate, where prior to issuance, successful completion of all examinations (content and pedagogy) was required. The validity period for the intern certificate will be one year and the validity period for the probationary certificate will be a maximum of two one-year validity periods. Probationary certificates will remain in 19 TAC §230.37.

Section 230.37 currently allows EPP candidates to be placed on a probationary certificate and serve as the teacher of record for up to three years. The amount of time a candidate can serve on a probationary certificate will be limited. Language was amended in adopted subsection (c)(4) to add intern certificates and reduce the total amount of time allowed from three years to two years. The adopted change may impact an EPP's timeline on preparing candidates but better aligns with the SBEC's goals and principles. To ensure that school districts and the TEA are properly notified about candidates serving on an intern or probationary certificate who resign or are terminated from assignments and/or candidates who withdraw or are released from an EPP, EPP notification requirements were removed from this subchapter and moved to Chapter 228.

Adopted subsection (d) establishes testing requirements for issuance of a probationary certificate and includes a transition from testing requirements and options in place prior to September 1, 2017, and testing requirements for issuance of the probationary certificate beginning September 1, 2017. Adopted subsection (d)(2) requires candidates to successfully complete all

examinations currently required for issuance of a standard certificate prior to issuance of the probationary certificate in any subject area (i.e., pedagogy, content, and as applicable, oral, written, or sign communication assessments) beginning September 1, 2017. In addition, the adopted amendment adds a requirement for successful completion of the pedagogy and professional responsibilities examination in addition to the required content examinations and removes the provision in subsection (d)(1) that prior to September 1, 2017, allows individuals to receive the probationary certificate for Grades 7-12 by substituting the required content examination with a minimum number of college hours. The adopted changes to the probationary certificate rules will ensure that individuals have demonstrated minimal competence in both pedagogy and content prior to placement in a classroom as the paid teacher of record with only minimal supervision. The adopted testing requirement to qualify for issuance of a probationary certificate will become effective September 1, 2017. Current subsections (d) - (f) were removed.

Since published as proposed, a technical correction was made to 19 TAC §230.37(d)(1)(B)(i) to confirm that the successful completion of the appropriate pedagogy and professional responsibilities test is not required until September 1, 2017.

The SBEC recognizes the impact of these adopted changes and acknowledges stakeholder feedback on the adopted rule actions and their concerns related to testing requirements prior to issuance of the intern and/or probationary certificate and the potential impact these requirements could have on bilingual certification candidates and certification candidates in other high-need areas. The SBEC carefully considered this issue. The SBEC has continued to focus on the need to ensure that individuals entering classrooms as the teacher of record demonstrate content proficiency to ensure that students have the best opportunity to master academic content. It is particularly critical that students in bilingual or special education classrooms have teachers with the academic knowledge and skills to meet the needs of those students. Although teachers on an intern or probationary certificate will still be receiving training in essential pedagogical skills, the adopted rule action supports the belief that all students deserve teachers who have demonstrated content knowledge. There are processes in place that allow districts to apply for bilingual exceptions to receive some flexibility from the bilingual program requirements. Creating a tiered licensure structure also allows for meaningful differentiation for districts in making hiring decisions and EPPs in supporting their intern or probationary teachers.

Section 230.39, Temporary Teacher Certificates, was repealed due to a lack of district participation for several years and because the TEA no longer issues the Grades 8-12 certificates that aligned with this process.

Language in 19 TAC §230.41, Visiting International Teacher Certificates, was amended in subsection (a) to remove the reference to the agreement since rules in this subsection provide eligibility and certificate issuance requirements. Adopted subsection (e) was added to confirm that issuance of the visiting international certificate does not preclude candidates from completing the credentials review process and being issued a one-year certificate if all requirements are met.

Subchapter E, Educational Aide Certificate

The purpose of Subchapter E, Educational Aide Certificate, is to outline the general requirements for the recommendation, issuance, and renewal of educational aide certificates.

The majority of the rules in this subchapter remain the same. Language was added as adopted 19 TAC §230.53(f) and (g) to confirm that individuals already certified as a classroom teacher will be eligible to serve as an educational aide without obtaining the educational aide certificate unless requested by the employing district and confirm that individuals seeking a higher level of educational aide certificate (i.e., transferring from educational aide I to II or educational aide II to III) will need to complete an online application, pay a fee, and be recommended for the new level of certification by the employing district.

Adopted new 19 TAC §230.63 addresses the adopted change in the validity period for educational aide certificates; provides notification of the adopted change taking effect September 1, 2017; and confirms the elimination of the renewal requirements having to be completed for an expired lower level educational aide certificate when applying and being recommended by the district for a higher level certificate.

Adopted new 19 TAC §230.65 clarifies the new process for reissuance of educational aide certificates by confirming that effective September 1, 2017, all educational aide certificates issued will expire at the end of their validity period and that reissuance of an educational aide certificate will require a new online application, a new recommendation from the employing district, and a new fee paid online. Because holders of educational aide certificates will be required to reapply for new certification each time, a fee reduction for issuance of this certificate will begin September 1, 2017. The adopted fee of $15 every two years is included in the adopted changes to 19 TAC §230.101, Schedule of Fees for Certification Services, in Subchapter G. It is also important to note that all educational aide certificates issued prior to September 1, 2017, will be issued with a five-year validity period, but the certificate will expire at the end of the period and is not subject to renewal. Individuals will be required to reapply for a new educational aide certificate with a two-year validity period. Individuals holding a lifetime educational aide certificate will maintain that certificate.

Subchapter F, Permits

The purpose of Subchapter F, Permits, is to outline the general requirements for the recommendation, issuance, and renewal of emergency permits.

The adopted rule action reflects returning use of emergency permits back to serving as a temporary credential that provides resolution to a "true emergency" and allows an employing district to fill an immediate need for placement of a teacher into the classroom. Language in 19 TAC §230.71, General Provisions, was amended to alert districts of adopted changes in issuance of emergency permits. Adopted subsection (b) was added to indicate that effective with the 2017-2018 school year, emergency permits will be limited to one year of issuance, with no option for renewal. Adopted subsection (c) was added to confirm that the one-year limitation does not apply to the annual reissuance of emergency permits for Junior Reserve Officer Training Corps (JROTC) instructors or renewals of emergency permits for teachers of students with visual impairments. Language in adopted subsection (d)(1) was amended to confirm that the superintendent or his designee must take specific steps to determine an individual's qualifications for placement on an emergency permit. Language in adopted subsection (d)(3) was amended to add "open-enrollment charter school" to expand the type of educational setting where a permit may be initiated for an individual. Language in adopted subsection (h)(3)(A) was amended to include a change from "deficiency plan" to "certification plan" to

better align with EPP terminology. Language in adopted subsection (h)(3)(B) was amended to add "or higher" after the bachelor's degree reference to confirm a higher degree is acceptable and in adopted subsection (i) to add "pertaining to parental notification."

Since published as proposed, language was amended in adopted subsection (j) to confirm that individuals issued an intern or probationary certificate will be allowed to also be placed on an emergency permit for a certificate area that the employing district may need coverage for if that certificate area is not offered through the entity that provided recommendation for the intern or probationary certificate. The change addresses the need for districts and EPPs to have flexibility to work with candidates to ensure eligibility for placement into assignments.

Language in 19 TAC §230.73 was amended in subsection (d) and adopted subsections (e)-(g) to confirm that the 2016-2017 school year will be a transition year and that rules currently in place for emergency permits, including renewal of permits will remain the same. However, in the 2017-2018 school year, the one-year limit will become effective. The only exceptions to the limited use of emergency permits are for the assignments to teach JROTC and to serve as teachers of students with visual impairments. Districts will continue being allowed to apply for new emergency permits every year to allow individuals employed in their district to continue serving in the assigned role of JROTC instructor. Districts will also be allowed a maximum of two renewals on emergency permits for assignments to teach students with visual impairments. TEC, §21.0485, requires individuals pursuing the Visually Impaired (VI) Supplemental Certificate to complete an EPP and does not allow them to earn this certificate through the certification by examination route. Individuals assigned to teach students with visual impairments on a permit are already certified educators who must complete requirements through an approved EPP to qualify for issuance of the VI Supplemental Certificate. Teachers of students with visual impairments often serve in itinerant positions that go where the students are at their local school in a district or as part of a cooperative for more rural areas of Texas. These teachers also receive additional support from the Texas School for the Blind and Visually Impaired's statewide mentoring program. Because the statute does not allow individuals to earn certification solely by test passage and due to the specialized and intensive nature of the training requirements for individuals seeking this certificate, the adopted rule action reflects additional time under the emergency permit for teachers of students with visual impairments. This will allow districts to maintain qualified staff in this specialized area without causing a disruption to the population of students being served.

Language in 19 TAC §230.75(1)(A) was amended to incorporate associate's degree or more advanced degree reference into the rule text to align with health science certification requirements.

Language in 19 TAC §230.77(c)(1)(B) was amended to increase the semester credit hour requirement from six to twelve in the subject to be taught. Also, changes to subsection (c)(2)(A) will match the increase in semester credit hours in subsection (c)(1)(B). Adopted subsection (c)(2)(C) incorporates stakeholder feedback to prohibit approval of a temporary classroom assignment permit for an individual teaching more than four class periods with fewer than six semester credit hours in the specific subject area to be taught. Language in subsections (d)-(g) was amended to incorporate minor edits to update certificate names, align semester credit hour requirements or licensure and experience requirements for certain certificates (e.g., career and technical education areas), and clarify degree requirements.

Language in 19 TAC §230.79(a)(1) and (b)(1) was amended to clarify application for the emergency permit is an online process. The adopted rule action also reflects changing "deficiency plan" to "certification plan" in subsections (a)(2)(A) and (b)(4) to better align with EPP terminology. Clarifying language specific to career and technical education assignments based on skill and experience was added in subsection (b)(2) and adopted paragraph (3).

Language was amended in 19 TAC §230.81(2) to confirm emergency permits are limited to one year in an assignment, and language in paragraph (3)(B) was amended to reflect a change in semester credit hour requirements needed for one renewal. Because the adopted change in the emergency permit validity period is not effective until the 2017-2018 school year, retaining the renewal provisions in rule will provide districts with guidance until the new emergency permit rules are effective.

Section 230.83(b)(3) was removed since there are very few district requests for nonrenewable permits related to candidates from other states who held the one-year certificate and did not pass the pedagogy and professional responsibilities (PPR) test during the validity period of their one-year certificate. The SBEC is cognizant of concerns expressed by stakeholders that the requirements for placement on emergency permits has been more rigorous for certified educators versus non-certified individuals. Attempts have been made to address this discrepancy by revising the emergency permit rule to treat both populations more fairly while maintaining a balance of meeting needs at the local level and still ensuring the placement of qualified individuals in every classroom.

Subchapter G, Certificate Issuance Procedures

The purpose of Subchapter G, Certificate Issuance Procedures, is to identify the general procedures for issuance of certificates, to confirm the roles of EPPs in the recommendation of their candidates for certification, to highlight the process for dating and issuing certificates and permits, to establish in rule the fees for various certification services, to outline the process for submitting fees for correction of a certificate or permit issued in error, and to identify requirements for issuance of additional certificates based on examination only.

The majority of the rules in this subchapter will remain the same; however, language was amended in 19 TAC §230.91(a)(1) to confirm that the virtual certificate is considered to be the official record of educator certification in Texas. This online certificate is available on the TEA website and satisfies the TEC, §21.053(a). The reference to the SBEC board chair signature was removed since TEA stopped printing and mailing paper certificates in January 2011.

Language was amended in 19 TAC §230.93, Candidates of Approved Educator Preparation Programs, to confirm that an EPP is responsible for recommending candidates for certification by the deadlines for issuance of the certificate. Language was amended in 19 TAC §230.97(c) to confirm that a fee is required to change the effective date for a certificate or permit.

Adopted fee changes in 19 TAC §230.101, Schedule of Fees for Certification Services, will support necessary online system updates to implement the adopted rule changes and cover TEA's administrative costs. Language was amended in subsec-

tion (a)(1) to confirm the fee reduction from $30 to $15 for the educational aide certificate, effective September 1, 2017, and in subsection (a)(3) to add the intern certificate to the line item and adopt a fee increase from $50 to $75 for issuance of the probationary or intern certificate. In subsection (a)(6), changing "temporary credential" to "one-year certificate" better reflects what is issued and aligns rule text with wording in Subchapter D, Types and Classes of Certificates Issued. In subsection (a)(8), the adopted amendment increases the national criminal history check processing fee from $6 to $10 to better cover TEA's administrative costs and, in adopted subsection (a)(9), add a fee for reviewing superintendent applications for the substitution of managerial experience for the principal certification requirements. The SBEC's approval of this fee allows TEA staff to begin the timely review of anticipated requests from individuals to utilize the new process recently established in rule to allow flexibility in obtaining the Superintendent Certificate in accordance to rules outlined in 19 TAC Chapter 242, Superintendent Certificate. The fee references in adopted subsections (a)(10) and (11) will not apply to educational aide certificates effective September 1, 2017; however, the current fees will be in place until they are no longer applicable to the certification process for educational aides. Language in adopted subsection (a)(18) was amended to increase the Visiting International Teacher certificate from $50 to $75 to better cover TEA's administrative costs.

Since published as proposed, language was added in 19 TAC §230.101(a)(8) that better differentiates between the portion of the fee that the TEA receives to review criminal histories and the portion of the fee that goes to the Texas Department of Public Safety for the scanning and processing of fingerprints.

Adopted new 19 TAC §230.104, Correcting a Certificate or Permit Issued in Error, confirms in rule the need for payment by an EPP or district to correct a certificate or permit issued in error based on information submitted by the EPP or district. TEA does not charge a fee to individuals, EPPs, or districts, if TEA staff was responsible for the incorrect issuance of a certificate or permit.

Section 230.105(2) was removed to allow marketing, health science, and trade and industrial education to the list of certificates eligible to be added under the provision of additional certification by examination. However, because there are legislative requirements that must be met for issuance of the health science certificate, as well as licensure and work experience requirements needed for the trade and industrial education certificate, TEA staff has aligned the test approval process for health science and trade and industrial education to the process already in place for marketing certification through additional certification by examination. Like marketing, candidates seeking the health science and/or trade and industrial education certificate through this route will need to have licensure and wage-earning experience verified through a school district or approved EPP before test approval can be granted.

And finally, adopted new 19 TAC §230.107 places into rule a process that allows individuals to relinquish a Texas certificate if they no longer wish to have the credential listed as part of their official record of certification. Over the years, educators have requested to relinquish one or more of their approved educator certifications. There is no current rule that addresses this type of request from an educator. Language in this section will allow an individual to relinquish the certificate, but also emphasizes that once it is relinquished, it cannot be added back to the official certificate record without the individual completing the requirements for issuance of the certificate (i.e., retaking the applicable test, completing EPP requirements as applicable, reapplying and paying the fee for certificate issuance).

Subchapter H, Texas Educator Certificates Based on Certification and College Credentials from Other States and Territories of the United States

The purpose of Subchapter H, Texas Educator Certificates Based on Certification and College Credentials from Other States and Territories of the United States, is to outline the process for individuals already certified to teach in other states to obtain Texas certification. This subchapter also explains the legislatively mandated comparable tests process that eliminates some of the Texas certification testing requirements for educators already certified to teach in other states.

The majority of the rules in this subchapter will remain the same, but a few minor changes were made. Language in 19 TAC §230.111(a) was amended to add the word "acceptable" to further describe the certificate or credential that can be submitted for the Texas review of credentials process. Language was amended in subsection (c) to resolve grammatical issues and clarify that examination and/or certificate renewal requirements pending in another state will not impact an individual's ability to complete the Texas review of credentials process if he or she has met all other requirements for certification in the other state. Language in subsection (d) was amended to confirm that a letter from another state department of education responsible for issuance of certification or licensure can be accepted in place of a copy of the actual certificate for purposes of the TEA's review of credentials process. Language was amended in subsection (e) to confirm that the Texas credentials review process can only be completed based on the areas and grade levels of certification included on the certificate issued by another state department of education.

Section 230.113(e) was removed to align with deletion of similar text in the nonrenewable permit section of this chapter. Language in adopted subsection (e) was amended to confirm that individuals must establish a base classroom teaching certificate before they can add a supplemental certification area to their Texas certificate record. After much consideration and discussion, along with stakeholder input, it was determined that it is important to leave territories of the United States in place as part of this subchapter's title, and any concerns regarding English language proficiency for individuals can be addressed directly with the individuals pursuing certification. The general certification requirements outlined in Subchapter B apply to all individuals seeking certification, regardless of the path taken to obtain Texas certification. For this reason, if an individual from a territory of the United States cannot provide proof that English was the primary language of instruction at the university where the bachelor's degree or higher was earned, that individual will be required to take and pass the oral proficiency test approved by the SBEC before a certificate could be issued.

SUMMARY OF COMMENTS AND BOARD RESPONSES. The public comment period on the proposal began August 26, 2016, and ended September 26, 2016. The SBEC also provided an opportunity for registered oral and written comments at the October 7, 2016, meeting in accordance with the SBEC board operating policies and procedures. Following is a summary of the public comments received and corresponding board responses regarding the proposed revisions to 19 TAC Chapter 230, Subchapters A, B, and D - H.

Comment: Pilot Point ISD stated this new rule requiring successful completion of examinations for issuance of certificates will make it harder to recruit teachers. With a bilingual program just being started in the district, the commenter also expressed concerns about limited test administration dates for Bilingual Target Language Proficiency Test (BTLPT) and English Language Arts and Reading, Grades 7-12. Lastly, the commenter suggested no changes to current rule, which met the NCLB requirement that secondary teachers could have 24 semester hours in the subject and 12 of the 24 semester hours being at the junior/senior level.

Board Response: The SBEC disagreed with the commenter regarding limited test administration dates. The BTLPT and the English Language Arts and Reading, Grades 7-12 tests are both administered six times a year. The SBEC acknowledged the district's concerns regarding starting a bilingual program; however, the district has the option to apply for a bilingual waiver as it strengthens the new bilingual program. The SBEC also disagreed with the commenter's suggestion to retain the 24/12 semester credit hours provision for secondary teachers. The SBEC determined it is appropriate to request demonstration of content knowledge through successful completion of the certification test(s) prior to entry into the classroom.

Comment: An individual from Liberty-Eylau ISD acknowledged the importance of improving the quality and preparedness of candidates entering the profession and of retaining more prepared teachers; but stated the school district still battles a shortage of appropriately certified applicants every hiring season. The commenter believes that increasing the rigor of the certification tests, requiring the tests be passed upfront, and reducing the length of allowable time for a probationary certificate from up to three years to two years further narrows the field of scarce candidates. The commenter also expressed concern that the proposed changes to increase the required semester credit hours for emergency permits and the more stringent requirements for math and science credits for Temporary Classroom Assignment Permits (TCAPs) could significantly increase the hardship on districts since they are working with extremely limited choices of applicants.

Board Response: The SBEC agreed with the commenter about improving the quality and preparedness of candidates entering the profession. The SBEC also agreed that increased requirements for issuance of probationary certificates and approval of emergency permits and/or TCAPs could narrow the field of candidates eligible for certification; but determined it is appropriate to raise standards for permit and certificate issuance because students in every classroom deserve the best qualified teachers. The SBEC disagreed with the commenter's suggestion to retain the 24/12 semester credit hours provision for secondary teachers and maintained it is appropriate to request demonstration of content knowledge through successful completion of the certification test(s) prior to entry into the classroom.

Comment: Texas Teachers asked for clarification on whether, under the old and new law, candidates currently serving in their first or second year of a probationary certificate will be permitted to be issued an intern certificate after September 1, 2017, to serve the third year on an internship.

Board Response: The SBEC agreed there will still be options for intern and/or probationary certificates to be issued to eligible candidates after September 1, 2017. TEA staff confirms three years is still the maximum amount of time an individual can be placed in a classroom assignment on a credential that is not a standard certificate. The references to the limit on preliminary certifications and permits are included in 19 TAC §230.36(c)(4) and §230.37(c)(4).

Comment: Education Career Alternatives Program, Ltd., stated that creation of a tiered certificate system will complicate certification tracking for personnel departments. The commenter also stated that the proposal will dictate that an individual pass ALL content tests (including supplemental tests) to be eligible for an initial certificate and that despite a degree in the content, an individual will have to pass the content test before applying for teaching positions. The commenter added, if hired as long-term substitutes, they will not be supported by an EPP.

Board Response: The SBEC disagreed with the commenter's statement that creation of a tiered certificate system will complicate certification tracking for personnel departments. The SBEC maintained that having an Intern Certificate and a Probationary Certificate will better identify a candidate's level of preparation and confirm content and/or pedagogy mastery prior to classroom entry.

Comment: iteachTEXAS commented that it does not believe a tiered system of educator preparation is needed. The commenter recommends that the time length, training and testing requirements, and the names of the Intern Certificate and Probationary Certificate be reversed, both for clarity and accuracy to reflect how the educator training process works. The commenter also suggested one technical correction to 19 TAC §230.37(d)(1)(B) to strike text that references passing the appropriate PPR test since that testing requirement is not effective prior to September 1, 2017.

Board Response: The SBEC disagreed with the commenter's position about a tiered licensure system for preparation and certification. The SBEC maintained that having an Intern Certificate and a Probationary Certificate will better identify a candidate's level of preparation and confirm content and/or pedagogy mastery prior to classroom entry. The SBEC disagreed with reversing the names and validity periods of the two certificates. The intern status is appropriate for the first year as the candidate is still making progress toward his or her full mastery of the content and pedagogy. The probationary status is appropriate for the second year because all required certification examinations have been successfully completed and a full year of direct responsibility for content and pedagogy has been completed. The SBEC agreed with the technical correction mentioned by the commenter and modified language in 19 TAC §230.37(d)(1)(B).

Comment: An individual from Killeen ISD stated that allowing teachers to voluntarily relinquish a Texas teaching certificate puts districts at a disadvantage. The commenter mentioned a teacher assigned to teach in a certified area can subsequently decide they do not want to teach the subject and can request to have the certificate area removed. The commenter suggested that if this rule is put into effect, the educator should be required to provide notice to the current school district and any school district for which the educator has accepted employment, but has not yet begun the assignment. The commenter added that the educator should notify TEA of his or her employing district and that TEA should, in turn, contact the district to determine current teaching assignments. The commenter stated that districts need immediate notification of educators who voluntarily relinquish their certificates.

Board Response: The SBEC agreed that districts could be placed at a disadvantage if the process to voluntarily relinquish a Texas certificate is not implemented correctly. The SBEC

determined the credential belongs to the educator and that the revisions to 19 TAC Chapter 230 would formalize an educator's right to return the certificate area(s) that he or she is no longer interested in maintaining as part of his or her official record of certification. The SBEC agreed that an individual should not be allowed to relinquish a certificate during an active assignment, but should be allowed to voluntarily relinquish certification at the end of a school year or while not currently employed in the specific certification area. The SBEC also determined that the process established should require written confirmation of the individual's decision to voluntarily relinquish the certificate and an understanding that he or she would be required to meet requirements for certification again if interested in reinstating the certificate area on his or her official record.

Comment: An individual from Texas State University requested that the implementation date be pushed back given the magnitude of the changes to 19 TAC Chapters 228, 229, and 230. The commenter added that implementation of the new rules mid-semester would be very chaotic and inconsistent. The commenter stated that universities need time to align catalogs, websites, degree audits, and policy and procedure statements with the new rules. The commenter suggested July or August 2017, the end of the academic year, as a more feasible effective date to allow time for EPPs to develop a robust infrastructure to support the new rules and to communicate changes to teacher candidates, advisors, and faculty.

Board Response: The SBEC disagreed with the commenter's position on the timing of the rule changes, but acknowledged the concerns expressed about the impact on educator preparation programs, certification candidates, school districts, parents, the agency, and a host of other stakeholders. The SBEC determined that this is the appropriate time to raise standards and increase everyone's level of accountability in ensuring every child has the best qualified classroom teacher.

Comment: Raise Your Hand Texas (RYHT) commented in support of the creation of an intern certificate with clearly articulated requirements for coursework and content knowledge, which will strengthen the preparation new teachers receive prior to entering the classroom. The commenter also stated that teachers represent the largest investment of educational dollars in the public school system and that producing a well-prepared teacher workforce is the most effective way Texas can ensure better educational outcomes for all students.

Board Response: The SBEC agreed that the rules would begin to further strengthen requirements for preparation, testing, certification, and accountability for licensure.

Comment: Educate Texas commented that the proposal in Chapter 230 would give educator preparation programs an opportunity to focus training and mentor support differently in year one and year two in a manner that builds skills upon skills for the teacher. The commenter added that a tiered system creates a more dynamic and thoughtful approach for the iterative and layered support that programs can provide teachers, as these layers of support have the potential to create foundations in teachers that may increase their effectiveness over time. The commenter expressed the enormous need as a state to prepare sufficient numbers of teachers for the state's continuously growing student population. The commenter added that regardless of the quantity of teachers needed, the quality of the preparation and support given to teachers cannot be compromised.

Board Response: The SBEC agreed that the rules would begin to further strengthen requirements for preparation, testing, certification, and accountability for licensure.

Comment: An individual from YES Prep Public Schools commented that the fee increase for Probationary and Intern Certificates will impact alternative certification candidates because they do not get their first paychecks until September.

Board Response: The SBEC disagreed. Because the fee increase from $52 to $77 is not effective until September 1, 2017, there is sufficient time for alternative certification program candidates to plan accordingly for payment of online application fees necessary for issuance of the credential.

The State Board of Education (SBOE) took no action on the review of the proposed amendments to 19 TAC §§230.1, 230.11, 230.13, 230.31, 230.33, 230.35, 230.37, 230.41, 230.53, 230.71, 230.73, 230.75, 230.77, 230.79, 230.81, 230.83, 230.91, 230.93, 230.97, 230.101, 230.105, 230.111, and 230.113; new 19 TAC §§230.36, 230.63, 230.65, 230.104, and 230.107; and repeal of 19 TAC §230.15 and §230.39 at the November 18, 2016, SBOE meeting.

STATUTORY AUTHORITY. The amendment is adopted under the Texas Education Code (TEC), §21.041(b)(1), which requires the State Board for Educator Certification (SBEC) to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; the TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; the TEC, §21.044(a), which requires the SBEC to propose rules establishing training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program; the TEC, §21.048(a), which requires the SBEC to propose rules prescribing comprehensive examinations for each class of certificate issued by the SBEC; the TEC, §21.050(a), which states that a person who applies for a teaching certificate for which SBEC rules require a bachelor's degree must possess a bachelor's degree received with an academic major or interdisciplinary academic major, including reading, other than education, that is related to the curriculum as prescribed under TEC, Chapter 28, Subchapter A; and the TEC, §22.082, which states that the SBEC shall subscribe to the criminal history clearinghouse as provided by the Texas Government Code, §411.0845, and may obtain from any law enforcement or criminal justice agency all criminal history record information and all records contained in any closed criminal investigation file that relate to a specific applicant for or holder of a certificate issued under the TEC, Chapter 21, Subchapter B. These rules are authorized or required by the statutory provisions described above.

CROSS REFERENCE TO STATUTE. The adopted amendment implements the TEC, §§21.041(b)(1) and (2) and (4), 21.044(a), 21.048, 21.050, and 22.082.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 7, 2016.

TRD-201606375
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Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Effective date: December 27, 2016
Proposal publication date: August 26, 2016
For further information, please call: (512) 475-1497

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SUBCHAPTER B. GENERAL CERTIFICATION REQUIREMENTS

19 TAC §230.11, §230.13

STATUTORY AUTHORITY. The amendments are adopted under the Texas Education Code (TEC), §21.041(b)(2), which requires the State Board for Educator Certification (SBEC) to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; the TEC, §21.044(a), which requires the SBEC to propose rules establishing training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program; the TEC, §21.048(a), which requires the SBEC to propose rules prescribing comprehensive examinations for each class of certificate issued by the SBEC; the TEC, §21.050(a), which states that a person who applies for a teaching certificate for which SBEC rules require a bachelor's degree must possess a bachelor's degree received with an academic major or interdisciplinary academic major, including reading, other than education, that is related to the curriculum as prescribed under TEC, Chapter 28, Subchapter A; and the TEC, §22.082, which states that the SBEC shall subscribe to the criminal history clearinghouse as provided by the Texas Government Code, §411.0845, and may obtain from any law enforcement or criminal justice agency all criminal history record information and all records contained in any closed criminal investigation file that relate to a specific applicant for or holder of a certificate issued under the TEC, Chapter 21, Subchapter B. These rules are authorized or required by the statutory provisions described above.

CROSS REFERENCE TO STATUTE. The adopted amendments implement the TEC, §§21.041(b)(2) and (4), 21.044(a), 21.048, 21.050, and 22.082.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 7, 2016.

TRD-201606376
Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Effective date: December 27, 2016
Proposal publication date: August 26, 2016
For further information, please call: (512) 475-1497

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19 TAC §230.15

STATUTORY AUTHORITY. The repeal is adopted under the Texas Education Code (TEC), §21.041(b)(2), which requires the State Board for Educator Certification (SBEC) to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; the TEC, §21.044(a), which requires the SBEC to propose rules establishing training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program; the TEC, §21.048(a), which requires the SBEC to propose rules prescribing comprehensive examinations for each class of certificate issued by the SBEC; the TEC, §21.050(a), which states that a person who applies for a teaching certificate for which SBEC rules require a bachelor's degree must possess a bachelor's degree received with an academic major or interdisciplinary academic major, including reading, other than education, that is related to the curriculum as prescribed under TEC, Chapter 28, Subchapter A; and the TEC, §22.082, which states that the SBEC shall subscribe to the criminal history clearinghouse as provided by the Texas Government Code, §411.0845, and may obtain from any law enforcement or criminal justice agency all criminal history record information and all records contained in any closed criminal investigation file that relate to a specific applicant for or holder of a certificate issued under the TEC, Chapter 21, Subchapter B. These rules are authorized or required by the statutory provisions described above.

CROSS REFERENCE TO STATUTE. The adopted repeal implements the TEC, §§21.041(b)(2) and (4), 21.044(a), 21.048, 21.050, and 22.082.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 7, 2016.

TRD-201606377
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Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Effective date: December 27, 2016
Proposal publication date: August 26, 2016
For further information, please call: (512) 475-1497

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SUBCHAPTER D. TYPES AND CLASSES OF CERTIFICATES ISSUED

19 TAC §§230.31, 230.33, 230.35 - 230.37, 230.41

STATUTORY AUTHORITY. The amendments and new section are adopted under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; the TEC, §21.031(a), which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; the TEC, §21.031(b), which

states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; the TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; the TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the TEC, §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; the TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; the TEC, §21.041(b)(5), which requires the SBEC to propose rules that provide for the issuance of an educator certificate to a person who holds a similar certificate issued by another state or foreign country, subject to the TEC, §21.052; the TEC, §21.041(b)(9), which requires the SBEC to propose rules that provide for continuing education requirements; the TEC, §21.051, which provides a requirement that before a school may employ a certification candidate as a teacher of record, the candidate must have completed at least 15 hours of field-based experience in which the candidate was actively engaged at an approved school in instructional or educational activities under supervision; the TEC, §22.0831(c), which provides that the SBEC shall review the national criminal history record information of all applicants for or holders of educator certification; and the TEC, §22.0831(f), which authorizes the SBEC to propose rules to implement the national criminal history record information review of certified educators. These rules are authorized or required by the statutory provisions described above.

CROSS REFERENCE TO STATUTE. The adopted amendments and new section implement the TEC, §§21.003(a), 21.031, 21.041(b)(1)-(5) and (9), 21.051, and 22.0831(c) and(f).

§230.37. Probationary Certificates.

(a) General provisions.

(1) Certificate classes. A probationary certificate may be issued for any class of certificate except educational aide.

(2) Requirement to hold a probationary certificate. A candidate seeking certification as an educator must hold a probationary certificate while participating in an internship through an approved educator preparation program (EPP).

(b) Requirements for issuance. A probationary certificate may be issued to a candidate seeking certification as an educator who meets the conditions and requirements prescribed in this subsection.

(1) Bachelor's degree. Except as otherwise provided in rules of the State Board for Educator Certification related to certain career and technical education certificates based on skill and experience, the candidate must hold a bachelor's degree or higher from an accredited institution of higher education. An individual who has earned a degree outside the United States must provide an original, detailed report or course-by-course evaluation of all college-level credits prepared by a foreign credential evaluation service recognized by the Texas Education Agency (TEA). The evaluation must verify that the individual holds, at a minimum, the equivalent of a bachelor's degree issued by an accredited institution of higher education in the United States.

(2) General certification requirements. The candidate must meet the general certification requirements prescribed in §230.11 of this title (relating to General Requirements).

(3) Fee. The candidate must pay the fee prescribed in §230.101 of this title (relating to Schedule of Fees for Certification Services).

(4) Fingerprints. The candidate must submit fingerprints in accordance with §232.35(c) of this title (relating to Submission of Required Information) and the Texas Education Code (TEC), §22.0831.

(c) Conditions. The validity and effectiveness of a probationary certificate is subject to the following conditions.

(1) Internship. The holder of a probationary certificate must be a participant in good standing of an approved Texas EPP, serving in an acceptable, paid internship supervised by the EPP.

(2) Inactive status. A probationary certificate will become inactive 30 calendar days after the holder's separation from the school assignment or the EPP. The unexpired term of a probationary certificate may be reactivated if the holder satisfies the program enrollment and school assignment requirements specified in §228.35 of this title (relating to Preparation Program Coursework and/or Training.

(3) Term of a probationary certificate. A probationary certificate shall be valid for a 12-month period from the date of issuance.

(4) Limit on preliminary certifications and permits. Without obtaining standard certification, an individual may not serve for more than three 12-month periods while holding any combination of the following:

(A) intern certificates, limited to one 12-month period maximum, as described in this subsection;

(B) probationary certificates, limited to two 12-month periods maximum, as described in this subsection;

(C) emergency permits as specified in Subchapter F of this chapter (relating to Permits); or

(D) one-year certificates as specified in Subchapter H of this chapter (relating to Texas Educator Certificates Based on Certification and College Credentials from Other States or Territories of the United States) and Chapter 245 of this title (relating to Certification of Educators from Other Countries).

(5) Reduction in force exception. If an educator is employed under a probationary certificate and is terminated or resigns in lieu of termination before the end of the school year due to a reduction in force, that probationary term shall not count as one of the two allowed annual probationary terms.

(d) Testing requirements for issuance of a probationary certificate.

(1) Prior to September 1, 2017, a candidate must meet the subject matter knowledge requirements for issuance of a probationary certificate to serve an internship in a classroom teacher assignment for each subject area to be taught:

(A) At the elementary school level, by passing the appropriate content area certification examination(s), as prescribed in Subchapter C of this chapter (relating to Assessment of Educators), appropriate to the grade level and subject matter assignment(s) as prescribed in Chapter 231 of this title (relating to Requirements for Public School Personnel Assignments).

(B) At the middle or high school level:

(i) by passing the appropriate content area certification examination(s), as prescribed in Subchapter C of this chapter, appropriate to the grade level and subject matter assignment(s) as prescribed in Chapter 231 of this title; or

(ii) by completing coursework that complies with the TEC, §21.050, and comprised of not fewer than 24 semester credit hours, including 12 semester credit hours of upper division coursework in the subject area(s) taught; or

(iii) in the case of career and technical education assignments based on skill and experience, by satisfying the requirements for that subject area contained in §233.14 of this title (relating to Career and Technical Education (Certificates requiring experience and preparation in a skill area)).

(C) A candidate who is the teacher of record in a special education assignment must meet the appropriate subject matter knowledge requirements prescribed in subparagraph (A) and/or (B) of this paragraph and pass the appropriate special education certification examination(s), as prescribed in Subchapter C of this chapter, appropriate to the assignment(s) as prescribed in Chapter 231 of this title. If a candidate has not passed the special education supplemental examination prior to the beginning of an internship, an EPP may permit the internship assignment if:

(i) the EPP has developed a plan to address any deficiencies identified through the candidate's previous attempt(s) on the examination; and

(ii) the EPP implements the plan during the initial internship, an EPP shall not permit an additional internship if all examinations requirements are not met.

(D) A candidate who is in a bilingual education and/or English as a Second Language (ESL) assignment must meet the appropriate subject matter knowledge requirements prescribed in subparagraph (A) and/or (B) of this paragraph and pass the appropriate bilingual education and/or ESL certification examination(s), as prescribed in Subchapter C of this chapter, appropriate to the assignment(s) as prescribed in Chapter 231 of this title. If a candidate has not passed the bilingual education supplemental examination, ESL supplemental examination, or the bilingual target language proficiency test prior to the beginning of an internship, an EPP may permit the internship if:

(i) the EPP has developed a plan to address any deficiencies identified through the candidate's previous attempt(s) on the examination(s); and

(ii) the EPP implements the plan during the initial internship. An EPP shall not permit an additional internship if all examination requirements are not met.

(2) Beginning September 1, 2017, a candidate must meet all testing requirements for issuance of a probationary certificate.

(A) To meet the subject matter knowledge requirements to be issued a probationary certificate for an internship in a classroom teacher assignment, a candidate must pass the appropriate certification examination(s), including the appropriate pedagogy and professional responsibilities examination, as prescribed in Subchapter C of this chapter.

(B) To meet the subject matter knowledge requirements to be issued a probationary certificate for an internship in a career and technical education classroom teacher assignment that is based on skill and experience, a candidate must satisfy the requirements for that subject area contained in §233.14 of this title and pass the appropriate certification examination(s), including the appropriate pedagogy and professional responsibilities examination, as prescribed in Subchapter C of this chapter.

(e) Probationary certificate in a certification class other than classroom teacher. A probationary certificate may be issued for an assignment as a superintendent, principal, reading specialist, master teacher, school librarian, school counselor, and/or educational diagnostician to an individual who meets the applicable requirements prescribed in subsection (b) of this section and who also meets the requirements prescribed in this subsection.

(1) An applicant for a probationary certificate in a certification class other than classroom teacher must meet all requirements established by the recommending EPP, which shall be based on the qualifications and requirements for the class of certification sought and the duties to be performed by the holder of a probationary certificate in that class.

(2) The individual must have also been:

(A) accepted and enrolled to participate in a Texas EPP that has been approved to prepare candidates for the certificate sought; and

(B) assigned in the certificate area being sought in a Texas school district, open-enrollment charter school, or, pursuant to §228.35 of this title, other school approved by the TEA.

(3) Effective September 1, 2017, to meet the subject matter requirements for issuance of the probationary certificate in a certification class other than classroom teacher, the individual must pass the appropriate examination(s) for that certificate.

(4) The holder of a probationary certificate in a certification class other than classroom teacher is subject to all terms and conditions of an intern certificate prescribed in subsection (c) of this section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 7, 2016.

TRD-201606378
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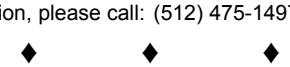
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Effective date: December 27, 2016
Proposal publication date: August 26, 2016
For further information, please call: (512) 475-1497



19 TAC §230.39

STATUTORY AUTHORITY. The repeal is adopted under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; the TEC, §21.031(a), which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; the TEC, §21.031(b), which states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or

renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; the TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; the TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the TEC, §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; the TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; the TEC, §21.041(b)(5), which requires the SBEC to propose rules that provide for the issuance of an educator certificate to a person who holds a similar certificate issued by another state or foreign country, subject to the TEC, §21.052; the TEC, §21.041(b)(9), which requires the SBEC to propose rules that provide for continuing education requirements; the TEC, §21.051, which provides a requirement that before a school may employ a certification candidate as a teacher of record, the candidate must have completed at least 15 hours of field-based experience in which the candidate was actively engaged at an approved school in instructional or educational activities under supervision; the TEC, §22.0831(c), which provides that the SBEC shall review the national criminal history record information of all applicants for or holders of educator certification; and the TEC, §22.0831(f), which authorizes the SBEC to propose rules to implement the national criminal history record information review of certified educators. These rules are authorized or required by the statutory provisions described above.

CROSS REFERENCE TO STATUTE. The adopted repeal implements the TEC, §§21.003(a), 21.031, 21.041(b)(1)-(5) and (9), 21.051, and 22.0831(c) and(f).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 7, 2016.

TRD-201606379
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Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Effective date: December 27, 2016
Proposal publication date: August 26, 2016
For further information, please call: (512) 475-1497

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SUBCHAPTER E. EDUCATIONAL AIDE CERTIFICATE

19 TAC §§230.53, 230.63, 230.65

STATUTORY AUTHORITY. The amendment and new sections are adopted under the Texas Education Code (TEC), §21.041(a), which allows the State Board for Educator Certification (SBEC) to adopt rules as necessary for its own procedures; the TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; the TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the TEC, §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; and the TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate. These rules are authorized or required by the statutory provisions described above.

CROSS REFERENCE TO STATUTE. The adopted amendment and new sections implement the TEC, §21.041(a) and (b)(1)-(4).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 7, 2016.

TRD-201606380
Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Effective date: December 27, 2016
Proposal publication date: August 26, 2016
For further information, please call: (512) 475-1497

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SUBCHAPTER F. PERMITS

19 TAC §§230.71, 230.73, 230.75, 230.77, 230.79, 230.81, 230.83

STATUTORY AUTHORITY. The amendments are adopted under the Texas Education Code (TEC), §21.031(a), which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; the TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; the TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; the TEC, §21.044(a), which requires the SBEC to propose rules establishing training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program; and the TEC, §21.048(a), which requires the SBEC to propose rules prescribing comprehensive examinations for each class of certificate issued by the SBEC. These rules are authorized or required by the statutory provisions described above.

CROSS REFERENCE TO STATUTE. The adopted amendments implement the TEC, §§21.031(a), 21.041(b)(1), (2), and (4), 21.044(a), and 21.048.

§230.71. General Provisions.

(a) In accordance with the provisions of this subchapter, emergency permits are issued under the authority of the State Board for Educator Certification (SBEC).

(b) Effective with the 2017-2018 school year, an emergency permit will limit an individual to one year of service and no renewal will be allowed.

(c) The one-year limitation on permits referenced in subsection (b) of this section does not apply to individuals serving in the position of Junior Reserve Officer Training Corps (JROTC) instructor or teachers of students with visual impairments. As indicated in §230.77(g)(4)(B) of this title (relating to Specific Requirements for Initial Emergency Permits), emergency permits for JROTC instructors must be reissued every year. Emergency permits for visual impairments referenced in §230.77(f)(2)(B) of this title may be renewed a maximum of two years.

(d) Under this subchapter, a superintendent or his or her designee who cannot secure an appropriately certified and qualified individual to fill a vacant position may activate an emergency permit for an individual who does not have one of the appropriate credentials required for the assignment as specified in Chapter 231 of this title (relating to Requirements for Public School Personnel Assignments). The superintendent or his or her designee must:

(1) document locally the efforts the school district or open-enrollment charter school has taken to employ an appropriately certified individual in the position for which an emergency permit is activated;

(2) apply for an emergency permit when a vacant position is filled with an uncertified or inappropriately certified individual who will serve as the teacher of record or will serve in the assignment for more than 30 consecutive instructional days. The application must be submitted to the Texas Education Agency (TEA) within 45 instructional days of the date of assignment;

(3) verify that the school district or open-enrollment charter school maintains a support system, has assigned a trained mentor, and will provide release time as needed to assist the individual serving on an emergency permit. (A school district shall not be required to provide a mentor for a degreed, certified teacher assigned on an emergency permit if the teacher has one or more creditable years experience within the school district, as defined in Chapter 153, Subchapter CC, of this title (relating to Commissioner's Rules on Creditable Years of Service)); and

(4) verify that the individual for whom the emergency permit is activated has been advised of the SBEC rules regarding permits and permit renewal requirements in this subchapter.

(e) A certified teacher must consent to the activation of an emergency permit and be advised of the conditions of the emergency permit. A teacher who refuses to consent to activation of an emergency permit may not be terminated or nonrenewed or otherwise retaliated against because of the teacher's refusal to consent to the activation of the emergency permit. However, a teacher's refusal to consent shall not impair a school district's right to implement a necessary reduction in force or other personnel actions in accordance with local school district or open-enrollment charter school policy.

(f) An emergency permit is authorized for the school district or open-enrollment charter school for a specific assignment and is not the property of the individual for whom the emergency permit was activated.

(g) If an emergency permit authorized by the SBEC is not used, the school district or open-enrollment charter school shall notify TEA staff by email.

(h) An emergency permit may be authorized on a hardship basis for an individual who does not meet all emergency permit requirements as listed in §§230.75, 230.77, and 230.81 of this title (relating to General Eligibility Requirements for Emergency Permits, Specific Requirements for Initial Emergency Permits, and Renewal Requirements and Procedures) only if approval has been granted and email notification received from the TEA staff. The school district must:

(l) document local conditions requiring the assignment of an individual who does not meet emergency permit requirements;

(2) verify that the deficiencies for the certificate sought do not exceed 36 semester credit hours; and

(3) verify:

(A) that the individual will be enrolled in the first available course listed on the certification plan; or

(B) registration for the next available administration of the appropriate content specialization portion of the certification examination for an individual who holds a valid Texas classroom teaching certificate and a bachelor's degree or higher from an accredited institution of higher education and is placed in an assignment requiring a different classroom teaching certificate.

(i) The school district is not required to comply with the requirements of this subchapter if an uncertified individual is assigned for a certified teacher that will be absent for more than 30 consecutive instructional days due to documented health related reasons and has expressed the intention to return to the assignment. The school district must comply with the Texas Education Code, §21.057, pertaining to parental notification.

(j) Candidates who hold an intern certificate under the provisions of §230.36 of this title (relating to Intern Certificates) or a probationary certificate under the provisions of §230.37 of this title (relating to Probationary Certificates) may be employed on an emergency permit during the validity of the intern certificate or probationary certificate, if the emergency permit is being issued in a certificate area not available through the educator preparation program that provided recommendation for the intern certificate or probationary certificate.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 7, 2016.

TRD-201606381
Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Effective date: December 27, 2016
Proposal publication date: August 26, 2016
For further information, please call: (512) 475-1497

SUBCHAPTER G. CERTIFICATE ISSUANCE PROCEDURES

19 TAC §§230.91, 230.93, 230.97, 230.101, 230.104, 230.105, 230.107

STATUTORY AUTHORITY. The amendments and new sections are adopted under the Texas Education Code (TEC), §21.031(a), which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the

certification, continuing education, and standards of conduct of public school educators; the TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; the TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the TEC, §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; the TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; the TEC, §21.041(b)(5), which requires the SBEC to propose rules that provide for the issuance of an educator certificate to a person who holds a similar certificate issued by another state or foreign country, subject to the TEC, §21.052; the TEC, §21.041(b)(9), which requires the SBEC to propose rules that provide for continuing education requirements; the TEC, §21.041(c), which requires the SBEC to propose a rule adopting a fee for the issuance and maintenance of an educator certificate that is adequate to cover the cost of administration of the TEC, Chapter 21, Subchapter B; the TEC, §21.044(a), which requires the SBEC to propose rules establishing training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program; the TEC, §21.044(e), which provides the requirements that SBEC rules must specify for a person to obtain a certificate to teach a health science technology education course; the TEC, §21.044(f), which provides that SBEC rules for a person to obtain a certificate to teach a health science technology education course shall not specify that a person must have a bachelor's degree or establish any other credential or teaching experience requirements that exceed the requirements under §21.044(e); the TEC, §21.048(a), which requires the SBEC to propose rules prescribing comprehensive examinations for each class of certificate issued by the SBEC; the TEC, §21.0485, which provides that all candidates for a certificate to teach students with visual impairments must complete an approved educator preparation program; the TEC, §21.050(a), which states that a person who applies for a teaching certificate for which SBEC rules require a bachelor's degree must possess a bachelor's degree received with an academic major or interdisciplinary academic major, including reading, other than education, that is related to the curriculum as prescribed under TEC, Chapter 28, Subchapter A; the TEC, §21.054(a), which requires the SBEC to propose rules establishing a process for identifying continuing education courses and programs that fulfill educators' continuing education requirements; the TEC, §22.082, which states that the SBEC shall subscribe to the criminal history clearinghouse as provided by the Texas Government Code, §411.0845, and may obtain from any law enforcement or criminal justice agency all criminal history record information and all records contained in any closed criminal investigation file that relate to a specific applicant for or holder of a certificate issued under the TEC, Chapter 21, Subchapter B; the TEC, §22.0831(f), which authorizes the SBEC to propose rules to implement the national criminal history record information review of certified educators; and the Texas Occupations Code (TOC), §53.105, which specifies that a licensing authority may charge a person requesting an evaluation under the TOC, Chapter 53, Subchapter D, a fee adopted by the authority. Fees adopted by a licensing authority under the TOC, Chapter 53, Subchapter D, must be in an amount sufficient to cover the cost of administering this subchapter. These rules are authorized or required by the statutory provisions described above.

CROSS REFERENCE TO STATUTE. The adopted amendments and new sections implement the TEC, §§21.031(a); 21.041(b)(1)-(5) and (9) and (c); 21.044(a), (e) and (f); 21.048; 21.0485; 21.050; 21.054(a); 22.082; and 22.0831(f) and TOC, §53.105.

§230.101. Schedule of Fees for Certification Services.

(a) An applicant for a certificate or a school district requesting a permit shall pay the applicable fee from the following list.

(1) Educational aide certificate:

(A) prior to September 1, 2017--$30; and

(B) after August 31, 2017--$15.

(2) Standard certificate--$75.

(3) Probationary or intern certificate:

(A) prior to September 1, 2017 --$50; and

(B) after August 31, 2017--$75.

(4) Addition of certification based on completion of appropriate examination--$75.

(5) Review of a credential issued by a jurisdiction other than Texas (nonrefundable):

(A) prior to September 1, 2016--$175; and

(B) after August 31, 2016--$160.

(6) One-year certificate based on a credential issued by a jurisdiction other than Texas--$50.

(7) Emergency permit (nonrefundable)--$55.

(8) National criminal history check (nonrefundable)--The fee, posted on the Texas Education Agency website, shall include a $10 criminal history review fee in addition to the current cost of fingerprint scanning, processing, and obtaining national criminal history record information from the Texas Department of Public Safety, its contractors, and the Federal Bureau of Investigation. The same fee will be paid by current certified educators who are subject to a national criminal history check pursuant to the Texas Education Code, §§22.082, 22.0831, and 22.0836.

(9) Review of the superintendent application for the substitution of managerial experience for the principal certificate requirement (nonrefundable)--$160.

(10) On-time renewal of educational aide certificate:

(A) prior to September 1, 2017--$10; and

(B) after August 31, 2017--no charge.

(11) Additional fee for late renewal of educational aide certificate:

(A) prior to September 1, 2017--$5; and

(B) after August 31, 2017--no charge.

(12) Reactivation of an inactive educational aide certificate--$15.

(13) Reinstatement following restitution of child support or student loan repayment for educational aide certificate--$20.

(14) On-time renewal of a standard certificate--$20.

(15) Additional fee for late renewal of a standard certificate--$10.

(16) Reactivation of an inactive standard certificate--$40; except for an inactivation pursuant to §232.9 of this title (relating to Inactive Status and Late Renewal).

(17) Reinstatement following restitution of child support or student loan repayment--$50.

(18) Visiting international teacher certificate--$75.

(19) Request for preliminary criminal history evaluation (nonrefundable)--$50.

(b) The fee for correcting a certificate or permit when the error is not made by the Texas Education Agency shall be equal to the fee for the original certificate or permit.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 7, 2016.

TRD-201606382
Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Effective date: December 27, 2016
Proposal publication date: August 26, 2016
For further information, please call: (512) 475-1497

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SUBCHAPTER H. TEXAS EDUCATOR CERTIFICATES BASED ON CERTIFICATION AND COLLEGE CREDENTIALS FROM OTHER STATES OR TERRITORIES OF THE UNITED STATES

19 TAC §230.111, §230.113

STATUTORY AUTHORITY. The amendments are adopted under the Texas Education Code (TEC), §21.040(6), which allows the State Board for Educator Certification (SBEC) authority to develop and implement policies that define responsibilities of the SBEC; the TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; the TEC, §21.041(b)(5), which requires the SBEC to propose rules that provide for the issuance of an educator certificate to a person who holds a similar certificate issued by another state or foreign country, subject to the TEC, §21.052; the TEC, §21.041(c), which requires the SBEC to propose a rule adopting a fee for the issuance and maintenance of an educator certificate that is adequate to cover the cost of administration of the TEC, Chapter 21, Subchapter B; the TEC, §21.048(a), which requires the SBEC to propose rules prescribing comprehensive examinations for each class of certificate issued by the SBEC; the TEC, §21.050(a), which states that a person who applies for a teaching certificate for which SBEC rules require a bachelor's degree must possess a bachelor's degree received with an academic major or interdisciplinary academic major, including reading, other than education, that is related to the curriculum as prescribed under TEC, Chapter 28, Subchapter A; the TEC, §21.052(a), which states that the SBEC may issue a certificate to an educator who holds a degree issued by an institution accredited by a regional accrediting agency or group that is recognized by a nationally recognized accreditation board or a degree issued by an institution located in a foreign country, if the degree is equivalent to a degree described by §21.052(a)(1)(A), holds an appropriate certificate or other credential issued by another state or country, and performs satisfactorily on the examination prescribed under the TEC, §21.048, or, if the educator holds a certificate or other credential issued by another state or country, an examination similar to and at least as rigorous as that described by §21.052(a)(1)(A) administered to the educator under the authority of that state; the TEC, §21.052(b), which states that for purposes of §21.052(a)(2), a person is considered to hold a certificate or other credential if the credential is not valid solely because it has expired; the TEC, §21.052(c), which states that the SBEC may issue a temporary certificate under this section to an educator who holds a degree required by §21.052(a)(1) and a certificate or other credential required by §21.052(a)(2) but who has not satisfied the requirements prescribed by §21.052(a)(3); and the TEC, §21.052(d), which states that a temporary certificate issued under §21.052(c) to an educator employed by a school district that has constructed or expanded at least one instructional facility as a result of increased student enrollment due to actions taken under the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. Section 2687) may not expire before the first anniversary of the date on which the SBEC completes the review of the educator's credentials and informs the educator of the examination or examinations under the TEC, §21.048, on which the educator must perform successfully to receive a standard certificate. These rules are authorized or required by the statutory provisions described above.

CROSS REFERENCE TO STATUTE. The adopted amendments implement the TEC, §§21.040(6); 21.041(b)(4) and (5) and (c); 21.048; 21.050; and 21.052.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 7, 2016.

TRD-201606383
Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Effective date: December 27, 2016
Proposal publication date: August 26, 2016
For further information, please call: (512) 475-1497

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CHAPTER 231. REQUIREMENTS FOR PUBLIC SCHOOL PERSONNEL ASSIGNMENTS

The State Board for Educator Certification (SBEC) adopts amendments to 19 TAC §§231.97, 231.241, 231.251, 231.257, 231.365, and 231.611 and new 19 TAC §231.175, concerning requirements for public school personnel assignments. The amendments to §§231.97, 231.241, 231.251, 231.257, and 231.365 and new §231.175 are adopted without changes to the proposed text as published in the August 26, 2016, issue of the

Texas Register (41 TexReg 6375) and will not be republished. The amendment to §231.611 is adopted with changes to the proposed text as published in the August 26, 2016, issue of the *Texas Register* (41 TexReg 6375). The SBEC rules in 19 TAC Chapter 231 provide guidance to school districts by listing courses by grade level and subject area and identifying the corresponding certificates appropriate for placement into each classroom assignment. The adopted amendments to 19 TAC §§231.97, 231.241, 231.251, 231.257, 231.365, and 231.611 and adopted new 19 TAC §231.175 identify the appropriate credential for placement in a particular teaching assignment, incorporate courses approved by the State Board of Education (SBOE), and provide guidance to districts on special education assignments.

REASONED JUSTIFICATION. The adopted revisions to 19 TAC Chapter 231, Subchapters D-F, identify the appropriate certificates for placement in particular assignments for Grades 6-12 to teach electives, disciplinary courses, local credit courses, and innovative courses; various assignments for Grades 9-12; and special education-related services personnel assignments.

Subchapter D, Electives, Disciplinary Courses, Local Credit Courses, and Innovative Courses, Grades 6-12 Assignments

Language in 19 TAC §231.97, including the section title, was amended to delete the reference to magnet course since the Texas Education Agency (TEA) stopped approving magnet courses several years ago. The adopted amendment also strengthens alignment with the internal processes for approval of innovative courses and confirms the TEA's role in identifying the appropriate certificates for assignments to teach innovative courses.

Subchapter E, Grades 9-12 Assignments

Division 3. Social Studies, Grades 9-12 Assignments. Adopted new 19 TAC §231.175, Personal Financial Literacy, Grades 9-12, was added to incorporate this new course approved by the SBOE. TEA staff has worked closely with the TEA Curriculum Standards and Student Supports Division to confirm the list of certificates appropriate to ensure the individual has the knowledge and skills necessary to teach the course and be eligible for placement into the assignment.

Division 7. Fine Arts, Grades 9-12 Assignments. Language in 19 TAC §231.241, Art, Music, Theatre, and Dance, Grades 9-12, was amended to add a reference to the adopted new Dance: Grades 6-12 certificate in subsection (d). The adopted new Dance: Grades 6-12 certificate is included in the adopted amendments to 19 TAC Chapter 233, Categories of Classroom Teaching Certificates, which may be found in the Adopted Rules section of this issue of the *Texas Register.* With the addition of the reference to the adopted new certificate, all remaining information under subsection (d) was renumbered accordingly.

Division 8. Technology Applications, Grades 9-12 Assignments. In response to a citizen petition addressed by the SBEC at the April 2016 meeting, TEA staff has worked closely with the TEA Curriculum Standards and Student Supports Division to confirm the transfer of the reference to "Fundamentals of Computer Science" from 19 TAC §231.251, Computer Science, Grades 9-12, to 19 TAC §231.257, Game Programming and Design or Mobile Application Development, Grades 9-12. This change is an appropriate rulemaking action that accurately addresses the petition and maintains appropriate certification for placement into the assignment. Language in 19 TAC §231.257, including the section title, was also amended to add "Advanced Placement Computer Science Principles," another course approved by the SBOE that had not yet been incorporated into this chapter.

Division 13. Business Management and Administration, Grades 9-12 Assignments. Subsection (b) in 19 TAC §231.365, Business English, Grades 9-12, was deleted since TEA staff has confirmed with the TEA Curriculum Standards and Student Supports Division that the reference to the TEA-approved training requirement is no longer needed. The list of certificates appropriate to teach this course provide individuals with the knowledge and skills needed to teach this course.

Subchapter F, Special Education-Related Services Personnel Assignments

The adopted amendment to 19 TAC §231.611, Special Education Teacher, specifies that anyone delivering content instruction will be required to hold one of the special education certificates listed and a valid certificate that matches the subject and grade level of the assignment. The addition of this requirement to also hold a valid certificate parallels the federal requirements for special education that were implemented as part of the highly qualified (HQ) requirements under No Child Left Behind (NCLB). Effective with the 2016-2017 school year, federal requirements are no longer in place and districts must now rely solely on certification rules. Language clarifies that individuals assigned to deliver content instruction in a special education setting must be certified in special education and the specific content area being taught to ensure that the individuals have the content knowledge necessary to deliver appropriate content instruction. Numerous districts have expressed a need for guidance from the TEA and flexibility to address the critical staffing shortage area of special education teachers. In addition, language was included to allow individuals to demonstrate competency through the state's 2010 and 2011 high objective uniform State standard of evaluation for elementary and secondary special education teachers as suggested by the Texas Council of Administrators of Special Education. These adopted changes in rule are necessary to provide districts the ability to retain teachers already qualified for special education assignments under the previous federal requirements and ensure that students in special education settings continue to receive the support they need from teachers who have appropriate content knowledge.

Since published as proposed, a technical edit was made in subsection (a) to accurately refer to the high objective uniform State standard of evaluation for elementary and secondary special education teachers.

SUMMARY OF COMMENTS AND BOARD RESPONSES. The public comment period on the proposal began August 26, 2016, and ended September 26, 2016. The SBEC also provided an opportunity for registered oral and written comments at the October 7, 2016, meeting in accordance with the SBEC board operating policies and procedures. Following is a summary of the public comments received and corresponding board responses regarding the proposed revisions to 19 TAC Chapter 231, Subchapters D-F.

Comment: Enabled Advocacy commented that the use of qualifying language added in 19 TAC §231.611(a) gives the impression that it is more likely that an individual is not providing content instruction in special education and that should not be the case. Enabled Advocacy also referenced Every Student Succeeds Act (ESSA) requirements to have the same academic content and achievement standards for all students, including students with disabilities (except alternate academic achievement

standards for students with the most significant cognitive disabilities). Lastly, Enabled Advocacy asked that the SBEC follow the recommendations of the National Council on Teacher Quality (NCTQ) and eliminate the generic Early Childhood-Grade 12 Special Education certification and offer certification for special education Prekindergarten-Grade 6 and Grades 7-12 to better align with Texas general educator certifications.

Board Response: The SBEC disagreed with the commenter's interpretation that the language in the amendment to 19 TAC §231.611, Special Education Teacher, makes it seem like special education teachers are not providing content instruction. Language was added in subsection (a) to parallel the federal requirements for special education that were implemented as part of the highly qualified (HQ) requirements under No Child Left Behind (NCLB) prior to the passage of ESSA. By specifying that anyone delivering content instruction would be required to hold one of the special education certificates listed and a valid certificate that matches the subject and grade level of the assignment, the revisions provide districts with guidance and flexibility to address the critical staffing needs for special education teachers. Additional language has been included to allow individuals to demonstrate competency through the state's 2010 and 2011 high objective uniform State standard of evaluation for elementary and secondary special education teachers as suggested by the Texas Council of Administrators of Special Education. These changes are necessary to provide districts the ability to retain teachers already qualified for special education assignments under the previous federal requirements and ensure that students in special education settings continue to receive the support they need from teachers who have appropriate content knowledge.

The SBEC disagreed with the suggestion to eliminate the Early Childhood-Grade 12 Special Education certification to align with recommendations from NCTQ. There is a Special Education Supplemental certificate available to add to the classroom content certificates at the various grade levels of Early Childhood-Grade 6, Grades 4-8, Grades 6-12, Grades 7-12, Grades 8-12, or Early Childhood-Grade 12.

The State Board of Education (SBOE) took no action on the review of the proposed amendments to 19 TAC §§231.97, 231.241, 231.251, 231.257, 231.365, and 231.611 and proposed new 19 TAC §231.175 at the November 18, 2016, SBOE meeting.

SUBCHAPTER D. ELECTIVES, DISCIPLINARY COURSES, LOCAL CREDIT COURSES, AND INNOVATIVE COURSES, GRADES 6-12 ASSIGNMENTS

19 TAC §231.97

STATUTORY AUTHORITY. The amendment is adopted under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; the TEC, §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; the TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and the TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

CROSS REFERENCE TO STATUTE. The adopted amendment implements the TEC, §§21.003(a), 21.031(a), and 21.041(b)(1) and (2).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 7, 2016.

TRD-201606384
Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Effective date: December 27, 2016
Proposal publication date: August 26, 2016
For further information, please call: (512) 475-1497

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SUBCHAPTER E. GRADES 9-12 ASSIGNMENTS

DIVISION 3. SOCIAL STUDIES, GRADES 9-12 ASSIGNMENTS

19 TAC §231.175

STATUTORY AUTHORITY. The new section is adopted under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; the TEC, §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; the TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and the TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

CROSS REFERENCE TO STATUTE. The adopted new section implements the TEC, §§21.003(a), 21.031(a), and 21.041(b)(1) and (2).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 7, 2016.

TRD-201606385

Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Effective date: December 27, 2016
Proposal publication date: August 26, 2016
For further information, please call: (512) 475-1497

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DIVISION 7. FINE ARTS, GRADES 9-12 ASSIGNMENTS

19 TAC §231.241

STATUTORY AUTHORITY. The amendment is adopted under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; the TEC, §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; the TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and the TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

CROSS REFERENCE TO STATUTE. The adopted amendment implements the TEC, §§21.003(a), 21.031(a), and 21.041(b)(1) and (2).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 7, 2016.

TRD-201606386
Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Effective date: December 27, 2016
Proposal publication date: August 26, 2016
For further information, please call: (512) 475-1497

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DIVISION 8. TECHNOLOGY APPLICATIONS, GRADES 9-12 ASSIGNMENTS

19 TAC §231.251, §231.257

STATUTORY AUTHORITY. The amendments are adopted under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; the TEC, §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; the TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and the TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

CROSS REFERENCE TO STATUTE. The adopted amendments implement the TEC, §§21.003(a), 21.031(a), and 21.041(b)(1) and (2).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 7, 2016.

TRD-201606387
Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Effective date: December 27, 2016
Proposal publication date: August 26, 2016
For further information, please call: (512) 475-1497

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DIVISION 13. BUSINESS MANAGEMENT AND ADMINISTRATION, GRADES 9-12 ASSIGNMENTS

19 TAC §231.365

STATUTORY AUTHORITY. The amendment is adopted under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; the TEC, §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; the TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and the TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

CROSS REFERENCE TO STATUTE. The adopted amendment implements the TEC, §§21.003(a), 21.031(a), and 21.041(b)(1) and (2).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 7, 2016.

TRD-201606388
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Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Effective date: December 27, 2016
Proposal publication date: August 26, 2016
For further information, please call: (512) 475-1497

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SUBCHAPTER F. SPECIAL EDUCATION-RELATED SERVICES PERSONNEL ASSIGNMENTS

19 TAC §231.611

STATUTORY AUTHORITY. The amendment is adopted under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; the TEC, §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; the TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and the TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

CROSS REFERENCE TO STATUTE. The adopted amendment implements the TEC, §§21.003(a), 21.031(a), and 21.041(b)(1) and (2).

§231.611. Special Education Teacher.

(a) Subject to the requirements in subsection (c) of this section, an assignment for Special Education Teacher is allowed with one of the following certificates. If an individual is providing content instruction in a special education classroom setting, a valid certificate that matches the subject and grade level of the assignment is also required, or the individual must demonstrate competency through the state's 2010 and 2011 high objective uniform State standard of evaluation for elementary and secondary special education teachers.

(1) Blind School (Texas State School for the Blind and Visually Impaired only).

(2) Deaf and Severely Hard of Hearing.

(3) Deaf School (Texas State School for the Deaf only).

(4) Deaf-Blind.

(5) Deficient Vision.

(6) Early Childhood Education for Handicapped Children (Infants-Grade 6 only).

(7) Elementary Generic Special Education.

(8) Emotionally Disturbed.

(9) Generic Special Education.

(10) Hearing Impaired.

(11) High School--Generic Special Education.

(12) Language and/or Learning Disabilities.

(13) Mentally Retarded.

(14) Physically Handicapped.

(15) School Speech-Language Pathologist.

(16) Secondary Generic Special Education (Grades 6-12) (Grades 6-12 only).

(17) Severely and Profoundly Handicapped.

(18) Severely Emotionally Disturbed and Autistic.

(19) Special Education Supplemental (Valid at grade level and subject area of the base certificate).

(20) Special Education: Early Childhood-Grade 12.

(21) Speech and Hearing Therapy.

(22) Speech and Language Therapy.

(23) Teacher of Students with Visual Impairments Supplemental: Early Childhood-Grade 12.

(24) Teacher of the Deaf and Hard of Hearing: Early Childhood-Grade 12.

(25) Visually Handicapped.

(b) The certificates specified in subsection (a) of this section are appropriate for a special education assignment in Prekindergarten-Grade 12 except where otherwise noted.

(c) The employing school district should make every effort to secure educators trained in the specialized skills and knowledge needed to serve the special needs of the children. If a staff member does not have the skills and knowledge needed for the assignment, the school district is responsible for making provisions for the person to acquire the necessary skills and knowledge.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 7, 2016.

TRD-201606389
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Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Effective date: December 27, 2016
Proposal publication date: August 26, 2016
For further information, please call: (512) 475-1497

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CHAPTER 233. CATEGORIES OF CLASSROOM TEACHING CERTIFICATES

19 TAC §§233.5, 233.8, 233.10, 233.14

The State Board for Educator Certification (SBEC) adopts amendments to 19 TAC §§233.5, 233.8, 233.10, and 233.14, concerning categories of classroom teaching certificates. The amendments to §§233.5, 233.10, and 233.14 are adopted without changes to the proposed text as published in the August 26, 2016, issue of the *Texas Register* (41 TexReg 6380) and

will not be republished. The amendment to §233.8 is adopted with changes to the proposed text as published in the August 26, 2016 issue of the *Texas Register* (41 TexReg 6380). The SBEC rules in 19 TAC Chapter 233 establish the general categories of classroom teaching certificates, specific grade levels and subject areas of classroom certificates, and the general area(s) of assignments that may be taught by the holder of each certificate. The adopted amendments to 19 TAC §§233.5, 233.8, 233.10, and 233.14 update the list of courses eligible to be taught with these certificates, identify any additional requirements to obtain certification, provide guidance to districts on special education assignments, and establish a new Dance: Grades 6-12 certificate.

REASONED JUSTIFICATION. The Texas Education Code (TEC), §21.041(b)(2), authorizes the SBEC to adopt rules that specify the classes of educator certificates to be issued, including emergency certificates.

The adopted amendments to 19 TAC Chapter 233 expand the list of courses eligible to be taught by holders of specific certificates, provide guidance to districts on special education assignments, and establish a new standard certificate for Dance: Grades 6-12.

§233.5. Technology Applications and Computer Science

Language was amended in subsection (c) to expand the list of courses referenced as eligible to be taught by individuals with computer science certification. Texas Education Agency (TEA) staff worked closely with the TEA Curriculum Standards and Student Supports Division to confirm holders of the computer science certificate have the knowledge and skills necessary to teach the following courses for Grades 9-12: Computer Science I, II, and III; Digital Forensics; Robotics Programming and Design; Fundamentals of Computer Science; Advanced Placement Computer Science Principles; Game Programming and Design; and Mobile Application Development.

§233.8. Special Education

The adopted amendment to subsection (a) specifies that anyone delivering content instruction in a special education setting will be required to hold a special education certificate and a valid classroom certificate that matches the subject and grade level of the assignment. The addition of this requirement to also hold a valid classroom certificate parallels the federal requirements for special education that were implemented as part of the highly qualified (HQ) requirements under No Child Left Behind (NCLB). Effective with the 2016-2017 school year, federal requirements are no longer in place and districts must now rely solely on certification rules. The adopted amendment clarifies that individuals assigned to deliver content instruction in a special education setting must be certified in special education and the specific content area being taught. Numerous districts have expressed a need for guidance from the TEA and flexibility to address the critical staffing shortage of special education teachers.

In addition, language was included to allow individuals to demonstrate competency through the state's 2010 and 2011 high objective uniform State standard of evaluation for elementary and secondary special education teachers as suggested by The Texas Council of Administrators of Special Education. These adopted changes in rule provide districts the ability to retain teachers already qualified for special education assignments under the federal requirements and ensure that students in special education settings continue to receive the support they need from teachers who have appropriate content knowledge. The adopted revisions to 19 TAC Chapter 231, Requirements for Public School Personnel Assignments, which also address eligibility for placement into special education assignments, may be found in the Adopted Rules section of this issue of the *Texas Register.* The adopted change to 19 TAC §231.611 includes identical language.

Since published as proposed, a technical edit was made in subsection (a) to accurately refer to the high objective uniform State standard of evaluation for elementary and secondary special education teachers.

§233.10. Fine Arts

Adopted new subsection (e) adds the new certificate for Dance: Grades 6-12. Language had previously been amended in subsection (d) to specify that Dance, Middle School 1-3 courses for Grades 6-8 will be taught by the holder of a Dance: Grades 8-12 certificate. Language in subsection (d) was added to establish a deadline of August 31, 2018, for candidates to complete all requirements for issuance of the last group of certificates for Dance: Grades 8-12 that the SBEC will issue and a deadline of October 30, 2018, for candidates and EPPs to submit completed applications to the TEA.

The adopted assignment for the new Dance: Grades 6-12 certificate may be found in the Adopted Rules section of this issue of the *Texas Register* adopting revisions to 19 TAC Chapter 231, Requirements for Public School Personnel Assignments, to ensure courses approved by the SBOE were included in SBEC rules and that the rules identified the appropriate teaching certificate needed for these course assignments. Initially, there were no plans to develop a new certification examination when the SBEC approved rule changes to allow the Dance: Grades 8-12 certificate to satisfy the requirement to teach Dance, Middle School 1-3 courses for Grades 6-8. However, now that a new certification examination for Dance: Grades 6-12 will be available in early 2017, a new Dance: Grades 6-12 certificate was added to the rule. The adopted amendment allows Dance: Grades 8-12 certificate holders to remain eligible to teach Dance, Middle School 1-3 courses for Grades 6-8. Once the Dance: Grades 6-12 examination and the Dance: Grades 6-12 certificate are available in 2017, all individuals seeking certification to teach Dance, Middle School 1-3 courses for Grades 6-8 must earn the Dance: Grades 6-12 certificate.

§233.14. Career and Technical Education (Certificates requiring experience and preparation in a skill area)

Language was amended in subsection (h)(1) to add Health Science Technology Education: Grades 8-12, Health Science: Grades 6-12, and Trade and Industrial Education: Grades 6-12 to the list of career and technical education (CTE) certificates eligible to pursue under the route of additional certification by examination. The requirements for Health Science certification mandated in the TEC must still be met, but individuals with the required licensure and years of experience that already hold classroom certification in another area will have a new option for pursuing this certification. TEA staff understands the increased demand on districts to provide trade and industrial education (TIE) classes and the ongoing challenges that districts continue to face with staffing individuals for TIE assignments. While it remains critical that individuals assigned to teach TIE courses know their trade and have experience in the area, the adopted amendment offers more flexibility in obtaining TIE certification for individuals already certified in another classroom certificate area. Prior to receiving approval to take the Trade and Industrial Education Pedagogy and Professional Responsibilities test,

individuals must obtain support from a district to verify they have the appropriate work experience and licensure for the specific trade. The adopted changes regarding health science technology education, health science, and TIE may be found in the Adopted Rules section of this issue of the *Texas Register* adopting revisions to 19 TAC Chapter 230, Professional Educator Preparation and Certification, that address the list of certificates eligible to be obtained through additional certification by examination.

In addition, language in §233.14(f) was modified to remove dates that will have passed by the effective date of the adopted amendments.

SUMMARY OF COMMENTS AND BOARD RESPONSES. The public comment period on the proposal began August 26, 2016, and ended September 26, 2016. The SBEC also provided an opportunity for registered oral and written comments at the October 7, 2016 meeting in accordance with the SBEC board operating policies and procedures. Following is a summary of the public comments received and corresponding board responses regarding the proposed amendments to 19 TAC Chapter 233.

Comment: Enabled Advocacy commented that the use of qualifying language added in 19 TAC §233.8(a) gives the impression that it is more likely that an individual is *not* providing content instruction in special education and that should not be the case. Enabled Advocacy also referenced ESSA requirements to have the same academic content and achievement standards for all students, including students with disabilities (except alternate academic achievement standards for students with the most significant cognitive disabilities). Lastly, Enabled Advocacy asked that the SBEC follow the recommendations of the National Council on Teacher Quality (NCTQ) and eliminate the generic Early Childhood-Grade 12 Special Education certification and offer certification for special education Prekindergarten-Grade 6 and Grades 7-12 to better align with Texas general educator certifications.

Board Response: The SBEC disagreed with the commenter's interpretation that the language in the amendment to 19 TAC §233.8, Special Education, makes it seem like special education teachers are not providing content instruction. Language was added in subsection (a) to parallel the federal requirements for special education that were implemented as part of the HQ requirements under NCLB prior to the passage of ESSA. By specifying that anyone delivering content instruction would be required to hold one of the special education certificates listed and a valid certificate that matches the subject and grade level of the assignment, the amendments provide districts with guidance and flexibility to address the critical staffing needs for special education teachers. Additional language has been included to allow individuals to demonstrate competency through the state's 2010 and 2011 high objective uniform State standard of evaluation for elementary and secondary special education teachers as suggested by the Texas Council of Administrators of Special Education. These changes are necessary to provide districts the ability to retain teachers already qualified for special education assignments under the previous federal requirements and ensure that students in special education settings continue to receive the support they need from teachers who have appropriate content knowledge.

The SBEC disagreed with the suggestion to eliminate the Early Childhood-Grade 12 Special Education certification to align with recommendations from NCTQ. There is a Special Education Supplemental certificate available to add to the classroom content certificates at the various grade levels of Early Childhood-Grade 6, Grades 4-8, Grades 6-12, Grades 7-12, Grades 8-12, or Early Childhood-Grade 12.

Comment: An individual stated the proposal to allow a previously certified teacher to challenge the TIE test for adding this credential to the teacher's certification record increases problems within the classroom in relation to instruction of public school students. The commenter questions how the teacher's experience and proof of current industry certification or licensure will be verified and how the new TIE teacher will provide the appropriate Career and Technical Student Organization (CTSO) experience for students since CTSO is a requirement for those teaching in all the CTE classrooms as described in the TEC, §29.182(b)(3)(D). Lastly, the commenter stated this is a bad revision and should be removed from the proposed rule changes.

Agency Response: The SBEC disagreed that the rule change for TIE certification is a bad revision. The SBEC agreed there is an increased demand on districts to provide TIE classes and the ongoing challenges that districts continue to face with staffing individuals for TIE assignments. While it remains critical that individuals assigned to teach TIE courses know their trade and have experience in the area, the amendment offers more flexibility in obtaining TIE certification for individuals already certified in another classroom certificate area. Prior to receiving approval to take the Trade and Industrial Education Pedagogy and Professional Responsibilities test, individuals must obtain support from a district to verify they have the appropriate work experience and licensure for the specific trade. The SBEC agreed with the commenter's reference to the importance of teachers and districts collaborating to support and enhance CTE experiences for students as outlined in TEC, §29.182, State Plan for Career and Technology Education, but these requirements are not directly related to certificate issuance and are outside the scope of the rule changes.

The State Board of Education (SBOE) took no action on the review of the proposed amendments to 19 TAC Chapter 233 at the November 18, 2016 SBOE meeting.

STATUTORY AUTHORITY. The amendments are adopted under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; the TEC, §21.031, which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; the TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; the TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the TEC, §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; the TEC, §21.041(b)(4), which requires the SBEC to propose rules that

specify the requirements for the issuance and renewal of an educator certificate; the TEC, §21.041(b)(6), which requires the SBEC to propose rules that provide for special or restricted certification of educators, including certification of instructors of American Sign Language; the TEC, §21.044(e), which provides the requirements that SBEC rules must specify for a person to obtain a certificate to teach a health science technology education course; the TEC, §21.044(f), which provides that SBEC rules for obtaining a certificate to teach a health science technology education course shall not specify that a person must have a bachelor's degree or establish any other credential or teaching experience requirements that exceed the requirements under TEC, §21.044(e); and the TEC, §21.048(a), which requires the SBEC to propose rules prescribing comprehensive examinations for each class of certificate issued by the SBEC. TEC, §21.048(a), also specifies that the commissioner of education shall determine the satisfactory level of performance required for each certification examination and require a satisfactory level of examination performance in each core subject covered by the generalist certification examination.

CROSS REFERENCE TO STATUTE. The adopted amendments implement the TEC, §§21.003(a), 21.031, 21.041(b)(1)-(4) and (6), 21.044(e) and (f), and 21.048(a).

§233.8. Special Education.

(a) Special Education: Early Childhood-Grade 12. The Special Education: Early Childhood-Grade 12 certificate may be issued no earlier than September 1, 2003. The holder of the Special Education: Early Childhood-Grade 12 certificate may teach at any level of a basic special education instructional program serving eligible students 3-21 years of age, unless otherwise specified in §89.1131 of this title (relating to Qualifications of Special Education, Related Service, and Paraprofessional Personnel). If an individual is providing content instruction in a special education classroom setting, a valid certificate that matches the subject and grade level of the assignment is also required, or the individual must demonstrate competency through the state's 2010 and 2011 high objective uniform State standard of evaluation for elementary and secondary special education teachers.

(b) Special Education Supplemental. The Special Education Supplemental certificate may be issued no earlier than September 1, 2003. The holder of the Special Education Supplemental certificate may teach in a special education instructional program serving eligible students at the same grade levels and in the content area(s) of the holder's base certificate, unless otherwise specified in §89.1131 of this title.

(c) Teacher of the Deaf and Hard of Hearing: Early Childhood-Grade 12. The Teacher of the Deaf and Hard of Hearing: Early Childhood-Grade 12 certificate may be issued no earlier than September 1, 2005. The holder of the Teacher of the Deaf and Hard of Hearing: Early Childhood-Grade 12 certificate is eligible to teach at any level in a special education instructional program serving eligible students, unless otherwise specified in §89.1131 of this title.

(d) Teacher of Students with Visual Impairments Supplemental: Early Childhood-Grade 12. The Teacher of Students with Visual Impairments Supplemental: Early Childhood-Grade 12 certificate may be issued no earlier than September 1, 2005. The holder of the Teacher of Students with Visual Impairments Supplemental: Early Childhood-Grade 12 certificate is eligible to teach at any level in a special education instructional program serving eligible students, unless otherwise specified in §89.1131 of this title.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 7, 2016.

TRD-201606390
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Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Effective date: December 27, 2016
Proposal publication date: August 26, 2016
For further information, please call: (512) 475-1497

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CHAPTER 247. EDUCATORS' CODE OF ETHICS

19 TAC §247.1, §247.2

The State Board for Educator Certification (SBEC) adopts amendments to 19 TAC §247.1 and §247.2, concerning the educators' code of ethics. The amendments to §247.1 and §247.2 are adopted without changes to the proposed text as published in the August 26, 2016, issue of the *Texas Register* (41 TexReg 6385) and will not be republished. The SBEC rules in 19 TAC Chapter 247 establish the purpose and scope of the Educators' Code of Ethics and standard practices for Texas educators. The adopted amendment to 19 TAC §247.1 makes conforming changes to correctly refer to the titles of cross-referenced sections from 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases. The adopted amendment to 19 TAC §247.2 implements the Every Student Succeeds Act (ESSA) and makes it a violation of the Educators' Code of Ethics for an educator to be intoxicated on school property or during school activities when students are present.

REASONED JUSTIFICATION. The adopted amendment to 19 TAC §247.1 conforms the titles of cross-referenced sections in 19 TAC Chapter 249 to the new titles of those sections following recent revisions to Chapter 249.

The adopted amendment to 19 TAC §247.2(1)(M) prohibits educators from being under the influence of alcohol while working as educators. Without language explicitly prohibiting educators from being under the influence of alcohol, it has been difficult for the SBEC to penalize educators who exhibit symptoms of alcohol intoxication while working as educators, but are not witnessed actually drinking on campus.

The adopted amendment that adds new 19 TAC §247.2(1)(N) implements the ESSA, 20 United States Code, §7926 (2015), which requires state educational agencies that receive federal funds to adopt rules that prohibit school employees from assisting other school employees from obtaining new jobs if the individual knows or has probable cause to believe that the individual seeking a job has engaged in sexual misconduct regarding a minor or student.

SUMMARY OF COMMENTS AND BOARD RESPONSES. The public comment period on the proposal began August 26, 2016, and ended September 26, 2016. The SBEC also provided an opportunity for registered oral and written comments at the October 7, 2016 meeting in accordance with the SBEC board operating

policies and procedures. No comments were received regarding the proposed amendments to 19 TAC Chapter 247.

The State Board of Education (SBOE) took no action on the review of the proposed amendments to 19 TAC Chapter 247 at the November 18, 2016 SBOE meeting.

STATUTORY AUTHORITY. The amendments are adopted under the Texas Education Code (TEC), §21.031(a), which charges the State Board for Educator Certification (SBEC) with regulating and overseeing all aspects of the certification, continuing education, and standards of conduct for public school educators; TEC, §21.041(a), which authorizes the SBEC to adopt rules as necessary to implement its procedures; and TEC, §21.041(b)(1), (7), and (8), which give the SBEC rulemaking authority to regulate educators, provide for disciplinary proceedings against educators, and create and enforce an educator's code of ethics; and 20 United States Code, §7926 (ESSA), which requires state educational agencies to adopt rules prohibiting school employees from assisting another school employee in obtaining a new job, if the school employee seeking employment has engaged in illegal sexual misconduct with a student or minor.

CROSS REFERENCE TO STATUTE. The adopted amendments implement the TEC, §21.031(a) and §21.041(a) and (b)(1), (7), and (8); and 20 United States Code, §7926 (ESSA).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 7, 2016.

TRD-201606391
Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Effective date: December 27, 2016
Proposal publication date: August 26, 2016
For further information, please call: (512) 475-1497

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CHAPTER 249. DISCIPLINARY PROCEEDINGS, SANCTIONS, AND CONTESTED CASES

SUBCHAPTER B. ENFORCEMENT ACTIONS AND GUIDELINES

19 TAC §249.14, §249.17

The State Board for Educator Certification (SBEC) adopts amendments to 19 TAC §249.14 and §249.17, concerning disciplinary proceedings, sanctions, and contested cases. The amendments to §249.14 and §249.17 are adopted without changes to the proposed text as published in the August 26, 2016, issue of the *Texas Register* (41 TexReg 6388) and will not be republished. The SBEC rules in 19 TAC Chapter 249 establish guidelines and procedures for conducting investigations and disciplinary actions relating to educator misconduct. The adopted amendment to 19 TAC §249.14(d) conforms the rule on superintendent reporting to the SBEC with changes to the Texas Education Code (TEC), §21.006, as a result of House Bill (HB) 1783, 84th Texas Legislature, Regular Session, 2015. The adopted amendment to 19 TAC §249.14(h) includes inappropriate communications with a student and inappropriate educator-student relationships and boundaries to the behaviors by an educator toward students that qualify as "Priority 1" conduct for purposes of investigation priority, investigative notices, and sanction authority. The adopted amendment to 19 TAC §249.17 creates a mandatory minimum sanction for an educator who tests positive for, possesses, or is under the influence of drugs or alcohol on campus. The adopted amendment also requires permanent revocation for an educator who injures a student, but is not immune from disciplinary action.

REASONED JUSTIFICATION. The adopted amendment to 19 TAC §249.14(d) updates the rule to meet the requirements of amendments to TEC, §21.006, enacted by HB 1783, 84th Texas Legislature, Regular Session, 2015. The changes eliminate any discrepancy between the statute and the rule and prevent confusion about when a superintendent or director must report to the SBEC.

The adopted amendment to 19 TAC §249.14(h) clarifies the breadth of "soliciting or engaging in sexual conduct or a romantic relationship with a student or minor" by explicitly stating that inappropriate communication, inappropriate professional educator-student relationships, and boundaries are all included as "Priority 1" misconduct. Inappropriate professional educator-student relationships and boundaries and inappropriate communication with a student or minor are violations of the Educators' Code of Ethics, 19 TAC §247.2(3)(H) and (I). To ensure the health, safety, and welfare of students and minors, the SBEC must prioritize investigations and immediately place investigation notices on the certificates of all educators who are alleged to have engaged in any form of an inappropriate relationship between the educator and students or minors, including inappropriate communications and inappropriate educator-student boundaries.

The adopted amendment to 19 TAC §249.14(k) expands the reasons for which TEA staff may toll the time limit for removal of an investigative notice on the certificate of an educator under investigation to include administrative investigations and administrative enforcement litigation. This allows TEA staff to avoid redundant parallel investigations and thereby preserve resources by waiting for a related administrative investigation conducted by another division of TEA or another state or federal agency to conclude before determining how to proceed with the SBEC investigation of the educator.

The adopted amendment to 19 TAC §249.17(d)(2)(A) increases the length of time in advance of the start of school that an educator has to give written notice of resignation to the school district in order to have the advance notice count as a mitigating factor in a disciplinary action for contract abandonment. The increased notice period for mitigation acknowledges that two weeks is not sufficient time for a school district to find a replacement teacher before the start of the next school year and prevents an educator from getting a lesser penalty when the educator's contract abandonment leaves the school district without reasonable time to find a replacement.

The adopted amendment to 19 TAC §249.17(d)(3)(C), (e)(4), and relettered (i) clarifies that for determining penalty, the SBEC treats default cases the same as cases following a contested case hearing at the State Office of Administrative Hearings (SOAH). This reflects the majority of SBEC precedent in final orders arising from both default cases and contested cases. The adopted amendment is, therefore, not intended to

increase penalties in default cases, but to ensure fairness and predictability in SBEC decisions regarding default cases.

The adopted amendment adds a new subsection (h) to 19 TAC §249.17 that creates a mandatory minimum sanction of a one-year suspension and required completion of a drug or alcohol treatment program for educators who are subject to sanction for testing positive for drugs or alcohol, or are in possession of drugs or alcohol, while on a school campus. This mandatory minimum gives clear guidance to staff at TEA and administrative law judges at SOAH regarding appropriate penalties in such cases and to ensure fairness and predictability in SBEC decisions regarding such cases.

The adopted amendment to relettered 19 TAC §249.17(i) adds intentional, knowing, or reckless injury to a student or minor from which the educator is not immune under TEC, §22.0512, to the list of conduct for which permanent revocation is the mandatory penalty. The adopted amendment parallels the elements of the criminal charge of felony injury to a child because the majority of cases for which the SBEC has ordered permanent revocation in the past have involved criminal charges of injury to a child. The adopted amendment reflects the extreme danger that such conduct presents to students and ensures fairness and predictability in SBEC decisions regarding such cases.

SUMMARY OF COMMENTS AND BOARD RESPONSES. The public comment period on the proposal began August 26, 2016, and ended September 26, 2016. The SBEC also provided an opportunity for registered oral and written comments at the October 7, 2016 meeting in accordance with the SBEC board operating policies and procedures. Following is a summary of the public comments received and corresponding board responses regarding the proposed amendments to 19 TAC §249.14 and §249.17.

Comment: The Association of Texas Professional Educators (ATPE) commented that the mandatory minimum sanction proposed in 19 TAC §249.17(h) is inappropriate for the wide variety of behaviors that could cause an educator to test positive, be under the influence, or be in possession of drugs or alcohol on school grounds. ATPE raised concerns that the proposed language could cause educators to be sanctioned with a one-year suspension for taking, being under the influence of, or being in possession of legally prescribed medications.

Board Response: The SBEC disagreed. The language in 19 TAC §249.17(h) is only a penalty guideline and does not independently create a new source of disciplinary authority. Instead, a certified educator must be subject to discipline due to violating another statute or rule within SBEC jurisdiction before the educator could be subject to sanction in keeping with the minimum. The language uses the wording "subject to sanction" to note this distinction.

The provision of the Educators' Code of Ethics that makes educators subject to sanction for using or possessing drugs, 19 TAC §247.2(1)(L), limits the proscribed conduct to "the illegal use or distribution of controlled substances and/or abuse of prescription drugs and toxic inhalants." The adjective "illegal" in 19 TAC §247.2(1)(L) prevents educators from being subject to discipline under that provision for using, possessing, or being under the influence of legally prescribed drugs when used as prescribed. An educator may also be subject to discipline for activities involving drugs or alcohol that violate a local district policy under 19 TAC §247.2(1)(G), which makes certified educators subject to sanction if the educator fails to comply with local policies. The question of whether and how local district policy forbids employees from testing positive, being under the influence, or being in possession of drugs or alcohol on school grounds is one that only local school districts can determine and is not within the purview of the SBEC.

The intent of 19 TAC §249.17(h) is to improve predictability and consistency in sanctioning educators who have violated one of these provisions of the Educators' Code of Ethics without necessitating any additional proof or analysis beyond that required to prove the violation itself. The language also sends a clear message to educators that any incident involving drugs or alcohol on campus that violates the Educators' Code of Ethics is serious enough to warrant a one-year suspension.

Comment: The Texas Classroom Teachers Association (TCTA) commented that it opposes proposed 19 TAC §249.17(i)(7), which requires permanent revocation for certified educators who are found after a contested case hearing to have intentionally, knowingly, or recklessly caused bodily injury to a student or minor and are not immune from discipline by SBEC under TEC, §22.0512. TCTA argued that the SBEC should not adopt the proposed language because it removes the SBEC's discretion to determine a lesser penalty; creates a negligence standard for such cases; requires permanent revocation even in cases of self-defense, events that occur outside of school, and automobile accidents; fails to include immunity from SBEC sanction for the broader swath of conduct that is currently only immune from civil personal liability suits under TEC, §22.0511; and is overbroad in that it includes injury to any student or minor, not just those under age 14 as in the Texas Penal Code's definition of criminal Injury to a Child.

Board Response: The SBEC disagreed that §249.17(i)(7) should not be adopted because it limits the SBEC's discretion and approved the language as proposed. The intent of the language is to create more consistency and predictability in educator discipline cases. Imposition of a mandatory sanction serves the interests of justice by ensuring that all educators who are found at a contested case hearing to have knowingly, intentionally, or recklessly injured a student or minor are treated equally.

The SBEC disagreed that §249.17(i)(7) creates a negligence standard for permanent suspension in cases of injury to a child by certified educators. It is unclear how TCTA believes the language creates a negligence standard, as the language specifically limits the provision to conduct that "intentionally, knowingly, or recklessly causes bodily injury." Negligence is clearly and intentionally not included. It is important to note that "recklessly" is defined in Texas law as when a person is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur--when a person ignores red flags that his or her conduct is likely to cause injury. In contrast, Texas law defines "negligence" as when a person ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur--when there are no red flags. The language intentionally excludes negligent conduct so that only educators who are aware, but consciously disregard that their conduct is likely to cause injury to a student or minor, are subject to permanent revocation.

The SBEC further disagreed that additional exceptions to the rule beyond the immunity created by TEC, §22.0512, are appropriate or necessary. The SBEC determined that educators must be sanctioned for intentional, knowing, or reckless injury to a child even when the injury does not occur at school. TCTA notes that an educator who recklessly caused a car accident in which the

educator's own child is injured would be subject to permanent revocation, but such a sanction is appropriate because certified educators worthy of being entrusted with Texas schoolchildren would not recklessly injure any child, even their own.

Moreover, carving out additional immunity from SBEC discipline for negligent actions that occur in the course of the educator's professional duties, as TCTA suggests, is both unnecessary, because negligent actions are already excluded from the proposed language, and inappropriate. TCTA confuses the standard set out by the Texas Legislature for immunity from professional discipline by the SBEC in TEC, §22.0512, from the lesser standard the Texas Legislature set to protect educators from civil lawsuits for damages under TEC, §22.0511. By distinguishing these two types of immunity for educators, the Texas Legislature intended for the SBEC to be able to sanction educators even when parents or students could not sue for monetary damages. TEC, §22.0511, does not apply to administrative actions by the SBEC and, therefore, should not be the basis for SBEC rules. Creating additional exceptions will only cause confusion and inconsistency in SBEC penalties and thereby undermine the primary purpose for which SBEC adopted this rule.

The SBEC also disagreed with TCTA's comment that the SBEC should limit its penalty guideline to cover only educators who cause injuries to children under age 14, in keeping with the criminal statute for felony Injury to a Child. Certified educators are placed in a special position of authority and trust with Texas students. The SBEC determined that all minors and students, regardless of age, should be protected from intentional, knowing, or reckless injury by an educator. The penalties and sanctions for certified educators must extend to cover all students and minors to ensure that all Texas students, regardless of age, are safe in their classrooms with their teachers.

The State Board of Education (SBOE) took no action on the review of the proposed amendments to 19 TAC §249.14 and §249.17 at the November 18, 2016 SBOE meeting.

STATUTORY AUTHORITY. The amendments are adopted under the Texas Education Code (TEC), §21.006(a)-(c), (f), and (g), which set reporting requirements for when superintendents and directors have to inform State Board for Educator Certification (SBEC) regarding an educator's criminal record, termination, or resignation. The statute requires the superintendent or director to inform SBEC not later than the seventh day after the superintendent knows any of the following has occurred: (1) an educator has a criminal history that the superintendent learned about other than through the standard criminal history background check; (2) an educator's employment is terminated based on evidence that the educator committed certain misconduct; or (3) an educator resigned and there is evidence that the educator may have engaged in misconduct; the TEC, §21.006, also gives SBEC authority to make rules as necessary and to sanction an educator who fails to make a required report; the TEC, §21.007, which requires the SBEC to propose rules that provide for a procedure for placing a public notice of alleged misconduct on an educator's certificate immediately when the educator is alleged to have committed misconduct that presents a risk to the health, safety, or welfare of a student or minor. The TEC, §21.007, also allows the SBEC to determine what types of misconduct would present such a risk; the TEC, §21.031(a), which charges the SBEC with regulating and overseeing all aspects of the certification, continuing education, and standards of conduct for public school educators; the TEC, §21.035, which states that Texas Education Agency (TEA) staff provides administrative functions and services for SBEC and gives SBEC the authority to delegate to either the commissioner of education or to TEA staff the authority to settle or otherwise informally dispose of contested cases involving educator certification; the TEC, §21.041(a), which authorizes the SBEC to adopt rules as necessary to implement its procedures; the TEC, §21.041(b)(1), (7), and (8), which give the SBEC rulemaking authority to regulate educators, specify requirements for the issuance and renewal of an educator certificate, provide for disciplinary proceedings against educators, and create and enforce an educator's code of ethics; the TEC, §21.058, which requires SBEC to revoke an educator's certificate if the educator is convicted of certain felony offenses or offenses that require the defendant to register as a sex offender, and the victim of the offense was under 18 years old; the TEC, §21.060, which sets out crimes that relate to the education profession and authorizes the SBEC to sanction or refuse to issue a certificate to any person who has been convicted of one of these offenses; the TEC, §§21.105(c), 21.160(c), and 21.210(c), which give SBEC authority to sanction an educator who has a continuing, term, or probationary contract and who resigns without good cause; the TEC, §22.085, which allows the SBEC to sanction educators who fail to fire or to refuse to hire an applicant when the educator knew or should have known from the background check that the employee had a criminal record reflecting certain offenses and requires a superintendent to certify to the commissioner of education that the school district is in compliance with this section; the TEC, §22.087, which requires a superintendent to report to SBEC if the superintendent knows of information showing that an educator or an applicant for an educator certificate has criminal history that is not reflected in the criminal history information provided by the Texas Department of Public Safety in response to a background check; and the TEC, §57.491(g), which requires the SBEC to refuse to renew the certificate of any educator who is in default on student loan payments; the Texas Government Code, §2001.058, which sets out the powers and duties of the State Office of Administrative Hearings and other state agencies with regard to contested case proceedings; and the Texas Occupations Code, §§53.021(a), 53.022-53.025, 53.051, and 53.052, which give the SBEC the authority to automatically suspend, revoke, or disqualify a person from receiving an educator certificate if the person has been convicted of certain offenses. As these statutes charge the SBEC with regulating and overseeing all aspects of the certification, continuing education, and standards of conduct for public school educators, the adopted changes, as indicated in the reasoned justification, provide notice and clarity to the regulated how the SBEC will fulfill its statutorily required duties. These rules are authorized or required by the statutory provisions described above.

CROSS REFERENCE TO STATUTE. The adopted amendments implement the TEC, §§21.006(a)-(c), (f), and (g); 21.007; 21.031(a); 21.035; 21.041(a) and (b)(1), (4), (7), and (8); 21.058; 21.060; 21.105(c); 21.160(c); 21.210(c); 22.085; 22.087; and 57.491(g); Texas Government Code, §2001.058; and Texas Occupations Code, §§53.021(a), 53.022-53.025, 53.051, and 53.052.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 7, 2016.

TRD-201606392
Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Effective date: December 27, 2016
Proposal publication date: August 26, 2016
For further information, please call: (512) 475-1497

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PART 8. WINDHAM SCHOOL DISTRICT

CHAPTER 300. GENERAL PROVISIONS

19 TAC §300.2

Adopted Amendments Preamble

The Windham School District Board of Trustees adopts amendments to §300.2, concerning Windham School District Board of Trustees Operating Procedures, without changes to the proposed text as published in the September 2, 2016, issue of the *Texas Register* (41 TexReg 6607).

The adopted amendments are necessary to provide clarification of Open Meetings requirements and update formatting.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §492.013.

Cross Reference to Statutes: None.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606525
Sharon Howell
General Counsel
Windham School District
Effective date: January 1, 2017
Proposal publication date: September 2, 2016
For further information, please call: (936) 437-6700

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TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 7. ADMINISTRATION

22 TAC §7.10

Introduction. The Texas Board of Architectural Examiners (Board) adopts amendments to §7.10, concerning General Fees. The amendments are adopted without changes to the proposed text as published in the September 30, 2016, issue of the *Texas Register* (41 TexReg 7657).

Reasoned Justification. The amendments to §7.10 revise the Board's fee schedule to implement a change in the fees charged by Texas.gov, the Board's third-party provider of online payment services. By updating the fee schedule to be compliant with the charges imposed by Texas.gov, the Board is able to continue collecting online payments. This results in greater convenience for registrants who choose to make online payments. Additionally, the Board benefits from a decrease in costs associate with processing payments by check.

Additionally, the amendments institute a $3 surcharge to fund the examination fee scholarship program. Under Occupations Code §1051.651, the Board is required to administer a scholarship program to offset the cost of the examination fee for qualifying applicants for architectural registration. The law requires this program to be funded through fees collected at the time of renewal for active and inactive architectural registrations held by Texas residents. Adoption of this rule allows the Board to satisfy the legal requirement to fund the examination fee scholarship program. In creating the program, the legislature identified the following public benefits to be served by the program: promoting the professional needs of the state, increasing the number of highly trained and educated architects available to serve the residents of the state, improving the state's business environment and encouraging economic development, and identifying, recognizing, and supporting outstanding applicants who plan to pursue careers in architecture. Adoption of this rule will decrease the cost to complete the registration examination for scholarship recipients.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposed rule.

Statutory Authority.

The amendment of §7.10 is adopted under §§1051.202, 1051.302, 1051.305, 1051.355, 1051.357, 1051.651, 1051.653, 1051.705, 1052.054, 1052.154, 1052.155, 1053.052, and 1053.156 of the Texas Occupations Code. The cited statutes provide the Board with obligations and authorizations with respect to the 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. The law requires the Board to set the fee at an amount determined by the board as reasonable and necessary to cover the costs of administering inactive registrations and, for architect registrants, an additional amount required to fund the examination fee scholarship program as described under §1051.651.

Section 1051.357 requires the Board to set a renewal fee for architect registrants on emeritus status in an amount reasonable and necessary to recover the costs to administer such registrations. The Board interprets this provision to mean that emeritus architects are not subject to any surcharge to fund the examination fee scholarship program.

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 (Architects), and requires the Board to set the re-

newal fee for architect registrants. For residents of Texas, the Board is directed to set the renewal fee the amount determined by the board as reasonable and necessary to cover administrative costs, and an amount determined annually by the board as reasonable and necessary for the administration of the examination fee scholarship program under §1051.653. For non-residents, the Board is directed to set the fee in an amount determined by the Board. The Board interprets this provision to mean that non-residents are not subject to any surcharge to fund the examination fee scholarship program. Additionally, §1051.651 authorizes the Board to accept payment of a fee by electronic means, and to charge a fee for such collection in an amount that is reasonably related to the expense incurred by the board in processing the payment.

Section 1051.653 directs the Board to administer a scholarship program for applicants for architect registration, and to fund the program with the amount added to each renewal fee under §1051.651.

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.

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 (Landscape Architects), and requires the Board to set the renewal fee for landscape architect registrants. Additionally, §1052.054 authorizes the Board to accept payment of a fee by electronic means, and to charge a fee for such collection in an amount that is reasonably related to the expense incurred by the board in processing the payment.

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 §1051.302, the board may delegate the collection of any examination fee prescribed by the board to the person who conducts the examination.

Section 1052.155 requires the Board to set a renewal fee for landscape architect registrants on emeritus status in an amount reasonable and necessary to recover the costs to administer such registrations.

Section 1053.052 requires the Board to set certain fees, in amounts that are reasonable and necessary to cover the costs of administering Chapter 1053 (Interior Designers), including a registration application fee, an annual registration renewal fee, a reciprocal registration fee and an examination fee. Furthermore, §1053.052 authorizes the Board to set fees for other services, in amounts that are reasonable and necessary to cover the costs of administering Chapter 1053, including providing a duplicate certificate of registration, providing a roster of interior designers, reinstating a revoked or suspended certificate of registration, and performing any other board action involving an administrative expense. Additionally, §1053.052 authorizes the Board to accept payment of a fee by electronic means, and to charge a fee for such collection in an amount that is reasonably related to the expense incurred by the board in processing the payment.

Section 1053.156 requires the Board to set a renewal fee for interior designer registrants on emeritus status in an amount reasonable and necessary to recover the costs to administer such registrations.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 8, 2016.

TRD-201606408
Lance Brenton
General Counsel
Texas Board of Architectural Examiners
Effective date: January 1, 2017
Proposal publication date: September 30, 2016
For further information, please call: (512) 305-8519

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 39. PUBLIC NOTICE

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §39.411 and §39.603.

The amendments to §39.411 and §39.603 are adopted *with changes* to the proposed text as published in the July 22, 2016, issue of the *Texas Register* (41 TexReg 5331) and, therefore, will be republished.

The amendments to §39.411(e)(4)(A)(i), (e)(5) (introductory paragraph), (e)(11)(A)(iv) and (v), (e)(13), (f) (introductory paragraph), (f)(8), and (g); and §39.603 will be submitted to the United States Environmental Protection Agency as revisions to the State Implementation Plan (SIP).

Background and Summary of the Factual Basis for the Adopted Rules

On February 25, 2016, Texas Aggregates and Concrete Association (TACA) submitted a petition requesting the commission conduct rulemaking to amend public notice rules applicable to initial registration applications for authorization under the Air Quality Standard Permit for Concrete Batch Plants, referred to in this preamble for ease of reference as the CBP standard permit. This permit is distinguishable from the Air Quality Standard Permit for Concrete Batch Plants with Enhanced Controls, which has different notice and public participation requirements. The petition requested amendments to §39.411(e)(11)(A)(iii) and §39.603(a) and (b) to provide for one 30-day public notice of initial registration applications. On April 6, 2016, the commission considered the petition and directed the executive director to examine the request and initiate rulemaking.

The TACA petition did not address the Air Quality Standard Permit for Concrete Batch Plants with Enhanced Controls authorized under Texas Clean Air Act (TCAA), Texas Health and Safety Code (THSC), §382.05198. The public notice requirements for that standard permit are listed within the permit, and registrations for that permit are not subject to the rules

in Chapter 39. Therefore, public notice requirements for that permit are not affected by this adopted rulemaking.

The commission is authorized to adopt standard permits under THSC, §382.05195, which prescribes the procedures the commission must follow to adopt a standard permit. The commission implemented THSC, §382.05195 by adopting rules in 30 TAC Chapter 116, Subchapter F. The rules in Chapter 116, Subchapter F provide that when the executive director drafts a new (or proposes amendments to an existing) standard permit, notice of the proposed permit is published in the *Texas Register* and in newspapers. In addition, TCEQ holds a public meeting to provide stakeholders the opportunity for discussion with TCEQ staff and for submittal of comments regarding the proposed permit. The responses to comments and any changes made to the proposed permit in response to the comments are presented to the commission for consideration in an open meeting, commonly referred to as Agenda. Once adopted, the conditions of the permit will be the same for all owners and operators that register to construct and operate under the standard permit. The standard permits are not designed to be amended to include tailored permit conditions applicable to an individual registration. The CBP standard permit was last amended by the commission effective December 21, 2012.

Each individual CBP standard permit registration application is subject to the public participation requirements in 30 TAC Chapters 39 and 55. Since 1985, owners or operators registering for authorization to construct and operate a concrete batch plant (under what is known today as the Air Quality Standard Permit for Concrete Batch Plants) have been subject to specific notice requirements for the proposed plant. These public notice requirements for initial registration applications included the opportunity to request a contested case hearing. In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which made changes to notice requirements for initial registration applications that were administratively complete on or after September 1, 1999. Since the rulemaking to implement HB 801 in 1999, and rule amendments adopted in 2010 have been in effect, the commission has required registrants for the CBP standard permit to publish a Notice of Receipt of Application and Intent to Obtain Permit (NORI) which solicits comments for a 15-day period; contested case hearing and public meeting requests are also solicited. At the same time the NORI is published in a newspaper of general circulation in the municipality or in the nearest municipality in which the plant will be located, the registrant is required to place a copy of the registration application in a public place in the county, and to post signs at the proposed facility location. Alternative language publication and signs may also be required.

After TCEQ staff complete the technical review, registrants were required to publish Notice of Application and Preliminary Decision (NAPD), which solicits comments for a 30-day period; hearing requests were also solicited but only if at least one such request was timely made in response to the NORI. At the close of the comment period, the executive director prepares a written response to all timely-filed comments and files the response with the TCEQ's Office of Chief Clerk. If hearing requests were submitted in response to the NORI, hearing requests may be submitted during the 30-day period after the mailing of the executive director's response to comments. Based on comments, registrants may update their registration application representations as to how they will construct and operate under the standard permit; historically, this has been very uncommon. Also, because the permit conditions in the CBP standard permit are established by the commission when the standard permit is adopted, the executive director cannot change any permit conditions for an individual registration in response to comments.

The public has expressed concern that the 15-day period is often not enough time to review the registration application, determine whether to comment, request a public meeting or contested case hearing, and then to timely submit the information to the TCEQ. This rulemaking requires one 30-day consolidated notice for registrants of the CBP standard permit that will serve as both the NORI and NAPD. To ensure the public has the opportunity to review a complete registration application, the consolidated notice will be published after the administrative and technical reviews of the registration application are completed. The consolidated notice establishes a single, 30-day notice period during which comments and requests for public meeting or contested case hearing can be submitted. With one notice instead of two, TCEQ expects there will be more clarity regarding the restrictions on the timeframe to submit hearing requests.

Concurrently with this adoption, and published in this issue of the *Texas Register,* the commission is adopting an amendment to §55.152 in Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment, to provide for a 30-day notice period during which comments and requests for public meeting or contested case hearing can be submitted in response to the consolidated NORI and NAPD. The 30-day period begins on the last date of newspaper publication, and the comment period is automatically extended to the close of any public meeting, as required by §55.152(b). As provided for in §55.201, which implements Senate Bill 709 (84th Texas Legislature, 2015), hearing requests must be based on the requestor's timely submitted comments.

The public participation requirements for renewals of registrations under the CBP standard permit are not affected by the adopted amendments in Chapters 39 and 55.

Section by Section Discussion

In addition to the amendments discussed later, the adopted rulemaking also includes various stylistic, non-substantive changes to update rule language to current *Texas Register* style and format requirements. Such changes include 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. Specifically, §§39.411(e)(11)(A)(iv), 39.411(e)(13), and 39.603(c) were amended to reflect the actual name of the CBP standard permit, which is "Air Quality Standard Permit for Concrete Batch Plants."

§39.411, Text of Public Notice

Clause (iv) is added to §39.411(e)(11)(A), which amends requirements for the notice text for initial registration applications received on or after January 1, 2017, for concrete batch plants that register to operate under the CBP standard permit. The adopted clause states that the text of the notice shall include three statements, adopted as subclauses (I(III). First, a request for a contested case hearing must be filed with the TCEQ's Office of Chief Clerk before the close of the 30-day comment period following the last publication of the consolidated NORI and NAPD. Second, if no hearing requests are received by the end of the 30-day comment period, there is no further opportunity to request a contested case hearing. Third, if any hearing requests are received before the close of the 30-day comment period, the opportunity to file a request for a contested case hearing is extended to 30 days after the mailing of the executive director's

response to comments. Existing clause (iv) is re-designated as clause (v).

Subsection (f) is amended to add a reference to the consolidated notice adopted in §39.603(c). In addition, because the effective date of §39.411 will change, the references to "the effective date of this section" in §39.411(e)(4)(A)(i) and (ii), (e)(5), (f)(8) and (9), and (g) are updated to provide for the precise date of June 18, 2010, which is the actual effective date for these particular requirements.

§39.603, Newspaper Notice

Adopted §39.603(c) provides that, for initial registration applications received on or after January 1, 2017, for authorization to construct and operate a concrete batch plant under the CBP standard permit, owners and operators are required to publish a consolidated NORI and NAPD. The consolidated NORI and NAPD must be published no later than 30 days after the chief clerk has mailed the preliminary decision concurrently with the consolidated NORI and NAPD to the registrant. In addition, the new consolidated notice must contain the text as required by §39.411(f).

Existing subsections (c) - (e) are re-lettered as subsections (d) - (f). References to "registrant" are added to subsections (d) - (f) to ensure that these requirements also apply to initial registration applications for the CBP standard permit.

Final Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendments to Chapter 39 are not specifically intended to protect the environment or reduce risks to human health from environmental exposure to air pollutants, but instead amend the notice requirements for initial registration applications for concrete batch plants under the CBP standard permit, which are procedural in nature.

As defined in the Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking action does not meet any of these four applicability requirements of a "major environmental rule." Specifically, the adopted amendments to Chapter 39 amends the notice requirements for initial registration applications for the CBP standard permit authorizations. This adopted rulemaking action does not exceed an express requirement of state law or a requirement of a delegation agreement, and was not developed solely under the general powers of the agency, but was developed to meet the requirements for public participation in the TCAA as identified in the Statutory Authority section of this preamble.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The adopted rulemaking to Chapter 39 amends the notice requirements for initial registration applications for concrete batch plants under the CBP standard permit, which are procedural in nature. Promulgation and enforcement of the adopted rulemaking will not burden private real property. The adopted amendments do not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will the amendments affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted amendments are not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the consistency with the CMP.

Effect on Sites Subject to the Federal Operating Permits Program

The adopted rules will not require any changes to outstanding federal operating permits.

Public Comment

The commission held a public hearing on August 10, 2016. The comment period closed on August 22, 2016. The commission received comments from Texas State Representative Alma Allen (Representative Allen), the City of Dallas, the City of Houston, TACA, and the United States Environmental Protection Agency, Region 6 (EPA).

Response to Comments

Changes in the Number of Notices and the Amount of Time to Submit Comments and Requests for a Contested Case Hearing

Comment

Representative Allen commented that while she does not believe that TCEQ's intent in helping the operators reach their goal for one notice is to shorten the time within which the community is able to organize and provide feedback, the shorter time is the most egregious consequence of this proposal.

The City of Houston commented that the current rules grant community members and citizens a valuable window of opportunity to evaluate the potential consequences of the plant proposed in their communities. They are able to obtain, review,

and present information about the negative effects concrete batch plants have on communities. Shortening the notice period will burden citizens by limiting their opportunity to participate in important registration and permitting decisions. For those in socioeconomically disadvantaged communities who historically have had less of a voice in public processes and who have fewer resources to deploy to protect themselves, the burden will be particularly onerous.

The City of Dallas commented that the proposed rules place the interests of industry above protection of public health and the environment. There is no benefit to the public by limiting their right to participate in the process of TCEQ review of air permit applications for concrete batch plants.

Response

This rulemaking was not intended to adversely affect anyone's opportunity or ability to comment on a concrete batch plant registration application, or their ability to ask questions of a registrant who is seeking approval to construct and operate under the CBP standard permit. Although the time to comment and request a contested case hearing has been a 15-day period since 1985 when the opportunity to request a contested case hearing for a concrete batch plant was added to the TCAA, the commission has received comments on previously submitted CBP standard permit registration applications expressing concern that the 15-day period to comment and request a hearing is too short. In response, this rulemaking extends that period to 30 days. In addition, the commission determined that 30 days is reasonable because the permit conditions cannot change in response to comment.

The commission disagrees that the rule amendments place the interests of industry above protection of public health and the environment. The CBP standard permit, last amended in 2012, is protective of human health and the environment, as discussed elsewhere in this Response to Comments. The commission has made no changes to the rules in response to these comments

Comment

Representative Allen commented that the current 15-day NORI period is often not enough time to allow citizens to search the newspapers, review the permit and understand its implications, decide to request a public meeting or a contested case hearing, and then to submit the information to TCEQ in a timely fashion. However, the proposed single 30-day period for the permit is also inadequate. Although the proposed rule allows additional time to request a contested case hearing, it shortens the time with which the public is able to organize and provide public comment.

The City of Dallas commented that it is very concerned that the proposed rules will substantially and unjustifiably limit the public's right to receive notices, submit comments, request public meetings, and request public hearings during the permit application process for the CBP standard permit. The proposed consolidation of the NORI and NAPD into one notice is a significant decrease in time and would diminish public opportunity for input to the agency. This would substantially limit the public's existing right to engage in the permitting process.

TACA supports the executive director's proposed rulemaking, including the specific amendments to §39.411 and §39.603. This rulemaking will allow the public more time to review the registration application. Because the initial comment period will increase from a 15-day period to a 30-day period, this rulemaking will also ensure an additional 15 days to request a contested case hearing. TACA encourages the TCEQ to adopt the rules as proposed.

Response

The purpose of this rulemaking is to establish a single, 30-day notice period during which comments and requests for public meeting or contested case hearing can be submitted. In response to previously submitted CBP standard permit registration applications, the public has expressed concerns that the 15-day period is often not enough time to review the registration application, determine whether to comment, request a public meeting or a contested case hearing, and then to timely submit the information to the TCEQ.

The consolidated NORI and NAPD will not be prepared or mailed to the registrant for publication until the registration application is both administratively and technically complete. To ensure that it is clear that the public has the opportunity to review the complete registration application with the established CBP standard permit within the 30-day comment period, §39.603(c) was changed from proposal in response to these comments to delete the reference to the executive director declaring the registration application administratively complete. In addition, §55.152(a)(2) is adopted to provide for a 30-day notice period.

Companies submitting registration applications to construct under the CBP standard permit are required to publish notice in a newspaper, and, in some cases, in alternate language publications. In addition, they are also required to post signs at the proposed site of the concrete batch plant. Both the signs, which are often the most effective for notifying nearby residents, and the newspaper notices provide instructions on how to obtain additional information about the registration application. A copy of the registration application is also available in a local public place. The TCEQ or the registrant may be contacted for more information about the registration application or CBP standard permit conditions.

The commission understands that citizens who live or work near a proposed location of a concrete batch plant may have never before received notice of a proposed concrete batch plant, or may be unaware of the commission's CBP standard permit, the process for submitting comments, or the opportunity to request a public meeting, or, for certain persons, the opportunity to request a contested case hearing. People can stay informed of any notices in their area by signing up for a mailing list, or going online to *http://www14.tceq.texas.gov/epic/eNotice/* and pull up notices by ZIP Code, County, etc.

To develop their comments and questions, citizens can review both the registration application and the commission's CBP standard permit. Unlike case-by-case applications which are often hundreds of pages in length and may contain air dispersion modeling, registration applications for a CBP standard permit are, by their nature, less extensive (on average they contain approximately 40 pages) and air dispersion modeling is not required. As discussed earlier, the conditions of the permit will be the same for all owners and operators that register to construct and operate under the CBP standard permit. Standard permits are not designed to be amended to include tailored permit conditions applicable to an individual registration. As such, the permit conditions cannot change in response to comments. The CBP standard permit was last amended by the commission effective December 21, 2012. In the actual permit document, currently located at *https://www.tceq.texas.gov/assets/public/permitting/air/NewSourceReview/Mechanical/cbpsp-final-*

preamble.pdf, the commission explains its basis for finding that the permit is protective of human health and the environment, and its basis for the specific permit conditions.

The deadline for submitting comments is extended to the end of any public meeting held regarding the registration application, if the meeting is held more than 30 days after the date of the last newspaper publication. Public meetings provide an opportunity for the public to submit comments regarding the registration applications. For CBP standard permit registration applications, the TCEQ will hold a public meeting if there is significant public interest in a registration application or if requested by a legislator from the area of the proposed project. A request for a public meeting must be submitted to the chief clerk during the 30-day public comment period. Comments, public meeting requests, and requests for contested case hearings may be submitted in writing to the commission via regular mail, fax, hand delivery, or electronic submittal. Oral comments are accepted at public meetings. All timely comments are responded to in writing by the executive director at or prior to the issuance of the CBP standard permit registration. Requests for contested case hearing must be received within 30 days of the publication of the consolidated notice. All timely hearing requests are considered by the commissioners in their open meeting.

Within the 30-day period, citizens should have adequate time to become aware of the notice, review the registration application and CBP standard permit, prepare and submit comments, and request a public meeting or a contested case hearing. For these reasons, and because the permit conditions cannot change in response to comment, the commission has determined that a 30-day comment period is reasonable.

Comment

Representative Allen commented that she and her constituents in House District 131 feel that rather than shortening the length of time the public is able to weigh in, they should be given, at minimum, the same amount of time they have presently, which is 45 days. Although they appreciate the extension of the contested case hearing deadline, and understand the need for consolidation and greater efficiency in the process, they do not see the need for the public to give up precious time in the process for providing feedback, when they have so little say to begin with. The residents are almost always on the losing side of these permits, having to put up with increased traffic, deteriorating roads, and dust particles. Having the time to weigh in on the application gives residents the ability to form a dialogue with the applicant, wherein they are able to discuss things like alternative routes, locations, and dust mitigation techniques. They support a 45-day notice that combines the entire application and review process, which would better serve the interests of both the communities and the owners or operators.

Response

As discussed earlier, because the registration application information is not voluminous, the commission has determined that 30 days is appropriate. The commission understands that citizens may want to meet with representatives of the applicant to discuss local concerns, including topics for which the TCEQ does not have jurisdiction, such as alternative routes for trucks and the specific location of the concrete batch plant. This can be accomplished by meetings between citizens and the applicant, or at a public meeting conducted by TCEQ. The commission has made no changes to the rules in response to this comment.

Comment

TACA commented that the proposed rule changes will expedite the permitting process, and encourages the TCEQ to adopt the rules as proposed.

Response

The purpose of this rulemaking is to establish a single, 30-day notice period during which comments and requests for public meeting or contested case hearing can be submitted. In response to previously submitted CBP standard permit registration applications, the public has expressed concerns that the 15-day period is often not enough time to review the registration application, determine whether to comment, request a public meeting or a contested case hearing, and then to timely submit the information to the TCEQ. Specifically, with one notice instead of two, TCEQ anticipates that there will be more clarity regarding the timeframe to submit hearing requests.

Under the amended rules, the administrative and technical reviews will occur prior to issuance of the consolidated NORI and NAPD for publication by the registrant. The TCEQ will consider the comments submitted and prepare a response to comments, which is also included as part of the processing time. If hearing requests are received, additional time is required for the commission to consider those requests at an open meeting. If a contested case hearing is held, the final decision on the registration application may be one year or longer after it is received.

The change to a consolidated notice may result in a reduction in the application processing time due to the notice consolidation. However, that reduction cannot be estimated at this time. Between September 1, 2015, and September 1, 2016, the average time to process CBP standard permit registration applications with both NORI and NAPD was 129 days. This includes registration applications with comments, public meetings and, where applicable, contested case hearing requests considered by the commission, including those for which a hearing request was granted and a contested case hearing was held.

Although there will be no separate NAPD publication under the adopted rules, the factor that primarily determines the length of time for a permit to be issued is the quality of the registration application. The permitting process is shortest when registrants provide a complete application at submittal, and newspaper publication occurs within a day or a few days after the notice is provided to the registrant by TCEQ. To expedite the review process, applicants can elect to submit their registration applications under the commission's expedited permitting program.

Comment

TACA commented that the change in public notice requirements would provide a cost savings to operators of concrete batch plants.

Response

As discussed in the Public Benefits and Costs portion of the proposed rule preamble, registrants for the CBP standard permit will save approximately 50% on publication costs by having one publication instead of two for English language publication and also for any required alternate language publication. One round of English language publication costs are estimated between $674 and $9,759, depending on which newspaper is used for publication, the day of the week, and how many words are in the notice. The cost of publishing in newspapers in larger cities is greater than newspaper publication costs in smaller cities.

Comment

TACA commented that the proposed rule changes will eliminate duplicative public notice requirements. TACA encourages the TCEQ to adopt the rules as proposed.

Response

Prior to these rule amendments, a registrant was required to publish two separate public notices, NORI and NAPD. Because the registration application is for a CBP standard permit, the only new information for the public to review during the NAPD period were updates to the application that may have been requested as part of the technical review. As discussed previously in this preamble, the permit conditions are established when the standard permit is issued by the commission under THSC, §382.05195 and 30 TAC Chapter 116, Subchapter F and cannot be changed or tailored for a specific facility. Under the adopted rules, the technical review will be complete prior to issuance of the consolidated notice.

These permits are distinguishable from applications for individual case-by-case permit applications. For those applications, the NORI does not include a draft permit for public review and comment. Only the NAPD for individual case-by-case permit applications provides a draft permit with conditions tailored to the specific type of facilities and emissions to be authorized that is subject to public review and comment. Those comments may result in changes to the draft permit.

These two separate procedures have resulted in some frustration that comments submitted in response to the NAPD for a CBP standard permit cannot result in changes to the permit.

Because the CBP standard permit process differs from the individual case-by-case permit application process, providing a separate NAPD for a CBP standard permit registration does not provide the public new information to form the basis for submitting comments that may affect the outcome of the TCEQ review. Because the CBP standard permit registration applications are less complex than many other applications, having the technical review completed and the standard permit available for review during one 30-day comment period is expected to result in comments that are more specifically focused on the particular registration application.

Concerns Regarding Protection of Public Health

Comment

The City of Houston commented that there is no doubt that concrete batch facility operations emit particulate air pollution. Particulate air pollution is known to be correlated with high-risk asthma attacks and cardiac arrest. There are currently 18 concrete batch facilities in a four-mile radius within the socio-economically disadvantaged Houston Super Neighborhoods of Central/Southeast, South Acres/Crestmont Park, and Minnetex. These Houston neighborhoods also experience particulate air pollution from other sources, including 13 metal recycling facilities. In summary, there are numerous facilities in socioeconomic or disadvantaged neighborhoods in Houston, which experience a higher rate of air pollution and health effects higher than the remainder of the city. Unsurprisingly, each of these particular Houston neighborhoods is within a "high risk of asthma attack and cardiac arrest" area according to the American Journal of Preventative Medicine and Public Health. See Loren H. Raun, *Geospatial Analysis for Targeting Out-of-Hospital Cardiac Arrest Intervention,* American Journal of Preventive Medicine, August 2013, at 137-42; Loren H. Raun, *Factors Affecting Ambulance Utilization for Asthma Attack Treatment: Understanding Where to Target Interventions*, Public Health, March 2015. Health officials are concerned that, in the aggregate, the density of air pollution sources, such as concrete batch plants, may result in cumulative concentration levels that pose an unacceptable health risk to neighborhoods like these.

The rules should not be changed to make it harder for communities and citizens to protect themselves by participating in regulatory proceedings, and therefore the City of Houston opposes the proposed rules.

The City of Dallas commented that the proposed rules do not further the TCEQ's stated mission of protecting the state's public health and natural resources consistent with sustainable economic development.

Response

The TCEQ previously conducted a comprehensive protectiveness review during the development of the CBP standard permit to ensure that the requirements of the permit would protect human health and the environment. This review took into consideration many variables and assumed conditions that maximize emissions impacts to develop an air dispersion modeling approach that was conservative and applicable to any location in the state.

The primary contaminants evaluated during the protectiveness review as potential emissions from concrete batch plants included particulate matter (PM) (aerodynamic diameter of equal to or less than 10 and 2.5 micrometers (PM_{10} and $PM_{2.5}$)), carbon monoxide (CO), nitrogen dioxide (NO_2), sulfur dioxide (SO_2), nickel particulate, and formaldehyde. When the conditions of this CBP standard permit are met, including annual, daily, and hourly production limits, concentrations of these pollutants would be below their respective health protective values, including the National Ambient Air Quality Standards (NAAQS) or TCEQ Effects Screening Levels (ESLs).

The NAAQS values for CO, NO_2, SO_2, and PM are derived to protect human health with an adequate margin of safety to include sensitive populations such as children, the elderly, and individuals that suffer from respiratory diseases such as asthma and chronic obstructive pulmonary disease (COPD). Similar criteria are used to derive the ESLs. Thus, if short-term and long-term emissions do not exceed these values, the operation of facilities with these types of emissions would not pose a threat to human health or welfare. This particular area of Houston has been in compliance with the NAAQS for all of the aforementioned air contaminants and will be required to continue to meet the NAAQS in the future even if those standards change.

The concern regarding the 18 concrete batch plants is addressed in two ways: via the conservatism used to derive the health protective NAAQS and ESLs, which take into consideration cumulative and aggregate exposures; and by the thorough review of air dispersion modeling representations of these types of facilities that are conducted during the development of the CBP standard permit. Modeling data indicate that maximum concentrations of pollutant emissions would typically occur a relatively short distance from the emissions source. Therefore, review of other off-site sources is not necessary when determining approval of registration applications for this particular standard permit. Concrete batch plants located greater than 550 feet from sources with similar emissions are predicted to not exceed the health protective NAAQS or ESLs, even when operating simultaneously. The CBP standard permit requires the owner or operator to locate the concrete batch plant at least 550 feet from any crushing

plant or hot mix asphalt plant. If these distance conditions in the standard permit are not met, then sources with similar emissions such as rock crushers, hot mix asphalt plants, or other concrete batch plants cannot operate at the same time.

As discussed earlier, there are layers of conservatism incorporated into the CBP standard permit. This includes the modeling assumptions used to establish the operational limitations, which include fabric or cartridge filter systems to control PM; distance restrictions regarding the location of the concrete batch plant relative to any crushing plant, hot mix asphalt plant, or other concrete batch plant; distance restrictions regarding the location of the suction shroud baghouse exhaust, stationary equipment, stockpiles, or vehicles used for the operation of the concrete batch plant; and material throughput by limiting the site production to, for example, no more than 300 cubic yards in any one hour and no more than 6,000 cubic yards per day. In addition, the NAAQS and ESLs are not only health-protective, but include a margin of safety to accommodate sensitive populations, aggregate exposures, and cumulative exposures. Thus, when the conditions of the CBP standard permit are met, plants operating under these permits are not expected to adversely affect human health, welfare, or the environment.

The comment also refers to areas of Houston where the neighborhoods coexisting with concrete batch plants and metal recycling facilities are characterized as "high risk of asthma and cardiac arrest," according to a scientific study published by Raun and colleagues. TCEQ staff reviewed this publication and has concerns with the interpretation and utilization of data therein. Primary concerns are that the study of correlation between emergency medical service (EMS) calls and criteria pollutants (CO, NO_2, SO_2, and $PM_{2.5}$) were in fact inconsistent, indicating a weakness in these associations and suggesting that the pollutants did not cause the EMS calls. The study authors also utilized a highly conservative linear model to estimate risks. Available data suggest that this type of model would overestimate risk for many criteria pollutants and would be inappropriate to use based on the fact that many, if not all, criteria pollutants demonstrate a threshold, meaning that there is a concentration below which harmful effects are not observed. Due to lack of proper controls, inconsistency in the body of available scientific evidence in the study, and acknowledgement of the limitations of their model, the results of these studies may be considered of interest, but not reliably predictive of health effects, particularly at lower, ambient pollutant levels.

Therefore, TCEQ's extensive evaluation clearly indicates that concrete batch plants operating in this area of Houston do not pose a threat to human health or welfare due to the parameters and limitations applied to the CBP standard permit. This conclusion is supported by the TCEQ's monitoring data in the area that demonstrate compliance with the PM NAAQS, which accommodate both aggregate and cumulative exposure. The commission has made no changes to the rules in response to these comments.

SIP Revision

Comment

EPA commented that the proposed amendments to §39.411(e)(4)(A)(ii) should not be submitted to the EPA as a revision to the SIP because this part of the rule pertains to permitting of Hazardous Air Pollutants under the Federal Clean Air Act, §112(g), 40 Code of Federal Regulations Part 63, and regulation of Hazardous Air Pollutants is outside the scope of the SIP.

Response

The commission agrees and is not submitting §39.411(e)(4)(A)(ii) as a revision to the SIP.

SUBCHAPTER H. APPLICABILITY AND GENERAL PROVISIONS

30 TAC §39.411

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission; and TWC, §5.115, Persons Affected in Commission Hearings' Notice of Application, which requires the commission to determine affected persons and provide certain notice of applications. The amendment is also adopted under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, which prescribes the public participation requirements for certain applications filed with the commission; and THSC, §382.058, concerning Notice of and Hearing on Construction of Concrete Plant Under Permit by Rule, Standard Permit, or Exemption, which prescribes authorization requirements for certain concrete batch plants. In addition, the amendment is also adopted under Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules; and the Federal Clean Air Act, 42 United States Code, §§7401, *et seq.,* which requires states to submit state implementation plan revisions that specify the manner in which the National Ambient Air Quality Standards will be achieved and maintained within each air quality control region of the state.

The adopted amendment implements THSC, §382.056 and §382.058.

§39.411. Text of Public Notice.

(a) Applicants shall use notice text provided and approved by the agency. The executive director may approve changes to notice text before notice being given.

(b) When Notice of Receipt of Application and Intent to Obtain Permit by publication or by mail is required by Subchapters H and K of this chapter (relating to Applicability and General Provisions and Public Notice of Air Quality Permit Applications) for air quality permit applications, those applications are subject to subsections (e) - (h) of

this section. When notice of receipt of application and intent to obtain permit by publication or by mail is required by Subchapters H - J and L of this chapter (relating to Applicability and General Provisions, Public Notice of Solid Waste Applications, Public Notice of Water Quality Applications and Water Quality Management Plans, and Public Notice of Injection Well and Other Specific Applications), Subchapter G of this chapter (relating to Public Notice for Applications for Consolidated Permits), or for Subchapter M of this chapter (relating to Public Notice for Radioactive Material Licenses), the text of the notice must include the following information:

(1) the name and address of the agency and the telephone number of an agency contact from whom interested persons may obtain further information;

(2) the name, address, and telephone number of the applicant and a description of the manner in which a person may contact the applicant for further information;

(3) a brief description of the location and nature of the proposed activity;

(4) a brief description of public comment procedures, including:

(A) a statement that the executive director will respond to comments raising issues that are relevant and material or otherwise significant; and

(B) a statement in the notice for any permit application for which there is an opportunity for a contested case hearing, that only disputed factual issues that are relevant and material to the commission's decision that are raised during the comment period can be considered if a contested case hearing is granted;

(5) a brief description of procedures by which the public may participate in the final permit decision and, if applicable, how to request a public meeting, contested case hearing, reconsideration of the executive director's decision, a notice and comment hearing, or a statement that later notice will describe procedures for public participation, printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice. The notice should include a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located or there is substantial public interest in the proposed activity;

(6) the application or permit number;

(7) if applicable, a statement that the application or requested action is subject to the Coastal Management Program and must be consistent with the Coastal Management Program goals and policies;

(8) the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the application is available for review and copying;

(9) a description of the procedure by which a person may be placed on a mailing list in order to receive additional information about the application;

(10) for notices of municipal solid waste applications, a statement that a person who may be affected by the facility or proposed facility is entitled to request a contested case hearing from the commission. This statement must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice; and

(11) any additional information required by the executive director or needed to satisfy public notice requirements of any federally authorized program; or

(12) for radioactive material licenses under Chapter 336 of this title (relating to Radioactive Substance Rules), if applicable, a statement that a written environmental analysis on the application has been prepared by the executive director, is available to the public for review, and that written comments may be submitted; and

(13) for Class 3 modifications of hazardous industrial solid waste permits, the statement "The permittee's compliance history during the life of the permit being modified is available from the agency contact person."

(c) Unless mailed notice is otherwise provided for under this section, the chief clerk shall mail Notice of Application and Preliminary Decision to those listed in §39.413 of this title (relating to Mailed Notice). When notice of application and preliminary decision by publication or by mail is required by Subchapters G - J and L of this chapter, the text of the notice must include the following information:

(1) the information required by subsection (b)(1) - (11) of this section;

(2) a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's preliminary decision may be submitted, or a statement in the notice for any permit application for which there is an opportunity for contested case hearing, that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted. The public comment procedures must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice;

(3) if the application is subject to final approval by the executive director under Chapter 50 of this title (relating to Action on Applications and Other Authorizations), a statement that the executive director may issue final approval of the application unless a timely contested case hearing request or a timely request for reconsideration (if applicable) is filed with the chief clerk after transmittal of the executive director's decision and response to public comment;

(4) a summary of the executive director's preliminary decision and whether the executive director has prepared a draft permit;

(5) the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the complete application and the executive director's preliminary decision are available for review and copying;

(6) the deadline to file comments or request a public meeting. The notice should include a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located or there is substantial public interest in the proposed activity; and

(7) for radioactive material licenses under Chapter 336 of this title, if applicable, a statement that a written environmental analysis on the application has been prepared by the executive director, is available to the public for review, and that written comments may be submitted.

(d) When notice of a public meeting or notice of a hearing by publication or by mail is required by Subchapters G - J and L of this chapter, the text of the notice must include the following information:

(1) the information required by subsection (b)(1) - (3), (6) - (8), and (11) of this section;

(2) the date, time, and place of the meeting or hearing, and a brief description of the nature and purpose of the meeting or hearing, including the applicable rules and procedures; and

(3) for notices of public meetings only, a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's preliminary decision may be submitted and a statement in the notice for any permit application for which there is an opportunity for contested case hearing, that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted.

(e) When Notice of Receipt of Application and Intent to Obtain Permit by publication or by mail is required by Subchapters H and K of this chapter for air quality permit applications, the text of the notice must include the information in this subsection:

(1) the name and address of the agency and the telephone number of an agency contact from whom interested persons may obtain further information;

(2) the name, address, and telephone number of the applicant and a description of the manner in which a person may contact the applicant for further information;

(3) a brief description of the location and nature of the proposed activity;

(4) a brief description of public comment procedures, including:

(A) a statement that the executive director will respond to:

(i) all comments regarding applications for Prevention of Significant Deterioration and Nonattainment permits under Chapter 116, Subchapter B of this title (relating to New Source Review Permits) and Plant-wide Applicability Limit permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) filed on or after June 18, 2010;

(ii) all comments regarding applications subject to the requirements of Chapter 116, Subchapter E of this title (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)), whether for construction or reconstruction, filed on or after June 18, 2010; and

(iii) for all other air quality permit applications, comments raising issues that are relevant and material or otherwise significant; and

(B) a statement in the notice for any air quality permit application for which there is an opportunity for a contested case hearing, that only disputed factual issues that are relevant and material to the commission's decision that are raised during the comment period can be considered if a contested case hearing is granted;

(5) a brief description of procedures by which the public may participate in the final permit decision and, if applicable, how to request a public meeting, contested case hearing, reconsideration of the executive director's decision, a notice and comment hearing, or a statement that later notice will describe procedures for public participation, printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice. Where applicable, the notice should include a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located if there is substantial public interest in the proposed activity when requested by any interested person for the following applications that are filed on or after June 18, 2010:

(A) air quality permit applications subject to the requirements for Prevention of Significant Deterioration and Nonattainment in Chapter 116, Subchapter B of this title;

(B) applications for the establishment or renewal of, or an increase in, a plant-wide applicability limit subject to Chapter 116 of this title; and

(C) applications subject to the requirements of Chapter 116, Subchapter E of this title, whether for construction or reconstruction;

(6) the application or permit number;

(7) if applicable, a statement that the application or requested action is subject to the Coastal Management Program and must be consistent with the Coastal Management Program goals and policies;

(8) the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the application is available for review and copying;

(9) a description of the procedure by which a person may be placed on a mailing list in order to receive additional information about the application;

(10) at a minimum, a listing of criteria pollutants for which authorization is sought in the application which are regulated under national ambient air quality standards or under state standards in Chapters 111, 112, 113, 115, and 117 of this title (relating to Control of Air Pollution from Visible Emissions and Particulate Matter, Control of Air Pollution from Sulfur Compounds, Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants, Control of Air Pollution from Volatile Organic Compounds, and Control of Air Pollution from Nitrogen Compounds);

(11) If notice is for any air quality permit application except those listed in paragraphs (12) and (15) of this subsection, the following information must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice:

(A) a statement that a person who may be affected by emissions of air contaminants from the facility or proposed facility is entitled to request a contested case hearing from the commission within the following specified time periods;

(i) for air quality permit applications subject to the requirements for Prevention of Significant Deterioration and Nonattainment permits in Chapter 116, Subchapter B of this title a statement that a request for a contested case hearing must be received by the commission by the end of the comment period or within 30 days after the mailing of the executive director's response to comments;

(ii) for air quality permit applications subject to the requirements of Chapter 116, Subchapter E of this title, whether for construction or reconstruction, a statement that a request for a contested case hearing must be received by the commission by the end of the comment period or within 30 days after the mailing of the executive director's response to comments;

(iii) for renewals of air quality permits that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted and the application does not involve a facility for which the applicant's compliance history is in the lowest classification under Texas Water Code, §5.753 and §5.754 and the commission's rules in Chapter 60 of this title (relating to Compliance History), a statement that a request for a contested case hearing must be received by the commission before the close of

the 15-day comment period provided in response to the last publication of Notice of Receipt of Application and Intent to Obtain Permit;

(iv) for initial registrations for concrete batch plants under the Air Quality Standard Permit for Concrete Batch Plants adopted by the commission under Chapter 116, Subchapter F of this title (relating to Standard Permits) received on or after January 1, 2017, the following statements:

(I) a request for a contested case hearing must be received by the commission before the close of the comment period provided in response to the last publication of the consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision in §39.603(c) of this title (relating to Newspaper Notice);

(II) if no hearing requests are received by the end of the 30-day comment period there is no further opportunity to request a contested case hearing; and

(III) if any hearing requests are received before the close of the 30-day comment period, the opportunity to file a request for a contested case hearing is extended to 30 days after the mailing of the executive director's response to comments; or

(v) for all air quality permit applications other than those in clauses (i(iv) of this subparagraph, a statement that a request for a contested case hearing must be received by the commission before the close of the 30-day comment period provided in response to the last publication of Notice of Receipt of Application and Intent to Obtain Permit. If no hearing requests are received by the end of the 30-day comment period following the last publication of Notice of Receipt of Application and Intent to Obtain Permit, there is no further opportunity to request a contested case hearing. If any hearing requests are received before the close of the 30-day comment period following the last publication of Notice of Receipt of Application and Intent to Obtain Permit, the opportunity to file a request for a contested case hearing is extended to 30 days after the mailing of the executive director's response to comments;

(B) a statement that a request for a contested case hearing must be received by the commission;

(C) a statement that a contested case hearing request must include the requester's location relative to the proposed facility or activity;

(D) a statement that a contested case hearing request should include a description of how the requestor will be adversely affected by the proposed facility or activity in a manner not common to the general public, including a description of the requestor's uses of property which may be impacted by the proposed facility or activity;

(E) a statement that only relevant and material issues raised during the comment period can be considered if a contested case hearing request is granted; and

(F) if notice is for air quality permit applications described in subparagraph (A)(v) of this paragraph, a statement that when no hearing requests are timely received the applicant shall publish a Notice of Application and Preliminary Decision that provides an opportunity for public comment and to request a public meeting.

(12) if notice is for air quality applications for a permit under Chapter 116, Subchapter L of this title (relating to Permits for Specific Designated Facilities), filed on or before January 1, 2018, a Multiple Plant Permit under Chapter 116, Subchapter J of this title (relating to Multiple Plant Permits), or for a Plant-wide Applicability Limit under Chapter 116 of this title, a statement that any person is entitled to request a public meeting or a notice and comment hearing, as applicable from the commission;

(13) notification that a person residing within 440 yards of a concrete batch plant authorized by the Air Quality Standard Permit for Concrete Batch Plants adopted by the commission under Chapter 116, Subchapter F of this title is an affected person who is entitled to request a contested case hearing;

(14) the statement: "The facility's compliance file, if any exists, is available for public review in the regional office of the Texas Commission on Environmental Quality;"

(15) if notice is for an application for an air quality permit under Chapter 116, Subchapter B, Division 6 of this title (relating to Prevention of Significant Deterioration Review) that would authorize only emissions of greenhouse gases as defined in §101.1 of this title (relating to Definitions), a statement that any interested person is entitled to request a public meeting or a notice and comment hearing, as applicable, from the commission; and

(16) any additional information required by the executive director or needed to satisfy federal public notice requirements.

(f) The chief clerk shall mail Notice of Application and Preliminary Decision, or the consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision, as provided for in §39.603(c) of this title, to those listed in §39.602 of this title (relating to Mailed Notice). When notice of application and preliminary decision by publication or by mail is required by Subchapters H and K of this chapter for air quality permit applications, the text of the notice must include the information in this subsection:

(1) the information required by subsection (e) of this section;

(2) a summary of the executive director's preliminary decision and whether the executive director has prepared a draft permit;

(3) the location, at a public place in the county with internet access in which the facility is located or proposed to be located, at which a copy of the complete application and the executive director's draft permit and preliminary decision are available for review and copying;

(4) a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's draft permit and, where applicable, preliminary decision, preliminary determination summary, and air quality analysis may be submitted, or a statement in the notice for any air quality permit application for which there is an opportunity for contested case hearing, that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted. The public comment procedures must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice;

(5) the deadline to file comments or request a public meeting. The notice should include a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located or there is substantial public interest in the proposed activity. The notice must include a statement that the comment period will be for at least thirty days following publication of the Notice of Application and Preliminary Decision;

(6) if the application is subject to final approval by the executive director under Chapter 50 of this title, a statement that the executive director may issue final approval of the application unless a timely contested case hearing request or a timely request for reconsid-

eration (if applicable) is filed with the chief clerk after transmittal of the executive director's decision and response to public comment;

(7) If the executive director prepares a Response to Comments as required by §55.156 of this title (relating to Public Comment Processing), the chief clerk will make the executive director's response to public comments available on the commission's website;

(8) in addition to the requirements in paragraphs (1) - (7) of this subsection, for air quality permit applications filed on or after June 18, 2010 for permits under Chapter 116, Subchapter B, Divisions 5 and 6 of this title (relating to Nonattainment Review Permits; and Prevention of Significant Deterioration Review):

(A) as applicable, the degree of increment consumption that is expected from the source or modification;

(B) a statement that the state's air quality analysis is available for comment;

(C) the deadline to request a public meeting;

(D) a statement that the executive director will hold a public meeting at the request of any interested person; and

(E) a statement that the executive director's draft permit and preliminary decision, preliminary determination summary, and air quality analysis are available electronically on the commission's website at the time of publication of the Notice of Application and Preliminary Decision; and

(9) in addition to the requirements in paragraphs (1) - (7) of this subsection, for air quality permit applications filed on or after June 18, 2010 for permits under Chapter 116, Subchapter E of this title:

(A) the deadline to request a public meeting;

(B) a statement that the executive director will hold a public meeting at the request of any interested person; and

(C) a statement that the executive director's draft permit and preliminary decision are available electronically on the commission's website at the time of publication of the Notice of Application and Preliminary Decision.

(g) When notice of a public meeting by publication or by mail is required by Subchapters H and K of this chapter for air quality permit applications filed on or after June 18, 2010, the text of the notice must include the information in this subsection. Air quality permit applications filed before June 18, 2010 are governed by the rules in Subchapters H and K of this chapter as they existed immediately before June 18, 2010, and those rules are continued in effect for that purpose.

(1) the information required by subsection (e)(1) - (3), (4)(A), (6), (8), (9), and (16) of this section;

(2) the date, time, and place of the public meeting, and a brief description of the nature and purpose of the meeting, including the applicable rules and procedures; and

(3) a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's draft permit and preliminary decision, and, as applicable, preliminary determination summary, and air quality analysis may be submitted and a statement in the notice for any air quality permit application for which there is an opportunity for contested case hearing, that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted.

(h) When notice of a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings) by publication or by mail is required by Subchapters H and K of this chapter for air quality permit applications, the text of the notice must include the following information:

(1) the information required by subsection (e)(1) - (3), (6), (9) and (16) of this section; and

(2) the date, time, and place of the hearing, and a brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 9, 2016.

TRD-201606421
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: December 29, 2016
Proposal publication date: July 22, 2016
For further information, please call: (512) 239-6812

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SUBCHAPTER K. PUBLIC NOTICE OF AIR QUALITY PERMIT APPLICATIONS

30 TAC §39.603

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission; and TWC, §5.115, Persons Affected in Commission Hearings' Notice of Application, which requires the commission to determine affected persons and provide certain notice of applications. The amendment is also adopted under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, which prescribes the public participation requirements for certain applications filed with the TCEQ; and THSC, §382.058, concerning Notice of and Hearing on Construction of Concrete Plant Under Permit by Rule, Standard Permit, or Exemption, which prescribes authorization requirements for certain concrete batch plants. In addition, the amendment is also adopted under Texas Government Code, §2001.004, which

requires state agencies to adopt procedural rules; and the Federal Clean Air Act, 42 United States Code, §§7401, *et seq.,* which requires states to submit state implementation plan revisions that specify the manner in which the National Ambient Air Quality Standards will be achieved and maintained within each air quality control region of the state.

The adopted amendment implements THSC, §382.056 and §382.058.

§39.603. Newspaper Notice.

(a) Notice of Receipt of Application and Intent to Obtain Permit under §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit) is required to be published no later than 30 days after the executive director declares an application administratively complete. This notice must contain the text as required by §39.411(e) of this title (relating to Text of Public Notice). This notice is not required for Plant-wide Applicability Limit permit applications.

(b) Notice of Application and Preliminary Decision under §39.419 of this title (relating to Notice of Application and Preliminary Decision) is required to be published within 33 days after the chief clerk has mailed the preliminary decision concurrently with the Notice of Application and Preliminary Decision to the applicant. This notice must contain the text as required by §39.411(f) of this title.

(c) Owners and operators who submit initial registration applications on or after January 1, 2017, for authorization to construct and operate a concrete batch plant under the Air Quality Standard Permit for Concrete Batch Plants adopted by the commission under Chapter 116, Subchapter F of this title (relating to Standard Permits) shall publish a consolidated Notice of Receipt of Application and Intent to Obtain Permit (NORI) under §39.418 of this title and Notice of Application and Preliminary Decision (NAPD) under §39.419 of this title no later than 30 days after the chief clerk has mailed the preliminary decision concurrently with the consolidated NORI and NAPD to the registrant. This notice must contain the text as required by §39.411(f) of this title.

(d) General newspaper notice. Unless otherwise specified, when this chapter requires published notice of an air quality permit application or registration, the applicant or registrant shall publish notice in a newspaper of general circulation in the municipality in which the facility is located or is proposed to be located or in the municipality nearest to the location or proposed location of the facility, as follows.

(1) One notice must be published in the public notice section of the newspaper and must comply with §39.411(e) - (g) of this title.

(2) Another notice with a total size of at least six column inches, with a vertical dimension of at least three inches and a horizontal dimension of at least two column widths, or a size of at least 12 square inches, must be published in a prominent location elsewhere in the same issue of the newspaper. This notice must contain the following information:

(A) permit application or registration number;

(B) company name;

(C) type of facility;

(D) description of the location of the facility; and

(E) a note that additional information is in the public notice section of the same issue.

(e) Alternative publication procedures for small businesses.

(1) The applicant or registrant does not have to comply with subsection (d)(2) of this section if all of the following conditions are met:

(A) the applicant or registrant and source meets the definition of a small business stationary source in Texas Water Code, §5.135 including, but not limited to, those which:

(i) are not a major stationary source for federal air quality permitting;

(ii) do not emit 50 tons or more per year of any regulated air pollutant;

(iii) emit less than 75 tons per year of all regulated air pollutants combined; and

(iv) are owned or operated by a person that employs 100 or fewer individuals; and

(B) if the applicant's or registrant's site meets the emission limits in §106.4(a) of this title (relating to Requirements for Permitting by Rule) it will be considered to not have a significant effect on air quality.

(2) The executive director may post information regarding pending air permit applications on its website, such as the permit number, company name, project type, facility type, nearest city, county, date public notice authorized, information on comment periods, and information on how to contact the agency for further information.

(f) If an air application or registration is referred to State Office of Administrative Hearings for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings), the applicant or registrant shall publish notice once in a newspaper as described in subsection (d) of this section, containing the information under §39.411(h) of this title. This notice must be published and affidavits filed with the chief clerk no later than 30 days before the scheduled date of the hearing.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 9, 2016.

TRD-201606422
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: December 29, 2016
Proposal publication date: July 22, 2016
For further information, please call: (512) 239-6812

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CHAPTER 55. REQUESTS FOR RECONSIDERATION AND CONTESTED CASE HEARINGS; PUBLIC COMMENT

SUBCHAPTER E. PUBLIC COMMENT AND PUBLIC MEETINGS

30 TAC §55.152

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts an amendment to §55.152.

The amendment to §55.152 is adopted *with change* to the proposed text as published in the July 22, 2016, issue of the *Texas Register* (41 TexReg 5339) and, therefore, will be republished.

The amendments to §55.152(a)(2), (3), (6) and (7) will be submitted to the United States Environmental Protection Agency as revisions to the State Implementation Plan.

Background and Summary of the Factual Basis for the Adopted Rule

On February 25, 2016, Texas Aggregates and Concrete Association (TACA) submitted a petition requesting the commission conduct rulemaking to amend public notice rules applicable to initial registration applications for authorization under the Air Quality Standard Permit for Concrete Batch Plants, referred to in this preamble for ease of reference as the CBP standard permit. This permit is distinguishable from the Air Quality Standard Permit for Concrete Batch Plants with Enhanced Controls, which has different notice and public participation requirements. The petition requested amendments to 30 TAC §39.411(e)(11)(A)(iii) and §39.603(a) and (b) to provide for one 30-day public notice of initial registration applications. On April 6, 2016, the commission considered the petition and directed the executive director to examine the request and initiate rulemaking.

The TACA petition did not address the Air Quality Standard Permit for Concrete Batch Plants with Enhanced Controls authorized under Texas Clean Air Act (TCAA), Texas Health and Safety Code (THSC), §382.05198. The public notice requirements for that standard permit are listed within the permit, and registrations for that permit are not subject to the rules in Chapter 39. Therefore, public notice requirements for that permit are not affected by this adopted rulemaking.

The commission is authorized to adopt standard permits under THSC, §382.05195, which prescribes the procedures the commission must follow to adopt a standard permit. The commission implemented THSC, §382.05195 by adopting rules in 30 TAC Chapter 116, Subchapter F. The rules in Chapter 116, Subchapter F provide that when the executive director drafts a new (or proposes amendments to an existing) standard permit, notice of the proposed permit is published in the *Texas Register* and in newspapers. In addition, TCEQ holds a public meeting to provide stakeholders the opportunity for discussion with TCEQ staff and for submittal of comments regarding the proposed permit. The responses to comments and any changes made to the proposed permit in response to the comments are presented to the commission for consideration in an open meeting, commonly referred to as Agenda. Once adopted, the conditions of the permit will be the same for all owners and operators that register to construct and operate under the standard permit. The standard permits are not designed to be amended to include tailored permit conditions applicable to an individual registration. The CBP standard permit was last amended by the commission effective December 21, 2012.

Each individual CBP Standard Permit registration application is subject to the public participation requirements in Chapters 39 and 55. Since 1985, owners or operators registering for authorization to construct and operate a concrete batch plant (under what is known today as the Air Quality Standard Permit for Concrete Batch Plants) have been subject to specific notice requirements for the proposed plant. These public notice requirements for initial registration applications included the opportunity to request a contested case hearing. In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which made changes to notice requirements for initial registration applications that were administratively complete on or after September 1, 1999. Since the rulemaking to implement HB 801 in 1999, and rule amendments adopted in 2010 have been in effect, the commission has required registrants for the CBP standard permit to publish a Notice of Receipt of Application and Intent to Obtain Permit (NORI) which solicits comments for a 15-day period; contested case hearing and public meeting requests are also solicited. At the same time the NORI is published in a newspaper of general circulation in the municipality or in the nearest municipality in which the plant will be located, the registrant is required to place a copy of the registration application in a public place in the county, and to post signs at the proposed facility location. Alternative language publication and signs may also be required.

After TCEQ staff complete the technical review, registrants were required to publish Notice of Application and Preliminary Decision (NAPD), which solicits comments for a 30-day period; hearing requests were also solicited but only if at least one such request was timely made in response to the NORI. At the close of the comment period, the executive director prepares a written response to all timely-filed comments and files the response with the TCEQ's Office of Chief Clerk. If hearing requests were submitted in response to the NORI, hearing requests may be submitted during the 30-day period after the mailing of the executive director's response to comments. Based on comments, registrants may update their registration application representations as to how they will construct and operate under the standard permit; historically, this has been very uncommon. Also, because the permit conditions in the CBP standard permit are established by the commission when the standard permit is adopted, the executive director cannot change any permit conditions for an individual registration in response to comments.

The public has expressed concern that the 15-day period is often not enough time to review the registration application, determine whether to comment, request a public meeting or contested case hearing, and then to timely submit the information to the TCEQ. This rulemaking requires one 30-day consolidated notice for registrants of the CBP standard permit that will serve as both the NORI and NAPD. To ensure the public has the opportunity to review a complete registration application, the consolidated notice will be published after the administrative and technical reviews of the registration application are completed. The consolidated notice establishes a single, 30-day notice period during which comments and requests for public meeting or contested case hearing can be submitted. With one notice instead of two, TCEQ expects there will be more clarity regarding the restrictions on the timeframe to submit hearing requests.

Amended §55.152(a)(2) provides for a 30-day notice period during which comments and requests for public meeting or contested case hearing can be submitted in response to the consolidated NORI and NAPD. The notice period ends 30 days after the last date of newspaper publication, and the public comment period is automatically extended to the close of any public meeting, as required by §55.152(b). As provided for in §55.201(c), which implements Senate Bill 709 (84th Texas Legislature, 2015), hearing requests must be based on the requestor's timely submitted comments.

Concurrently with this adoption, and published in this issue of the *Texas Register,* the commission is adopting amendments to §39.411 and §39.603 in Chapter 39, Public Notice, to provide for a consolidated NORI and NAPD.

The public participation requirements for renewals of registrations under the CBP standard permit are not affected by the adopted amendments in Chapters 39 and 55.

Section Discussion

§55.152, Public Comment Period

Adopted §55.152(a)(2) is created by relocating some of the text of existing subsection (a)(2) to adopted subsection (a)(3). Adopted subsection (a)(2) provides that the close of the public comment period for standard permit registrations for concrete batch plants under the CBP Standard Permit would change from 15 days after the last publication of NORI, or 30 days after NAPD if a second notice is required, to 30 days after the last publication of the consolidated notice concurrently adopted in §39.603. Adopted §55.152(a)(2) does not apply to concrete batch plants temporarily located in or contiguous to the right-of-way of a public works project or to temporary concrete batch plants operating under the standard permit that qualify for relocation. Subsection (a)(2) was changed from proposal to reflect the actual name of the CBP standard permit, which is "Air Quality Standard Permit for Concrete Batch Plants."

Amended subsection (a)(3) will continue to provide for the comment period applicable to air quality permit renewal applications. Existing paragraphs (3)- (6) in §55.152(a) are re-numbered as paragraphs (4)- (7).

Final Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendment to Chapter 55 is not specifically intended to protect the environment or reduce risks to human health from environmental exposure to air pollutants, but instead would amend the public comment period for initial standard permit registrations for concrete batch plants under the CBP standard permit, which are procedural in nature.

As defined in the Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking action does not meet any of these four applicability requirements of a "major environmental rule." Specifically, the adopted amendment to Chapter 55 would amend the public comment period for initial standard permit registration applications for the CBP standard permit for Concrete Batch Plants, which is procedural in nature. This adopted rulemaking action does not exceed an express requirement of state law or a requirement of a delegation agreement, and was not developed solely under the general powers of the agency, but was developed to meet the requirements for public participation in the TCAA as identified in the Statutory Authority section of this preamble.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The adopted rulemaking to Chapter 55 amends the public comment period for initial standard permit registrations for concrete batch plants under the CBP standard permit, which is procedural in nature. Promulgation and enforcement of the adopted rulemaking will not burden private real property. The adopted amendment does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will the amendment affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted amendment 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.

Effect on Sites Subject to the Federal Operating Permits Program

The adopted rule will not require any changes to outstanding federal operating permits.

Public Comment

The commission held a public hearing on August 10, 2016. The comment period closed on August 22, 2016. The commission received comments from Texas State Representative Alma Allen (Representative Allen), the City of Dallas, the City of Houston, and TACA.

Response to Comments

Changes in the Number of Notices and the Amount of Time to Submit Comments and Requests for a Contested Case Hearing

Comment

Representative Allen commented that while she does not believe that TCEQ's intent in helping the operators reach their goal for one notice is to shorten the time within which the community is able to organize and provide feedback, the shorter time is the most egregious consequence of this proposal.

The City of Houston commented that the current rules grant community members and citizens a valuable window of opportunity to evaluate the potential consequences of the plant proposed in their communities. They are able to obtain, review, and present information about the negative effects concrete

batch plants have on communities. Shortening the notice period will burden citizens by limiting their opportunity to participate in important registration and permitting decisions. For those in socioeconomically disadvantaged communities who historically have had less of a voice in public processes and who have fewer resources to deploy to protect themselves, the burden will be particularly onerous.

The City of Dallas commented that the proposed rules place the interests of industry above protection of public health and the environment. There is no benefit to the public by limiting their right to participate in the process of TCEQ review of air permit applications for concrete batch plants.

Response

This rulemaking was not intended to adversely affect anyone's opportunity or ability to comment on a concrete batch plant registration application, or their ability to ask questions of a registrant who is seeking approval to construct and operate under the CBP standard permit. Although the time to comment and request a contested case hearing has been a 15-day period since 1985 when the opportunity to request a contested case hearing for a concrete batch plant was added to the TCAA, the commission has received comments on previously submitted CBP standard permit registration applications expressing concern that the 15-day period to comment and request a hearing is too short. In response, this rulemaking extends that period to 30 days. In addition, the commission determined that 30 days is reasonable because the permit conditions cannot change in response to comment.

The commission disagrees that the rule amendments place the interests of industry above protection of public health and the environment. The CBP standard permit, last amended in 2012, is protective of human health and the environment, as discussed elsewhere in this Response to Comments. The commission has made no changes to the rules in response to these comments.

Comment

Representative Allen commented that the current 15-day NORI period is often not enough time to allow citizens to search the newspapers, review the permit and understand its implications, decide to request a public meeting or a contested case hearing, and then to submit the information to TCEQ in a timely fashion. However, the proposed single 30-day period for the permit is also inadequate. Although the proposed rule allows additional time to request a contested case hearing, it shortens the time with which the public is able to organize and provide public comment.

The City of Dallas commented that it is very concerned that the proposed rules will substantially and unjustifiably limit the public's right to receive notices, submit comments, request public meetings, and request public hearings during the permit application process for the CBP standard permit. The proposed consolidation of the NORI and NAPD into one notice is a significant decrease in time and would diminish public opportunity for input to the agency. This would substantially limit the public's existing right to engage in the permitting process.

TACA supports the executive director's proposed rulemaking, including the specific amendments to §39.411 and §39.603. This rulemaking will allow the public more time to review the registration application. Because the initial comment period will increase from a 15-day period to a 30-day period, this rulemaking will also ensure an additional 15 days to request a contested case hearing. TACA encourages the TCEQ to adopt the rules as proposed.

Response

The purpose of this rulemaking is to establish a single, 30-day notice period during which comments and requests for public meeting or contested case hearing can be submitted. In response to previously submitted CBP standard permit registration applications, the public has expressed concerns that the 15-day period is often not enough time to review the registration application, determine whether to comment, request a public meeting or a contested case hearing, and then to timely submit the information to the TCEQ.

The consolidated NORI and NAPD will not be prepared or mailed to the registrant for publication until the registration application is both administratively and technically complete. To ensure that it is clear that the public has the opportunity to review the complete registration application with the established CBP standard permit within the 30-day comment period, §39.603(c) was changed from proposal in response to these comments to delete the reference to the executive director declaring the registration application administratively complete. In addition, §55.152(a)(2) is adopted to provide for a 30-day notice period.

Companies submitting registration applications to construct under the CBP standard permit are required to publish notice in a newspaper, and, in some cases, in alternate language publications. In addition, they are also required to post signs at the proposed site of the concrete batch plant. Both the signs, which are often the most effective for notifying nearby residents, and the newspaper notices provide instructions on how to obtain additional information about the registration application. A copy of the registration application is also available in a local public place. The TCEQ or the registrant may be contacted for more information about the registration application or CBP standard permit conditions.

The commission understands that citizens who live or work near a proposed location of a concrete batch plant may have never before received notice of a proposed concrete batch plant, or may be unaware of the commission's CBP standard permit, the process for submitting comments, or the opportunity to request a public meeting, or, for certain persons, the opportunity to request a contested case hearing. People can stay informed of any notices in their area by signing up for a mailing list, or going online to *http://www14.tceq.texas.gov/epic/eNotice/* and pull up notices by ZIP Code, County, etc.

To develop their comments and questions, citizens can review both the registration application and the commission's CBP standard permit. Unlike case-by-case applications which are often hundreds of pages in length and may contain air dispersion modeling, registration applications for a CBP standard permit are, by their nature, less extensive (on average they contain approximately 40 pages) and air dispersion modeling is not required. As discussed earlier, the conditions of the permit will be the same for all owners and operators that register to construct and operate under the CBP standard permit. Standard permits are not designed to be amended to include tailored permit conditions applicable to an individual registration. As such, the permit conditions cannot change in response to comments. The CBP standard permit was last amended by the commission effective December 21, 2012. In the actual permit document, currently located at *https://www.tceq.texas.gov/assets/public/permitting/air/NewSourceReview/Mechanical/cbpsp-final-preamble.pdf,* the commission explains its basis for finding that the permit is protective of human health and the environment, and its basis for the specific permit conditions.

The deadline for submitting comments is extended to the end of any public meeting held regarding the registration application, if the meeting is held more than 30 days after the date of the last newspaper publication. Public meetings provide an opportunity for the public to submit comments regarding the registration applications. For CBP standard permit registration applications, the TCEQ will hold a public meeting if there is significant public interest in a registration application or if requested by a legislator from the area of the proposed project. A request for a public meeting must be submitted to the chief clerk during the 30-day public comment period. Comments, public meeting requests, and requests for contested case hearings may be submitted in writing to the commission via regular mail, fax, hand delivery, or electronic submittal. Oral comments are accepted at public meetings. All timely comments are responded to in writing by the executive director at or prior to the issuance of the CBP standard permit registration. Requests for contested case hearing must be received within 30 days of the publication of the consolidated notice. All timely hearing requests are considered by the commissioners in their open meeting.

Within the 30-day period, citizens should have adequate time to become aware of the notice, review the registration application and CBP standard permit, prepare and submit comments, and request a public meeting or a contested case hearing. For these reasons, and because the permit conditions cannot change in response to comment, the commission has determined that a 30-day comment period is reasonable.

Comment

Representative Allen commented that she and her constituents in House District 131 feel that rather than shortening the length of time the public is able to weigh in, they should be given, at minimum, the same amount of time they have presently, which is 45 days. Although they appreciate the extension of the contested case hearing deadline, and understand the need for consolidation and greater efficiency in the process, they do not see the need for the public to give up precious time in the process for providing feedback, when they have so little say to begin with. The residents are almost always on the losing side of these permits, having to put up with increased traffic, deteriorating roads, and dust particles. Having the time to weigh in on the application gives residents the ability to form a dialogue with the applicant, wherein they are able to discuss things like alternative routes, locations, and dust mitigation techniques. They support a 45-day notice that combines the entire application and review process, which would better serve the interests of both the communities and the owners or operators.

Response

As discussed earlier, because the registration application information is not voluminous, the commission has determined that 30 days is appropriate. The commission understands that citizens may want to meet with representatives of the applicant to discuss local concerns, including topics for which the TCEQ does not have jurisdiction, such as alternative routes for trucks and the specific location of the concrete batch plants. This can be accomplished by meetings between citizens and the applicant, or at a public meeting conducted by TCEQ. The commission has made no changes to the rules in response to this comment.

Comment

TACA commented that the proposed rule changes will expedite the permitting process, and encourages the TCEQ to adopt the rules as proposed.

Response

The purpose of this rulemaking is to establish a single, 30-day notice period during which comments and requests for public meeting or contested case hearing can be submitted. In response to previously submitted CBP standard permit registration applications, the public has expressed concerns that the 15-day period is often not enough time to review the registration application, determine whether to comment, request a public meeting or a contested case hearing, and then to timely submit the information to the TCEQ. Specifically, with one notice instead of two, TCEQ anticipates that there will be more clarity regarding the timeframe to submit hearing requests.

Under the amended rules, the administrative and technical reviews will occur prior to issuance of the consolidated NORI and NAPD for publication by the registrant. The TCEQ will consider the comments submitted and prepare a response to comments, which is also included as part of the processing time. If hearing requests are received, additional time is required for the commission to consider those requests at an open meeting. If a contested case hearing is held, the final decision on the registration application may be one year or longer after it is received.

The change to a consolidated notice may result in a reduction in the application processing time due to the notice consolidation. However, that reduction cannot be estimated at this time. Between September 1, 2015, and September 1, 2016, the average time to process CBP standard permit registration applications with both NORI and NAPD was 129 days. This includes registration applications with comments, public meetings and, where applicable, contested case hearing requests considered by the commission, including those for which a hearing request was granted and a contested case hearing was held.

Although there will be no separate NAPD publication under the adopted rules, the factor that primarily determines the length of time for a permit to be issued is the quality of the registration application. The permitting process is shortest when registrants provide a complete application at submittal, and newspaper publication occurs within a day or a few days after the notice is provided to the registrant by TCEQ. To expedite the review process, applicants can elect to submit their registration applications under the commission's expedited permitting program.

Comment

TACA commented that the change in public notice requirements would provide a cost savings to operators of concrete batch plants.

Response

As discussed in the Public Benefits and Costs portion of the proposed rule preamble, registrants for the CBP standard permit will save approximately 50% on publication costs by having one publication instead of two for English language publication and also for any required alternate language publication. One round of English language publication costs are estimated between $674 and $9,759, depending on which newspaper is used for publication, the day of the week, and how many words are in the notice. The cost of publishing in newspapers in larger cities is greater than newspaper publication costs in smaller cities.

Comment

TACA commented that the proposed rule changes will eliminate duplicative public notice requirements. TACA encourages the TCEQ to adopt the rules as proposed.

Response

Prior to these rule amendments, a registrant was required to publish two separate public notices, NORI and NAPD. Because the registration application is for a CBP standard permit, the only new information for the public to review during the NAPD period were updates to the application that may have been requested as part of the technical review. As discussed previously in this preamble, the permit conditions are established when the standard permit is issued by the commission under THSC, §382.05195 and 30 TAC Chapter 116, Subchapter F and cannot be changed or tailored for a specific facility. Under the adopted rules, the technical review will be complete prior to issuance of the consolidated notice.

These permits are distinguishable from applications for individual case-by-case permit applications. For those applications, the NORI does not include a draft permit for public review and comment. Only the NAPD for individual case-by-case permit applications provides a draft permit with conditions tailored to the specific type of facilities and emissions to be authorized that is subject to public review and comment. Those comments may result in changes to the draft permit.

These two separate procedures have resulted in some frustration that comments submitted in response to the NAPD for a CBP standard permit cannot result in changes to the permit.

Because the CBP standard permit process differs from the individual case-by-case permit application process, providing a separate NAPD for a CBP standard permit registration does not provide the public new information to form the basis for submitting comments that may affect the outcome of the TCEQ review. Because the CBP standard permit registration applications are less complex than many other applications, having the technical review completed and the standard permit available for review during one 30-day comment period is expected to result in comments that are more specifically focused on the particular registration application.

Concerns Regarding Protection of Public Health

Comment

The City of Houston commented that there is no doubt that concrete batch facility operations emit particulate air pollution. Particulate air pollution is known to be correlated with high-risk asthma attacks and cardiac arrest. There are currently 18 concrete batch facilities in a four-mile radius within the socio-economically disadvantaged Houston Super Neighborhoods of Central/Southeast, South Acres/Crestmont Park, and Minnetex. These Houston neighborhoods also experience particulate air pollution from other sources, including 13 metal recycling facilities. In summary, there are numerous facilities in socioeconomic or disadvantaged neighborhoods in Houston, which experience a higher rate of air pollution and health effects higher than the remainder of the city. Unsurprisingly, each of these particular Houston neighborhoods is within a "high risk of asthma attack and cardiac arrest" area according to the American Journal of Preventative Medicine and Public Health. See Loren H. Raun, *Geospatial Analysis for Targeting Out-of-Hospital Cardiac Arrest Intervention*, American Journal of Preventive Medicine, August 2013, at 137-42; Loren H. Raun, *Factors Affecting Ambulance Utilization for Asthma Attack Treatment: Understanding Where to Target Interventions*, Public Health, March 2015. Health officials are concerned that, in the aggregate, the density of air pollution sources, such as concrete batch plants, may result in cumulative concentration levels that pose an unacceptable health risk to neighborhoods like these.

The rules should not be changed to make it harder for communities and citizens to protect themselves by participating in regulatory proceedings, and therefore the City of Houston opposes the proposed rules.

The City of Dallas commented that the proposed rules do not further the TCEQ's stated mission of protecting the state's public health and natural resources consistent with sustainable economic development.

Response

The TCEQ previously conducted a comprehensive protectiveness review during the development of the CBP standard permit to ensure that the requirements of the permit would protect human health and the environment. This review took into consideration many variables and assumed conditions that maximize emissions impacts to develop an air dispersion modeling approach that was conservative and applicable to any location in the state.

The primary contaminants evaluated during the protectiveness review as potential emissions from concrete batch plants included particulate matter (PM) (aerodynamic diameter of equal to or less than 10 and 2.5 micrometers (PM_{10} and $PM_{2.5}$)), carbon monoxide (CO), nitrogen dioxide (NO_2), sulfur dioxide (SO_2), nickel particulate, and formaldehyde. When the conditions of this CBP standard permit are met, including annual, daily, and hourly production limits, concentrations of these pollutants would be below their respective health protective values, including the National Ambient Air Quality Standards (NAAQS) or TCEQ Effects Screening Levels (ESLs).

The NAAQS values for CO, NO_2, SO_2, and PM are derived to protect human health with an adequate margin of safety to include sensitive populations such as children, the elderly, and individuals that suffer from respiratory diseases such as asthma and chronic obstructive pulmonary disease (COPD). Similar criteria are used to derive the ESLs. Thus, if short-term and long-term emissions do not exceed these values, the operation of facilities with these types of emissions would not pose a threat to human health or welfare. This particular area of Houston has been in compliance with the NAAQS for all of the aforementioned air contaminants and will be required to continue to meet the NAAQS in the future even if those standards change.

The concern regarding the 18 concrete batch plants is addressed in two ways: via the conservatism used to derive the health protective NAAQS and ESLs, which take into consideration cumulative and aggregate exposures; and by the thorough review of air dispersion modeling representations of these types of facilities that are conducted during the development of the CBP standard permit. Modeling data indicate that maximum concentrations of pollutant emissions would typically occur a relatively short distance from the emissions source. Therefore, review of other off-site sources is not necessary when determining approval of registration applications for this particular standard permit. Concrete batch plants located greater than 550 feet from sources with similar emissions are predicted to not exceed the health protective NAAQS or ESLs, even when operating simultaneously. The CBP standard permit requires the owner or operator to locate the concrete batch plant at least 550 feet from any crushing

plant or hot mix asphalt plant. If these distance conditions in the standard permit are not met, then sources with similar emissions such as rock crushers, hot mix asphalt plants, or other concrete batch plants cannot operate at the same time.

As discussed earlier, there are layers of conservatism incorporated into the CBP standard permit. This includes the modeling assumptions used to establish the operational limitations, which include fabric or cartridge filter systems to control PM; distance restrictions regarding the location of the concrete batch plant relative to any crushing plant, hot mix asphalt plant, or other concrete batch plant; distance restrictions regarding the location of the suction shroud baghouse exhaust, stationary equipment, stockpiles, or vehicles used for the operation of the concrete batch plant; and material throughput by limiting the site production to, for example, no more than 300 cubic yards in any one hour and no more than 6,000 cubic yards per day. In addition, the NAAQS and ESLs are not only health-protective, but include a margin of safety to accommodate sensitive populations, aggregate exposures, and cumulative exposures. Thus, when the conditions of the CBP standard permit are met, plants operating under these permits are not expected to adversely affect human health, welfare, or the environment.

The comment also refers to areas of Houston where the neighborhoods coexisting with concrete batch plants and metal recycling facilities are characterized as "high risk of asthma and cardiac arrest," according to a scientific study published by Raun and colleagues. TCEQ staff reviewed this publication and has concerns with the interpretation and utilization of data therein. Primary concerns are that the study of correlation between emergency medical service (EMS) calls and criteria pollutants (CO, NO_2, SO_2, and $PM_{2.5}$) were in fact inconsistent, indicating a weakness in these associations and suggesting that the pollutants did not cause the EMS calls. The study authors also utilized a highly conservative linear model to estimate risks. Available data suggest that this type of model would overestimate risk for many criteria pollutants and would be inappropriate to use based on the fact that many, if not all, criteria pollutants demonstrate a threshold, meaning that there is a concentration below which harmful effects are not observed. Due to lack of proper controls, inconsistency in the body of available scientific evidence in the study, and acknowledgement of the limitations of their model, the results of these studies may be considered of interest, but not reliably predictive of health effects, particularly at lower, ambient pollutant levels.

Therefore, TCEQ's extensive evaluation clearly indicates that concrete batch plants operating in this area of Houston do not pose a threat to human health or welfare due to the parameters and limitations applied to the CBP standard permit. This conclusion is supported by the TCEQ's monitoring data in the area that demonstrate compliance with the PM NAAQS, which accommodate both aggregate and cumulative exposure. The commission has made no changes to the rules in response to these comments.

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission; TWC, §5.115, Persons Affected in Commission Hearings; Notice of Application, which requires the commission to determine affected persons and provide certain notice of applications. The amendment is also adopted under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, which prescribes the public participation requirements for certain applications filed with the commission; and THSC, §382.058, concerning Notice of and Hearing on Construction of Concrete Plant Under Permit by Rule, Standard Permit, or Exemption, which prescribes authorization requirements for certain concrete batch plants. In addition, the amendment is also adopted under Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules; and the Federal Clean Air Act, 42 United States Code, §§7401, *et seq.,* which requires states to submit state implementation plan revisions that specify the manner in which the National Ambient Air Quality Standards will be achieved and maintained within each air quality control region of the state.

The adopted amendment implements THSC, §382.056 and §382.058.

§55.152. Public Comment Period.

(a) Public comments must be filed with the chief clerk within the time period specified in the notice. The public comment period shall end 30 days after the last publication of the Notice of Application and Preliminary Decision, except that the time period shall end:

(1) 30 days after the last publication of Notice of Receipt of Application and Intent to Obtain Permit under §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit), or 30 days after Notice of Application and Preliminary Decision if a second notice is required under §39.419 of this title (relating to Notice of Application and Preliminary Decision), for an air quality permit application not otherwise specified in this section;

(2) 30 days after the last publication of the consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision under §39.603 of this title (relating to Newspaper Notice) for a registration for a concrete batch plant under the Air Quality Standard Permit for Concrete Batch Plants adopted by the commission under Chapter 116, Subchapter F of this title (relating to Standard Permits), unless the plant is to be temporarily located in or contiguous to the right-of-way of a public works project;

(3) 15 days after the last publication of Notice of Receipt of Application and Intent to Obtain Permit under §39.418 of this title, or 30 days after Notice of Application and Preliminary Decision if a second notice is required under §39.419 of this title, for a permit renewal under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);

(4) 45 days after the last publication of the notice of Application and Preliminary Decision for an application for a hazardous

waste facility permit, or to amend, extend, or renew or to obtain a Class 3 Modification of such a permit, or 30 days after the publication of Notice of Application and Preliminary Decision for Class 3 modifications of non-hazardous industrial solid waste permits;

(5) 30 days after the mailing of the notice of draft production area authorization under Chapter 331 of this title (relating to Underground Injection Control);

(6) the time specified in commission rules for other specific types of applications; or

(7) as extended by the executive director for good cause.

(b) The public comment period shall automatically be extended to the close of any public meeting.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 9, 2016.

TRD-201606423
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Texas Commission on Environmental Quality
Effective date: December 29, 2016
Proposal publication date: July 22, 2016
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CHAPTER 113. STANDARDS OF PERFORMANCE FOR HAZARDOUS AIR POLLUTANTS AND FOR DESIGNATED FACILITIES AND POLLUTANTS

SUBCHAPTER C. NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES (FCAA, §112, 40 CFR PART 63)

30 TAC §§113.100, 113.120, 113.190, 113.200, 113.290, 113.300, 113.320, 113.330, 113.340, 113.350, 113.380, 113.430, 113.450, 113.560, 113.610, 113.640, 113.660, 113.670, 113.690, 113.700, 113.710, 113.720, 113.730, 113.750, 113.780, 113.810, 113.860, 113.1040, 113.1090, 113.1130, 113.1190, 113.1200, 113.1300, 113.1390

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §§113.100, 113.120, 113.190, 113.200, 113.290, 113.300, 113.320, 113.330, 113.340, 113.350, 113.380, 113.430, 113.560, 113.610, 113.640, 113.660, 113.670, 113.690, 113.700, 113.710, 113.720, 113.730, 113.750, 113.780, 113.810, 113.860, 113.1040, 113.1090, 113.1130, 113.1300, and 113.1390; and new §§113.450, 113.1190, and 113.1200.

The amendments to §§113.340, 113.380, 113.690, 113.750, 113.780, and 113.1300 are adopted *with changes* to the proposed text as published in the July 22, 2016, issue of the *Texas Register* (41 TexReg 5350) and will be republished. The amendments to §§113.100, 113.120, 113.190, 113.200, 113.290, 113.300, 113.320, 113.330, 113.350, 113.430, 113.560, 113.610, 113.640, 113.660, 113.670, 113.700, 113.710, 113.720, 113.730, 113.810, 113.860, 113.1040, 113.1090, 113.1130, and 113.1390; and new §§113.450, 113.1190, and 113.1200 are adopted *without changes* and will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The adopted rules revise Chapter 113 to incorporate by reference changes that the United States Environmental Protection Agency (EPA) has made to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories, under 40 Code of Federal Regulations (CFR) Part 63. The EPA's changes to 40 CFR Part 63 include amendments to a number of existing NESHAPs, the addition of a new NESHAP covering Wool Fiberglass Manufacturing at area sources, and the promulgation of two NESHAP which replaced standards previously vacated by court actions. Adopted Chapter 113 incorporates by reference amendments and additions that the EPA made to the NESHAP under 40 CFR Part 63 as published through August 3, 2016.

The Federal Clean Air Act (FCAA) Amendments of 1990, §112, requires the EPA to develop national technology-based standards for new and existing sources of hazardous air pollutants (HAPs). The compounds which are considered to be HAPs are listed in FCAA, §112(b). These technology-based standards intended to control HAP emissions are commonly called maximum achievable control technology (MACT) and generally available control technology (GACT) standards. The MACT standards are required to be based on the maximum degree of emission control that is achievable, taking into consideration cost and any non-air quality health and environmental impacts and energy requirements. GACT standards reflect a less stringent level of control (relative to MACT) and are intended to be applied to non-major sources of HAPs, known as area sources. The EPA has the option to apply either MACT or GACT to area sources, at their discretion.

The adopted rules incorporate amendments the EPA promulgated to 31 existing MACT and GACT standards for a variety of source categories. Many of the standards covered in this rulemaking were amended by the EPA as a result of FCAA requirements that the EPA periodically conduct risk assessments on each source category and determine if changes are needed to reduce residual risks or address developments in applicable control technology. Some standards were revised by the EPA in order to remove startup, shutdown, and malfunction (SSM)-related affirmative defense provisions which were vacated in *Natural Resources Defense Council v. EPA,* 749 F. 3d 1055 (District of Columbia, Circuit (D.C. Cir.) 2014). In addition, the EPA finalized new standards for brick and clay manufacturing to replace the 2003 standards vacated in *Sierra Club v. EPA,* 479 F. 3d 875 (D.C. Cir. 2007).

Under federal law, affected industries are required to implement the MACT and GACT standards regardless of whether the commission or the EPA is the agency responsible for implementation. As MACT and GACT standards are promulgated or amended by the EPA, the standards are reviewed by commission staff for compatibility with current commission regulations and policies. The commission then incorporates the standards, as appropriate, into Chapter 113 through formal rulemaking procedures. Unless otherwise noted, all incorporations by reference adopted in this rulemaking are without change (meaning that the standards are incorporated as published in the CFR, with no modi-

fications to the text of the regulation being incorporated). After each MACT or GACT standard or amendment is adopted, the commission will seek formal delegation from the EPA under 40 CFR Part 63, Subpart E, Approval of State Programs and Delegation of Federal Authorities, which implements FCAA, §112(l). Upon delegation, the commission will be responsible for administering and enforcing the MACT or GACT requirements.

The commission incorporates the following amendments that the EPA has made to the 40 CFR Part 63, General Provisions, and the federal MACT and GACT standards previously incorporated into the commission rules, by updating the federal promulgation dates and *Federal Register* (FR) citations stated in the commission rules, as discussed more specifically in the Section by Section Discussion in this preamble. The 34 amended and new standards, along with their corresponding Chapter 113 sections and original incorporation dates if applicable, are listed in the following table (Figure: 30 TAC Chapter 113--Preamble).

Figure: 30 TAC Chapter 113--Preamble

The EPA is continually in the process of revising 40 CFR Part 63, MACT and GACT regulations, and the EPA adopted changes to certain standards which were published too recently to be specifically addressed in the proposal documents for this rulemaking. In the proposal preamble, the commission provided notice that in addition to the changes specifically described in the Section by Section Discussion portion of the proposal preamble, the commission would consider the incorporation by reference of any final amendments made by the EPA after the date the revisions to Chapter 113 were proposed. Accordingly, in this adoption the commission has included certain 2016 amendments to 40 CFR Part 63, Subparts CC, GG, LLL, RRR, UUU, and UUUUU, which were published by the EPA after the proposal documents for this rulemaking were prepared. These recent amendments are generally corrections, clarifications, or updates to compliance dates, and it is administratively more efficient to include these amendments and ensure that Chapter 113, Subchapter C, is as up-to-date as possible, than to address these amendments separately in a later rulemaking. These amendments are discussed further in the appropriate Section by Section Discussion of this preamble.

Section by Section Discussion

§113.100, General Provisions (40 Code of Federal Regulations Part 63, Subpart A)

The commission adopts the amendment to §113.100 by incorporating by reference all amendments to 40 CFR Part 63, Subpart A, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart A, on June 25, 2013 (78 FR 37973); February 27, 2014 (79 FR 11228); March 27, 2014 (79 FR 17340); June 30, 2015 (80 FR 37366); August 19, 2015 (80 FR 50386); September 18, 2015 (80 FR 56700); October 15, 2015 (80 FR 62390); October 26, 2015 (80 FR 65470); December 1, 2015 (80 FR 75178); and December 4, 2015 (80 FR 75817).

The June 25, 2013, amendments to CFR Part 63, Subpart A, revised 40 CFR §63.13(a) to update the mailing address used to submit reports and correspondence to EPA Region VII. Although the change to the EPA Region VII mailing address does not affect states in EPA Region VI such as Texas, it is administratively more efficient to include this amendment than to specifically exclude it. The February 27, 2014, amendments added Methods 3A and 19 to the list of methods not requiring the use of audit samples in 40 CFR §63.7(c), corrected a reference to a section of Performance Specification 2 in 40 CFR §63.8(f)(6)(iii), and revised 40 CFR §63.14 to arrange the materials that are incorporated by reference in alpha-numeric order. The March 27, 2014, amendments revised 40 CFR §63.14 to incorporate various test methods and reference materials for use with 40 CFR Part 63, Subparts JJJ and PPP. The June 30, 2015, amendments revised 40 CFR §63.14 to incorporate various test methods and reference materials for use with 40 CFR Part 63, Subpart XXX. The August 19, 2015, amendments revised 40 CFR §63.14 to incorporate various test methods and reference materials for use with 40 CFR Part 63, Subparts AA and BB. The September 18, 2015, amendments revised 40 CFR §63.14 to incorporate various test methods and reference materials for use with 40 CFR Part 63, Subpart RRR. The October 15, 2015, amendments revised 40 CFR §63.14 to incorporate various test methods and reference materials for use with 40 CFR Part 63, Subpart LL. The October 26, 2015, amendments revised 40 CFR §63.14 to incorporate various test methods and reference materials for use with 40 CFR Part 63, Subparts JJJJJ and KKKKK. The December 1, 2015, amendments revised 40 CFR §63.14 to incorporate various test methods and reference materials for use with 40 CFR Part 63, Subparts Y, CC, and UUU. The December 4, 2015, amendments revised 40 CFR §63.14 to correct certain paragraph numbering errors which were published as part of the October 26, 2015, amendments to 40 CFR §63.14.

§113.120, Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater (40 Code of Federal Regulations Part 63, Subpart G)

The commission adopts the amendment to §113.120 by incorporating by reference all amendments to 40 CFR Part 63, Subpart G, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart G, on February 27, 2014 (79 FR 11228). The February 27, 2014, amendments revised 40 CFR Part 63, Subpart G, to allow the use of Method 316 or Method 8260B in the SW-846 Compendium of Methods to determine HAP concentrations in wastewater streams in 40 CFR §63.144(b)(5)(i).

§113.190, Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks (40 Code of Federal Regulations Part 63, Subpart N)

The commission adopts the amendment to §113.190 by incorporating by reference all amendments to 40 CFR Part 63, Subpart N, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart N, on February 27, 2014 (79 FR 11228). The February 27, 2014, amendments added South Coast Air Quality Management District Method 205.1 as a testing option for measuring total chromium.

§113.200, Ethylene Oxide Emissions Standards for Sterilization Facilities (40 Code of Federal Regulations Part 63, Subpart O)

The commission adopts the amendment to §113.200 by incorporating by reference all amendments to 40 CFR Part 63, Subpart O, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart O, on February 27, 2014 (79 FR 11228). The February 27, 2014, amendments added California Air Resources Board Method 431 as an alternative to the procedures in 40 CFR §63.365(b) for determining the efficiency at the sterilization chamber vent and corrected an error in a reference to a section in Performance Specification 8.

§113.290, Secondary Lead Smelting (40 Code of Federal Regulations Part 63, Subpart X)

The commission adopts the amendment to §113.290 by incorporating by reference all amendments to 40 CFR Part 63, Subpart X, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart X, on January 3, 2014 (79 FR 367). The January 3, 2014, amendments revised regulatory text to clarify compliance dates and clarify provisions related to monitoring of negative pressure in total enclosures. The amendments also corrected typographical errors in a table listing congeners of dioxins and furans and in the testing requirements for total hydrocarbons.

§113.300, Marine Tank Vessel Loading Operations (40 Code of Federal Regulations Part 63, Subpart Y)

The commission adopts the amendment to §113.300 by incorporating by reference all amendments to 40 CFR Part 63, Subpart Y, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart Y, on February 27, 2014 (79 FR 11228), and December 1, 2015 (80 FR 75178). The February 27, 2014, amendments added Method 25B as an alternative to Method 25A in 40 CFR §63.565(d)(5) for determining the average volatile organic compound (VOC) concentration upstream and downstream of recovery devices, added Method 25B as an alternative method for determining the percent reduction in VOC in 40 CFR §63.565(d)(8), and added Method 25B as an alternative to Method 25A in determining the baseline outlet VOC concentration in 40 CFR §63.565(g). The February 27, 2014, amendments also added a requirement that Method 25B be validated according to Method 301 in §63.565(d)(10). The December 1, 2015, amendments deleted the exclusion for marine vessel loading operations at petroleum refineries and required small marine vessel loading operations and offshore marine vessel loading operations to use submerged filling.

The commission also adopts the revision to the title of §113.300 to "Marine Tank Vessel Loading Operations" to maintain consistency with the title of the corresponding federal regulation in 40 CFR Part 63, Subpart Y.

§113.320, Phosphoric Acid Manufacturing Plants (40 Code of Federal Regulations Part 63, Subpart AA)

The commission adopts the amendment to §113.320 by incorporating by reference all amendments to 40 CFR Part 63, Subpart AA, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart AA, on August 19, 2015 (80 FR 50386). The August 19, 2015, amendments finalized the EPA's residual risk and technology review for the Phosphoric Acid Manufacturing and Phosphate Fertilizer Production source categories. The amendments to 40 CFR Part 63, Subpart AA, included: numeric emission limits for previously unregulated mercury (Hg) and total fluoride emissions from calciners; work practice standards for hydrogen fluoride (HF) emissions from previously unregulated gypsum dewatering stacks and cooling ponds; clarifications to the applicability and monitoring requirements to accommodate process equipment and technology changes; removal of the exemptions for SSM; adoption of work practice standards for periods of startup and shutdown; and revised recordkeeping and reporting requirements for periods of SSM.

§113.330, Phosphate Fertilizers Production Plants (40 Code of Federal Regulations Part 63, Subpart BB)

The commission adopts the amendment to §113.330 by incorporating by reference all amendments to 40 CFR Part 63, Subpart BB, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart BB, on August 19, 2015 (80 FR 50386). The August 19, 2015, amendments finalized the EPA's residual risk and technology review conducted for the Phosphoric Acid Manufacturing and Phosphate Fertilizer Production source categories. The amendments to 40 CFR Part 63, Subpart BB, included: clarifications to applicability and monitoring requirements to accommodate process equipment and technology changes; removal of the exemptions for SSM; adoption of work practice standards for periods of startup and shutdown; and revised recordkeeping and reporting requirements for periods of SSM.

§113.340, Petroleum Refineries (40 Code of Federal Regulations Part 63, Subpart CC)

The commission adopts the amendment to §113.340 by incorporating by reference all amendments to 40 CFR Part 63, Subpart CC, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart CC, on June 20, 2013 (78 FR 37133); December 1, 2015 (80 FR 75178); and July 13, 2016 (81 FR 45232). The June 20, 2013, amendments revised the standards for heat exchange systems to include an alternative monitoring option that would allow owners and operators at existing sources to monitor quarterly instead of monthly. The June 20, 2013, amendments also revised the definition of heat exchange system to clarify the applicability of monitoring and repair provisions for individual heat exchangers within the heat exchange system. Finally, the June 20, 2013, amendments provided for monitoring at an aggregated location for once-through cooling water heat exchange systems, provided that the combined cooling water flow rate at the monitoring location does not exceed 40,000 gallons per minute.

The December 1, 2015, amendments finalized the residual risk and technology review the EPA conducted for the Petroleum Refinery source categories regulated under Refinery MACT 1 (40 CFR Part 63, Subpart CC) and Refinery MACT 2 (40 CFR Part 63, Subpart UUU). These amendments included expanded storage vessel emission control requirements, new provisions to require and support fenceline monitoring for benzene emissions, and revised standards for decoking operations and flares used as pollution control devices. The amendments also included work practice standards for minimizing emissions from pressure relief devices (PRDs), emergency flaring events, and maintenance work on process equipment containing HAP or VOC. The July 13, 2016, amendments adjusted the compliance date for requirements that apply to maintenance vents during periods of startup, shutdown, maintenance, or inspection for sources constructed or reconstructed on or before June 30, 2014; amended the compliance dates for requirements that apply during startup, shutdown, or hot standby for fluid catalytic cracking units (FCCUs) and startup and shutdown for sulfur recovery units (SRU) constructed or reconstructed on or before June 30, 2014; and made various technical corrections and clarifications to the rule.

§113.350, Off-Site Waste and Recovery Operations (40 Code of Federal Regulations Part 63, Subpart DD)

The commission adopts the amendment to §113.350 by incorporating by reference all amendments to 40 CFR Part 63, Subpart DD, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart DD, on March 18, 2015 (80 FR 14248). The March 18, 2015, amendments finalized the EPA's residual risk and technology review conducted for the Off-Site Waste and Recovery Operations source category. These amendments revised storage tank requirements to require increased control of emissions for tanks in a specific size range that also contain material above a specified vapor pressure, and revised equipment leak requirements to remove the

option to comply with 40 CFR Part 61, Subpart V, instead of 40 CFR Part 63, Subpart H. The amendments also revised the standards to eliminate the SSM exemption, so that the standards in this rule apply at all times. In addition, the March 18, 2015, amendments added requirements for reporting of performance testing through the Electronic Reporting Tool (ERT); revised routine maintenance provisions; clarified provisions pertaining to open-ended valves and lines; added monitoring requirements for PRDs; and clarified provisions for certain performance test methods and procedures.

§113.380, Aerospace Manufacturing and Rework Facilities (40 Code of Federal Regulations Part 63, Subpart GG)

The commission adopts the amendment to §113.380 by incorporating by reference all amendments to 40 CFR Part 63, Subpart GG, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart GG, on February 27, 2014 (79 FR 11228); December 7, 2015 (80 FR 76152); and August 3, 2016 (81 FR 51114). The February 27, 2014, amendments removed an incorrect reference to the location of Method 319 in 40 CFR §63.750(o). The December 7, 2015, amendments finalized the EPA's residual risk and technology review conducted for this source category. The December 7, 2015, amendments added limitations to reduce organic and inorganic emissions of HAP from specialty coating operations; removed exemptions for periods of SSM so that affected units will be subject to the emission standards at all times; and revised provisions to address recordkeeping and reporting requirements applicable to SSM. The December 7, 2015, amendments also added a requirement to report performance testing through the EPA's Compliance and Emissions Data Reporting Interface (CEDRI), and revised rule language to clarify applicability and compliance demonstration provisions. The August 3, 2016, direct final amendments revised 40 CFR Part 63, Subpart GG, to clarify the compliance date for the handling and storage of waste.

§113.430, Primary Aluminum Reduction Plants (40 Code of Federal Regulations Part 63, Subpart LL)

The commission adopts the amendment to §113.430 by incorporating by reference all amendments to 40 CFR Part 63, Subpart LL, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart LL, on October 15, 2015 (80 FR 62390). The October 15, 2015, amendments finalized the EPA's residual risk and technology review conducted for the Primary Aluminum Production source category. These amendments included technology-based standards and work practice standards reflecting performance of MACT, and related monitoring, reporting, and testing requirements for several previously unregulated HAPs from various emissions sources. The amendments also finalized new and revised emission standards for certain HAP emissions from potlines using the Soderberg technology, added a requirement for electronic reporting of compliance data, and eliminated the exemptions for periods of SSM.

§113.450, Wool Fiberglass Manufacturing at Area Sources (40 Code of Federal Regulations Part 63, Subpart NN)

The commission adopts the amendment to §113.450, which would incorporate by reference the final promulgated rules in 40 CFR Part 63, Subpart NN, adopted by the EPA on July 29, 2015 (80 FR 45280). This GACT standard applies to facilities which manufacture wool fiberglass that are area sources. HAPs emitted from these facilities include chromium compounds, formaldehyde, methanol, and phenol.

§113.560, Generic Maximum Achievable Control Technology Standards (40 Code of Federal Regulations Part 63, Subpart YY)

The commission adopts the amendment to §113.560 by incorporating by reference all amendments to 40 CFR Part 63, Subpart YY, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart YY, on October 8, 2014 (79 FR 60898). The October 8, 2014, amendments finalized the EPA's residual risk and technology review conducted for the Acrylic and Modacrylic Fibers Production, Amino/Phenolic Resins Production and Polycarbonate Production source categories. The amendments revised the standards to require facilities to comply with the leak detection and repair requirements of 40 CFR Part 63, Subpart UU, rather than 40 CFR Part 63, Subpart TT, with the exception of connectors in gas and vapor service and in light liquid service. The amendments also established standards for previously unregulated HAP emissions from spinning lines that use a spin dope produced from a solution polymerization process at existing facilities. Finally, the amendments revised requirements for PRDs, revised reporting requirements to provide for electronic reporting of certain performance test information, and eliminated the SSM exemption.

§113.610, Mineral Wool Production (40 Code of Federal Regulations Part 63, Subpart DDD)

The commission adopts the amendment to §113.610 by incorporating by reference all amendments to 40 CFR Part 63, Subpart DDD, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart DDD, on July 29, 2015 (80 FR 45280). The July 29, 2015, amendments finalized the EPA's residual risk and technology reviews conducted for the Mineral Wool Production and Wool Fiberglass Manufacturing source categories. The amendments to 40 CFR Part 63, Subpart DDD, included the removal of formaldehyde as a surrogate for phenol and methanol and the removal of carbon monoxide as a surrogate for carbonyl sulfide (COS). The amendments also revised cupola emission limits for COS, hydrochloric acid (HCl), and HF and finalized emission limits for formaldehyde, methanol, and phenol for bonded lines. In addition, the amendments allowed the use of EPA Methods 26A and 320 for measuring concentrations of HCl and HF, revised various performance testing requirements, added requirements for reporting of performance testing through the ERT, and added several definitions to clarify terminology used in the standards. These amendments also eliminated the SSM exemption and established work practice standards for periods of startup and shutdown.

§113.640, Pharmaceuticals Production (40 Code of Federal Regulations Part 63, Subpart GGG)

The commission adopts the amendment to §113.640 by incorporating by reference all amendments to 40 CFR Part 63, Subpart GGG, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart GGG, on February 27, 2014 (79 FR 11228). The February 27, 2014, amendments revised the 40 CFR §63.1251 definition of process vent to allow Method 320 as an alternative to Method 18 for demonstrating that a vent is not a process vent.

§113.660, Flexible Polyurethane Foam Production (40 Code of Federal Regulations Part 63, Subpart III)

The commission adopts the amendment to §113.660 by incorporating by reference all amendments to 40 CFR Part 63, Subpart III, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart III, on August 15,

2014 (79 FR 48073). The August 15, 2014, amendments finalized the EPA's residual risk and technology review conducted for the Flexible Polyurethane Foam (FPUF) Production source category. The amendments added a prohibition on the use of HAP or HAP-based products as auxiliary blowing agents for all slabstock FPUF production operations, eliminated the SSM exemption so that the standards apply at all times, added requirements for electronic reporting of performance testing through the ERT, clarified the leak detection methods allowed for diisocyanate storage vessels at slabstock foam production facilities, and added a schedule for delay of leak repairs for valves and connectors.

§113.670, Group IV Polymers and Resins (40 Code of Federal Regulations Part 63, Subpart JJJ)

The commission adopts the amendment to §113.670 by incorporating by reference all amendments to 40 CFR Part 63, Subpart JJJ, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart JJJ, on March 27, 2014 (79 FR 17340). The March 27, 2014, amendments finalized the EPA's residual risk and technology review conducted for the Group IV Polymers and Resins source category. The amendments added language to require electronic reporting of performance test results, added a requirement to monitor PRDs in organic HAP service, and eliminated the SSM exemption so that emission standards would apply at all times. In addition, the amendments addressed certain emissions that were not previously regulated, provided for alternative compliance demonstration methods during periods of startup and shutdown, and lifted the stay of requirements for process contact cooling towers at existing sources in one Polymers and Resins subcategory.

§113.690, Portland Cement Manufacturing Industry (40 Code of Federal Regulations Part 63, Subpart LLL)

The commission adopts the amendment to §113.690 by incorporating by reference all amendments to 40 CFR Part 63, Subpart LLL, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart LLL, on July 27, 2015 (80 FR 44772) and July 25, 2016 (81 FR 48356). The July 27, 2015, amendments clarified the definitions of rolling average, operating day, and run average; restored a table of emission limits which apply until September 9, 2015; provided a scaling alternative for sources that have a wet scrubber, tray tower, or dry scrubber relative to the HCl compliance demonstration; added a temperature parameter to the startup and shutdown requirements; and clarified language related to span values for Hg and HCl measurements. The amendments also removed an affirmative defense provision from the rule which was vacated by a court action and corrected a number of typographical and grammatical errors and errors in various dates. The July 25, 2016, amendments provided a temporary compliance alternative for sources that would otherwise be required to use an HCl continuous emissions monitoring system to demonstrate compliance with the HCl emissions limit, and restored regulatory text requiring the reporting of clinker production and kiln feed rates that was inadvertently deleted from the standard.

§113.700, Pesticide Active Ingredient Production (40 Code of Federal Regulations Part 63, Subpart MMM)

The commission adopts the amendment to §113.700 by incorporating by reference all amendments to 40 CFR Part 63, Subpart MMM, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart MMM, on March 27, 2014 (79 FR 17340). The March 27, 2014, amendments finalized the EPA's residual risk and technology review conducted for this source category. The amendments clarified that sources may submit a precompliance plan to request alternative compliance options after the compliance date has passed or construction or preconstruction applications have already been submitted. The amendments also clarified provisions for packed-bed scrubbers in 40 CFR §63.1366(b)(1)(ii), and revised the definition for "'pesticide active ingredient." In addition, the amendments added language to require electronic reporting of performance test results, added a requirement to monitor PRDs in organic HAP service, and eliminated the SSM exemption so that emissions standards would apply at all times. The amendments also revised Table 1 of 40 CFR Part 63, Subpart MMM, (the General Provisions applicability table), in several respects relating to SSM requirements.

§113.710, Wool Fiberglass Manufacturing (40 Code of Federal Regulations Part 63, Subpart NNN)

The commission adopts the amendment to §113.710 by incorporating by reference all amendments to 40 CFR Part 63, Subpart NNN, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart NNN, on July 29, 2015 (80 FR 45280). The July 29, 2015, amendments finalized the EPA's residual risk and technology reviews conducted for the Mineral Wool Production and Wool Fiberglass Manufacturing source categories. The amendments to 40 CFR Part 63, Subpart NNN, included revised chromium and particulate matter (PM) emission limits for certain sources, new pollutant-specific emissions limits for HAPs such as methanol and phenol that were previously regulated under the surrogate compound formaldehyde, and established new emission limits for certain other HAPs that were previously unregulated. The amendments also finalized first-time GACT standards for gas-fired glass-melting furnaces at area sources, added requirements for electronically reporting performance test results through the ERT, eliminated the SSM exemption, and established revised work practice standards for periods of startup and shutdown.

§113.720, Manufacture of Amino/Phenolic Resins (40 Code of Federal Regulations Part 63, Subpart OOO)

The commission adopts the amendment to §113.720 by incorporating by reference all amendments to 40 CFR Part 63, Subpart OOO, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart OOO, on October 8, 2014 (79 FR 60898). The October 8, 2014, amendments finalized the EPA's residual risk and technology reviews conducted for the Acrylic and Modacrylic Fibers Production, Amino/Phenolic Resins Production (APR) and Polycarbonate Production source categories. The amendments to 40 CFR Part 63, Subpart OOO, revised the applicability of the APR new source MACT standards to include smaller capacity storage vessels and storage vessels containing liquids with lower vapor pressures. The amendments also clarified that pressure releases from PRDs in organic HAP service to the atmosphere are prohibited and specified provisions for monitoring PRDs in HAP service. In addition, the amendments established standards for certain previously-unregulated HAP emissions from storage vessels and continuous process vents at existing facilities. The amendments also added requirements for electronically reporting performance test results through the ERT and eliminated the SSM exemption.

§113.730, Polyether Polyols Production (40 Code of Federal Regulations Part 63, Subpart PPP)

The commission adopts the amendment to §113.730 by incorporating by reference all amendments to 40 CFR Part 63, Subpart PPP, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart PPP, on March 27, 2014 (79 FR 17340). The March 27, 2014, amendments finalized the EPA's residual risk and technology review conducted for this source category. The amendments to 40 CFR Part 63, Subpart PPP, clarified that pressure releases from PRDs in organic HAP service to the atmosphere are prohibited, and specified provisions for monitoring PRDs in HAP service. The amendments also clarified requirements for precompliance reports, added requirements for electronically reporting performance test results through the ERT, eliminated the SSM exemption, and revised associated SSM requirements.

§113.750, Secondary Aluminum Production (40 Code of Federal Regulations Part 63, Subpart RRR)

The commission adopts the amendment to §113.750 by incorporating by reference all amendments to 40 CFR Part 63, Subpart RRR, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart RRR, on February 27, 2014 (79 FR 11228); September 18, 2015 (80 FR 56700); and June 13, 2016 (81 FR 38085). The February 27, 2014, amendments added Method 26 as an alternative to Method 26A for determining HCl concentration. The September 18, 2015, amendments finalized the EPA's residual risk and technology review conducted for this source category. These amendments revised rule language to clarify applicability of certain rule provisions to area sources and added or revised certain technical definitions. The amendments also provided criteria for changing furnace classifications and established an allowed frequency of such changes. In addition, the amendments eliminated the SSM exemption and revised associated SSM requirements, revised various provisions relating to performance testing, and added requirements for electronically reporting performance test results through the ERT. The June 13, 2016, direct final amendments corrected inadvertent errors, clarified requirements for initial performance tests and submittal of malfunction reports, provided an additional option for new round top furnaces to account for unmeasured emissions during compliance testing, and clarified what constitutes a change in furnace operating mode. The direct final rule also updated website addresses for the EPA's ERT and CEDRI.

§113.780, Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units (40 Code of Federal Regulations Part 63, Subpart UUU)

The commission adopts the amendment to §113.780 by incorporating by reference all amendments to 40 CFR Part 63, Subpart UUU, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart UUU, on December 1, 2015 (80 FR 75178) and July 13, 2016 (81 FR 45232). The December 1, 2015, amendments finalized the EPA's residual risk and technology review conducted for this source category. These amendments removed the incremental PM limit when burning liquid or solid fuels and finalized a 20% opacity limit based on a three-hour average. The amendments also added an option for bag leak detectors to be used as an alternative to a continuous opacity monitoring system, and added requirements for daily checks of the air or water pressure to spray nozzles on wet scrubbers. In addition, the amendments required periodic FCCU performance testing at a frequency of once every five years and incorporated enhanced flare operational requirements directly into the Refinery MACT. The amendments also eliminated the SSM exemption and revised associated SSM requirements, established alternative emission standards for certain startup and shutdown situations, and added requirements for reporting performance test results through the ERT. The July 13, 2016, amendments adjusted the compliance date for requirements that apply to maintenance vents during periods of startup, shutdown, maintenance, or inspection for sources constructed or reconstructed on or before June 30, 2014; amended the compliance dates for requirements that apply during startup, shutdown, or hot standby for FCCUs and startup and shutdown for SRUs constructed or reconstructed on or before June 30, 2014; and made various technical corrections and clarifications to the rule.

§113.810, Ferroalloys Production: Ferromanganese and Silicomanganese (40 Code of Federal Regulations Part 63, Subpart XXX)

The commission adopts the amendment to §113.810 by incorporating by reference all amendments to 40 CFR Part 63, Subpart XXX, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart XXX, on June 30, 2015 (80 FR 37366). The June 30, 2015, amendments finalized the EPA's residual risk and technology review conducted for this source category. The amendments revised PM standards for electric arc furnaces, metal oxygen refining processes, and crushing and screening operations and expanded requirements to control process fugitive emissions from furnace operations, tapping, casting, and other processes. The amendments also finalized opacity limits and established required monitoring using a digital camera opacity technique in lieu of Method 9. The amendments also finalized emission standards for certain previously unregulated HAPs (formaldehyde, HCl, Hg, and polycyclic aromatic hydrocarbons). In addition, the amendments eliminated the SSM exemption and added requirements for reporting performance test results through the ERT.

§113.860, Manufacturing of Nutritional Yeast (40 Code of Federal Regulations Part 63, Subpart CCCC)

The commission adopts the amendment to §113.860 by incorporating by reference all amendments to 40 CFR Part 63, Subpart CCCC, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart CCCC, on February 27, 2014 (79 FR 11228). The February 27, 2014, amendments revised Table 2 of 40 CFR Part 63, Subpart CCCC, to delete the requirement to use Methods 1, 2, 3, and 4 when measuring VOC by Method 25A. The commission also adopts the revision to this section title for consistency with other sections in this subchapter, by using the full term "Code of Federal Regulations" rather than the acronym "CFR."

§113.1040, Cellulose Products Manufacturing (40 Code of Federal Regulations Part 63, Subpart UUUU)

The commission adopts the amendment to §113.1040 by incorporating by reference all amendments to 40 CFR Part 63, Subpart UUUU, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart UUUU, on February 27, 2014 (79 FR 11228). The February 27, 2014, amendments revised Table 4 of 40 CFR Part 63, Subpart UUUU, to allow Method 320 as an alternative to Method 18 for determining control device efficiency.

§113.1090, Reciprocating Internal Combustion Engines (40 Code of Federal Regulations Part 63, Subpart ZZZZ)

The commission adopts the amendment to §113.1090 by incorporating by reference all amendments to 40 CFR Part 63, Sub-

part ZZZZ, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart ZZZZ, on March 6, 2013 (78 FR 14457), and February 27, 2014 (79 FR 11228). The March 6, 2013, amendments corrected several typographical errors in Table 2c of 40 CFR Part 63, Subpart ZZZZ. The February 27, 2014, amendments revised Table 4 of 40 CFR Part 63, Subpart ZZZZ, to clarify that a heated probe is not necessary when using ASTM D6522 to measure oxygen or carbon dioxide concentrations and deleted the requirement to use Method 1 or 1A when testing gaseous emissions from engines with smaller ducts.

§113.1130, Industrial, Commercial, and Institutional Boilers and Process Heaters Major Sources (40 Code of Federal Regulations Part 63, Subpart DDDDD)

The commission adopts the amendment to §113.1130 by incorporating by reference all amendments to 40 CFR Part 63, Subpart DDDDD, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart DDDDD, on November 20, 2015 (80 FR 72790). The November 20, 2015, amendments revised the definitions of startup and shutdown and revised the work practice standards which apply during these periods. The amendments also removed affirmative defense provisions which applied during periods of malfunction. In addition, the amendments included a number of technical corrections, clarifications, and corrections of various typographical errors.

§113.1190, Brick and Structural Clay Products Manufacturing (40 Code of Federal Regulations Part 63, Subpart JJJJJ)

The commission adopts new §113.1190 by incorporating by reference the final promulgated rules in 40 CFR Part 63, Subpart JJJJJ, adopted by the EPA on October 26, 2015 (80 FR 65470). This MACT standard applies to brick and structural clay production facilities which are major sources. Brick and structural clay product manufacturing facilities typically process raw clay and shale, form the processed materials into bricks or shapes, and dry and fire the bricks or shapes. HAPs emitted from these facilities include Hg, non-Hg metal HAPs, and acid gases such as HF, hydrogen chloride, and chlorine. The standards adopted by the EPA on October 26, 2015, that are incorporated into §113.1190, were developed in response to a 2007 court action which vacated the original brick and structural clay MACT standards adopted by the EPA in 2003 *(Sierra Club v. EPA,* 479 F.3d 875, 876 (D.C. Cir. 2007)).

§113.1200, Clay Ceramics Manufacturing (40 Code of Federal Regulations Part 63, Subpart KKKKK)

The commission adopts new §113.1200 by incorporating by reference the final promulgated rules in 40 CFR Part 63, Subpart KKKKK, adopted by the EPA on October 26, 2015 (80 FR 65470), as amended December 4, 2015 (80 FR 75817). This MACT standard applies to clay production facilities which are major sources. The Clay Ceramics Manufacturing source category includes facilities that manufacture pressed floor tile, pressed wall tile, and other pressed tile; or sanitaryware such as toilets and sinks. HAPs emitted from these facilities include Hg, non-Hg metal HAPs, dioxins, furans, and acid gases such as HF, HCl, and chlorine. The standards adopted by the EPA on October 26, 2015, that are incorporated into §113.1200, were developed in response to a 2007 court action which vacated the original clay ceramics manufacturing MACT standard adopted by the EPA in 2003 *(Sierra Club v. EPA,* 479 F.3d 875, 876 (D.C. Cir. 2007)). The December 4, 2015, amendments corrected minor typographical errors in the standards.

§113.1300, Coal- and Oil-Fired Electric Utility Steam Generating Units (40 Code of Federal Regulations Part 63, Subpart UUUUU)

The commission adopts the amendment to §113.1300 by incorporating by reference all amendments to 40 CFR Part 63, Subpart UUUUU, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart UUUUU, on November 19, 2014 (79 FR 68777); March 24, 2015 (80 FR 15510); and April 6, 2016 (81 FR 20172). The November 19, 2014, amendments revised numerous startup and shutdown-related provisions, including clarifications to certain definitions relating to startup and shutdown, and finalized an alternative work practice compliance option for startup and shutdown periods. The March 24, 2015, amendments required owners or operators of affected sources to submit certain required emissions and compliance reports to the EPA through the Emissions Collection and Monitoring Plan System Client Tool, and the amendments temporarily suspended the requirement for owners or operators of affected sources to submit certain reports using the CEDRI. The April 6, 2016, amendments made a number of technical corrections and clarifications, and removed affirmative defense provisions associated with malfunctions.

§113.1390, Polyvinyl Chloride and Copolymers Production Area Sources (40 Code of Federal Regulations Part 63, Subpart DDDDDD)

The commission adopts the amendment to §113.1390 by incorporating by reference all amendments to 40 CFR Part 63, Subpart DDDDDD, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart DDDDDD, on February 4, 2015 (80 FR 5938). The February 4, 2015, amendments withdrew the total non-vinyl chloride organic HAP process wastewater emission standards for new and existing polyvinyl chloride and copolymers area sources.

Final Regulatory Impact Analysis Determination

The commission reviewed the rulemaking in light of the Regulatory Impact Analysis (RIA) requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a major environmental rule as defined in that statute, and in addition, if it did meet the definition, would not be subject to the requirement to prepare a RIA.

A major environmental rule means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent of these adopted rules is to adopt amendments to a number of existing NESHAPs incorporated into Chapter 113 and adopt incorporations of three NESHAPs not yet incorporated into Chapter 113, two of which replaced standards previously vacated by court actions. The NESHAPs are promulgated by the EPA for source categories mandated by 42 United States Code (USC), §7412 and are required to be included in operating permits by 42 USC, §7661a. These NESHAPs are technology-based standards commonly referred to as MACT or GACT standards which the EPA develops to regulate emissions of HAPs as required under the FCAA. Certain sources of HAPs will be affected and stationary sources are required to comply with federal standards whether or not the commission adopts the standards or takes delegation from the EPA. As discussed in the Fiscal Note of

the rulemaking proposal, the adopted rules are not anticipated to add any significant additional costs to affected individuals or businesses beyond what is already required to comply with federal MACT or GACT standards on the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Additionally, the rulemaking does not meet any of the four applicability criteria for requiring a RIA for a major environmental rule, which are listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

Under 42 USC, §7661a, states are required to have federal operating permit programs that provide authority to issue permits and assure compliance with each applicable standard, regulation, or requirement under the FCAA, including NESHAPs, which are required under 42 USC, §7412. Similar to requirements in 42 USC, §7410, regarding the requirement to adopt and implement plans to attain and maintain the National Ambient Air Quality Standards, states are not free to ignore requirements in 42 USC, §7661a, and must develop and submit programs to provide for operating permits for major sources that include all applicable requirements of the FCAA.

The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by Senate Bill 633 (SB 633 or bill) during the 75th Texas Legislature, 1997. The intent of SB 633 was to require agencies to conduct a RIA of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law.

Because of the ongoing need to meet federal requirements, the commission routinely proposes and adopts rules incorporating or designed to satisfy specific federal requirements. The legislature is presumed to understand this federal scheme. If each rule proposed by the commission in order to meet a federal requirement was considered to be a major environmental rule that exceeds federal law, then each of those rules would require the full RIA contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was only to require the full RIA for rules that are extraordinary in nature. While the adopted rules may have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA, and in fact, creates no additional impacts since the adopted rules do not modify the federal NESHAP, but are incorporations by reference, which do not change the federal requirements.

For these reasons, the adopted rules fall under the exception in Texas Government Code, §2001.0225(a), because they are required by, and do not exceed, federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code, but left this provision substantially un-amended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." *(Central Power & Light Co. v. Sharp,* 919 S.W.2d 485, 489 (Tex. App. Austin 1995), writ denied with per curiam opinion respecting another issue, 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.,* 798 S.W.2d 353, 357 (Tex. App. Austin 1990, no writ) superseded by statute on another point of law, Texas Tax Code, §112.108, Other Actions Prohibited, as recognized in, *First State Bank of Dumas v. Sharp,* 863 S.W. 2d 81, 83, (Tex. App. Austin 1993, no writ.); *Cf. Humble Oil & Refining Co. v. Calvert,* 414 S.W.2d 172 (Tex. 1967); *Berry v. State Farm Mut. Auto Ins. Co.,* 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor,* 24 S.W.3d 581 (Tex. App. Austin 2000, pet. denied); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.,* 563 S.W.2d 916 (Tex. 1978))

The commission's interpretation of the RIA 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" (See Texas Government Code, §2001.035). The legislature specifically identified Texas Government Code, §2001.0225, as falling under this standard. As discussed in this analysis and elsewhere in this preamble, the commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

The adopted rules implement requirements of the FCAA. The NESHAP standards being incorporated into state law are federal technology-based standards that are required by 42 USC, §7412, required to be included in permits under 42 USC, §7661a, adopted by reference without modification or substitution, and will not exceed any standard set by state or federal law. These rules are not an express requirement of state law. The adopted rules do not exceed a requirement of a delegation agreement or a contract between state and federal government, as the EPA delegates the NESHAP to Texas in accordance with the delegation procedures codified in 40 CFR Part 63. The amendments were not developed solely under the general powers of the agency, but are authorized by specific sections of Texas Health and Safety Code, 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, including Texas Health and Safety Code, §§382.011, 382.012, and 382.017. Therefore, this adopted rulemaking action is not

subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an analysis of whether the adopted rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The commission's preliminary assessment indicates Texas Government Code, Chapter 2007 does not apply.

Under Texas Government Code, §2007.002(5), taking means: "(A) a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; or (B) a governmental action that: (i) affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and (ii) is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect."

The commission completed a takings impact analysis for the adopted rulemaking action under the Texas Government Code, §2007.043. The specific intent of these adopted rules is to adopt amendments to a number of existing NESHAPs incorporated into Chapter 113 and adopt incorporations of three NESHAPs not yet incorporated into Chapter 113. The NESHAPs are promulgated by the EPA for source categories mandated by 42 USC, §7412 and required to be included in operating permits by 42 USC, §7661a. These NESHAPs are technology-based standards commonly referred to as MACT or GACT standards which the EPA develops to regulate emissions of HAPs as required under the FCAA. Certain sources of HAPs will be affected and stationary sources are required to comply with federal standards whether or not the commission adopts the standards or takes delegation from the EPA. The adopted rules do not create any additional burden on private real property. Under federal law, the affected industries will be required to comply with the NESHAPs regardless of whether the commission or the EPA is the agency responsible for implementation of the NESHAPs. The adopted rules do not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The adoption does not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the adopted rulemaking does not cause a taking under the Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found that the adoption is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.,* and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22, and found the adopted rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to this adopted rulemaking action is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(1), Goals). The CMP policy applicable to this rulemaking action is the policy that commission rules comply with federal regulations in 40 CFR, to protect and enhance air quality in the coastal areas (31 TAC §501.32, Policies for Emission of Air Pollutants). The adopted rules incorporate federal regulations concerning emissions of HAPs from certain industries into Chapter 113, allowing the commission to enforce those standards. This would tend to benefit the environment because it would result in lower emissions of HAPs. Therefore, in accordance with 31 TAC §505.22(e), Consistency Required for New Rules and Rule Amendments Subject to the Coastal Management Program, the commission affirms that this rulemaking is consistent with CMP goals and policies.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rules are consistent with these CMP goals and policies, and because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas.

The commission invited public comment regarding the consistency of the proposed rules with the CMP during the public comment period. No comments were received.

Effect on Sites Subject to the Federal Operating Permits Program

Chapter 113 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program. Owners or operators subject to the Federal Operating Permits Program must, consistent with the revision process in Chapter 122, upon the effective date of the adopted rulemaking, revise their operating permits to include the new Chapter 113 requirements. In addition, owners and operators of area sources should be aware that federal rules require certain area source categories to obtain a federal operating permit.

Public Comment

The commission offered a public hearing on August 18, 2016. The comment period closed on August 22, 2016. No oral or written comments on the proposed rules were received.

Statutory Authority

The amendments and new sections are adopted under Texas Water Code (TWC), §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC. The amendments and new sections are also adopted under Texas Healthy and Safety Code (THSC), §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the

proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act; and THSC, §382.051, concerning Permitting Authority of the Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the Texas Clean Air Act.

The adopted amendments and new sections implement THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051.

§113.340. Petroleum Refineries (40 Code of Federal Regulations Part 63, Subpart CC).

The Petroleum Refineries Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart CC, is incorporated by reference as amended through July 13, 2016 (81 FR 45232).

§113.380. Aerospace Manufacturing and Rework Facilities (40 Code of Federal Regulations Part 63, Subpart GG).

The Aerospace Manufacturing and Rework Facilities Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart GG, is incorporated by reference as amended through August 3, 2016 (81 FR 51114).

§113.690. Portland Cement Manufacturing Industry (40 Code of Federal Regulations Part 63, Subpart LLL).

The Portland Cement Manufacturing Industry Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart LLL, is incorporated by reference as amended through July 25, 2016 (81 FR 48356).

§113.750. Secondary Aluminum Production (40 Code of Federal Regulations Part 63, Subpart RRR).

The Secondary Aluminum Production Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart RRR, is incorporated by reference as amended through June 13, 2016 (81 FR 38085).

§113.780. Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units (40 Code of Federal Regulations Part 63, Subpart UUU).

The Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart UUU, is incorporated by reference as amended through July 13, 2016 (81 FR 45232).

§113.1300. Coal- and Oil-Fired Electric Utility Steam Generating Units (40 Code of Federal Regulations Part 63, Subpart UUUUU).

The Coal- and Oil-Fired Electric Utility Steam Generating Units Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart UUUUU, is incorporated by reference as amended through April 6, 2016 (81 FR 20172).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 9, 2016.

TRD-201606433
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Effective date: December 29, 2016
Proposal publication date: July 22, 2016
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CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §114.100 and §114.305; and the repeal of §§114.211 - 114.217 and 114.219.

The amendments to §114.100 and §114.305; and the repeal of §§114.211 - 114.217 and 114.219 are adopted *without changes* as published in the July 22, 2016, issue of the *Texas Register* (41 TexReg 5361) and will not be republished.

Adopted revisions to §114.100 and §114.305 will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP). Because of the adopted repeal of §§114.211 - 114.217 and 114.219, the TCEQ is withdrawing these rules from the EPA's consideration as a SIP revision. Additionally, it has come to the commission's attention that while §114.100 is approved as part of the SIP the section is not listed on the table titled "EPA Approved Regulations in the Texas SIP" in 40 Code of Federal Regulations (CFR) Part 52, §52.2270(c). The Oxygenated Fuels rule (previously numbered as §114.13) was originally approved by the EPA on September 12, 1994, *(Federal Register* Document No. 94-22398). The EPA most recently acknowledged §114.100 as included in the SIP in the final approval of the El Paso County Carbon Monoxide Maintenance Plan (73 FR 45162). The omission of §114.100 from 40 CFR §52.2270(c) is an oversight by the EPA.

Background and Summary of the Factual Basis for the Adopted and Repealed Rules

The current state regulations for the Voluntary Accelerated Vehicle Retirement (VAVR) program, as specified in Chapter 114 Vehicle Scrappage Program rules, §§114.211 - 114.217 and 114.219, Subchapter F, Division 2 were adopted by the commission on April 19, 2000, at the request of stakeholders in the Dallas-Fort Worth (DFW) ozone nonattainment area as an air pollution control strategy to reduce nitrogen oxides (NO_x) and other emissions to assist in achieving attainment of the National Ambient Air Quality Standard for the 1990 one-hour ozone standard. The adopted VAVR program regulations and accompanying SIP revision were the result of a coordinated development process involving the EPA, the commission, local elected officials, citizens, industrial stakeholders, air quality researchers, and hired consultants. The SIP revision, which incorporated the VAVR program rules, was submitted to the EPA on April 28, 2000.

Subsequent to the adoption of the VAVR program, the Low-Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) was authorized by House Bill 2134, 77th Texas Legislature, 2001. The LIRAP provides funds to participating counties to assist low-income individuals with repairs, retrofits, or retirement of vehicles that fail an emissions test or are at least 10 years old. The LIRAP has been successfully

implemented in 16 Texas counties. Due to the success of the LIRAP, the VAVR program never became a viable program in any region of the state including the DFW area that had originally requested it as an air pollution control strategy. The EPA has taken no action on the submitted SIP revision that incorporated these rules. The adopted repeal of the VAVR program removes obsolete rules that provide no current benefit to the state and are no longer necessary since the adoption and implementation of the LIRAP.

The adopted amendments make minor revisions to certain test method requirements in §114.100 and §114.305. The current state regulations for the approved test method for the oxygen requirements for gasoline in §114.100 requires the use of American Society for Testing and Materials (ASTM) D4815. The adopted amendment to §114.100 requires regulated entities to use the most current, or "active," version of the ASTM and prevent the use of obsolete versions of this test standard. The current state regulations for the approved test method to determine compliance with the Chapter 114 Reid vapor pressure (RVP) control requirements in §114.301 as specified in §114.305 require the use of the ASTM Test Method D5191-99 (Standard Test Method for Vapor Pressure of Petroleum Products (Mini Method)), which is the version of the ASTM test method approved by the ASTM in 1999 but is now obsolete. The most current version of the ASTM D5191 test method was approved by the ASTM in 2013. The executive director has previously approved requests from regulated entities for minor modifications to this test method, as permitted under §114.305(b), to allow the use of the newer version of this test method for consistency with the industry's current testing practices. The adopted amendment to §114.305 requires regulated entities to use the most current, or "active," version of the ASTM D5191 Test Method for determining compliance with the RVP standards specified in §114.301. This adopted action removes the current need for the executive director to approve minor modifications to obsolete versions of this standard test method, such as the ASTM Test Method D5191-99 that is currently referenced as the approved test method.

Section by Section Discussion

To conform to TCEQ and *Texas Register* formatting requirements, non-substantive revisions were made throughout the adopted amendments to correct citations, acronym usage, and other minor issues.

Subchapter D: Oxygen Requirements for Gasoline

§114.100, Oxygenated Fuels

The commission adopts the amendment §114.100 to replace the obsolete reference to "Texas Natural Resource Conservation Commission" and "commission" with "executive director" in subsections (b), (c), and (d), and to specify the "active version" of the ASTM Test Method D4815 referenced in subsection (e)(2) for clarity and consistency with the current rules.

Subchapter F: Vehicle Retirement and Mobile Emission Reduction Credits

Division 2: Vehicle Scrappage Program

The commission adopts the repeal of Chapter 114, Subchapter F, Division 2, §§114.211 - 114.217 and 114.219, to remove the VAVR program regulations. The VAVR program is an obsolete program that provides no current benefit to the state and is no longer considered viable since the adoption and implementation of the LIRAP.

Subchapter H: Low Emission Fuels

Division 1: Gasoline Volatility

§114.305, Approved Test Methods

The commission adopts the amendment to §114.305 to specify that compliance with the RVP limits in §114.301 must be determined by the active version of the ASTM Test Method D5191 (Standard Test Method for Vapor Pressure of Petroleum Products (Mini Method)) for consistency with the current rules and to lessen obsolescence due to future revisions to the testing method.

Final Regulatory Impact Analysis Determination

The commission reviewed this adopted rulemaking in light of the Regulatory Impact Analysis requirements of Texas Government Code, §2001.0225, and determined that this adopted rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule." A "major environmental rule" means "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." Additionally, this adopted rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Texas Government Code, §2001.0225(a).

Texas Government Code, §2001.0225 applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking adopts the repeal of the VAVR program and makes minor revisions to §114.100 and §114.305. The adopted revision to §114.305 requires regulated entities to use the most current, or "active," version of the ASTM D5191 Test Method for determining compliance with the RVP standards specified in §114.301. Neither of these adopted changes exceed a standard set by federal law. In addition, these adopted changes do not exceed an express requirement of state law and are not adopted solely under the general powers of the agency, but are specifically authorized by the provisions cited in the Statutory Authority section of this preamble. Finally, these changes do not exceed a requirement of a delegation agreement or contract to implement a state and federal program.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the draft regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007 is applicable. The specific intent of this adopted rulemaking is to repeal the VAVR program in addition to making minor changes to require regulated entities to use the most current, or "active," version of the ASTM D5191 Test Method for determining compliance with the RVP standards specified in

§114.301. Nevertheless, the commission further evaluated the adopted rulemaking and performed an assessment of whether this adopted rulemaking constitutes a "taking" under Texas Government Code, Chapter 2007. Promulgation and enforcement of this adopted rulemaking would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted 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 adopted 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, this adopted rulemaking do not constitute a taking under Texas Government Code, Chapter 2007. For these reasons, Texas Government Code, Chapter 2007 does not apply to this adopted rulemaking.

Consistency with the Coastal Management Program

The commission reviewed this rulemaking for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is administrative in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. The commission received no public comment regarding the consistency with the coastal management program during the public comment period.

Effect on Sites Subject to the Federal Operating Permits Program

This adopted rulemaking does not impact facilities with air emissions that have applicable (federal or state) requirements with the Federal Operating Permit (30 TAC Chapter 122).

Public Comment

The commission offered a public hearing on August 18, 2016, but the public hearing was not formally opened for comment due to the lack of public attendance. The comment period closed on August 22, 2016. The commission received no comments on this rulemaking during the public comment period.

SUBCHAPTER D. OXYGEN REQUIREMENTS FOR GASOLINE

30 TAC §114.100

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC. The amendment is also adopted under Texas Health and Safety Code (THSC), §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; and THSC, §382.202, concerning Vehicle Emissions Inspection and Maintenance Program, which authorizes the commission to establish vehicle fuel content standards after January 1, 2004, as long as distribution of low emission diesel as described in the State Implementation Plan is not required prior to February 1, 2005.

The adopted amendment implements THSC, §§382.002, 382.011, 382.012, 382.017, and 382.202.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 9, 2016.

TRD-201606416
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Texas Commission on Environmental Quality
Effective date: December 29, 2016
Proposal publication date: July 22, 2016
For further information, please call: (512) 239-2613

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SUBCHAPTER F. VEHICLE RETIREMENT AND MOBILE EMISSION REDUCTION CREDITS
DIVISION 2. VEHICLE SCRAPPAGE PROGRAM

30 TAC §§114.211 - 114.217, 114.219

Statutory Authority

The repealed sections are adopted under Texas Water Code (TWC), §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC. The repeal is also adopted under Texas Health and Safety Code (THSC), §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; and THSC, §382.202, concerning Vehicle Emissions Inspection and Maintenance Program, which authorizes the commission to establish vehicle fuel content standards after January 1, 2004, as long as distribution of low emission diesel as described in the State Implementation Plan is not required prior to February 1, 2005.

The adopted repealed sections implement THSC, §§382.002, 382.011, 382.012, 382.017, and 382.202.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 9, 2016.

TRD-201606417
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: December 29, 2016
Proposal publication date: July 22, 2016
For further information, please call: (512) 239-2613

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SUBCHAPTER H. LOW EMISSION FUELS
DIVISION 1. GASOLINE VOLATILITY

30 TAC §114.305

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC. The amendment is also adopted under Texas Health and Safety Code (THSC), §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; and THSC, §382.202, concerning Vehicle Emissions Inspection and Maintenance Program, which authorizes the commission to establish vehicle fuel content standards after January 1, 2004, as long as distribution of low emission diesel as described in the State Implementation Plan is not required prior to February 1, 2005.

The adopted amendment implements THSC, §§382.002, 382.011, 382.012, 382.017, and 382.202.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 9, 2016.

TRD-201606418
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: December 29, 2016
Proposal publication date: July 22, 2016
For further information, please call: (512) 239-2613

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CHAPTER 210. USE OF RECLAIMED WATER
SUBCHAPTER F. USE OF GRAYWATER AND ALTERNATIVE ONSITE WATER

30 TAC §§210.81 - 210.85

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §§210.81 - 210.85.

Amended §§210.82 - 210.85 are adopted *with changes* to the proposed text as published in the July 22, 2016, issue of the *Texas Register* (41 TexReg 5366) and will be republished. The amendment to §210.81 is adopted *without change* and will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

House Bill 1902 (HB 1902 or bill), 84th Texas Legislature (2015), amended Texas Health and Safety Code (THSC), Chapters 341 and 366, and Texas Water Code, Chapter 26, in relation to the use of graywater and alternative onsite water. The bill requires TCEQ to develop standards to allow the reuse of graywater for toilet and urinal flushing.

Additionally, the bill creates a new regulatory classification for "alternative onsite water" which the bill defines as "rainwater, air-conditioning condensate, foundation drain water, storm water, cooling tower blowdown, swimming pool backwash and drain water, reverse osmosis reject water, or any other source of water considered appropriate by the commission." The bill directs TCEQ to develop similar standards for the reuse of this new source of water similar to graywater.

The bill provides authority to TCEQ to adopt and implement rules for the inspection and annual testing of graywater and alternative onsite water systems.

The bill allows an adjustment in the drainfield size of an on-site sewage facility (OSSF) if used in conjunction with a graywater reuse system.

Lastly, the bill requires TCEQ to develop a regulatory guidance manual to explain the graywater and alternative onsite water regulations.

The bill requires amendments to Chapter 210, Use of Reclaimed Water, and 30 TAC Chapter 285, On-Site Sewage Facilities. The adopted rules allow for a reduction in the OSSF drainfield size if the OSSF is used in conjunction with a graywater reuse system, move all graywater reuse to Chapter 210, authorize toilet and urinal flushing as an additional reuse of graywater, authorize the reuse of alternative onsite water, establish uses of and treatment standards for alternative onsite water similar to graywater, incorporate nationally recognized treatment standards for graywater and alternative onsite water when used for toilet and urinal flushing, and revise bacteria limits from fecal coliform to *Escherichia coli (E. coli)*.

HB 1902 retains the existing prohibition on the commission requiring a permit for the residential use of less than 400 gallons per day of graywater and adds alternative onsite water to the permit prohibition.

Because TCEQ does not issue permits for graywater and alternative onsite water reuse systems, the adopted rules do not include an inspection or testing program for these systems.

A regulatory guidance manual to explain the graywater and alternative onsite water regulations will be developed after adoption of this rulemaking.

A corresponding rulemaking is published in this issue of the *Texas Register* concerning Chapter 285, Subchapter H, Disposal of Graywater.

Section by Section Discussion

The adopted amendment to Chapter 210, Subchapter F, changes the title from "Use of Graywater Systems" to "Use of Graywater and Alternative Onsite Water" to reflect the inclusion of alternative onsite water in the subchapter.

§210.81, Applicability

Adopted §210.81(a) includes alternative onsite water, is clarified by noting that the graywater and alternative onsite water must be generated and used onsite, and revises the term "domestic use" to "private residence." Adopted §210.81(b) is revised to improve clarity and readability. Adopted §210.81(c) specifically notes that the rule does not apply to the design, construction, or operation of an OSSF, as these facilities are regulated by Chapter 285.

Adopted §210.81(d) includes a savings clause that retains the previous version of the rules in effect for facilities that were installed under that version of the rule. Existing facilities that were installed under the previous rule are not required to make changes to their facility to comply with the adopted rule, except as noted in adopted §210.83(j).

Lastly, adopted §210.81(e) specifically notes that the subchapter does not authorize the diversion or impoundment of state water. The diversion or impoundment of state water must be authorized under 30 TAC Chapter 297, Water Rights, Substantive. Alternative onsite water includes stormwater which must be impounded to collect and reuse under the adopted rule. A water right permit may be required to impound the stormwater.

§210.82, Definitions and General Requirements

The adopted amendment to §210.82 changes the title from "General Requirements" to "Definitions and General Requirements" to include definitions in the title.

The adopted rule adds definitions to §210.82(a) for "Alternative onsite water," "Alternative water reuse system," "Combined reuse system," and "Graywater reuse system."

The definition of "Alternative onsite water" in §210.82(a)(1) includes the same sources of water that are in the definition provided in THSC, §341.039(e), except cooling tower blowdown. The adopted rule has specific limitations on two sources of water that were included in THSC, §341.039(e): cooling tower blowdown and reverse osmosis reject water. The definition of "Alternative onsite water" specifically excludes cooling tower blowdown for the purposes of this subchapter, as that source of water must be reused in accordance with the requirements of Chapter 210, Subchapter E. Additionally, the definition of "Alternative onsite water" excludes reverse osmosis reject water generated at industrial facilities, commercial facilities, and institutions, as that source of water generated at those facilities must be reused in accordance with the requirements of Chapter 210, Subchapter E. Reverse osmosis reject water generated at private residences and agriculture facilities may be reused in accordance with the requirements of the adopted rule.

The definitions for "Alternative water reuse system," "Combined reuse system," and "Graywater reuse system," in §210.82(a)(2), (3), and (5) respectively, are necessary because the requirements, especially as they relate to design and functionality of the system when it nears maximum capacity, are different depending on the source of water routed to each system. The differences are discussed later in this preamble.

Adopted §210.82(b) establishes requirements for alternative water reuse systems used at a private residence, industrial facility, commercial facility, institution, or agriculture facility. Adopted §210.82(b)(1) establishes examples of beneficial reuses of water from alternative water reuse systems. Providing examples rather than specified uses ensures that the rule allows other uses that the commission may not consider during this rulemaking. The adopted rule also allows for the reuse of an unlimited volume of water from an alternative water reuse system.

Adopted §210.82(b)(2) reiterates that reverse osmosis reject water generated at an industrial facility, commercial facility, or institution is not allowed to be stored or used in an alternative water reuse system. If an industrial facility, commercial facility, or institution wants to reuse reverse osmosis reject water or a combination of reverse osmosis reject water and other sources of alternative onsite water, it must comply with the requirements of Chapter 210, Subchapter E.

Adopted §210.82(b)(3) allows for the reuse of water from an alternative water reuse system without an authorization from the commission. Property owners are responsible for compliance with the requirements of the adopted rule.

Adopted §210.82(b)(4) - (6) limits the application rate, allows spray irrigation of water from an alternative water reuse system under certain conditions, and includes a requirement that the system not create a nuisance, threaten human health, or damage the quality of surface water or groundwater. These requirements comply with THSC, §341.039(b) and (c)(6) - (8).

Adopted §210.82(b)(7) prohibits the reuse of swimming pool backwash and drain water within five days of adding chemicals for shock or acid treatment. This five-day waiting period allows for the chemicals to volatilize to the air prior to reuse.

Adopted §210.82(b)(8) requires water from an alternative water reuse system that is used for toilet or urinal flushing to meet *E. coli* limits, total suspended solids limits, and requires color specific pipes for distribution. The *E. coli* and total suspended solids limits are consistent with the National Science Foundation International/American National Standards Institute (NSF/ANSI) Standard 350-2014: *On-site Residential and Commercial Water Reuse Treatment Systems.* The colored pipe complies with plumbing codes and 30 TAC Chapter 217, Subchapter M. An alternative water reuse system that stores rainwater only and the rainwater meets the potable requirements in 30 TAC §290.44 does not require the purple pipe.

Adopted §210.82(b)(9) prohibits alternative water reuse systems from having a connection to an organized wastewater collection system or OSSF. Wastewater collection systems and their associated wastewater treatment plants are not designed for inflow from alternative onsite water. The adopted rule allows for alter-

native water reuse systems to overflow onto the ground when the capacity of the system is exceeded; however, the authorized overflow must be induced by rainfall conditions. Failure to use the stored water in a timely manner is not an authorized overflow.

Adopted §210.82(b)(10) notes that an alternative water reuse system may be subject to backflow prevention requirements in §290.44 to protect the public water supply from cross-contamination. It is the responsibility of the property owner to determine if the system is subject to §290.44 and to comply with the applicable requirements of that rule.

Adopted §210.82(c) has general requirements for graywater reuse systems and combined reuse systems used at a private residence, industrial facility, commercial facility, institution, or agriculture facility. These requirements are in addition to the requirements in §§210.83 - 210.85. Adopted §210.82(c)(1) requires graywater reuse systems and combined reuse systems to comply with the requirements of this subchapter and the local permitting authority.

Adopted §210.82(c)(2) and (3) limit the application rate of water from a graywater reuse system or a combined reuse system and includes a requirement that the system not create a nuisance, threaten human health, or damage the quality of surface water or groundwater. These requirements comply with THSC, §341.039(b) and (c)(6) and (7).

Adopted §210.82(c)(4) notes that a graywater reuse system or combined reuse system may be subject to backflow prevention requirements in §290.44 to protect the public water supply from cross-contamination. It is the responsibility of the property owner to determine if the system is subject to §290.44 and to comply with the applicable requirements of that rule.

§210.83, Residential Use of Graywater and Alternative Onsite Water

The adopted amendment to §210.83 changes the title from "Criteria for the Domestic Use of Graywater" to "Residential Use of Graywater and Alternative Onsite Water" to be more concise, to include alternative onsite water, and to use terminology common to the public.

Adopted §210.83(a) establishes requirements for graywater reuse systems and combined reuse systems used at a private residence. An authorization from the commission is not required for the residential use of graywater and alternative onsite water when the total combined average is less than 400 gallons per day. The residential use of graywater and alternative onsite water when the total combined average is greater than or equal to 400 gallons per day does not require an authorization from the commission, unless directed by the executive director. Adopted §210.83(b) and (c) notes that the graywater and alternative onsite water must be generated and used onsite. Adopted §210.83(c) retains the list of approved uses of graywater from the former rule while adding toilet and urinal flushing and applying these uses to alternative onsite water.

Adopted §210.83(d) prohibits the overflow of graywater reuse systems and combined reuse systems onto the ground under any circumstances. Instead, in §210.83(d)(1) the rule requires that graywater reuse systems be designed so that the storage tank overflows into the wastewater collection system or OSSF unless prohibited by Chapter 285, Subchapter H. Adopted §210.83(d)(2) requires that combined reuse systems be designed so that the graywater can be diverted into the wastewater collection system or OSSF, unless prohibited by Chapter 285, Subchapter H. The graywater must be diverted prior to entering the storage tank and during periods of non-use of the combined reuse system or when the storage tank reaches 80% capacity. Adopted §210.83(d)(3) requires combined reuse systems that store stormwater, rainwater, and/or foundation drain water to have an automatic shutoff system to stop the inflow of these sources of water when the system reaches 80% capacity. The 20% reserved volume in the tank is to accommodate inflows of other sources of alternative onsite water.

Adopted §210.83(d)(1) and (2) require either a single air gap or two backflow preventers between the reuse system and the wastewater system.

Adopted §210.83(e) and (f) continues the existing requirement for graywater to be stored in tanks and retains the existing tank and piping requirements, while applying these requirements to water from a combine reuse system.

Adopted §210.83(g) allows water from a graywater or combine reuse system to be applied via spray irrigation if certain conditions are met, including limiting exposure during irrigation events and meeting *E. coli* limits.

Adopted §210.83(h) establishes minimum standards for graywater and alternative onsite water. Monitoring and recordkeeping are not required; however, property owners may refer to the regulatory guidance document required by THSC, §341.039 for assistance in complying with the standards. Adopted §210.83(h)(1) requires graywater and alternative onsite water to be treated to remove debris by requiring a 50-mesh screen on the storage tank inflow. Removing this debris prevents clogs in the distribution pipes and reduces organic matter in the storage tank that can cause nuisance odors and vector attraction. Adopted §210.83(h)(2) prohibits swimming pool backwash and drain water from being reused within five days of adding chemicals for shock or acid treatment. This five-day waiting period allows for the chemicals to volatilize to the air prior to reuse. Lastly, adopted §210.83(h)(3) requires water from a graywater reuse system or a combined reuse system that is used for toilet or urinal flushing to meet *E. coli* limits, total suspended solids limits, and requires color specific pipes for distribution. The *E. coli* and total suspended solids limits in adopted §210.83(h)(3)(A) and (B) are consistent with NSF/ANSI Standard 350-2014 for single-family residential dwellings (Class R). The colored pipe in adopted §210.83(h)(3)(C) complies with plumbing codes and Chapter 217, Subchapter M.

Adopted §210.83(i) adds alternative onsite water to the existing recommendations to residential builders and clarifies that residential builders should consider end use requirements and maintaining sufficient blackwater waste flow.

Adopted §210.83(j) clarifies the existing requirements for laundry graywater by replacing the phrase "effective date of this rule" with the exact date that former subsection (e) was effective, in §210.83(j)(1) replacing "must not create a public health nuisance" with "must not create a nuisance or threaten human health," and correcting grammatical errors in §210.83(j)(6). Additionally, adopted §210.83(j)(8) is revised to improve readability and adds a date for alterations. The date is the effective date of former subsection (f).

§210.84, Industrial, Commercial, or Institutional Use of Graywater and Alternative Onsite Water

The adopted amendment to §210.84 changes the title from "Criteria for Use of Graywater for Industrial, Commercial, or Institutional Purposes" to "Industrial, Commercial, or Institutional Use of Graywater and Alternative Onsite Water" to be more concise and to include alternative onsite water.

Adopted §210.84(a) reiterates that alternative onsite water generated at an industrial facility, commercial facility, or institution does not include reverse osmosis reject water, as this source of water is regulated by Chapter 210, Subchapter E.

Adopted §210.84(b) revises language regarding authorization from the commission for the use of graywater and alternative onsite water at an industrial facility, commercial facility, or institution and moves former §210.84(c)(1)(B) to adopted §210.84(b). These amendments improve readability.

Adopted §210.84(c) clarifies that the graywater and alternative onsite water must be generated and used onsite.

Adopted §210.84(d) prohibits the overflow of graywater reuse systems and combined reuse systems onto the ground under any circumstances. Instead, adopted §210.84(d)(1) requires that graywater reuse systems be designed and constructed so that the graywater can be diverted to a wastewater collection system, OSSF, authorized wastewater outfall, or authorized disposal area. The graywater must be diverted when the graywater reuse system is not being used or when the system reaches maximum capacity.

Adopted §210.84(d)(2) requires that combined reuse systems be designed and constructed so that the graywater can be diverted to a wastewater collection system, OSSF, authorized wastewater outfall, or authorized disposal area prior to entering the combined reuse system. The graywater must be diverted when the combined reuse system is not being used or when the system reaches 80% capacity. Additionally, adopted §210.84(d)(3) notes that combined reuse systems that store stormwater, rainwater, and/or foundation drain water must have an automatic shutoff system to stop the inflow of these sources of water when the system reaches 80% capacity. The 20% reserved volume is to accommodate inflows of other sources of alternative onsite water.

Adopted §210.84(d)(1) and (2) also require either a single air gap or two backflow preventers between the reuse system and the wastewater system.

Adopted §210.84(e) retains the list of approved uses of graywater from the former rule while applying these uses to alternative onsite water. Adopted §210.84(e)(1) - (5) revises the bacteria limits from fecal coliform to *E. coli;* however, the limit values for all uses were not revised from the former rule, except toilet or urinal flushing in §210.84(e)(4). Additionally, in §210.84(e)(2) the applicability of bacteria limits is revised based on whether there is public access or restricted public access to the application area rather than if there is public contact with the water or the public is present at the time of irrigation. Adopted §210.84(e)(4) revises the bacteria limits for toilet or urinal flushing from fecal coliform to *E. coli,* revises the limit values, and adds a limit for total suspended solids. The *E. coli* and total suspended solids limit values for toilet or urinal flushing are consistent with NSF/ANSI Standard 350-2014 for commercial facilities (Class C). Adopted §210.84(e)(4)(C) revises the color of the warning on exposed pipes carrying graywater and/or alternative onsite water to be consistent with Chapter 217, Subchapter M.

Adopted §210.84(f) was revised to improve readability.

§210.85, Agricultural Use of Graywater and Alternative Onsite Water

The adopted amendment to §210.85 changes the title from "Criteria for Use of Graywater for Irrigation and for Other Agricultural Purposes" to "Agricultural Use of Graywater and Alternative Onsite Water" to be more concise and to include alternative onsite water.

Adopted §210.85(a) revises language regarding authorization from the commission for agricultural use of graywater and moves former §210.85(c)(1)(B) to adopted §210.85(a). The amendment adds alternative onsite water and improves readability. Adopted §210.85(b) clarifies that the graywater and alternative onsite water must be generated and used onsite.

Adopted §210.85(c) prohibits the overflow of graywater reuse systems and combined reuse systems onto the ground under any circumstances. Instead, adopted §210.85(c)(1) requires that graywater reuse systems be designed and constructed so that the graywater can be diverted to a wastewater collection system or an OSSF, unless prohibited by Chapter 285. For graywater reuse systems, the graywater must be diverted when the graywater reuse system is not being used or when the system reaches maximum capacity.

Adopted §210.85(c)(2) requires that combined reuse systems be designed and constructed so that the graywater can be diverted to a wastewater collection system or an OSSF, unless prohibited by Chapter 285. The graywater must be diverted prior to entering the combined reuse system. The graywater must be diverted when the combined reuse system is not being used or when the system reaches 80% capacity. Additionally, adopted §210.85(c)(3) requires combined reuse systems that store stormwater, rainwater, and/or foundation drain water to have an automatic shutoff system to stop the inflow of these sources of water when the system reaches 80% capacity. The 20% reserved volume is to accommodate inflows of other sources of alternative onsite water.

Adopted §210.85(c)(1) and (2) require either a single air gap or two backflow preventers between the reuse system and the wastewater system.

Adopted §210.85(d) retains the list of approved uses of graywater from the former rule while adding toilet and urinal flushing and applying these uses to alternative onsite water. Adopted §210.85(d)(1) - (4) and (6) revises the bacteria limits from fecal coliform to *E. coli;* however, the limit values for all uses were not revised from the former rule. Additionally, adopted §210.85(d)(2) notes the applicability of bacteria limits is revised based on whether there is public access or restricted public access to the application area rather than if there is public contact with the water or the public is present at the time of irrigation. Adopted §210.85(d)(4) clarifies that bacteria limits do not apply to the irrigation of fields that are not used for edible crops or grazing milking animals.

Adopted §210.85(d)(5) adds toilet or urinal flushing as an additional use of graywater and alternative onsite water at agricultural facilities. Adopted §210.85(d)(5)(A) - (C) requires water from a graywater reuse system or a combined reuse system that is used for toilet or urinal flushing to meet *E. coli* limits, total suspended solids limits, and requires color specific pipes for distribution. The *E. coli* and total suspended solids limits are consistent with NSF/ANSI Standard 350-2014 for commercial facilities (Class C). The colored pipe complies with plumbing codes and Chapter 217, Subchapter M.

Adopted §210.85(e) was revised to improve readability.

Final Regulatory Impact Analysis Determination

TCEQ reviewed the adopted rulemaking in consideration of the regulatory analysis of major environmental rules required by Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225(a) because it does not meet the definition of a "major environmental rule" as defined in Texas Government Code, §2001.0225(g)(3). The following is a summary of that review.

Texas Government Code, §2001.0225 applies to a "major environmental rule" adopted by a state agency, the result of which is to exceed standards set by federal law, exceed express requirements of state law, exceed requirements of delegation agreements between the state and the federal government to implement a state and federal program, or adopt a rule solely under the general powers of the agency instead of under a specific state law. 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.

As the Author's/Sponsor's Statement of Intent makes clear, the 84th Texas Legislature, 2015, enacted HB 1902 with the aim of lessening Texas' demand for freshwater resources by encouraging and expanding the allowable uses of graywater and other recycled water. By updating decades-old statutory provisions governing graywater disposal and reuse with new technologies and systems that expand the possibilities for safe reuse of graywater on commercial, industrial, and domestic properties, the statutory changes from HB 1902 would ideally result in less demand for freshwater resources for water needs that do not require freshwater standards. More specifically, the Statement of Intent articulates that "by clarifying the existing {Texas Health and Safety Code (THSC)} standards and expanding the scope and uses of graywater and alternative onsite water {and ensuring that the Texas Water Code conforms to these changes}, C.S.H.B. 1902 could act as another part of the solution to Texas' water challenges."

To expand the possibilities for safe reuse of graywater, HB 1902 brings current law and regulations up to date by directing TCEQ to, by rule, expand the sources of usable non-potable water to include "alternative onsite water" by defining and including it in relevant rule language governing graywater. HB 1902 furthers the use of graywater and alternative onsite water by allowing the indoor use of graywater for toilet and urinal flushing. Specifically, HB 1902 amends the THSC to specify that the minimum standards adopted and implemented by TCEQ rule for the use and reuse of graywater are for the indoor and outdoor use and reuse of treated graywater and alternative onsite water. HB 1902 promotes the use of graywater and alternative onsite water as viable, sustainable resources as a way to avoid or prevent a lack of water for drinking and other essential purposes, which would be a human health and safety crisis.

Therefore, the specific intent of the adopted rulemaking is to lessen demand for freshwater resources for water needs that do not require freshwater standards by adopting and implementing minimum standards for the indoor and outdoor use and reuse of treated graywater and alternative onsite water for irrigation, certain domestic uses, and agricultural, commercial, and industrial uses. All of which help to prevent a human health and safety crisis due to a lack of water for drinking and other essential purposes. By promoting the use and reuse of treated graywater and alternative onsite water, which helps to avoid a lack of water for drinking and other essential purposes, the adopted rules protect human health and safety, as well as water quality; however, the adopted rules will not adversely affect the economy, a sector of the economy, productivity, competition, or jobs within the state or a sector of the state. Accordingly, the commission concludes that the adopted rulemaking does not meet the definition of a "major environmental rule."

Even if this rulemaking was a "major environmental rule," this rulemaking meets none of the criteria in Texas Government Code, §2001.0225, for the requirement to prepare a full regulatory impact analysis. First, this rulemaking is not governed by federal law. Second, it does not exceed state law but rather creates new minimum standards and corresponding processes under state law to ensure efficient regulatory oversight, while comprehensively protecting the state's natural resources. Third, it does not come under a delegation agreement or contract with a federal program; and finally, it is not being adopted under the TCEQ's general rulemaking authority. This rulemaking is being adopted under a specific piece of state legislation from HB 1902, Texas Legislature, 2015, which amends the THSC to direct TCEQ to adopt and implement minimum standards for the indoor and outdoor use and reuse of treated graywater and alternative onsite water, while not threatening human health.

Therefore, the commission does not adopt the rule solely under the commission's general powers. The commission invites public comment on the Draft Regulatory Impact Analysis Determination.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the regulatory impact analysis determination.

Takings Impact Assessment

TCEQ evaluated the adopted rulemaking and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The following is a summary of that analysis.

The specific purpose of the adopted rulemaking is to lessen demand for freshwater resources for water needs that do not require freshwater standards by adopting and implementing minimum standards for the indoor and outdoor use and reuse of treated graywater and alternative onsite water for irrigation, certain domestic uses, and agricultural, commercial, and industrial uses. All of which help to prevent a human health and safety crisis due to a lack of water for drinking and other essential purposes. The adopted rulemaking substantially advances this stated purpose by adopting language in amended Chapter 210 that expands the sources of water that can be reused by defining "alternative onsite water" and expands the allowable use and reuse of treated graywater and alternative onsite water to include toilet and urinal flushing.

Promulgation and enforcement of the adopted rules is not a statutory or constitutional taking of private real property because, as the commission's analysis indicates, Texas Government Code, Chapter 2007 does not apply to these adopted rules because these rules do not impact private real property. In HB 1902, the legislature expressed that as Texans strive to more efficiently use increasingly scarce water resources, clari-

fying the existing standards and expanding the scope and uses of graywater and alternative onsite water, coupled with the new technologies and systems that have been created, expanding the possibilities for safe reuse of graywater on commercial, industrial, and domestic properties, graywater reuse can contribute to meeting state water needs and helping to prevent a lack of water for drinking and other essential purposes. The public has access to vast quantities of graywater as the public themselves are the producers of their own graywater. Specifically, the adopted rulemaking does not apply to or affect any landowner's rights in any private real property because it does not burden (constitutionally), restrict, or limit any landowner's right to real property or reduce any property's value by 25% or more beyond that which would otherwise exist in the absence of the regulations. For graywater, there are no real property rights that have been granted for use of an individual's own graywater. These actions will not affect or burden private real property rights because the graywater and alternative onsite water are generated onsite and used onsite by the same individual.

Even if there were real property rights issued for graywater produced by the public, the commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to these adopted rules because this is an action that is taken in response to a real and substantial threat to public health and safety; is designed to significantly advance the health and safety purpose; and does not impose a greater burden than is necessary to achieve the health and safety purpose. Thus, this action is exempt under Texas Government Code, §2007.003(b)(13). Lack of water for drinking and other essential purposes would be a health and safety crisis. This rulemaking could help to lessen the demand for freshwater resources for water needs that do not require freshwater standards, resulting in more drinking water and water for essential purposes.

Consistency with the Coastal Management Program

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Public Comment

The commission held a public hearing on August 16, 2016. The comment period closed on August 22, 2016. The commission received comments prior to the public comment period and related communications during the public comment period from Texas State Representative Donna Howard (Representative Howard) and Texas State Representative Paul D. Workman (Representative Workman). The commission received comments during the public comment period from the Biggerstaff Homes, Inc., Sunbelt Construction, LLC, Lipan Development, LLC (Biggerstaff); City of Austin (COA); City of Irving (COI); Harris County, Texas (Harris County); League of Women Voters of Texas (LWV); Texas Association of Builders (TAB); Texas On-Site Wastewater Association (TOWA); and Water ReNu, LLC (Water ReNu).

Ten commenters were in support of the rulemaking, no commenters were against the rulemaking, and the commenters suggested changes.

Response to Comments

General Comments

Comment

LWV supported the timely development of the rules, the inclusion of other onsite sources of water, and provision for a manual explaining the rules to the public.

Response

The commission acknowledges this comment.

Comment

Biggerstaff and Water ReNu recommended that graywater reuse systems should be allowed to contain reverse osmosis reject water and air conditioning condensate and that these sources of water be allowed to be routed to the wastewater collection system or OSSF.

Response

The commission disagrees with this comment. The rules are separated into three types of systems: alternative water reuse systems, graywater reuse systems, and combined reuse systems. A reuse system that contains graywater, reverse osmosis reject water, and air conditioning condensate is a combined reuse system. Combined reuse systems must be designed to divert graywater to the wastewater system and to have an automatic shutoff to stop inflows of stormwater, rainwater, and foundation drain water when the system reaches 80% capacity. The 20% reserved volume is to accommodate inflows of air-conditioner condensate and reverse osmosis reject water. No changes were made in response to this comment.

Comment

COI commented that reverse osmosis reject water should not be excluded from the rule.

Response

The commission partially agrees with this comment. Adopted §210.82(a)(1) states that reverse osmosis reject water generated at private residences and agricultural facilities can be used in accordance with this subchapter. However, reverse osmosis reject water from industrial facilities, commercial facilities, and institutions is authorized for reuse under Chapter 210, Subchapter E. No changes were made in response to this comment.

Comment

TOWA commented that toilet systems should not be allowed to drain into a graywater system unless solid waste is separated from liquid waste and the liquid waste meets bacteria and total suspended solids limits consistent with the National Science Foundation Standard 350. Harris County recommends that the rules allow reuse of blackwater for non-potable uses including irrigation and toilet and urinal flushing water.

Response

THSC, §341.039 and the revisions in HB 1902 do not allow reuse of toilet water, also known as blackwater. Blackwater may be reused in accordance with Chapter 210, Subchapters A - D.

Comment

Representatives Howard and Workman recommended that the rules not require graywater systems to overflow to OSSF systems. They recommend that designated agents retain authority to determine whether to connect graywater and OSSF systems.

Response

The commission partially agrees with this comment. OSSF systems that have a reduced drainfield are not designed to accommodate the inflow of graywater. However, if the OSSF does not have a reduced drainfield, the OSSF is designed to accommodate the inflow of graywater. A designated agent should not be authorized to prohibit graywater from entering an OSSF that is designed to accommodate the graywater. No changes were made in response to this comment.

Comment

TOWA commented that the rules should allow individuals that are already trained in wastewater recycling and OSSFs to implement the requirements of the subchapter.

Response

The adopted rules allow flexibility for users to determine the best way to comply with the requirements of this subchapter. The adopted rules allow anyone, including individuals, to install and operate a reuse system. No changes were made in response to this comment.

Comment

TOWA commented that the rules should allow individuals that are already trained in wastewater recycling and OSSFs to conduct the testing and reporting of reuse systems.

Response

The commission partially agrees with this comment. The adopted rules allow anyone, including individuals, to conduct the required monitoring of effluent from a reuse system. However, the rules do not require a reuse system to be tested nor monitoring results to be reported to the agency. The commission is not implementing the reuse system inspection and testing program identified in THSC, §341.039(b-1), as that provision of the statute is optional. No changes were made in response to this comment.

Comment

Water ReNu commented that the rules include requirements that add cost to graywater reuse systems. Increasing the cost of the systems will result in fewer builders incorporating reuse systems.

Response

The commission is directed by THSC, §341.039(b) to adopt standards to prevent nuisances, protect human health, and prevent damage to the quality of surface water and groundwater. The commission recognizes that the adopted rule must balance the protective standards with the cost-effectiveness of the requirements. For this reason, the rules do not include specific design criteria, but instead allow design flexibility to meet the standards. No changes were made in response to this comment.

Comment

Water ReNu commented that the rules should allow for off-the-shelf systems to be used which could increase graywater reuse.

Response

The commission agrees with this comment. The adopted rules do not include specific design criteria, but instead allow design flexibility. Commercially available off-the-shelf systems may be used if they meet the requirements in the rule. No changes were made in response to this comment.

Comment

Water ReNu requested clarification if the use of a single electronic controller for separate systems is allowed.

Response

The adopted rules do not include specific design criteria, but instead allows flexibility in designing reuse systems. This flexibility allows the use of a single controller for multiple systems. No changes were made in response to this comment.

Comment

Water ReNu requested clarification on the following scenario: if rainwater is stored in a rainwater only alternative water reuse system and also sent to a combined reuse system, are the two distinct irrigation zones considered as a single combined reuse system or an alternative onsite reuse system and a combined reuse system.

Response

The type of reuse system depends on the type of water being stored and distributed. A reuse system that stores and distributes graywater and one or more sources of alternative onsite water is a combined reuse system. A reuse system that stores and distributes only alternative onsite water is an alternative water reuse system. It is possible to have more than one reuse system on a site. In the scenario described by the commenter, the system that stores and distributes the rainwater only would be an alternative water reuse system and the system that stores and distributes rainwater commingled with graywater would be a combined reuse system. The distribution system cannot be shared by different reuse systems. No changes were made in response to this comment.

Specific Comments

Comment

Water ReNu recommended revising §210.82(a)(1) from "industrial facilities" and "commercial facilities" to "industrial processes" and "commercial processes."

Response

The commission disagrees with this comment. This provision of the rule is clarifying that reverse osmosis reject water generated at facilities, other than residential and agricultural, are regulated under Chapter 210, Subchapter E. No change was made in response to this comment.

Comment

Harris County commented that §210.82(b)(1) and §210.83(c)(2) should be revised to clarify if gardening includes edible items or just ornamental.

Response

The commission disagrees with this comment. Section 210.82(b)(1) and §210.83(c) allow reuse for landscape irrigation and gardening. Landscape is typically non-edible vegetation and gardening is edible vegetation. No change was made in response to this comment.

Comment

Harris County commented that the requirement in proposed §210.82(b)(6) and (c)(4) that reuse does not "damage the quality of surface water or groundwater" is vague and potentially re-

quires a higher burden of proof. The commenter recommended revising "damage" to "impact."

Response

The commission partially agrees with this comment. Although "damage" may require a higher burden of proof, the adopted rule language matches THSC, §341.039(b). No change was made in response to this comment.

Comment

Harris County commented that §210.82(b)(9) has a grammatical error and should be revised to read: "…to an organized wastewater collection system or an onsite sewage facility (OSSF)."

Response

The commission agrees with this comment and revised §210.82(b)(9) as recommended.

Comment

Water ReNu recommended revising §210.82(c) by deleting "used at a private residence, industrial facility, commercial facility, institution, or agriculture facility" noting that the phrase is unnecessary since it includes all facility types regulated under the rule.

Response

The commission agrees with this comment and revised §210.82(c) as recommended.

Comment

Biggerstaff and Water ReNu recommended revising §210.82(c)(2) to allow the property owner or the installing contractor to provide notice to the relevant authorities. TAB commented that the notification required by §210.82(c)(2) is an unnecessary burden on individual property owners, and home builders may not be an authority on the graywater system.

Response

This rulemaking implements HB 1902. According to the statement of intent for HB 1902, the intent was to encourage and expand the allowable uses of graywater and other recycled water. The notification requirement in §210.82(c)(2) resulted in unexpected complexities for property owners that want to reuse graywater and alternative onsite water. These complexities may dis-incentivize reuse, which conflicts with the intent of HB 1902. In response to this comment, the commission removed the notification requirement so that the adopted rule meets the intent of HB 1902, and re-numbered subsequent paragraphs.

Comment

Water ReNu recommended that §210.82(c)(6) be revised to allow air-conditioner condensate and reverse osmosis reject water in a combined reuse system to overflow to the wastewater system.

Response

Sections 210.83(d)(2) and (3), 210.84(d)(2) and (3), and 210.85(c)(2) and (3) require combined reuse systems to be designed to divert graywater to the wastewater system and to have an automatic shutoff to stop inflows of stormwater, rainwater, and foundation drain water when the system reaches 80% capacity. The 20% reserved volume is to accommodate inflows of air-conditioner condensate and reverse osmosis reject water. Since the design requirements for combined reuse systems are contained in §§210.83 - 210.85, the commission removed §210.82(c)(6).

Comment

Harris County commented that §210.83(a) should be revised to read: "An authorization from the commission is not required for the residential use of graywater and alternative onsite water from a graywater reuse system, an alternative reuse system, or a combined reuse system when the total combined average…"

Response

Section 210.82(b) provides the requirements for alternative water reuse systems for all facility types. Section 210.82(b)(3) allows reuse of water from an alternative water reuse system without authorization from the commission and §210.82(b)(1) allows reuse of the water in any volume. The recommended change would conflict with the requirements of §210.82(b). No change was made in response to this comment.

Comment

Water ReNu recommended that §210.83(a) be clarified if the 400 gallons per day limit applies in total across the entire property or as individual limits for each reuse system.

Response

As proposed, an authorization is not required for reuse of less than 400 gallons per day. The 400 gallons per day limit applies to the total volume from graywater and combined reuse systems on the entire property. Most residences generate less than 400 gallons per day of graywater, so it would be rare for a residence to require an authorization for graywater reuse. However, sources of alternative onsite water can exceed 400 gallons per day. Most residences that install a combined reuse system would exceed the volume limitation and have to obtain an authorization.

According to the statement of intent for HB 1902, the intent was to encourage and expand the allowable uses of graywater and other recycled water. Requiring an authorization for most residences that install a combined reuse system may dis-incentivize reuse, which conflicts with the intent of HB 1902.

THSC, §341.039 states that the commission may not require a permit for reuse of less than 400 gallons per day. The statute is silent to whether or not a permit is required when 400 gallons per day or more is reused. This provides the commission the discretion to determine if a permit is required for reuse of greater than 400 gallons per day. In response to this comment, the commission added a statement that authorization is not required for reuse of 400 gallons per day or more, unless directed by the executive director.

Comment

Biggerstaff and Water ReNu questioned whether there is sufficient cost benefit to requiring two backflow preventers for connecting graywater overflow to wastewater collection systems or OSSFs in §§210.83(d)(1) and (2), 210.84(d)(1) and (2), and 210.85(c)(1) and (2).

Response

The commission partially agrees with this comment. Installing backflow valves or preventers between the wastewater system and the reuse system prevents and protects against blackwater back-up into the reuse system and subsequently the building. The requirement for two valves or preventers ensures protection in the event that one of the valves or preventers mal-

functions. However, the commission recognizes that an air gap is an effective method of preventing backflow. In response to this comment, the commission revised §§210.83(d)(1) and (2), 210.84(d)(1) and (2), and 210.85(c)(1) and (2) to allow for either one air gap or two backflow valves or preventers.

Comment

Harris County commented that §210.83(d)(2) and §210.85(c)(2) be revised to read: "Combined reuse systems must be designed and constructed so that 100% of the graywater, but not the alternative onsite water, can be diverted to an organized wastewater collection system or an OSSF…"

Response

The commission agrees with this comment, but the recommended change is unnecessary. Section 210.82(c)(6) requires that a combined reuse system be designed so that alternative onsite water is not allowed to enter the wastewater system. No changes were made in response to this comment.

Comment

Water ReNu recommended that §210.83(d)(2) and §210.84(d)(2) be revised to state "Graywater must be diverted or redirected…"

Response

The commission disagrees with this comment. Including "diverted or redirected" in the rule text is redundant. No change was made in response to this comment.

Comment

Water ReNu recommended that §210.83(d)(3) and §210.84(d)(3) be revised to require the automatic shutoff system to activate "if this inflow will enter the graywater tank, or disrupt or prevent processing of graywater."

Response

The commission disagrees with this comment. A combined reuse system, by definition, contains graywater and one or more sources of alternative onsite water. Section 210.83(d)(3) and §210.84(d)(3) are requirements for a combined reuse system which has inflows of graywater and stormwater, rainwater, and/or foundation drain water. A reuse system that only contains stormwater, rainwater, and/or foundation drain water is an alternative water reuse system, subject to the requirements in §210.82(b). No changes were made in response to this comment.

Comment

Water ReNu commented that the requirements for irrigation at private residences is different than industrial, commercial, and agriculture facilities. The commenter noted that whether a property is a commercial premise or private residence, the graywater/alternative onsite water should be treated to an acceptable standard for irrigation and preventing human contact. The commenter recommended allowing non-*E. coli* treatment standards for irrigation, regardless of the property type.

Response

The proposed rules prohibited spray irrigation at private residences, but not at industrial, commercial, and agriculture facilities. Instead, the proposed rules required industrial, commercial, and agriculture facilities to meet *E. coli* limits for irrigation, which could include spray irrigation. The commission agrees that spray irrigation should be allowed for private residences if treated to meet *E. coli* limits. THSC, §341.039(c) states, "The commission may not require a permit for the domestic use of less than 400 gallons of graywater or alternative onsite water each day if the water…is distributed by a surface or subsurface system that does not spray into the air." The statute is silent on whether or not a permit is required when graywater or alternative onsite water is reused by spray irrigation. This provides the commission the discretion to determine if a permit is required for reuse via spray irrigation.

The commission disagrees that *E. coli* limits should not apply to irrigation of graywater and alternative onsite water. These sources of water have *E. coli* in concentrations that can pose a risk to human health; therefore, it may be appropriate to treat the water to reduce these pathogens. In response to this comment, the commission revised §210.83(g) to allow reuse using a spray irrigation system only if: 1) the water meets *E. coli* limits to protect human health; 2) the water is applied at times when people and pets will not come into contact with the water; 3) the water is not applied during weather conditions that could result in discharges; 4) the water is applied at a rate to prevent ponding, puddling, or runoff; 5) the water cannot be sprayed or allowed to drift off the property; 6) the spray distribution system has suitable backflow prevention to protect the potable or raw water system; and 7) the system must be inspected and repaired as needed to prevent discharges. Section 210.82(b)(5) was similarly revised, with the exception of *E. coli* limits.

Comment

Biggerstaff recommended removing the requirement for a 50-mesh filter in §210.83(h)(1). Water ReNu recommended removing the requirement for a 50-mesh filter on graywater reuse systems but retaining it for alternative water reuse systems. TAB recommended adjusting the mesh scale to limit unnecessary flooding and damage to a home, as well as limit unnecessary complications to a homeowner.

Response

The commission disagrees with these comments. The 50-mesh screen filter is necessary to prevent the accumulation of organic solids into the storage tank and/or distribution lines. Accumulation of organic solids in the storage tank will reduce the storage capacity of the tanks and increase the rate at which the water will become septic. A system that is septic creates nuisance odors. Accumulation of organic solids in the distribution lines will clog the lines, making the system unusable.

The commission selected 50-mesh because this size will be effective in preventing organic solids from entering the tank. No changes were made in response to these comments.

Comment

Water ReNu recommended that §210.83(i)(1) be revised to read: "…from all allowable sources, taking into consideration end use requirements and maintaining sufficient blackwater waste flow…"

Response

The commission agrees with this comment and revised §210.83(i)(1) as recommended.

Comment

COA commented that §210.83(j) should be revised to prohibit laundry graywater disposal onto the drainfield of an OSSF.

Response

The commission agrees that laundry graywater should not be disposed of on an OSSF drainfield. However, the recommended change was not made because §210.83(j) applies to laundry graywater that has been disposed of onto the ground prior to January 6, 2005. The recommended change may require a property owner to alter their system by changing the location of the disposal area. Adopted §210.83(j)(8) prevents property owners from using a system that is altered after January 6, 2005. No change was made in response to this comment.

Comment

Harris County commented that TCEQ should explain what is meant by "significant" in proposed §210.83(j)(8) and how a regular consumer would distinguish between such products.

Response

Section 210.83(j)(8) was a recommendation rather than a regulatory requirement. As such, it is appropriate to include in the regulatory guidance document required by THSC, §341.039 rather than in the rule. In response to this comment, the commission removed proposed §210.83(j)(8) and renumbered the subsequent paragraph and will include this recommendation in the regulatory guidance document. This recommendation is intended to encourage homeowners to be aware of the ingredients in laundry detergents when choosing which product to purchase. Product ingredients are listed in order based on the amount of each ingredient, from greatest amount to least amount. A homeowner is encouraged to choose products either without these nutrients or with these nutrients listed lower in the ingredients list.

Comment

Water ReNu commented that *E. coli* limits for landscape irrigation and other uses are unnecessary and exceed the standards required by THSC, §341.039(b). The commenter recommended revising §210.84(e)(2) and (5) to replace the *E. coli* limits with water management techniques, such as limiting irrigation volume to that required for beneficial irrigation, site-based rainfall detection defining when additional makeup water should not be added and when irrigation should be suspended, minimum distances for subsurface irrigation, and diverting excess graywater, air-conditioner condensate, and reverse osmosis reject water to the wastewater system when sufficient water has already been irrigated.

Response

The commission disagrees with this comment. THSC, §341.039(b) requires the commission to adopt standards that assure that the use of graywater or alternative onsite water is not a nuisance and does not threaten human health or damage the quality of surface water and groundwater. The water management techniques recommended by the commenter will ensure that the graywater and alternative onsite water is beneficially reused rather than disposal, as required by the adopted rule. The recommended management techniques do not ensure protection of human health. No changes were made in response to this comment.

Comment

Water ReNu recommended that §210.84(a) be revised to allow small scale reverse osmosis producing less than 50 gallons per day from non-industrial or non-commercial processes to be used in accordance with this subchapter.

Response

The commission disagrees with this comment. Reverse osmosis reject water from industrial facilities, commercial facilities, and institutions is authorized for reuse under Chapter 210, Subchapter E. No changes were made in response to this comment.

Comment

Biggerstaff commented that §210.84(e)(2) should be revised so that multi-family developments and small commercial developments with graywater volumes similar to residential reuse should not be required to install treatment and sanitizing systems. TAB commented that the rules should not categorize multi-family buildings as commercial. The commenters recommended that treatment and categorization should be based on irrigation loading, irrigation area size, and method of irrigation.

Response

The commission disagrees with these comments. THSC, §341.039(b) requires the commission to adopt standards that protect human health. Categorizing multi-family buildings as commercial facilities is necessary to protect human health. At private residences, the owner will know that a reuse system is installed and the location of distribution areas. Having knowledge of the system and distribution areas allows the owner to avoid contact with the reuse water as a method of protecting human health. Occupants of multi-family buildings may or may not be owners and, therefore, may or may not be aware of a reuse system. Without the knowledge to avoid contact with the reuse water, protection of human health is achieved by meeting *E. coli* limits. No changes were made in response to these comments.

Comment

Harris County commented that §210.84(f) should be revised to require *E. coli* monitoring and recordkeeping for all systems that have *E. coli* standards. Harris County also commented that §210.84(f) incorrectly cites subsection (d)(2)(A) instead of subsection (e)(2)(A).

Response

The commission agrees with this comment and revised §210.84(f) to correct the citation and revised §210.84(f) and §210.85(e) to require monitoring and recordkeeping for all systems that are required to meet *E. coli* limits. Monitoring and recordkeeping are not required for residential reuse. Section 210.83(h) was revised for clarity.

Comment

COA commented that there is an inconsistent reference to OSSFs regulated under §285.81 within §210.85(c)(1) which regulates agricultural uses.

Response

The commission disagrees with this comment. Agricultural facilities can have single family residences that would qualify for a reduced OSSF effluent disposal system under Chapter 285, Subchapter H. No change was made in response to this comment.

Comment

Water ReNu requested clarification of §210.85(d)(4), noting that some Texas jurisdictions allow graywater reuse on citrus and nut trees without meeting *E. coli* limits. The commenter asked if the *E. coli* limits apply to all graywater or combined reuse systems

regardless of property type and end use, specifically non-commercial applications where the produce is not sold as part of a commercial enterprise.

Response

Citrus and nut trees are edible crops. Water from a graywater reuse system or a combined reuse system that is used to irrigate these types of trees at an agricultural facility must meet the *E. coli* limits in §210.85(d)(2)(A). No changes were made in response to this comment.

Statutory Authority

The amended sections are adopted under Texas Water Code (TWC), §5.013 and §5.102, which establish the commission's general jurisdiction and provides general powers of the commission over other areas of responsibility as assigned to the commission under the TWC; TWC, §5.103 and §5.105, require the commission to adopt any rule or policy necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.120, requires the commission to administer the law so as to promote judicious use and maximum conservation and protection of the environment and the natural resources of the state; and TWC, §26.011, provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state by subjecting waste discharges or impending waste discharges to reasonable rules or orders adopted or issued by the Texas Commission on Environmental Quality in the public interest. Lastly, Texas Health and Safety Code (THSC), §341.039, specifically directs the commission to adopt and implement rules related to the expanded use of graywater and alternative onsite water; specifically directs the commission to adopt and implement minimum standards for the indoor and outdoor use and reuse of treated graywater and alternative onsite water for irrigation, certain domestic uses, and agricultural, commercial, and industrial uses; and requires the commission to adopt rules relating to standards for control of graywater, graywater standards, and standards for alternative onsite water. Specific statutory authorization derives from House Bill (HB) 1902, which amended TWC, §26.0311, and THSC, §341.039 and §366.012(a), relating to Standards for Control of Graywater, Graywater Standards, and Rules Concerning On-Site Disposal Systems.

The amendments implement the statutory amendments of HB 1902.

§210.82. Definitions and General Requirements.

(a) Definitions. For the purposes of this subchapter, the following terms have the following meanings.

(1) Alternative onsite water--rainwater, air-conditioner condensate, foundation drain water, stormwater, swimming pool backwash and drain water, or reverse osmosis reject water. Cooling tower blowdown is regulated by Subchapter E of this chapter (relating to Special Requirements for Use of Industrial Reclaimed Water); therefore, for the purposes of this subchapter, all references to alternative onsite water do not include cooling tower blowdown. Reverse osmosis reject water generated at industrial facilities, commercial facilities, and institutions is regulated by Subchapter E of this chapter; therefore, for the purposes of this subchapter, all references to alternative onsite water do not include reverse osmosis reject water generated at industrial facilities, commercial facilities, and institutions. Reverse osmosis reject water generated at private residences and agriculture facilities may be used in accordance with this subchapter.

(2) Alternative water reuse system--a system designed and constructed to store and distribute one or more sources of alternative onsite water. An alternative water reuse system shall not contain, store, or distribute any graywater.

(3) Combined reuse system--a system designed and constructed to store and distribute graywater and one or more sources of alternative onsite water.

(4) Graywater-- wastewater from showers, bathtubs, handwashing lavatories, sinks that are used for disposal of household or domestic products, sinks that are not used for food preparation or disposal, and clothes-washing machines. Graywater does not include wastewater from the washing of material, including diapers, soiled with human excreta or wastewater that has come into contact with toilet waste.

(5) Graywater reuse system--a system designed and constructed to store and distribute graywater only. A graywater reuse system shall not contain, store, or distribute any source of alternative onsite water.

(b) Alternative water reuse systems. The following requirements apply to alternative water reuse systems used at a private residence, industrial facility, commercial facility, institution, or agriculture facility.

(1) Water from an alternative water reuse system may be reused for beneficial purposes including but not limited to landscape irrigation, gardening, composting, foundation stabilization, and toilet and urinal flushing. An alternative water reuse system may store and use either a single source or a combination of sources of alternative onsite water, and in any volume.

(2) Reverse osmosis reject water generated at an industrial facility, commercial facility, or an institution is prohibited from being stored and used in an alternative water reuse system. Reverse osmosis reject water generated by an industrial facility, commercial facility, or an institution is regulated by Subchapter E of this chapter.

(3) Reuse of water from an alternative water reuse system does not require authorization from the commission if used in accordance with this subchapter. The property owner is responsible for ensuring that the alternative water reuse system is properly operated and maintained to comply with the requirements of this subchapter.

(4) Water from an alternative water reuse system must be applied at a rate that will not result in ponding or pooling, or cause runoff across the property lines or onto any paved surface.

(5) Water from an alternative water reuse system shall not be applied using a spray distribution system except in accordance with the following conditions.

(A) Water from the spray distribution system must be applied at times when people and pets are not actively using the distribution area.

(B) Water from the spray distribution system must not be applied during rainfall events, when the ground is frozen, or within 24 hours after one-half inch or more of rain.

(C) Water from the spray distribution system must be applied at a rate to prevent ponding, puddling, or runoff.

(D) Water from the spray distribution system must not be sprayed or allowed to drift off the property.

(E) The spray distribution system must not be connected to a potable or raw water irrigation system unless suitable backflow prevention is provided to protect the potable or raw water system.

(F) The spray distribution system must be inspected and repaired as needed to prevent discharges to water in the state or off the property.

(6) The storage and use of water from an alternative water reuse system must not create a nuisance, threaten human health, or damage the quality of surface water or groundwater.

(7) Swimming pool backwash and drain water cannot be used within five days of adding chemicals for shock or acid treatment.

(8) Water from an alternative water reuse system that is used for toilet or urinal flushing must meet the following requirements. Property owners may refer to the regulatory guidance document that is required by the Texas Health and Safety Code, §341.039, for assistance in complying with these requirements.

(A) For residential toilet or urinal flushing, *Escherichia coli (E. coli)* must be less than 14 most probable number (MPN) or colony-forming units (CFU) per 100 milliliters for 30-day geometric mean and less than 240 MPN or CFU per 100 milliliters maximum single grab sample. For industrial, commercial, or agricultural toilet or urinal flushing, *E. coli* must be less than 2.2 MPN or CFU per 100 milliliters for 30-day geometric mean and less than 200 MPN or CFU per 100 milliliters maximum single grab sample.

(B) Total suspended solids must be less than 10.0 milligrams per liter for 30-day geometric mean and less than 30.0 milligrams per liter maximum single grab sample.

(C) All exposed piping and piping carrying alternative onsite water within a building must be either purple pipe or painted purple; all buried piping must be either manufactured in purple, painted purple, taped with purple metallic tape, or bagged in purple; and all exposed piping must be stenciled in yellow with a warning reading "NON-POTABLE WATER." An alternative water reuse system that stores only rainwater, commonly referred to as a rainwater harvesting system, and uses the water for potable purposes in accordance with §290.44 of this title (relating to Water Distribution) is exempt from this subparagraph.

(9) An alternative water reuse system cannot have a physical connection to an organized wastewater collection system or an on-site sewage facility (OSSF). When the system reaches capacity, it is allowed to overflow onto the ground only if the overflow is caused by inflow of rainwater or stormwater. Overflow under these conditions is exempt from the requirement of paragraph (4) of this subsection.

(10) An alternative water reuse system may be subject to backflow prevention requirements in §290.44 of this title to protect public water supply systems from cross-contamination.

(c) Graywater reuse systems and combined reuse systems. The following requirements apply to all graywater reuse systems and combined reuse systems.

(1) Construction of a graywater reuse system or a combined reuse system, including storage and distribution systems, must comply with this subchapter and any requirements of the local permitting authority.

(2) Water from a graywater reuse system or a combined reuse system must be applied at a rate that will not result in ponding or pooling and will not cause runoff across the property lines or onto any paved surface.

(3) The storage and use of water from a graywater reuse system or a combined reuse system must not create a nuisance, threaten human health, or damage the quality of surface water or groundwater.

(4) A graywater reuse system or combined reuse system may be subject to backflow prevention requirements in §290.44 of this title to protect public water supply systems from cross-contamination.

§210.83. Residential Use of Graywater and Alternative Onsite Water.

(a) An authorization from the commission is not required for the residential use of graywater and alternative onsite water from a graywater reuse system or a combined reuse system when the total combined average is less than 400 gallons per day and the water is used in accordance with this subchapter. Unless directed by the executive director, an authorization from the commission is not required for the residential use of graywater and alternative onsite water from a graywater reuse system or a combined reuse system when the total combined average is greater than or equal to 400 gallons per day and the water is used in accordance with this subchapter.

(b) The graywater and alternative onsite water must originate from a private residence.

(c) Water from a graywater reuse system or a combined reuse system may only be used at the private residence for the following purposes:

(1) to minimize foundation movement and cracking;

(2) for gardening;

(3) for composting;

(4) for landscaping; or

(5) for toilet or urinal flushing.

(d) Graywater reuse systems and combined reuse systems are not authorized to overflow onto the ground under any circumstance.

(1) Graywater reuse systems must be designed and constructed so that the storage tank required by subsection (e) of this section overflows to an organized wastewater collection system or an on-site sewage facility (OSSF) unless prohibited by Chapter 285, Subchapter H of this title (relating to Disposal of Graywater). The graywater must enter the organized wastewater collection system or OSSF through either one air gap or two backflow valves or backflow preventers.

(2) Combined reuse systems must be designed and constructed so that 100% of the graywater can be diverted to an organized wastewater collection system or an OSSF, unless prohibited by Chapter 285, Subchapter H of this title, prior to entering the storage tank required by subsection (e) of this section. Graywater must be diverted to the organized wastewater collection system or OSSF during periods of non-use of the system or if the storage tank required by subsection (e) of this section reaches 80% capacity. The graywater must enter the organized wastewater collection system or the OSSF through either one air gap or two backflow valves or backflow preventers.

(3) Combined reuse systems that store stormwater, rainwater, and/or foundation drain water must have an automatic shutoff system to stop the inflow of stormwater, rainwater, and foundation drain water into the combined reuse system. The automatic shutoff system must activate when the storage tank required by subsection (e) of this section reaches 80% capacity.

(e) Except as authorized by subsection (j) of this section, graywater reuse systems and combined reuse systems must store the water in tanks and the tanks must:

(1) be clearly labeled as non-potable water;

(2) restrict access, especially to children;

(3) eliminate habitat for mosquitoes and other vectors;

(4) be able to be cleaned; and

(5) meet the structural requirements of §210.25(i) of this title (relating to Special Design Criteria for Reclaimed Water Systems).

(f) Graywater reuse systems and combined reuse systems must use piping that meets the piping requirement of §210.25 of this title.

(g) Water from a graywater reuse system or a combined reuse system shall not be applied using a spray distribution system except in accordance with the following conditions.

(1) Water from the spray distribution system must meet the following limits: *Escherichia coli (E. coli)* must be less than 14 most probable number (MPN) or colony-forming units (CFU) per 100 milliliters for 30-day geometric mean and less than 240 MPN or CFU per 100 milliliters maximum single grab sample.

(2) Water from the spray distribution system must be applied at times when people and pets are not actively using the distribution area.

(3) Water from the spray distribution system must not be applied during rainfall events, when the ground is frozen, or within 24 hours after one-half inch or more of rain.

(4) Water from the spray distribution system must be applied at a rate to prevent ponding, puddling, or runoff.

(5) Water from the spray distribution system must not be sprayed or allowed to drift off property.

(6) The spray distribution system must not be connected to a potable or raw water irrigation system unless suitable backflow prevention is provided to protect the potable or raw water system.

(7) The spray distribution system must be inspected and repaired as needed to prevent discharges to water in the state or off property.

(h) The property owner is responsible for ensuring that the graywater reuse system or combined reuse system is properly operated and maintained to achieve the following requirements. Monitoring and recordkeeping for *E. coli* and total suspended solids is not required. Property owners may refer to the regulatory guidance document that is required by the Texas Health and Safety Code, §341.039, for assistance in complying with these requirements.

(1) Graywater and alternative onsite water shall be treated to remove debris such as lint, leaves, twigs, and branches prior to entering the storage tank by use of a 50 mesh screen.

(2) Swimming pool backwash and drain water cannot be used within five days after adding chemicals for shock or acid treatment.

(3) Water from a graywater reuse system or a combined reuse system that is used for toilet or urinal flushing must meet the following requirements.

(A) *E. coli* must be less than 14 MPN or CFU per 100 milliliters for 30-day geometric mean and less than 240 MPN or CFU per 100 milliliters maximum single grab sample.

(B) Total suspended solids must be less than 10.0 milligrams per liter for 30-day geometric mean and less than 30.0 milligrams per liter maximum single grab sample.

(C) All exposed piping and piping carrying graywater and/or alternative onsite water within a building must be either purple pipe or painted purple; all buried piping must be either manufactured in purple, painted purple, taped with purple metallic tape, or bagged in purple; and all exposed piping must be stenciled in yellow with a warning reading "NON-POTABLE WATER."

(i) Builders of private residences are encouraged to:

(1) install plumbing in new housing to collect graywater and alternative onsite water from all allowable sources, taking into consideration end-use requirements and maintaining sufficient blackwater waste flow; and

(2) design and install a subsurface distribution system around the foundation of new housing to minimize foundation movement or cracking.

(j) Property owners who have been disposing of wastewater from residential clothes-washing machines, otherwise known as laundry graywater, directly onto the ground prior to January 6, 2005, may continue disposing of laundry graywater under the following conditions.

(1) The disposal area must not create a nuisance or threaten human health.

(2) Surface ponding must not occur in the disposal area.

(3) The disposal area must support plant growth or be sodded with vegetative cover.

(4) The disposal area must have limited access and use by residents and pets.

(5) Laundry graywater that has been in contact with human or animal waste must not be disposed onto the ground surface.

(6) Laundry graywater must not be disposed onto an area where the soil is wet.

(7) A lint trap must be affixed to the end of the discharge line.

(8) The system has not been altered after January 6, 2005, has not created a nuisance, and does not discharge graywater from any source other than clothes-washing machines.

§210.84. Industrial, Commercial, or Institutional Use of Graywater and Alternative Onsite Water.

(a) For the purposes of this section, alternative onsite water does not include reverse osmosis reject water, as this source of water is regulated by Subchapter E of this chapter (relating to Special Requirements for Use of Industrial Reclaimed Water).

(b) An authorization from the commission is not required for the use of graywater and alternative onsite water from a graywater reuse system or a combined reuse system at an industrial facility, commercial facility, or institution. Treatment required by this section does not require authorization from the commission.

(c) The graywater and alternative onsite water must be generated and used onsite.

(d) Graywater reuse systems and combined reuse systems are not authorized to overflow onto the ground under any circumstances.

(1) Graywater reuse systems must be designed and constructed so that 100% of the graywater can be diverted to an organized wastewater collection system, on-site sewage facility (OSSF), authorized outfall in a wastewater discharge permit, or authorized disposal area in a Texas Land Application Permit (TLAP). The graywater must be diverted to the organized wastewater collection system, OSSF, authorized outfall in a wastewater discharge permit, or authorized disposal area in a TLAP during periods of non-use of the graywater reuse system or if the system reaches maximum capacity. The graywater

must enter the organized wastewater system or OSSF through either one air gap or two backflow valves or backflow preventers.

(2) Combined reuse systems must be designed and constructed so that 100% of the graywater can be diverted to an organized wastewater collection system, OSSF, authorized outfall in a wastewater discharge permit, or authorized disposal area in a TLAP prior to entering the combined reuse system. Graywater must be diverted to the organized wastewater collection system, OSSF, authorized outfall in a wastewater discharge permit, or authorized disposal area in a TLAP during periods of non-use of the system or if the combined reuse system reaches 80% capacity. The graywater must enter the organized wastewater collection system or the OSSF through either one air gap or two backflow valves or backflow preventers.

(3) Combined reuse systems that store stormwater, rainwater, and/or foundation drain water must have an automatic shutoff system to stop the inflow of stormwater, rainwater, and foundation drain water into the combined reuse system. The automatic shutoff system must activate when the combined reuse system reaches 80% capacity.

(e) Water from a graywater reuse system or a combined reuse system may be used onsite for the following activities.

(1) Process water. Water from a graywater reuse system or a combined reuse system that is used for process water must be treated to a standard that allows the water to be used in operational processes.

(2) Landscape maintenance. Water from a graywater reuse system or a combined reuse system that is used for landscape maintenance must meet the following limits.

(A) If the water will be applied in areas with public access, the water must meet the following limits:

(i) Escherichia coli (E. coli), 20 most probable number (MPN) or colony-forming units (CFU) per 100 milliliters (ml), 30-day geometric mean; or

(ii) E. coli (not to exceed), 75 MPN or CFU per 100 ml, single grab sample.

(B) If the water will be applied in areas with restricted access to the public, the water must meet the following limits:

(i) E. coli, 200 MPN or CFU per 100 ml, 30-day geometric mean; or

(ii) E. coli (not to exceed), 800 MPN or CFU per 100 ml, single grab sample.

(3) Dust control. Water from a graywater reuse system or a combined reuse system that is used for dust control must meet the *E. coli* limits in paragraph (2)(B) of this subsection.

(4) Toilet or urinal flushing. Water from a graywater reuse system or a combined reuse system that is used for toilet or urinal flushing must meet the following requirements.

(A) *E. coli* must be less than 2.2 MPN or CFU per 100 ml for 30-day geometric mean and less than 200 MPN or CFU per 100 ml maximum single grab sample.

(B) Total suspended solids must be less than 10.0 milligrams per liter for 30-day geometric mean and less than 30.0 milligrams per liter maximum single grab sample.

(C) All exposed piping and piping carrying graywater and/or alternative onsite water within a building must be either purple pipe or painted purple; all buried piping installed after January 6, 2005, must be either manufactured in purple, painted purple, taped with purple metallic tape, or bagged in purple; and all exposed piping must be stenciled in yellow with a warning reading "NON-POTABLE WATER."

(5) Other uses. Water from a graywater reuse system or a combined reuse system that is used for other similar activities must:

(A) meet the *E. coli* limits in paragraph (2)(A) of this subsection if used in a way that the public may come into contact with the water; or

(B) meet the *E. coli* limits in paragraph (2)(B) of this subsection if used in a way that the public will not come into contact with the water.

(f) Water from a graywater reuse system or a combined reuse system that is required to meet the *E. coli* limits in subsection (e) of this section must be monitored for *E. coli* at least monthly. These records must be maintained at the site and be readily available for inspection by the commission for a minimum of five years.

§210.85. Agricultural Use of Graywater and Alternative Onsite Water.

(a) An authorization from the commission is not required for the use of graywater and alternative onsite water from a graywater reuse system or a combined reuse system for agricultural purposes. Treatment required by this section does not require authorization from the commission.

(b) The graywater and alternative onsite water must be generated and used onsite.

(c) Graywater reuse systems and combined reuse systems are not authorized to overflow onto the ground under any circumstances.

(1) Graywater reuse systems must be designed and constructed so that 100% of the graywater can be diverted to an organized wastewater collection system or on-site sewage facility (OSSF), unless prohibited by Chapter 285, Subchapter H of this title (relating to Disposal of Graywater). The graywater must be diverted during periods of non-use of the graywater reuse system or if the system reaches maximum capacity. The graywater must enter the organized wastewater collection system or OSSF through either one air gap or two backflow valves or backflow preventers.

(2) Combined reuse systems must be designed and constructed so that 100% of the graywater can be diverted to an organized wastewater collection system or OSSF, unless prohibited by Chapter 285, Subchapter H of this title prior to entering the combined reuse system. Graywater must be diverted to the organized wastewater collection system or OSSF during periods of non-use of the system or if the combined reuse system reaches 80% capacity. The graywater must enter the organized wastewater collection system or the OSSF through either one air gap or two backflow valves or backflow preventers.

(3) Combined reuse systems that store stormwater, rainwater, and/or foundation drain water must have an automatic shutoff system to stop the inflow of stormwater, rainwater, and foundation drain water into the combined reuse system. The automatic shutoff system must activate when the combined reuse system reaches 80% capacity.

(d) Water from a graywater reuse system or a combined reuse system may be used for the following activities.

(1) Process water. Water from a graywater reuse system or a combined reuse system that is used for irrigation and other agricultural purposes may be treated to a standard that allows the water to be used in operational processes.

(2) Landscape maintenance. Water from a graywater reuse system or a combined reuse system that is used for landscape maintenance must meet the following limits.

(A) If the water will be applied in areas with public access, the water must meet the following limits:

(i) Escherichia coli (E. coli), 20 most probable number (MPN) or colony-forming units (CFU) per 100 milliliters (ml), 30-day geometric mean; or

(ii) E. coli (not to exceed), 75 MPN or CFU per 100 ml, single grab sample.

(B) If the water will be applied in areas with restricted access to the public, the water must meet the following limits:

(i) E. coli, 200 MPN or CFU per 100 ml, 30-day geometric mean; or

(ii) E. coli, 800 MPN or CFU per 100 ml, single grab sample.

(3) Dust control. Water from a graywater reuse system or a combined reuse system that is used for dust control must meet the *E. coli* limits in paragraph (2)(B) of this subsection.

(4) Irrigation of fields. Water from a graywater reuse system or a combined reuse system that is used to irrigate fields where edible crops are grown or fields that are pastures for milking animals, the water must meet the *E. coli* limits in paragraph (2)(A) of this subsection. *E. coli* limits do not apply to graywater and alternative onsite water that is used to irrigate fields other than those where edible crops are grown or fields that are pastures for milking animals.

(5) Toilet or urinal flushing. Water from a graywater reuse system or a combined reuse system that is used for toilet or urinal flushing must meet the following requirements.

(A) *E. coli* must be less than 2.2 MPN or CFU per 100 ml for 30-day geometric mean and less than 200 MPN or CFU per 100 ml maximum single grab sample.

(B) Total suspended solids must be less than 10.0 milligrams per liter for 30-day geometric mean and less than 30.0 milligrams per liter maximum single grab sample.

(C) All exposed piping and piping carrying graywater and/or alternative onsite water within a building must be either purple pipe or painted purple; all buried piping must be either manufactured in purple, painted purple, taped with purple metallic tape, or bagged in purple; and all exposed piping must be stenciled in yellow with a warning reading "NON-POTABLE WATER."

(6) Other uses. Water from a graywater reuse system or a combined reuse system that is used for other similar activities must:

(A) meet the *E. coli* limits in paragraph (2)(A) of this subsection if used in a way that the public may come into contact with the water; or

(B) meet the *E. coli* limits in paragraph (2)(B) of this subsection if used in a way that the public will not come into contact with the water.

(e) Water from a graywater reuse system or a combined reuse system that is required to meet the *E. coli* limits in subsection (d) of this section must be monitored for *E. coli* at least monthly. These records must be maintained at the site and be readily available for inspection by the commission for a minimum period of five 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 December 9, 2016.

TRD-201606427
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Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: December 29, 2016
Proposal publication date: July 22, 2016
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♦ ♦ ♦

CHAPTER 285. ON-SITE SEWAGE FACILITIES
SUBCHAPTER H. DISPOSAL OF GRAYWATER

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §285.80; the repeal of §285.81; and new §285.81.

The amendment to §285.80 and new §285.81 are adopted *with changes* to the proposed text as published in the July 22, 2016, issue of the *Texas Register* (41 TexReg 5377) and, therefore, will be republished. The repeal of §285.81 is adopted *without change* and will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

House Bill 1902 (HB 1902 or bill), 84th Texas Legislature (2015), amended Texas Health and Safety Code (THSC), Chapters 341 and 366, and Texas Water Code, Chapter 26, in relation to the use of graywater and alternative onsite water. The bill requires TCEQ to develop standards to allow the reuse of graywater for toilet and urinal flushing.

Additionally, the bill creates a new regulatory classification for "alternative onsite water" which the bill defines as "rainwater, air-conditioning condensate, foundation drain water, storm water, cooling tower blowdown, swimming pool backwash and drain water, reverse osmosis reject water, or any other source of water considered appropriate by the commission." The bill directs TCEQ to develop similar standards for the reuse of this new source of water similar to graywater.

The bill provides authority to TCEQ to adopt and implement rules for the inspection and annual testing of graywater and alternative onsite water systems.

The bill allows an adjustment in the drainfield size of an on-site sewage facility (OSSF) if used in conjunction with a graywater reuse system.

Lastly, the bill requires TCEQ to develop a regulatory guidance manual to explain the graywater and alternative onsite water regulations.

The bill requires amendments to 30 TAC Chapter 210, Use of Reclaimed Water, and Chapter 285. The adopted rules allow for a reduction in the OSSF drainfield size if the OSSF is used in conjunction with a graywater reuse system, move all graywater reuse to Chapter 210, authorize toilet and urinal flushing as an additional reuse of graywater, authorize the reuse of alternative onsite water, establish uses of and treatment standards for alternative onsite water similar to graywater, incorporate nationally recognized treatment standards for graywater and alternative onsite water when used for toilet and urinal flushing, and

revise bacteria limits from fecal coliform to *Escherichia coli (E. coli).*

HB 1902 retains the existing prohibition on the commission requiring a permit for the residential use of less than 400 gallons per day of graywater and adds alternative onsite water to the permit prohibition.

Because TCEQ does not issue permits for graywater and alternative onsite water reuse systems, the adopted rules do not include an inspection or testing program for these systems.

A regulatory guidance manual to explain the graywater and alternative onsite water regulations will be developed after adoption of this rulemaking.

A corresponding rulemaking is published in this issue of the *Texas Register* concerning Chapter 210, Subchapter F, Use of Graywater and Alternative Onsite Water.

Section by Section Discussion

§285.80, General Requirements

The adopted rule adds language to use terms for graywater reuse systems and combined reuse systems that are consistent with the adopted amendments to Chapter 210, Subchapter F, in a concurrent rulemaking.

Adopted §285.80(b) adds a requirement that a graywater reuse system must also comply with Chapter 210, Subchapter F since the rules for those systems have been moved to that chapter.

The adopted amendment moves former §285.81(g) to §285.80(c).

Adopted §285.80(d) requires existing graywater systems to continue to comply with the rules as the rules existed when the graywater system installation was completed. Any alterations to existing graywater systems must meet the requirements of the current rules.

Adopted §285.80(e) prohibits a reduction to OSSFs when using graywater reuse systems unless the OSSF meets the requirements of §285.81. No reduction in the size of the OSSF will be allowed when using a graywater reuse system unless the OSSF meets all of the conditions and requirements of §285.81.

Adopted §285.80(f) allows only OSSFs permitted for graywater to be connected to a graywater or combined reuse system. The adopted rule allows a combined reuse system to be connected to an OSSF permitted for graywater only and requires the alternative onsite water to be diverted prior to the connection. The adopted rule prohibits an alternative water reuse system from being connected to an OSSF. The adopted rule provides the piping requirements for connecting graywater to an OSSF.

§285.81, Requirements and Conditions for Potentially Reducing the Size of an OSSF Disposal System for a Single Family Residence with a Graywater Reuse System or a Combined Reuse System.

The commission repealed §285.81 and replaced it with adopted new §285.81. The requirements of the repealed section are being incorporated into Chapter 210, Subchapter F, in a concurrent rulemaking. In order to provide clear guidance to property owners and homeowners with OSSFs, the adopted rule in the new §285.81 provides additional clarification on when and how requirements apply.

Adopted new §285.81 is titled, "Requirements and Conditions for Potentially Reducing the Size of an OSSF Disposal System for a Single Family Residence with a Graywater Reuse System or a Combined Reuse System." Adopted new §285.81 provides technical requirements for the design, permitting, and operation of OSSFs serving single family residences which have a reduction based on the presence of a graywater reuse system or a combined reuse system. The adopted rule is limited to single family residences based on the limitations of statutory language in THSC, §366.012(a)(2)(B). Additionally, from a technical perspective, graywater generation proportions from a residence are relatively well understood and defined. However, non-residence proportions of graywater are not as well defined and are subject to varying patterns of wastewater generation over time as building activity changes. This uncertain nature of present and future graywater generation in non-residences does not lend itself to OSSF reductions.

Adopted new §285.81(a) clarifies that graywater and combined reuse systems are authorized without a permit. However, OSSFs which are reduced based on the presence of a graywater or combined reuse system require a permit and submission of planning materials. This subsection also clarifies that this section and the associated OSSF reduction only applies to single family residences.

Adopted new §285.81(b) provides the potential allowable sizing reduction to the OSSF disposal field. The reductions outlined in Figure: 30 TAC §285.81(b) were estimated using data contained in Table 4.2 of *Design Manual, On-Site Wastewater Treatment and Disposal Systems (EPA/625/1-80/012) October 1980.*

Adopted new §285.81(c) provides that a qualified professional plumber is responsible for documenting which sewage sources will be entering the OSSF. The evaluation of the plumbing should occur after the plumbing is installed.

Adopted new §285.81(d) and Figure: 30 TAC §285.81(d) provide the design organic strength of the wastewater entering the OSSF. The numbers are based on the assumptions that sewage containing all blackwater and graywater sources within a residence will be 300 milligrams per liter five-day biochemical oxygen demand (mg/l BOD_5) and all graywater sources have no BOD_5 concentration.

Adopted new §285.81(e) and (f) establish the qualifications needed to design OSSFs in this section and the BOD_5 effluent quality that must be achieved by the reduced OSSF. The requirements are consistent with previously adopted sections of Chapter 285.

Adopted new §285.81(g) requires property owners to set aside an area for future OSSF expansion should the property owner abandon the graywater or combined reuse system at a later date or if required by the OSSF permitting authority to expand the OSSF. The area must meet the setbacks required by §285.91(10) and shall not be used for surface improvements.

Adopted new §285.81(h) prohibits property owners from applying graywater or alternative onsite water to the surface of their reduced OSSF disposal field. This action can overload the OSSF disposal area.

Adopted new §285.81(i) prohibits any physical connection between the graywater or combined reuse system and the OSSF since the OSSF is not designed to receive graywater.

Adopted new §285.81(j) requires three days of graywater storage when a graywater or combined reuse system is used in combination with a reduced OSSF. The requirement for storage is necessary so the property owner will not apply graywater during

saturated landscape conditions. A graywater or combined reuse system that is not used in combination with a reduced OSSF is not subject to the requirement for three days of storage.

Adopted new §285.81(k) provides a mechanism to alert buyers, upon transfer of the property, of the limitations of the OSSF and their responsibilities for operating the OSSF and the graywater or combined reuse system.

Adopted new §285.81(l) requires that a property owner convicted or found in violation of any statute related to graywater or public health nuisance, and the system in question is not properly repaired in a timely manner, shall expand their OSSF and have it permitted to dispose of graywater.

Final Regulatory Impact Analysis Determination

TCEQ reviewed the adopted rulemaking in consideration of the regulatory analysis of major environmental rules required by Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225(a) because it does not meet the definition of a "major environmental rule" as defined in Texas Government Code, §2001.0225(g)(3). The following is a summary of that review.

Texas Government Code, §2001.0225 applies to a "major environmental rule" adopted by a state agency, the result of which is to exceed standards set by federal law, exceed express requirements of state law, exceed requirements of delegation agreements between the state and the federal government to implement a state and federal program, or adopt a rule solely under the general powers of the agency instead of under a specific state law. 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.

As the Author's/Sponsor's Statement of Intent makes clear, the 84th Texas Legislature, 2015, enacted HB 1902 with the aim of lessening Texas' demand for freshwater resources by encouraging and expanding the allowable uses of graywater and other recycled water. By updating decades-old statutory provisions governing graywater disposal and reuse with new technologies and systems that expand the possibilities for safe reuse of graywater on commercial, industrial, and domestic properties, the statutory changes from HB 1902 would ideally result in less demand for freshwater resources for water needs that do not require freshwater standards. More specifically, the Statement of Intent articulates that "by clarifying the existing {Texas Health and Safety Code (THSC)} standards and expanding the scope and uses of graywater and alternative onsite water {and ensuring that the Texas Water Code conforms to these changes}, C.S.H.B. 1902 could act as another part of the solution to Texas' water challenges."

To encourage the use of graywater systems, which helps to prevent a health and safety crisis due to a lack of water for drinking and other essential purposes, HB 1902 amends the THSC to direct TCEQ to adopt rules that allow for an adjustment in the size of a drainfield of an OSSF if used in conjunction with a graywater reuse system. Additionally, the adopted rulemaking adds language to §285.80 for terms for graywater reuse systems and combined reuse systems that are consistent with adopted amendments in a concurrent rulemaking involving Chapter 210, Subchapter F. As part of the same rulemaking, the commission repealed §285.81 and replaced it with a new §285.81. The requirements of the repealed section are being incorporated into Chapter 210, Subchapter F, in a concurrent rulemaking.

Therefore, the specific intent of the adopted rulemaking, which amends and repeals TCEQ rules, is to implement the legislative amendments in HB 1902, which eliminates duplicate provisions with other chapters in the title, and requires the commission to adopt rules to allow an adjustment in the size of a drainfield of an OSSF if used in conjunction with a graywater or combined reuse system. All of which aim to prevent a health and safety crisis due to a lack of water for drinking and other essential purposes. The adopted rulemaking does 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. Accordingly, the commission concludes that the adopted rulemaking does not meet the definition of a "major environmental rule."

Even if this rulemaking was a "major environmental rule," this rulemaking meets none of the criteria in Texas Government Code, §2001.0225, for the requirement to prepare a full Regulatory Impact Analysis. First, this rulemaking is not governed by federal law. Second, it does not exceed state law but rather creates new minimum standards and corresponding processes under state law to ensure efficient regulatory oversight, while comprehensively protecting the state's natural resources. Third, it does not come under a delegation agreement or contract with a federal program, and finally, it is not being adopted under the TCEQ's general rulemaking authority. This rulemaking is being adopted under a specific piece of state legislation from HB 1902, Texas Legislature, 2015, which directs TCEQ to undertake this rulemaking in an effort to reasonably fulfill an obligation mandated by state law to implement the OSSF program under THSC, Chapter 366.

Therefore, the commission does not adopt the rule solely under the commission's general powers.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the regulatory impact analysis determination.

Takings Impact Assessment

TCEQ evaluated the adopted rulemaking and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007, which applies to governmental actions which affect private property. The following is a summary of that analysis.

The specific purpose of the adopted rulemaking is to implement the legislative amendments in HB 1902, which eliminates duplicate provisions with other chapters in 30 TAC and directs the commission to adopt rules to allow an adjustment in the size of a drainfield of an OSSF if used in conjunction with a graywater or combined reuse system. All of which aim to prevent a health and safety crisis due to a lack of water for drinking and other essential purposes. The adopted rulemaking substantially advances this stated purpose by adopting language in amended Chapter 285 to expand and encourage the allowable indoor and outdoor use and reuse of treated graywater and alternative onsite water by allowing for a reduction in the size of an OSSF's drainfield.

Promulgation and enforcement of the adopted rules are not a statutory or constitutional taking of private real property because, as the commission's analysis indicates, Texas Gov-

ernment Code, Chapter 2007, does not apply to these adopted rules because the rules do not impact private real property. Additionally, the public has access to vast quantities of graywater as the public themselves are the producers of their own graywater. Specifically, the adopted rulemaking does not apply to or affect any landowner's rights in any private real property because it does not burden (constitutionally), restrict, or limit any landowner's right to real property or reduce any property's value by 25% or more beyond that which would otherwise exist in the absence of the regulations. For graywater, there are no real property rights that have been granted for use of an individual's own graywater. These actions will not affect or burden private real property rights because the graywater and alternative onsite water are generated onsite and used onsite by the same individual.

Even if there were real property rights issued for graywater produced by the public, the commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to these adopted rules. Texas Government Code, §2007.003(b)(4), (11)(B), and (13)(A) - (C) state that the chapter does not apply to governmental actions reasonably taken to fulfill an obligation mandated by state law, to regulate OSSF, to respond a real and substantial threat to public health and safety, to significantly advance the health and safety purpose, and to not impose a greater burden than is necessary to achieve the health and safety purpose. All of the above exemptions apply to the adopted rulemaking. This rulemaking is adopted pursuant to the specific requirements of THSC, Chapter 366, which requires the commission to adopt rules to protect the environment and the health and safety of Texas citizens by encouraging use of graywater or combined reuse systems by amending the OSSF regulations to allow for a reduction in the size of an OSSF's drainfield. The adopted rulemaking encourages the use of graywater or combined reuse systems to respond to a real and substantial threat to public health and safety in the form of a lack of water for drinking and other essential purposes and encouraging use of graywater or combined reuse systems advances a health and safety purpose by making efforts to address Texas' water challenges. Finally, the adopted rulemaking imposes no greater burden than is necessary to achieve the health and safety purpose, the adopted rules are similar to the predecessor rules for OSSFs and do not establish a greater burden for most types of systems. Because this is an action that is taken in response to a real and substantial threat to public health and safety; is designed to significantly advance the health and safety purpose; and does not impose a greater burden than is necessary to achieve the health and safety purpose, this action is exempt according to the provisions of Texas Government Code, §2007.003. Lack of water for drinking and other essential purposes would be a health and safety crisis. This rulemaking could help to lessen the demand for freshwater resources for water needs that do not require freshwater standards, resulting in more drinking water and water for essential purposes.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found that the rulemaking is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.,* and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the adopted rulemaking is consistent with the applicable CMP goals and policies.

The applicable goals of the CMP are: to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas; to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone; to ensure and enhance planned public access to and enjoyment of the coastal zone in a manner that is compatible with private property rights and other uses of the coastal zone; and to balance these competing interests.

The specific CMP policies applicable to these adopted rules include Nonpoint Source Water Pollution and require, under the THSC, Chapter 366 (governing on-site sewage disposal systems) that on-site disposal systems be located, designed, operated, inspected, and maintained so as to prevent releases of pollutants that may adversely affect coastal waters. The adopted rules ensure that OSSFs will perform properly when receiving only blackwater, and therefore, the rules are consistent with the CMP policies.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rules are consistent with these CMP goals and policies, because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas, and because the adopted rules do not relax current treatment or disposal standards.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Public Comment

The commission held a public hearing on August 16, 2016. The comment period closed on August 22, 2016. The commission received comments prior to the public comment period and related communications during the public comment period from Texas State Representative Donna Howard (Representative Howard) and Texas State Representative Paul D. Workman (Representative Workman). The commission received comments during the public comment period from the City of Austin (COA); Harris County, Texas (Harris County); League of Women Voters of Texas (LWV); Lower Colorado River Authority (LCRA); Septic Systems Express; Texas On-Site Wastewater Association (TOWA); Texas Septic Systems Council; and Water ReNu, LLC (Water ReNu).

Ten commenters were in support of the rulemaking, no commenters were against the rulemaking, and the commenters suggested changes.

Response to Comments

General Comments

Comment

LWV supported the timely development of the rules, the inclusion of other onsite sources of water, and provision for a manual explaining the rules to the public.

Response

The commission acknowledges this comment.

Comment

Representatives Howard and Workman, reiterating some of the suggested rule changes from the COA, commented that the proposed rules should not allow graywater systems to overflow to OSSF systems without permission from the OSSF permitting authority.

Response

The commission agrees with this comment. Adopted §285.80(f) and §285.81(i) properly address this comment. No change was made in response to this comment.

Comment

Harris County commented that the proposed changes to Chapter 285 do not address OSSF design and operation for commercial facilities, industrial facilities, institutions, or agricultural facilities that elect to reuse graywater under Chapter 210. The commenter stated that if a commercial system elects to reuse graywater, the amendments in Chapter 285 fail to require design adjustments to suit the higher strength wastewater (there is no requirement for design for higher strength wastewater as in Chapter 285, Figure: 30 TAC §285.81(d) (Table II, Adjusted Organic Strength)). The commenter also stated that this type of oversight leaves a regulatory gap in OSSF system design, which could impact water quality and OSSF operation. Harris County recommended adding language for commercial facilities, industrial facilities, institutions, or agricultural facilities that will hold these facilities to the same standard as residential systems.

Response

The commission disagrees with this comment. THSC, §366.012(a)(2) addresses graywater separation of graywater for single family residences and allows for an adjustment of the OSSF for single family residences that have separated their graywater. Therefore, the OSSF for non-single family residences must be sized for the inclusion of graywater. Adopted §285.81(a) was amended to clarify that the potential reduction outlined in §285.81 only applies to single family residences.

Comment

TOWA is concerned that the potential "new program," and the proposed move of the graywater section from Chapter 285 to Chapter 210 by repealing §285.81, has the potential of eliminating a licensed group of professionals who are already performing inspection and testing of onsite wastewater treatment systems of tens of thousands of Texas residential and commercial properties. The commenter noted that creating a new program has the potential to cause an unnecessary increase in cost to users of graywater and alternative onsite water systems.

Response

The commission partially agrees with this comment. The commission is not proposing or adopting a testing and inspection program through this rulemaking. If a testing program will be required, then rules would need to be amended in a separate rulemaking. No change was made in response to this comment.

Comment

TOWA commented that the program could benefit immediately from the experience and training already existing in Chapter 285, which also keeps a workforce who is already going to these onsite locations performing inspections, collecting samples for testing of water quality eligible for a new license, if one is created, working. Therefore, TOWA commented that should testing of graywater or alternative onsite water systems be required by TCEQ, the skills possessed by trained OSSF licensees would be a natural fit.

Response

The commission partially agrees with this comment. The commission is not proposing or adopting a testing and inspection program through this rulemaking. If a testing program will be required, then rules would need to be amended in a separate rulemaking. No change was made in response to this comment.

§285.80

Comment

Harris County commented that the requirement in §285.80(c) that reuse does not "damage the quality of surface water or groundwater" is vague and potentially requires a higher burden of proof. Harris County recommended revising "damage" to "impact."

Response

The commission partially agrees with this comment. Although "damage" may require a higher burden of proof, the adopted rule matches THSC, §341.039(b). No change was made in response to this comment.

Comment

COA commented that §285.80(e) should be modified to read: "No reduction in the size of the on-site sewage facility (OSSF) will be allowed when using a graywater reuse system unless the OSSF meets all of the conditions and requirements of §285.81 of this title."

Response

The commission agrees with this comment. In response to this comment, adopted §285.80(e) was amended to clarify that all of the conditions and requirements of §285.81 must be met in order to reduce an OSSF when using a graywater reuse system.

§285.81

Comment

COA commented the word "Reduction" should be replaced with the word "Sizing" in the title for §285.81 so that the title reads: "OSSF Sizing for Single Family Residences with a Graywater Reuse System or a Combined Reuse System."

Response

The commission agrees with this comment. In response to this comment, the title of adopted §285.81 was revised to read, "Requirements and Conditions for Potentially Reducing the Size of an OSSF Disposal System for a Single Family Residence with a Graywater Reuse System or a Combine Reuse System. "

Comment

COA recommended clarifying that reductions in OSSF sizing are not always required, the word "Potential" should be inserted before "Percent Reduction" in the title and Table Header of Table I in §285.81(b).

Response

The commission agrees with this comment and revised adopted Figure: 30 TAC §285.81(b) as recommended.

Comment

Representatives Howard and Workman, reiterating some of the suggested rule changes from the COA, commented that the proposed rules should not prescribe "reductions" in size of an OSSF if a graywater system is also going to be used. The commenters noted that HB 1902, Section 2, allows TCEQ to "adjust" the size of an OSSF, since the OSSF might actually need to be larger, not smaller, if a graywater system will also be used (given the higher concentration of the effluent reaching the OSSF system).

Response

The commission agrees with this comment. In response to a separate comment, the title of adopted §285.81 was amended to clarify this was a sizing adjustment rather than "OSSF Reduction" and adopted §285.81(a) and (b) were amended to provide clarification of when a sizing adjustment may be made.

Comment

Representatives Howard and Workman commented that they encourage any specific details (such as the percent reduction chart) be included in TCEQ's guidance document only, and not in the rules themselves. The commenters noted that the reductions in the chart are too prescriptive and could lead to inappropriate sizing of OSSF systems. The commenters noted that suggested scenarios in a guidance document would be more appropriate, with latitude for permitting authorities to make appropriate sizing determinations as noted in the comments above. Additional communications with Representatives Howard and Workman's offices clarified that if recommended language consistent with final comments from the COA were made at adoption, this comment would be addressed.

Response

In response to separate comments from the COA during the comment period, the title of adopted §285.81, as well §285.81(a) and (b) were amended to clarify the intent of the sizing chart and to remove language that was interpreted as too prescriptive.

Comment

LCRA commented that §285.81(c) should be modified to require the master plumber to provide the permitting authority with a certification documenting which sewage sources enter the OSSF after the plumbing is installed because changes from the approved planning materials are a frequent occurrence during construction and a means for verification of sewage sources after construction is needed.

Response

The commission agrees with this comment. In response to this comment, adopted §285.81(c) was amended to reflect that the evaluation by the master plumber must be conducted after the plumbing is installed.

Comment

Harris County, Septic Systems Express, and Texas Septic Systems Council commented that §285.81(f) only allows a professional engineer to demonstrate that a proposed system can meet effluent quality to limits provided if secondary treatment is required, while §285.81(e) allows both a professional engineer and a professional sanitarian to show that a system can meet effluent quality limits if secondary treatment is not required. The commenters recommend amending §285.81(f) to include professional sanitarians as well.

Response

The commission disagrees with this comment. The adopted rule is consistent with Chapter 285 rules. Section 285.32(c)(5)(A)(ii) requires proprietary systems treating wastewater stronger than 300 mg/l BOD to be considered non-standard treatment systems and §285.5(a)(3)(A) requires professional engineers to submit designs for non-standard treatment systems which require secondary treatment. Allowing sanitarians to design systems for this particular high-strength effluent would create inconsistencies within Chapter 285. No change was made in response to this comment.

Comment

Septic Systems Express and Texas Septic Systems Council commented that for houses that will have graywater systems, the higher-than-normal organic strength of the wastewater going to the treatment unit will be offset by the reduction in volume and the higher retention time. Additionally, the commenters noted that there is no need for additional treatment when an aerobic treatment unit is being used in the new graywater application, this is because of the decreased hydraulic loading. The commenters stated that no additional designing than what's normally done and certainly no engineering will be required.

Response

The commission disagrees that additional detention time inside a primary treatment system/septic tank will reduce the higher strength wastewater to levels needed for disposal. No change was made in response to this comment.

Comment

Water ReNu commented that the text of proposed §285.81(j) should include a comma after "combined reuse system" to clarify that a graywater reuse system that doesn't have a reduced OSSF, does not require three days storage.

Response

The commission agrees with this comment. In response to this comment, adopted §285.81(j) was amended to include a comma before and after the phrase "used in association with a reduced effluent disposal system under this section…"

Comment

LCRA commented that §285.81(k) should be modified to require a standard "model" affidavit be included in the figures required by §285.90.

Response

The commission disagrees with this comment. This change is not possible as §285.90 is not a rule provision that is currently open and eligible for modification. No change was made in response to this comment.

Comment

Harris County commented that §285.81(k) should be amended to require the affidavit to include a metes and bounds description of the "specific reserve area that shall not contain surface improvements" for reduced effluent disposal systems. The commenter noted that doing so will assist with inspections by the permitting authority.

Response

The commission disagrees with this comment. The layout and location of OSSF components does not presently require a metes and bounds description. Requiring that for the location

of future components is inconsistent with existing rules. No change was made in response to this comment.

Comment

Harris County commented that §285.81(l) should be modified in such a way that expands the availability of this enforcement tool to commercial and other systems (including single family residences with reuse systems without reduced effluent disposal systems).

Response

The commission partially agrees with this comment. OSSF reductions for non-single family residences with graywater reuse or combined reuse systems will not be allowed. Therefore, since the OSSF is already sized for graywater, connection of the graywater to the OSSF in these cases is presently required for compliance if the owner is convicted or found in violation under existing statutes. No change was made in response to this comment.

Comment

LCRA commented that §285.81(l) should be modified to include a definition for "improperly operating" that reads "operation in violation of 30 TAC Chapter 210, subchapter F, of this chapter, or a rule adopted or order or permit issued under this chapter."

Response

The commission partially agrees with this comment. In response to this comment, adopted §285.81(l) was amended to remove the language "for improperly operating the graywater reuse system or combined reuse system" and language was added to clarify that a conviction or violation of any statute related to graywater or public health nuisance will allow a permitting authority to require connection of a graywater system to an OSSF, that the OSSF must be expanded to accommodate the graywater and that the expansion of the OSSF must be permitted.

30 TAC §285.80, §285.81

Statutory Authority

The amended section and new section are adopted under Texas Water Code (TWC), §5.013 and §5.102, which establish the commission's general jurisdiction and provides general powers of the commission over other areas of responsibility as assigned to the commission under the TWC; TWC, §5.103 and §5.105, which require the commission to adopt any rule or policy necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.120, which requires the commission to administer the law so as to promote judicious use and maximum conservation and protection of the environment and the natural resources of the state; and TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state by subjecting waste discharges or impending waste discharges to reasonable rules or orders adopted or issued by the Texas Commission on Environmental Quality in the public interest. Lastly, Texas Health and Safety Code (THSC), §341.039 and §366.012, which specifically direct the commission to adopt and implement rules related to the expanded use of graywater and alternative onsite water; THSC, §341.039, which directs the commission to adopt and implement minimum standards for the indoor and outdoor use and reuse of treated graywater and alternative onsite water; THSC, §366.012, which directs the commission to adopt rules to allow for an adjustment in the size required of an on-site sewage disposal system if the system is used in conjunction with a graywater or combined reuse system that complies with the rules adopted under THSC, §341.039; and THSC, §366.011, which establishes the commission's authority over the location, design, construction, installation, and proper functioning of on-site sewage disposal systems.

The amended section and new section are adopted under the authority granted to the TCEQ by the Texas Legislature in THSC, Chapter 366. Specific statutory authorization derives from House Bill (HB) 1902, which amended TWC, §26.0311, and THSC, §341.039 and §366.012(a), relating to Standards for Control of Graywater, Standards for Graywater and Alternative Onsite Water, and Rules Concerning On-Site Disposal Sewage Disposal Systems.

The amendment section and new section implement the statutory amendments of HB 1902.

§285.80. General Requirements.

(a) For the purpose of this chapter, graywater is defined as wastewater from showers; bathtubs; handwashing lavatories; sinks that are used for disposal of household or domestic products; sinks that are not used for food preparation or disposal; and clothes-washing machines. Graywater does not include wastewater from the washing of material, including diapers, soiled with human excreta or wastewater that has come in contact with toilet waste.

(b) Construction of a graywater reuse system, including storage and disposal systems, must comply with this chapter; Chapter 210, Subchapter F of this title (relating to Use of Graywater and Alternative Onsite Water); and any more stringent requirements of the local permitting authority. For the purposes of this subchapter, a graywater reuse system begins at the graywater stub-out of a single family dwelling.

(c) A graywater reuse system must not create a nuisance or damage the quality of surface water or groundwater. If a graywater reuse system creates a nuisance, threatens human health, or damages the quality of surface water or groundwater, the permitting authority may take action under §285.71 of this title (relating to Authorized Agent Enforcement of OSSFs).

(d) A graywater reuse system shall comply with the requirements of this subchapter as they existed on the date installation was completed. The previous version of this subchapter is continued in effect for this purpose. Any alterations to an existing system must comply with this chapter; Chapter 210, Subchapter F of this title; and any more stringent requirements of the local permitting authority.

(e) No reduction in the size of the on-site sewage facility (OSSF) will be allowed when using a graywater reuse system unless the OSSF meets all of the conditions and requirements of §285.81 of this title (relating to Requirements and Conditions for Potentially Reducing the Size of an OSSF Disposal System for a Single Family Residence with a Graywater Reuse System or a Combined Reuse System).

(f) If the OSSF is not a reduced OSSF as described in §285.81 of this title, the graywater from either a graywater reuse system or a combined reuse system authorized under Chapter 210, Subchapter F of this title may, be connected to the OSSF to dispose of the graywater during periods when graywater is not being reused. If the reuse system is a combined reuse system as defined under Chapter 210, Subchapter F of this title, the flows from alternative onsite water sources must be diverted and shall not be allowed to enter the OSSF. Alternative water reuse systems as defined in Chapter 210, Subchapter F of this title, shall not be connected to the OSSF as OSSFs are not authorized nor designed to treat or dispose of flows from alternative onsite water sources. The piping connecting the graywater to the OSSF shall meet the applica-

ble requirements of Subchapter D of this chapter (relating to Planning, Construction, and Installation Standards for OSSFs).

§285.81. Requirements and Conditions for Potentially Reducing the Size of an OSSF Disposal System for a Single Family Residence with a Graywater Reuse System or a Combined Reuse System.

(a) Graywater reuse systems and combined reuse systems are authorized in Chapter 210, Subchapter F of this title (relating to Use of Graywater and Alternative Onsite Water) without a permit, without the submission of planning materials, and without meeting the requirements and conditions of this section. However, a homeowner requesting an on-site sewage facility (OSSF) disposal system smaller than required in §285.33 of this title (relating to Criteria for Effluent Disposal Systems) must obtain a permit and meet the requirements and conditions of this section. Additionally, the potential reduction of the OSSF disposal system in this section only applies to single family residence with a graywater reuse or a combined reuse system. OSSF disposal systems for non-single family residences with a graywater reuse or a combined reuse system shall not have an OSSF disposal system reduction.

(b) Effluent disposal system sizing. If the graywater reuse system or combined reuse system serving the single family residence is in compliance with Chapter 210, Subchapter F of this title, the effluent disposal system required in §285.33 of this title may be reduced in accordance with Table I in Figure: 30 TAC §285.81(b) of this section.
Figure: 30 TAC §285.81(b)

(c) Verification of plumbing entering the OSSF. A licensed master plumber shall evaluate and document, after the plumbing is installed, which sewage sources will be entering the OSSF. The documentation must be provided to the OSSF permitting authority.

(d) Increased wastewater strength. When graywater is removed from the total sewage stream, the remaining sewage stream entering the OSSF will have a higher organic strength. The resulting increase in sewage strength shall be determined in accordance with Table II in Figure: 30 TAC §285.81(d) of this section.
Figure: 30 TAC §285.81(d)

(e) If the effluent disposal system does not require secondary treatment, either a professional sanitarian or a professional engineer shall demonstrate with effective treatment design and supporting calculations that the proposed treatment system will reduce the effluent quality down to 140 milligrams per liter five-day biochemical oxygen demand (mg/l BOD_5) prior to entering the effluent disposal system.

(f) If the effluent disposal system requires secondary treatment, then a professional engineer shall demonstrate with effective treatment design and supporting calculations that the effluent quality meets the levels outlined in §285.32(e) of this title (relating to Criteria for Sewage Treatment Systems).

(g) If the effluent disposal system is reduced based on the presence of a graywater reuse system or a combined reuse system, a reserve area equivalent to the reduced area shall be shown to be available for future construction of a disposal field should the graywater reuse system or combined reuse system be abandoned at a later date. The reserve area shall meet the setbacks required by §285.91(10) of this title (relating to Tables) and shall not be used for any surface improvements.

(h) Graywater or alternative onsite water, as defined in Chapter 210, Subchapter F of this title, shall not be applied to the surface of a reduced effluent disposal system.

(i) The reduced effluent disposal system is not sized to accommodate graywater. Therefore, there shall not be any physical connection between the graywater reuse system or the combined reuse system and any part of the OSSF without authorization from the OSSF permitting authority.

(j) In addition to the requirements outlined in Chapter 210, Subchapter F of this title, a graywater reuse system or a combined reuse system, used in association with a reduced effluent disposal system under this section, must have a storage tank capable of storing a volume of three days of graywater. The storage is necessary to prevent application of graywater during periods when the landscape is saturated.

(k) Before a license to operate is issued for a reduced effluent disposal system allowed under this section, an affidavit shall be properly filed and recorded in the deed records of the county. The affidavit must include the owner's full name, the legal description of the property, a statement that the permit for the OSSF is transferred to the new owner upon transfer of the property, a statement that the effluent disposal system is reduced due to the presence of a graywater reuse system or a combined reuse system, a statement that the specified reserve area shall not contain surface improvements, and a statement that the graywater reuse system or combined reuse system cannot be connected to the OSSF without obtaining a permit from the OSSF permitting authority.

(l) If the property owner of a graywater reuse system or a combined reuse system on a property served by a reduced effluent disposal system is convicted under or found in violation of any statute related to graywater or public health nuisance, and the system is not properly repaired in a timely manner, the OSSF permitting authority may require the graywater to be connected to the OSSF. If the OSSF permitting authority requires the graywater to be connected to the OSSF, the effluent disposal system must be expanded to accommodate all the flow required in §285.91(3) of this title, and the expansion must be permitted by the OSSF permitting authority.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 9, 2016.

TRD-201606428
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: December 29, 2016
Proposal publication date: July 22, 2016
For further information, please call: (512) 239-2141

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30 TAC §285.81

Statutory Authority

The repeal is adopted under Texas Water Code (TWC), §5.013 and §5.102, which establish the commission's general jurisdiction and provides general powers of the commission over other areas of responsibility as assigned to the commission under the TWC; TWC, §5.103 and §5.105, which require the commission to adopt any rule or policy necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.120, which requires the commission to administer the law so as to promote judicious use and maximum conservation and protection of the environment and the natural resources of the state; and TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to

control the quality of, the water in the state by subjecting waste discharges or impending waste discharges to reasonable rules or orders adopted or issued by the TCEQ in the public interest. Lastly, Texas Health and Safety Code (THSC), §341.039 and §366.012, which specifically direct the commission to adopt and implement rules related to the expanded use of graywater and alternative onsite water; THSC, §341.039, which directs the commission to adopt and implement minimum standards for the indoor and outdoor use and reuse of treated graywater and alternative onsite water; THSC, §366.011, which establishes the commission's authority over the location, design, construction, installation, and proper functioning of on-site sewage disposal systems; and THSC, §366.012, which directs the commission to adopt rules to allow for an adjustment in the size required of an on-site sewage disposal system if the system is used in conjunction with a graywater or combined reuse system that complies with the rules adopted under THSC, §341.039 and which requires the commission to adopt rules consistent with the policy defined in TWC, §26.0311, and THSC, §341.039 and §366.012, relating to Standards for Control of Graywater, Graywater Standards, and Rules Concerning On-Site Disposal Systems.

Specific statutory authorization derives from House Bill (HB) 1902, which amended TWC, §26.0311, and THSC, §341.039 and §366.012(a).

The repeal implements the statutory amendments of HB 1902.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 9, 2016.

TRD-201606430
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: December 29, 2016
Proposal publication date: July 22, 2016
For further information, please call: (512) 239-2141

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CHAPTER 331. UNDERGROUND INJECTION CONTROL

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §331.9 and §331.131.

Amended §331.9 and §331.131 are adopted *without changes* to the proposed text as published in the July 22, 2016, issue of the *Texas Register* (41 TexReg 5383) and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

House Bill (HB) 2230, 84th Texas Legislature, 2015, authored by Representative Lyle Larson, provides authority for the TCEQ to authorize an injection well used for oil and gas waste disposal to be used for the disposal of nonhazardous brine generated by a desalination operation or nonhazardous drinking water treatment residuals (DWTR). HB 2230 adds Texas Water Code (TWC), §27.026 that allows the TCEQ to authorize, by individual permit, general permit, or by rule, a Class V injection well for the disposal of such nonhazardous brine or nonhazardous DWTR by injection into a Class II well permitted by the Railroad Commission of Texas (RRC) under TWC, Chapter 27, Subchapter C. The adopted rules are consistent with the long-standing practice of the TCEQ's Underground Injection Control (UIC) program to authorize Class V injection wells by rule.

Section by Section Discussion

In addition to adopting amendments to implement HB 2230, the commission adopts non-substantive changes to update the rules in accordance with current *Texas Register* style and format requirements, improve readability, and establish consistency in the rules. These non-substantive changes are not intended to alter the existing rule requirements in any way and are not specifically discussed in this preamble. The commission also adopts other minor amendments to be consistent with current language in Chapter 331.

§331.9, Injection Authorized by Rule

The commission adopts amended §331.9(b)(2)(E) to update the reference to Chapter 331, Subchapter K to reflect the current title, "Additional Requirements for Class V Injection Wells Associated with Aquifer Storage and Recovery Projects" to be consistent with current language in Chapter 331.

The commission adopts §331.9(b)(2)(F) to state that an owner or operator of a Class V well authorized for disposal by injection of certain wastes into a Class II disposal well is prohibited from injecting into the well if the owner or operator fails to comply with §331.9(b)(3).

The commission adopts §331.9(b)(3) to provide authorization by rule of a Class V injection well for disposal of nonhazardous brine from a desalination operation or nonhazardous DWTR into a Class II disposal well permitted by the RRC whose operator has an active Form P-5 Organization Report in good standing with the RRC. The RRC requires the Form P-5 Organization Report for any entity performing operations within the jurisdiction of the RRC's Oil and Gas Division in accordance with Oil and Gas Statewide Rule 1 (16 TAC §3.1). The Form P-5 Organization Report includes provisions for financial assurance for plugging and abandonment of a disposal well.

The commission adopts §331.9(b)(3)(A) to state that Chapter 331, Subchapter H (which references the standards for Class V wells) and §331.9(a) (which references the requirements for plugging and abandonment of a well authorized by rule prior to January 1, 1982, for Class V wells, motor vehicle waste disposal wells, large capacity septic systems, large capacity cesspools, subsurface fluid distribution systems, and dry wells) are not applicable to a Class V well authorized by rule to inject waste into a Class II well permitted by the RRC. The RRC's construction and closure standards for the Class II disposal well would be the applicable construction and closure standards for a Class V well authorized by rule for disposal by injection of nonhazardous brine from a desalination operation or nonhazardous DWTR into a Class II disposal well permitted by the RRC.

The commission adopts §331.9(b)(3)(B) to provide that the use or disposal of radioactive material under §331.9(b)(3) is subject to the applicable requirements of 30 TAC Chapter 336.

§331.131, Applicability

The commission adopts amended §331.131 to exclude Class V wells authorized by rule to dispose of nonhazardous brine from a

desalination operation or nonhazardous DWTR by injection into a Class II well permitted by the RRC from the requirements of Chapter 331, Subchapter H. The RRC's Class II disposal well standards would be the applicable standards for a Class V well authorized by rule for disposal by injection of nonhazardous brine from a desalination operation or nonhazardous DWTR into a Class II disposal well permitted by the RRC.

The commission also adopts amended §331.131 to update the term "aquifer storage wells" to "aquifer storage and recovery injection wells" and to update the reference to Chapter 331, Subchapter K to reflect the current title, "Additional Requirements for Class V Injection Wells Associated with Aquifer Storage and Recovery Projects" to be consistent with current language in Chapter 331.

Final Regulatory Impact Analysis Determination

The commission reviewed the adopted rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225 because this rulemaking action does not meet the Texas Government Code definition of a "major environmental rule." "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The specific intent of the adopted rules is to implement the statutory requirements of TWC, §27.026, enacted by HB 2230, which provides that the commission may authorize by individual permit, general permit, or by rule, a Class V injection well for the disposal of nonhazardous desalination brine or nonhazardous DWTR by injection into a Class II disposal well permitted by the RRC. The adopted rules substantially advance this purpose by providing an authorization by rule for a Class V injection well for the disposal of nonhazardous desalination brine or nonhazardous DWTR by injection into a Class II disposal well permitted by the RRC. The intent is not inconsistent with the first prong of the definition of "major environmental rule."

However, the adoption does not meet the second prong of the definition of "major environmental rule" because the rulemaking does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment or public health and safety of the state or a sector of the state or impose additional regulatory burdens that would affect the economy or a sector of the economy in a material way. The adopted rules implement the legislative directives of HB 2230 and do not impose additional regulatory burdens that affect the economy or a sector of the economy in a material way.

Furthermore, the adopted rules do not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). The adopted rules do not exceed a standard set by federal law because the adopted rules are consistent with federal standards for Class V injection wells. The adopted rules do not exceed an express requirement of state law because the adopted rules are consistent with the express requirements of HB 2230 and TWC, §27.026; and with TWC, §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells. Further, the adopted rules do not exceed requirements set out in the TCEQ's UIC program authorized for the state of Texas under the federal Safe Drinking Water Act. Finally, the rulemaking is not adopted under the general powers of the agency, but is adopted under the express requirements of HB 2230 and TWC, §27.026.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated this adopted rulemaking action and performed a preliminary assessment of whether Texas Government Code, Chapter 2007 is applicable. The commission's preliminary assessment is that implementation of these adopted rules does not constitute a taking of real property.

The adopted action implements the statutory requirements of TWC, §27.026, enacted by HB 2230. TWC, §27.026 provides that the commission may authorize, by individual permit, general permit, or by rule, a Class V injection well for the disposal of nonhazardous desalination brine or nonhazardous DWTR by injection into a Class II disposal well permitted by the RRC. The adopted rules substantially advance their purpose by amending existing commission rules to establish an authorization by rule for an existing Class II disposal well permitted by the RRC as a Class V injection well for the disposal of nonhazardous desalination brine or nonhazardous DWTR.

Promulgation or enforcement of these adopted rules will be neither a statutory nor a constitutional taking of private real property. The adopted rulemaking does not affect a landowner's rights in private real property because this rulemaking action does not burden (constitutionally), nor restrict or limit, the owner's right to property and reduce its value by 25% or more beyond which would otherwise exist in the absence of the regulations. The adopted rules establish an authorization by rule for an existing Class II disposal well permitted by the RRC as a Class V injection well for the disposal of nonhazardous desalination brine or nonhazardous DWTR by injection into a Class II disposal well permitted by the RRC consistent with the requirements of HB 2230. Because the adopted rules apply only to Class II disposal well operators that seek authorization to conduct the subject Class V disposal activity, the rules do not restrict or limit an owner's rights in real property or reduce its value by 25% or more beyond which would otherwise exist in the absence of the regulations. Therefore, the adopted rules do not affect real property in a manner that is different than real property would have been affected without the adopted rules.

Consistency with the Coastal Management Program

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the consistency with the CMP.

Effect on Sites Subject to the Federal Operating Permits Program

The adopted rules will not require any revisions to federal operating permits.

Public Comment

The commission held a public hearing on August 16, 2016. The comment period closed on August 22, 2016. The commission received comments from Lotus, LLC (Lotus) and Water Remediation Technology (WRT). The commenters expressed support for the proposed rules. They also stated that the requirements of the commission's radioactive licensing rules (which are not under consideration in this rulemaking) impose costs on the disposal of DWTR that contain regulated levels of naturally occurring radioactive material (NORM).

Response to Comments

Comment

Lotus objected to dual TCEQ-RRC regulation of NORM contaminated DWTR. WRT noted that HB 2230 is silent on whether a radioactive materials license is required for disposal of DWTR.

Response

To ensure that these rules are consistent with HB 2230, all comments were carefully reviewed. The adopted rules are consistent with the provisions of HB 2230. The commission respectfully points out that licensing requirements for NORM and oil and gas NORM are contained in Texas Health and Safety Code (THSC), §§401.412 - 401.415 and not in TWC, Chapter 27, which was amended by HB 2230. The commission has regulatory jurisdiction for NORM while RRC has exclusive regulatory jurisdiction for oil and gas NORM. No changes have been made in response to these comments.

Comment

Lotus requested the commission exempt desalination brine and DWTR from the requirements of Chapter 336 and clarify the exemption in a new Memorandum of Understanding (MOU) between TCEQ and RRC or amend the existing MOU. Lotus further stated that instead of amending or entering into a new MOU between the RRC and the commission to implement the Class II-Class V disposal option as required by TWC, §27.026 and HB 2230, the commission consider including DWTR waste in an MOU between the Texas Department of State Health Services (TDSHS) and RRC.

Response

There is no statutory basis to exempt desalination brine and DWTR wastes containing NORM above exempted levels from the licensing requirements of Chapter 336. Chapter 336 was amended effective July 21, 2005 to add Subchapter K which provides for the licensing of the commercial disposal of NORM waste from public water systems in Class I injection wells. Licensing is a statutory requirement under THSC, §401.101 which prohibits a person from receiving, processing or disposing of NORM unless the person has a license, registration or exemption from TDSHS or the commission. HB 2230 did not revise any requirements in the THSC. HB 2230 specifically requires the commission to enter or amend an MOU with RRC. No changes have been made in response to these comments.

Comment

Lotus and WRT pointed out the significant cost of disposal of DWTR containing NORM, but also noted that radionuclide water treatment is not a big industry and a finite number of cities have this issue. Lotus stated that the requirement to obtain a radioactive materials license for the disposal of DWTR containing NORM, in addition to Lotus' existing radioactive materials license, would increase the cost of disposal for Lotus and for municipalities, causing operators to pass these costs to generators that use the disposal facility. In summary, the commenters estimated the additional cost to municipalities would be $3,500 per year for monitoring and testing and approximately $5,000 per load for waste preparation. The commenters estimated that the additional cost to operators would be an initial expense of approximately $500,000 for facility upgrades and licensing, approximately $150,000 annually for TCEQ licensing fees and monitoring, and $5,000 per load for waste preparation including hazardous materials personnel.

Response

The commission's exclusive jurisdiction over solid waste, from which oil and gas waste is excluded, is established in THSC, Chapter 361. The commission's exclusive jurisdiction over NORM, from which oil and gas NORM is excluded, is established in THSC, Chapter 401. The RRC's jurisdiction over oil and gas waste is established in THSC, Chapter 361 and in Texas Natural Resources Code, Chapter 91. THSC, Chapter 401 establishes that RRC and TDSHS each have jurisdiction over certain aspects of oil and gas NORM.

HB 2230 and the adopted rules authorize disposal of desalination brine and DWTR that are nonhazardous and contain exempt levels of NORM. These wastes must be characterized to determine if they are nonhazardous and contain non-exempt levels of NORM. Lotus' estimates include costs related to making these determinations as well as cost estimates which appear to address radioactive materials license requirements. No changes have been made in response to these comments.

Comment

The majority of comments provided by Lotus and WRT relate to waste streams that could not, by statute or rule, be permitted under the provisions of HB 2230. These comments range from the occurrence of radionuclides in ground water, health effects and risks of exposure to radionuclides in drinking water, water treatment for NORM and hazardous constituents, environmental risks related to NORM disposal, and technical permitting and licensing requirements.

Response

The comments on these topics do not apply to HB 2230 and are outside the scope of this rulemaking. No changes have been made in response to these comments.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §331.9

Statutory Authority

The amendment is adopted under the authority of the Texas Water Code (TWC), §5.103, which provides the commission the authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; TWC, §5.120, which authorizes the commission to administer the law so as to promote the judicious use and maximum conservation and protection of the environment and natural resources of the state; TWC, §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; and TWC, §27.026, which allows the commission to authorize by individual permit, general permit, or by rule, a Class V injection well for the disposal by injection of nonhazardous

desalination brine or nonhazardous drinking water treatment residuals (DWTR) into a Class II disposal well permitted by the Railroad Commission of Texas under TWC, Chapter 27, Subchapter C.

The adopted amendment implements House Bill 2230, 84th Texas Legislature, 2015, which allows the commission to authorize by individual permit, general permit, or by rule, a Class V injection well for the disposal by injection of nonhazardous desalination brine or nonhazardous DWTR into a Class II disposal well permitted by the Railroad Commission of Texas under TWC, Chapter 27, Subchapter C.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 9, 2016.

TRD-201606419
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: December 29, 2016
Proposal publication date: July 22, 2016
For further information, please call: (512) 239-6812

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SUBCHAPTER H. STANDARDS FOR CLASS V WELLS

30 TAC §331.131

Statutory Authority

The amendment is adopted under the authority of the Texas Water Code (TWC), §5.103, which provides the commission the authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; TWC, §5.120, which authorizes the commission to administer the law so as to promote the judicious use and maximum conservation and protection of the environment and natural resources of the state; TWC, §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; and TWC, §27.026, which allows the commission to authorize by individual permit, general permit, or by rule, a Class V injection well for the disposal by injection of nonhazardous desalination brine or nonhazardous drinking water treatment residuals (DWTR) into a Class II disposal well permitted by the Railroad Commission of Texas under TWC, Chapter 27, Subchapter C.

The adopted amendment implements House Bill 2230, 84th Texas Legislature, 2015, which allows the commission to authorize by individual permit, general permit, or by rule, a Class V injection well for the disposal by injection of nonhazardous desalination brine or nonhazardous DWTR into a Class II disposal well permitted by the Railroad Commission of Texas under TWC, Chapter 27, Subchapter C.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 9, 2016.

TRD-201606420
Robert Martinez
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Texas Commission on Environmental Quality
Effective date: December 29, 2016
Proposal publication date: July 22, 2016
For further information, please call: (512) 239-6812

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TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 23. ADMINISTRATIVE PROCEDURES

34 TAC §23.7, §23.8

The Teacher Retirement System of Texas ("TRS" or "system") adopts amendments to 34 TAC §23.7 and §23.8, concerning TRS' Code of Ethics for Contractors (the "Code") and related materials. The amendments are adopted without changes to the proposed rule text published in the October 28, 2016, issue of the *Texas Register* (41 TexReg 8515).

Section 825.212 of the Government Code requires the TRS Board of Trustees to adopt a code of ethics, including standards of ethical conduct and disclosure requirements, applicable to certain TRS contractors. Section 825.212(c) also requires TRS by rule or policy to adopt procedures for disclosing and curing violations of the common law of conflict of interests and any such rule or policy may specify time periods in which disclosures and cures must be completed. In compliance with §825.212, the board has adopted the Code.

Section 23.7 of TRS' rules of the TRS Board of Trustees adopts the Code of Ethics by reference. In June 2016, the board adopted a revised Code. The adopted rule amendments update §23.7 to reflect the current version of the Code.

Section 23.8 of TRS' rules adopts by reference the Expenditure Reporting Memorandum (reporting memorandum) and Expenditure Reporting Form for Contractors (reporting form) and requires Contractors to report expenditures made on behalf of any one TRS trustee or employee of the system. Section 2263.004 of the Government Code requires the board by rule to require certain contractors, financial advisors and service providers to the retirement system to meet specified standards of conduct. Pursuant to this section, the Code requires that certain contractors, financial advisors and service providers file with the system a report detailing any expenditure of more than $50 made on behalf of a trustee or employee of the system. The board adopts the form used by contractors to report such expenditures. The executive director provides an explanatory memorandum addressed to contractors to accompany the reporting form. In February 2016, the executive director approved a revised reporting memorandum. In June 2016, the board adopted a revised reporting form. The adopted amendments to §23.8 adopt by reference the latest versions of the executive director's reporting memorandum and the reporting form under the Code.

No comments were received on the rule proposals.

The amendments are adopted under authority of §825.102 of the Government Code, which authorizes the board to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the board.

The adopted rules affect §825.212 of the Government Code, concerning the adoption of a code of ethics for contractors and related reporting requirements, and §2263.004 of the Government Code, concerning ethics requirements for outside financial advisors or service providers.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 9, 2016.

TRD-201606441
Brian Guthrie
Executive Director
Teacher Retirement System of Texas
Effective date: December 29, 2016
Proposal publication date: October 28, 2016
For further information, please call: (512) 542-6513

CHAPTER 25. MEMBERSHIP CREDIT

The Teacher Retirement System of Texas ("TRS" or "system") adopts amendments to 34 TAC §25.24, relating to Performance Pay, §25.31, relating to Percentage Limits on Compensation Increases, and §25.303 relating to Calculation of Actuarial Cost for Purchase of Compensation Credit. The amended rules are adopted without changes to the proposed rule text published in the October 28, 2016, issue of the *Texas Register* (41 TexReg 8516).

The adopted amendments to §25.24 regard the crediting of performance pay that was earned prior to the 2011-2012 school year but paid in the 2011-2012 school year. The amendments clarify that performance pay earned prior to the 2011-2012 school year but paid in the 2011-2012 school year will be credited in the school year in which the standards establishing the right to the performance pay are met or in which the service occurred, whichever is earlier. Prior to amendment, the language indicated that, beginning with the 2011-2012 school year, performance pay would be credited in the school year in which it was paid, but the former version of the rule did not clearly address how amounts earned prior to that school year would be credited. The adopted amendments are consistent with staff's interpretation and application of the rule since it was amended in April 2011.

The adopted amendments to §25.31 regard the application of the percentage limit on compensation increases in the last school years prior to retirement. Prior to amendment, the rule limited increases in compensation in the final three or five school years prior to retirement, depending on the member's grandfathered status. The increases are limited to the greater of $10,000 or 10 percent of the allowed compensation for the previous year.

Before adoption of the current amendments, for members who were grandfathered to use a three-year salary average when calculating retirement benefits, the base line amount used to determine the amount of allowable compensation in the third school year prior to retirement was the greater of either the amount of the compensation for the fourth or the fifth school year prior to retirement. If there was no compensation in the fourth or fifth school year prior to retirement, the base amount was the earliest salary credited in the three school years prior to retirement. If the member did not have compensation credited in at least three of the last five school years prior to retirement, the limit on increases did not apply. For members who were not grandfathered to use a three year salary average but had to use a five year salary average when calculating retirement benefits, the base line amount used to determine the amount of allowable compensation in the fifth school year prior to retirement was the greater of either the amount of the compensation for the sixth or the seventh school year prior to retirement. If there was no compensation in the sixth or seventh school year prior to retirement, the base amount was the earliest salary credited in the five school years prior to retirement. If the member did not have compensation credited in at least five of the last seven school years prior to retirement, the limit on increases did not apply to these members.

The adopted amendments to §25.31 address the harsh cut-back suffered by some members whose pay in the base year does not reflect a full school year of pay or even a school year in which service credit was given. The amendments require that the base year must be a school year in which service credit was given. This change will minimize the cut-back in compensation experienced by a member who received only a month or two of compensation in the base year and did not receive service credit for that year. Also, the amendments require that a grandfathered member must have service credit rather than simply compensation credit in at least three of the last five school years in order for the compensation limit to apply. This change eliminates the compensation limit for members who did not receive service credit in at least three of the last five school years. Similarly, a member who is not grandfathered must have received service credit in at least five of the last seven school years prior to retirement in order for the compensation limit to apply.

The adopted amendments to §25.303 regard how the actuarial cost of compensation credit is calculated. The content of §25.303 was moved from §25.302, which relates to the calculation of the actuarial cost for service credit, during the most recent rule review of Chapter 25 to separate the requirements for calculating the cost of service credit from those for calculating the cost of compensation credit. However, after working with the rule relating to the purchase of compensation credit, an ambiguity was identified in the wording of subsection (b). Although TRS has consistently applied the correct formula, the amendments make it clear that the cost of the increased compensation credit is determined by dividing the increased compensation by three or five (depending on the member's grandfathered status) and then dividing that quotient by 1,000. The resulting quotient is then multiplied by the appropriate cost factor from the table to determine the cost of the compensation credit.

The adopted amendments to subsection (a) of §25.303 provide that a member's age and years of service credit used to determine the appropriate cost factor will based on the member's age and years of service credit on September 1 of the year the cost is established. The amendment regarding the member's age and years of service credit on September 1 of the year the cost is established is consistent with language in §25.302 regarding the calculation of the cost to purchase service credit and results in consistency in the cost of compensation credit and in administrative efficiencies.

No comments were received on the rule proposals.

SUBCHAPTER B. COMPENSATION

34 TAC §25.24, §25.31

The amendments are adopted under authority of the following sections of the Government Code: §825.102, which authorizes the TRS Board of Trustees (board) to adopt rules for eligibility for membership, the administration of the funds of the system, and the transaction of business of the board, and §825.110, which requires the board to adopt rules that include a percentage limit on increases in annual compensation.

The adopted amendments affect the following sections of the Government Code: §821.001(4), which defines "annual compensation"; §824.203, which provides the method of computing standard service retirement benefits; §825.403, which provides for collection of member contributions and requiring the payment of actuarial cost to establish unreported service or compensation credit; and §825.105, which authorizes the board to adopt actuarial tables.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 9, 2016.

TRD-201606442
Brian Guthrie
Executive Director
Teacher Retirement System of Texas
Effective date: December 29, 2016
Proposal publication date: October 28, 2016
For further information, please call: (512) 542-6513

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SUBCHAPTER P. CALCULATION OF FEES AND COSTS

34 TAC §25.303

The amendments are adopted under authority of the following sections of the Government Code: §825.102, which authorizes the TRS Board of Trustees (board) to adopt rules for eligibility for membership, the administration of the funds of the system, and the transaction of business of the board, and §825.110, which requires the board to adopt rules that include a percentage limit on increases in annual compensation.

The adopted amendments affect the following sections of the Government Code: §821.001(4), which defines "annual compensation"; §824.203, which provides the method of computing standard service retirement benefits; §825.403, which provides for collection of member contributions and requiring the payment of actuarial cost to establish unreported service or compensation credit; and §825.105, which authorizes the board to adopt actuarial tables.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 9, 2016.

TRD-201606443
Brian Guthrie
Executive Director
Teacher Retirement System of Texas
Effective date: December 29, 2016
Proposal publication date: October 28, 2016
For further information, please call: (512) 542-6513

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CHAPTER 29. BENEFITS

SUBCHAPTER G. PROPORTIONATE RETIREMENT

34 TAC §29.83

The Teacher Retirement System of Texas (TRS or "system") adopts new 34 TAC §29.83, relating to Calculation of Amount of Retirement Benefit. The new rule is adopted without changes to the proposed rule text as published in the October 28, 2016, issue of the *Texas Register* (41 TexReg 8519).

The adopted new rule concerns how service credit maintained in another retirement system participating in the Proportionate Retirement Program will be used in determining the early age reduction applied to a member's service retirement benefit. Although the statutes establishing the Proportionate Retirement Program provide that combined service credit must be considered in determining eligibility for service retirement, the statutes do not distinguish between normal age and early age retirement. The law, however, provides that, with regard to "length-of-service" requirements for service retirement, the combined service credit is to be considered as if it were all credited in one system.

There are currently six tiers of TRS membership with different eligibility requirements for normal age retirement and different reduction factors and percentage reductions for early age retirement. However, length of service (amount of service credit) is used in determining eligibility for normal age and the reductions for early age service retirement in each tier. The calculation of a normal age service retirement annuity using combined service credit is addressed in 34 TAC §29.80, which authorizes the calculation of an unreduced benefit once eligibility for normal age retirement is established using the combined service credit. Using the combined service credit as adopted in the new rule to determine the applicable reduction for an early age service retirement annuity is consistent with §29.80, statutory requirements, and the intent of the law. By using the combined service credit to determine the applicable early age reduction, the amount of the reduction for early age retirement will be less.

No comments were received on the rule proposals.

The new rule is adopted under §803.401(a) of the Government Code, which authorizes the TRS Board of Trustees ("board") to adopt rules it finds necessary to implement the Proportionate Retirement Program provided by Chapter 803 of the Government Code, and §825.102 of the Government Code, which authorizes the board to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the board.

The adoption affect §§803.201, 803.401 and 825.102 of the Government 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 December 9, 2016.

TRD-201606444
Brian Guthrie
Executive Director
Teacher Retirement System of Texas
Effective date: December 29, 2016
Proposal publication date: October 28, 2016
For further information, please call: (512) 542-6513

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 151. GENERAL PROVISIONS

37 TAC §151.3

The Texas Board of Criminal Justice adopts amendments to §151.3, concerning Operating Procedures for the Texas Board of Criminal Justice, without changes to the proposed text as published in the September 2, 2016, issue of the *Texas Register* (41 TexReg 6660).

The adopted amendments are necessary to provide clarification of Open Meetings requirements and update formatting.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §492.013.

Cross Reference to Statutes: None.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606473
Sharon Howell
General Counsel
Texas Department of Criminal Justice
Effective date: January 1, 2017
Proposal publication date: September 2, 2016
For further information, please call: (936) 437-6700

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37 TAC §151.6

Adopted Amendments Preamble

The Texas Board of Criminal Justice adopts amendments to §151.6, concerning the Petition for the Adoption of a Rule, without changes to the proposed text as published in the November 4, 2016, issue of the *Texas Register* (41 TexReg 8806).

The adopted amendments are necessary to conform the language of the rule to state statute and update formatting.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §§492.013, 492.016, 2001.021, and Chapter 2008.

Cross Reference to Statutes: None.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606476
Sharon Howell
General Counsel
Texas Department of Criminal Justice
Effective date: January 1, 2017
Proposal publication date: November 4, 2016
For further information, please call: (936) 437-6700

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37 TAC §151.52

The Texas Board of Criminal Justice adopts amendments to §151.52, concerning the Sick Leave Pool, without changes to the proposed text as published in the September 2, 2016, issue of the *Texas Register* (41 TexReg 6661).

The adopted amendments are necessary to clarify the intent of the rule and update formatting.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §492.013, §661.001 - .008.

Cross Reference to Statutes: None.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606478
Sharon Howell
General Counsel
Texas Department of Criminal Justice
Effective date: January 1, 2017
Proposal publication date: September 2, 2016
For further information, please call: (936) 437-6700

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CHAPTER 155. REPORTS AND INFORMATION GATHERING

SUBCHAPTER B. SITE SELECTION AND FACILITY NAMES

37 TAC §155.21

The Texas Board of Criminal Justice adopts amendments to §155.21, concerning Naming of a Texas Department of Criminal Justice Owned Facility, without changes to the proposed text as published in the November 4, 2016, issue of the *Texas Register* (41 TexReg 8807).

The adopted amendments are necessary to update formatting.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §492.013.

Cross Reference to Statutes: None.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606499
Sharon Howell
General Counsel
Texas Department of Criminal Justice
Effective date: January 1, 2017
Proposal publication date: November 4, 2016
For further information, please call: (936) 437-6700

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CHAPTER 161. COMMUNITY JUSTICE ASSISTANCE DIVISION ADMINISTRATION

37 TAC §161.21

The Texas Board of Criminal Justice adopts amendments to §161.21, concerning the Role of the Judicial Advisory Council, without changes to the proposed text as published in the November 4, 2016, issue of the *Texas Register* (41 TexReg 8808).

The adopted amendments are necessary to update formatting.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §492.006, §492.013, §493.003(b), §2110.005.

Cross Reference to Statutes: None.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606505
Sharon Howell
General Counsel
Texas Department of Criminal Justice
Effective date: January 1, 2017
Proposal publication date: November 4, 2016
For further information, please call: (936) 437-6700

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CHAPTER 163. COMMUNITY JUSTICE ASSISTANCE DIVISION STANDARDS

37 TAC §163.5

The Texas Board of Criminal Justice adopts amendments to §163.5, concerning Waiver to Standards, without changes to the proposed text as published in the November 4, 2016, issue of the *Texas Register* (41 TexReg 8809).

The adopted amendments are necessary to update formatting.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §492.013, §509.003.

Cross Reference to Statutes: None.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2016.

TRD-201606506
Sharon Howell
General Counsel
Texas Department of Criminal Justice
Effective date: January 1, 2017
Proposal publication date: November 4, 2016
For further information, please call: (936) 437-6700

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 748. MINIMUM STANDARDS FOR GENERAL RESIDENTIAL OPERATIONS

The Texas Health and Human Service Commission (HHSC) adopts on behalf of the Department of Family and Protective Services (DFPS), amendments to §§748.3, 748.43, 748.61, 748.65, 748.191, 748.301, 748.303, 748.309, 748.313, 748.315, 748.361, 748.363, 748.393, 748.395, 748.505, 748.533, 748.535, 748.539, 748.563, 748.571, 748.575, 748.605, 748.681, 748.721, 748.725, 748.729, 748.801, 748.861, 748.867, 748.869, 748.883, 748.885, 748.935, 748.937, 748.939, 748.941, 748.943, 748.945, 748.985, 748.987, 748.1009, 748.1013, 748.1021, 748.1103, 748.1109, 748.1117, 748.1119, 748.1205, 748.1207, 748.1209, 748.1211, 748.1213, 748.1215, 748.1217, 748.1219, 748.1223, 748.1225, 748.1263, 748.1269, 748.1303, 748.1331, 748.1335, 748.1337, 748.1341, 748.1345, 748.1349, 748.1351, 748.1381, 748.1385, 748.1389, 748.1433, 748.1435, 748.1437, 748.1501, 748.1531, 748.1539, 748.1541, 748.1543, 748.1549, 748.1551, 748.1581, 748.1661, 748.1695, 748.1697, 748.1741, 748.1743, 748.1751, 748.1757, 748.1759, 748.1761, 748.1763, 748.1791, 748.1793, 748.2003, 748.2009, 748.2053, 748.2101, 748.2151, 748.2231, 748.2233, 748.2309, 748.2401, 748.3015, 748.3017, 748.3351, 748.3353, 748.3357, 748.3365, 748.3601, 748.3603, 748.3701, 748.3705,

748.3751, 748.3753, 748.3757, 748.3765, 748.3801, 748.3891, 748.3931, 748.4043, 748.4045, 748.4213, 748.4261, 748.4265, 748.4301, 748.4403, 748.4471, and 748.4473; the repeals of §§748.101, 748.103, 748.105, 748.107, 748.109, 748.111, 748.131, 748.133, 748.161, 748.163, 748.231, 748.233, 748.235, 748.237, 748.239, 748.241, 748.307, 748.341, 748.435, 748.501, 748.727, 748.731, 748.1101, 748.1105, 748.1753, 748.1765, 748.3481, 748.3535, 748.3567, 748.4041, and 748.4047; and new §§748.101, 748.103, 748.105, 748.107, 748.109, 748.111, 748.113, 748.115, 748.117, 748.119, 748.121, 748.123, 748.125, 748.127, 748.129, 748.151, 748.153, 748.155, 748.157, 748.161, 748.341, 748.343, 748.345, 748.347, 748.724, 748.731, 748.1101, 748.1340, 748.1386, 748.1753, 748.1765, and 748.4041 in Chapter 748, Minimum Standards for General Residential Operations, concerning a comprehensive review. The amendments to §§748.43, 748.303, 748.801, 748.937, 748.939, 748.1263, 748.1349, 748.1543, 748.1695, 748.1757, 748.2009, 748.2233, 748.2309, 748.3365, 748.3603, and 748.3757, and new §748.113 and §748.724; are adopted with changes to the proposed text in the August 26, 2016, issue of the *Texas Register* (41 TexReg 6409). The amendments to §§748.3, 748.61, 748.65, 748.191, 748.301, 748.309, 748.313, 748.315, 748.361, 748.363, 748.393, 748.395, 748.505, 748.533, 748.535, 748.539, 748.563, 748.571, 748.575, 748.605, 748.681, 748.721, 748.725, 748.729, 748.861, 748.867, 748.869, 748.883, 748.885, 748.935, 748.941, 748.943, 748.945, 748.985, 748.987, 748.1009, 748.1013, 748.1021, 748.1103, 748.1109, 748.1117, 748.1119, 748.1205, 748.1207, 748.1209, 748.1211, 748.1213, 748.1215, 748.1217, 748.1219, 748.1223, 748.1225, 748.1269, 748.1303, 748.1331, 748.1335, 748.1337, 748.1341, 748.1345, 748.1351, 748.1381, 748.1385, 748.1389, 748.1433, 748.1435, 748.1437, 748.1501, 748.1531, 748.1539, 748.1541, 748.1549, 748.1551, 748.1581, 748.1661, 748.1697, 748.1741, 748.1743, 748.1751, 748.1759, 748.1761, 748.1763, 748.1791, 748.1793, 748.2003, 748.2053, 748.2101, 748.2151, 748.2231, 748.2401, 748.3015, 748.3017, 748.3351, 748.3353, 748.3357, 748.3601, 748.3701, 748.3705, 748.3751, 748.3753, 748.3765, 748.3801, 748.3891, 748.3931, 748.4043, 748.4045, 748.4213, 748.4261, 748.4265, 748.4301, 748.4403, 748.4471, and 748.4473, the repeals of §§748.101, 748.103, 748.105, 748.107, 748.109, 748.111, 748.131, 748.133, 748.161, 748.163, 748.231, 748.233, 748.235, 748.237, 748.239, 748.241, 748.307, 748.341, 748.435, 748.501, 748.727, 748.731, 748.1101, 748.1105, 748.1753, 748.1765, 748.3481, 748.3535, 748.3567, 748.4041, and 748.4047, and new §§748.101, 748.103, 748.105, 748.107, 748.109, 748.111, 748.115, 748.117, 748.119, 748.121, 748.123, 748.125, 748.127, 748.129, 748.151, 748.153, 748.155, 748.157, 748.161, 748.341, 748.343, 748.345, 748.347, 748.731, 748.1101, 748.1340, 748.1386, 748.1753, 748.1765, and 748.4041, are adopted without changes to the proposed text published in the August 26, 2016, issue of the *Texas Register* (41 TexReg 6409) and will not be republished. Also in this issue of the *Texas Register,* DFPS is withdrawing the amendment to §748.2307. DFPS agrees with a commenter that "screaming" is too open for interpretation.

BACKGROUND AND JUSTIFICATION

The justification of the amendments, repeals, and new sections is to implement Texas Human Resources Code (HRC) §42.042(b), which requires CCL to conduct a comprehensive review of all rules and minimum standards every six years. The changes are a result of the comprehensive review of all minimum standards located in Chapter 748.

During this review of standards, CCL's goal was to balance the concerns of child advocacy groups, general residential operations, children, and parents to formulate standards that promote the safety of every child in care.

In preparation for the review of minimum standards, CCL conducted a web-based survey open to permit holders, caregivers, advocates, parents, and anyone in the general public interested in commenting on the standards. The survey was available for public input from late August through December 2014. The next step in the review was to hold a series of 13 stakeholder forums throughout the state between September and November 2015 to solicit additional input from the public about changes to the minimum standards.

Between the web-based survey and the stakeholder forums, CCL received almost three hundred comments (for both Chapters 748 and 749, Minimum Standards for Child-Placing Agencies) from stakeholders for consideration in the review. These comments, along with a line-by-line review of all minimum standards conducted by both regional and State Office Licensing staff, formed the basis of the first round of recommendations that were presented to a temporary workgroup. The temporary workgroup, comprised of 13 participants, including providers from child-placing agencies and general residential operations and representatives from Child Protective Services, Residential Contracts, and Licensing, met twice on December 16, 2015, and February 2, 2016. The workgroup reviewed and provided additional comments regarding the recommendations.

The amendments, repeals, and new sections will function to: (1) clarify the Minimum Standards for General Residential Operations (GROs); (2) place DFPS in compliance with HRC §42.042(b); and (3) reduce the risk to children.

COMMENTS

The 30-day comment period ended September 26, 2016. During this period, DFPS received 16 comments from six commenters: Texas Boys Ranch, Breathable Baby, the Coalition for Nurses in Advanced Practice, Devereux Advanced Behavior Health, The Settlement Home for Children, and One Voice Texas. A summary of the comments relating to the rules and DFPS' responses follow.

No comments concerning §748.43(64). However, DFPS adopts this paragraph of the rule with changes to clarify the definition of "substantial physical injury" by changing "substantial" to "serious" when discussing evidence of a physical injury to make the language in the definition consistent throughout.

No comments concerning §748.113(9). However, DFPS adopts this rule with changes in response to a comment received regarding a sister rule in Chapter 749. DFPS is clarifying the language to make it clear that a "child in care" is included amongst individuals against whom retaliation is prohibited.

Comments concerning §748.303(a)(9): There was one comment (and two additional comments from two other commenters that were received regarding a sister rule in Chapter 749) regarding reporting as a serious incident when a child 13 and older is absent from the foster home and still missing for more than two hours (previously 24 hours). The commenters stated that teens often leave without permission to clear their heads; there are some 16 year-olds that are practicing independent living skills and participating in normalcy activities in the community,

such as riding the bus, going to school events after school, and working, and these teens may push the boundaries of their "curfews" and agreed upon times to return; 85% of teens return within two hours, 95% of teens come back within 4-6 hours, and very rarely does a teen stay gone for more than 24 hours; reporting these incidents will increase the workload for hotline intakes, which already take 30 minutes or more to answer a phone call; police will not take a report until it has been 24 hours; this will hurt a child's chances for a placement if they have a lot of run-away history; and one commenter recommended making the time frame 5 hours instead of 2.

Response: DFPS agrees in part and disagrees in part with the commenter and adopts this paragraph of the rule with changes. The National Center for Missing and Exploited Children (NCMEC) are the experts in this area, and NCMEC states that the quicker children are reported, the more likely and quickly they will be found. Also, law enforcement must take reports on missing children and must report the child to the National Crime Information Center (NCIC) database immediately. The Department of Public Safety Crimes Against Children Unit has been calling law enforcement agencies all over Texas to remind them of this duty. With that said, DFPS understands the need to give teenagers space, especially in relation to independent living and normalcy. DFPS also understands that GROs need the ability to make prudent parenting decisions. DFPS is adopting a six hour time frame for reporting, but adding information that if a child has been alleged or determined to be a trafficking victim or you believe the child has been abducted or has no intention of returning to the foster home, then you must report this absence immediately. DFPS is also adding information regarding prudent decision making to a Helpful Information box located on the DFPS public website version of the minimum standards immediately following this rule.

Comment concerning §748.363(7): The commenter would like to require employees to be trained on a GRO's operational policies, rather than just requiring that employees read these policies. The commenter stated that for adults reading is not an effective way to learn.

Response: DFPS agrees with the commenter, but adopts this rule without changes. DFPS agrees that training on the operational policies is important and a better method of learning, but §748.831(a)(1) currently requires a GRO to provide orientation that covers an operation's policies. In addition, training on operational policies can also be provided during general pre-service training or annual training. Additional specificity is not needed at this time.

Comment concerning §748.539: Concerning when an administrator is absent on a frequent and/or extended basis the administrator must designate another employee with an administrator's license to be responsible for the operation, the commenter requested that the terms "frequent and/or extended basis" be better defined.

Response: DFPS agrees with the commenter, but adopts this rule without changes. DFPS believes it would be more prudent to allow more time to work with GROs and advocates in an effort to develop appropriate definitions for "frequent and/or extended basis", and then propose the specific definitions to place all GROs and advocates on notice and to them an opportunity to comment on any proposed definitions.

Comment concerning §748.721: The commenter asks how the system will manage multiple witnesses reporting the same abuse/neglect incident. The commenter also wants to know if an administrator must report to DFPS abuse/neglect witnessed by a volunteer that has already been reported by the volunteer.

Response: DFPS adopts this rule without changes. In response to the commenter's questions, Family Code §261.101 requires all persons to report abuse and neglect when the person believes the child has been abused or neglected. The current reporting system already has in place a mechanism for merging the same reports. An administrator should make the report to DFPS, because the administrator cannot know for sure that the volunteer made the report, and the incident is required to be reported as a serious incident.

No comments concerning §748.724. However, DFPS adopts this rule with changes to correct a typographical error.

No comments concerning §748.801. However, DFPS adopts this rule with changes as noted below in the response to comments concerning §748.937(d).

No comments concerning §748.937(d). However, DFPS adopts this rule with changes in response to a comment received to a sister rule in Chapter 749 relating to a concern about increasing the number of self-instructional training hours that are allowed, and to make the rules consistent with the sister rule in Chapter 749. DFPS adopts three changes to further clarify these issues: (1) §748.801 is being changed to add a definition for "self-study training", which is non-standardized training where an individual reads written materials, watches a training video, or listens to a recording to obtain certain knowledge that is required for annual training. The definition for "self-instructional training" is also being changed to clarify that self-study training is a type of self-instructional training; (2) §748.937(d) is being clarified further to state that no more than three hours of the self-instructional training may come from self-study training; and (3) the training requirements in §748.939 are being clarified so it is clear that they apply to instructor-led training and self-instructional training, but not self-study training.

No comments concerning §748.939. However, DFPS adopts this rule with changes as noted above in the response to comments concerning §748.937(d).

Comment concerning §748.1101(b)(1)(C): The commenter stated the laundry list of discrimination grounds should not be deleted. Rather, all of the discrimination grounds, including sexual orientation and gender identity, should be listed to clearly outline what is prohibited.

Response: DFPS disagrees with the commenter, and adopts the subparagraph of this rule without changes. DFPS is committed to making sure there is no discrimination, but a laundry list is complicated, confusing, and not all encompassing. What is important is that a child be treated fairly in all situations.

Comment concerning §748.1101(b)(3)(C): The commenter stated that the language of this rule ("The right to have the child's religious needs met. The child has the right to choose a church or not to practice a religion.") was troublesome and would be problematic for faith-based organizations. Many residential care agencies are faith-based. These policies and contract mandates restrict operations and compound the problems of the Texas foster care system.

Response: DFPS agrees with the commenter, but adopts this rule without changes. Before publication of this rule, the language of this rule was modified and was published to say "The right to have the child's religious needs met", which is the lan-

guage that was used in the previous rule that was in place for the last ten years. This meets the intent to protect the child's right to practice a religion consistent with the child's belief system without unnecessary and prescriptive language in the rule.

Comments concerning §748.1219(3)(A) and 748.1551: The commenter recommended that advanced practice registered nurses (APRNs) be able to sign written orders for the admission of children with primary medical needs into a GRO, and allow APRNs to review a child's primary medical needs.

Response: DFPS agrees with the commenter, but adopts these rules without changes. DFPS believes it would be prudent to propose these changes in the future to place GROs and physicians on notice and to allow GROs and physicians an opportunity to comment on any changes to the rules.

No comments concerning §748.1349. However, DFPS adopts this rule with changes to clarify the language in the rule.

Comment concerning §748.1539(c): The commenter proposes that a GRO be allowed 30 days after admission in all situations to obtain immunization records, because there are several circumstances besides the child being homeless or in foster care when a child's immunization records cannot be obtained immediately. Re-immunizing children multiple times carries a medical risk and should be avoided. And the referral to a health-care professional should be to "restart" the immunizations rather than to "obtain" the immunizations.

Response: DFPS disagrees with the commenter, and adopts these rules without changes. Provisional enrollment of a child without meeting immunization requirements is specified in the Department of State Health Services (DSHS) rules. Those rules only allow for provisional enrollment for children who are homeless or in foster care. No other option is available under law. Those rules also specify that the student should be promptly referred to an appropriate health care provider to "obtain" the required vaccinations/immunizations.

Comment concerning §748.1543: The commenter stated that DSHS uses an immunization record format that does not require the address and phone number of the health-care professional that administered the vaccine, and this information is not likely to be available.

Response: DFPS agrees with the commenter, and adopts this rule with changes. While the proposed rule does not mention phone numbers, it does require an address. DFPS agrees the DSHS rules do not require addresses, but do require clinic contact information if the immunization record was generated from an electronic health record system. DFPS has reorganized this proposed rule regarding the documentation requirements for immunization records to delete the address requirement, add the clinic contact information, simplify and clarify the language of the rule, and make this rule consistent with its sister rules in Chapters 744 and 746.

No comments concerning §748.1695. However, DFPS adopts this rule with changes to replace "child" with "infant".

Comment concerning §748.1757(b) and (c) [proposed as §748.1757(a)(6)]: As proposed, the rule added language to an existing rule enumerating types of products not allowed in a crib for an infant younger than 12 months of age. Of particular relevance to this rule, DFPS proposed adding a clarification that crib bumpers, which were not allowed under prior rule and interpretation, included "mesh bumpers." The commenter stated that there is a difference between bumper pads/mesh bumpers and mesh liners. The commenter disputed CCL's rationale for the changes that liners pose risks to children in care. According to the commenter, mesh liners prevent an infant's limbs from being entrapped between the crib slats. In addition, the mesh liners are much more permeable (from 14 to 46 times more permeable) than bumper pads and are not a risk for suffocation. The commenter provided studies they paid for to support both of these points, which conclude that for 13 plus years there have been no known injuries or deaths as a result of the mesh liners. The commenter expressed concern that there was no definition for bumper pads. One solution suggested was to ban bumper pads (including mesh bumpers) that incorporate any padding or other materials that are more than 12mm in thickness. The commenter indicated that were DFPS to adopt a ban on all types of bumpers and liners, the agency would be out of step with current research and pending action on the part of the Consumer Products Safety Commission (CPSC).

In addition, the commenter voiced concerns regarding whether DFPS complied with the Administrative Procedures Act in the proposal of the rule. Specifically, the commenter complained that product manufacturers were not specifically included in the preparatory outreach DFPS conducted prior to the rule's proposal in the *Texas Register.* The commenter next took issue with the fact that the rule proposal had an incorrect cite regarding the statutory authority under which the rules were proposed, which the commenter indicated delayed their assessment of the impact of the rule. Finally, the commenter also expressed that fiscal implications to manufacturers should have been calculated as a part of DFPS' fiscal impact analysis.

Response: DFPS recommends that the rule be adopted with changes. The DFPS rationale for the rule change is based on existing research that states that the safest course for a sleeping infant is a bare crib. However, DFPS agrees that the language could be clarified. First, DFPS determined it would be of maximum clarity to the public to reiterate the agency's stance, which mirrors that of the American Academy of Pediatrics (AAP) and the agency's own safe sleep campaigns that to be as safe as possible, the crib must be bare of anything other than a tight fitting sheet. Second, DFPS is clarifying, as the AAP has noted, that a crib mattress cover used to protect against wetness is also allowable if the cover is specifically designed for the crib and crib mattress, tight fitting, thin, and not designed to make the sleep surface softer Lastly, rather than specifically enumerating any particular product, DFPS has concluded that it would be of maximum aid to the public's understanding to simply restate the basic principle that only a tight fitting sheet, or mattress cover if appropriately used, are allowed in a crib for an infant under 12 months.

DFPS carefully reviewed the information provided by the commenter, along with other available information regarding safe sleep; arranged a meeting with the commenter and high level agency staff; and have continued dialogue regarding the rule on an ongoing basis. However, DFPS continues to view the safest mode of sleep for an infant is a crib with nothing other than a bare sheet, which has been the agency's historical interpretation of this rule without the clarification DFPS proposed. While CPSC may propose safety standards for alternatives to crib bumpers in the future, and while it is true that some states have carved mesh liners from their prohibitions, DFPS is committed to reviewing and applying existing research with an eye to maximum child protection. A close reading of the most recent CPSC information provided by the commenter indicates that while the concern of suffocation with bumper pads may not be as great with alternatives to bumper pads (mesh liners and vertical bumpers), there

is still a lingering concern regarding alternatives to bumper pads being a strangulation hazard.

DFPS has concluded that the current CPSC review supports a ban of all bumpers and alternatives. Should the CPSC revisit their conclusions, CCL remains open to revisiting the corresponding regulations. However, in addition to the CPSC review, the American Academy of Pediatrics updated their guidelines regarding safe sleep as recently as October 24, 2016 and continues to recommend that for the maximum safety of infants, cribs be bare. While not specifically differentiating between cloth bumpers and mesh liners or other alternatives, the AAP's recommendations for the crib do not suggest that anything beyond a tight fitting sheet and possibly a tight fitting thin mattress cover if needed to protect the mattress against wetness. See http://pediatrics.aappublications.org/content/early/2016/10/25/peds.2016-2938.

Furthermore, in proposing this rule DFPS complied with the requirements of the Administrative Procedures Act. While product manufacturers were not specifically sought out for input prior to the rule's publication in the *Texas Register,* the requirements of the APA are that the public be put on notice of the rule in the proposal, not beforehand. Moreover, DFPS conducted a web-based survey from August - December 2014, held 13 stakeholder forums from September - November 2015, and met with two temporary workgroups in December 2015 and February 2016. In addition, while it would have been preferable for DFPS to list the correct statutory citation for rulemaking authority in the preamble as proposed, that requirement goes to whether DFPS had the statutory authority to take the action that it did, which is not in dispute. In addition, DFPS complied with the Act's directive to include in the preamble an explanation of the rule as well as the contents of the rule. Tex. Gov't Code §2001.024(a)(1) and -(2). Public notice is effectuated through those requirements and not the listing of statutory authority, as evidenced by the fact that the commenter determined the subject matter of the rule and submitted comments within the public comment period. Finally, the APA requires DFPS to consider the economic impact of the rule on those required to comply with the rule. Tex. Gov't Code §2001.024(a)(5). In any event, DFPS was not modifying its interpretation but clarifying existing practice. Nor is DFPS affecting the manufacture or sale of mesh liners in the marketplace generally. DFPS is regulating the use of mesh liners only within the small subset of Texas general residential operations subject to its regulatory authority.

Comment concerning §748.2009(a)(2): The commenter discussed this rule, which requires the GRO to inform a child's physician of the administration and dosage of non-prescription medication and supplements to ensure there is not a contraindication with prescribed medication or the condition of the child. The commenter recommends broadening the term "physician" to "prescribing health-care professional", which would include an advanced practice registered nurse or physician's assistant that prescribes medication. The change would allow the relevant health-care professional to be informed of the administration and dosage of non-prescription medication and supplements and provide the most up to date information on the child.

Response: DFPS agrees with the commenter and adopts this rule with changes. The language of "prescribing health-care professional" has been incorporated into the rule.

Comment concerning §748.2053: The commenter states the rule says "child", but wants further clarification on whether this standard regarding medication dosage for a self-medication program applies to residents who are 18 years and older.

Response: DFPS adopts this rule without changes. In response to the commenter's question, the rule only applies to children. All of the minimum standards are only monitored for and only apply to children in care and do not apply to adults in care, with very rare exceptions. For example, Subchapter G regarding Child/Caregiver Ratios specifically states that the ratios apply to adult residents.

No comments concerning §748.2233(b)(2). However, DFPS adopts this rule with changes to clarify that when reporting serious side effects to the health-care professional, the reporting should be to a "prescribing" health-care professional.

Comment concerning §748.2307(8): The commenter is concerned that "screaming" at a child will be at times too open to interpretation, especially in crisis situations and when a firm voice tone is needed.

Response: DFPS agrees with the commenter, and is withdrawing the amendment.

No comments concerning §748.2309(b). However, DFPS adopts this rule with changes to correct a typographical error.

Comment concerning §748.3365: The commenter would like temporary exceptions not in the child's bedroom to allow a mattress to be on the floor when additional support/supervision of the child is needed, especially when a child is a danger to self or others.

Response: DFPS agrees with the commenter, and adopts this rule with changes. DFPS agrees that in certain situations a child will need additional supervision, which may entail a child sleeping in other areas when the child is sick or needs additional supervision. The rule has been changed to clarify that a bed in the child's bedroom must elevate the mattress off the floor, and other wording has been changed to clarify that the linen requirements apply in all situations.

Comment concerning §748.3603(m): The commenter wanted clarification on the intent of the standard, assuming it means to protect children from entering the pool area versus exiting the pool area. Please clarify that furniture inside the fencing is not subject to this rule.

Response: DFPS agrees with the commenter, and adopts this rule with changes. DFPS clarified the rule to state that it is only applies to areas outside of the fence around the pool to keep a child from entering the pool area.

No comments concerning §748.3757. However, DFPS recommends a change to clarify that subsection (b) is only applicable when all of the children in the group are four years of age and older and to clarify in that situation at least two adults must supervise four or more children who are actually in the water.

SUBCHAPTER A. PURPOSE AND SCOPE

40 TAC §748.3

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendments implement HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606273
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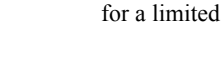
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854



SUBCHAPTER B. DEFINITIONS AND SERVICES

DIVISION 1. DEFINITIONS

40 TAC §748.43

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendments implement HRC §42.042.

§748.43. What do certain words and terms mean in this chapter?

The words and terms used in this chapter have the meanings assigned to them under §745.21 of this title (relating to What do the following words and terms mean when used in this chapter?), unless another meaning is assigned in this section or unless the context clearly indicates otherwise. The following words and terms have the following meanings unless the context clearly indicates otherwise:

(1) Accredited college or university--An institution of higher education accredited by one of the following regional accrediting entities:

(A) The Southern Association of Colleges and Schools Commission on Colleges, a subdivision of the Southern Association of Colleges and Schools;

(B) The Middle States Commission on Higher Education, a component of the Middle States Association of Colleges and Schools;

(C) The Commission on Institutions of Higher Education, a subdivision of the New England Association of Schools and Colleges;

(D) The Higher Learning Commission (formerly part of the North Central Association of Colleges and Schools);

(E) The Northwest Commission on Colleges and Universities;

(F) The Accrediting Commission for Senior Colleges and Universities, a subdivision of the Western Association of Schools and Colleges; or

(G) The Accrediting Commission for Community and Junior Colleges, a subdivision of the Western Association of Schools and Colleges.

(2) Activity space--An area or room used for child activities.

(3) Adaptive functioning--Refers to how effectively a person copes with common life demands and how well the person meets standards of personal independence expected of someone in his particular age group, sociocultural background, and community setting.

(4) Adult--A person 18 years old or older.

(5) Caregiver--A person counted in the child/caregiver ratio, whose duties include the direct care, supervision, guidance, and protection of a child. This does not include a contract service provider who:

(A) Provides a specific type of service to your operation for a limited number of hours per week or month; or

(B) Works with one particular child.

(6) Certified lifeguard--A person who has been trained in rescue techniques, lifesaving, and water safety by a qualified instructor from a recognized organization that awards a certificate upon successful completion of the training. A certified lifeguard ensures the safety of persons by preventing and responding to water related emergencies.

(7) Chemical restraint--A type of emergency behavior intervention that uses chemicals or pharmaceuticals through topical application, oral administration, injection, or other means to immobilize or sedate a child as a mechanism of control. The use of a medication is not a chemical restraint under this chapter if the medication:

(A) Is prescribed by a treating health-care professional;

(B) Is administered solely for medical or dental reasons; and

(C) Has a secondary effect of immobilizing or sedating a child.

(8) Child/caregiver ratio--The maximum number of children for whom one caregiver can be responsible.

(9) Childhood activities--Activities that are generally accepted as suitable for children of the same chronological age, level of maturity, and developmental level as determined by a reasonable and prudent parent standard as specified in §748.705 of this title (relating to What is the "reasonable and prudent parent standard"?). Examples of childhood activities include extracurricular activities, in-school and out-of-school activities, enrichment activities, cultural activities, and employment opportunities. Childhood activities include unsupervised childhood activities.

(10) Child in care--A child who is currently admitted as a resident of a general residential operation, regardless of whether the child is temporarily away from the operation, as in the case of a child at school or at work. Unless a child has been discharged from the operation, the child is considered a child in care.

(11) Child passenger safety seat system--An infant or child passenger restraint system that meets the federal standards for crash-tested restraint systems as set by the National Highway Traffic Safety Administration.

(12) Corporation or other type of business entity--May include an association, corporation, nonprofit association, nonprofit corporation, nonprofit association with religious affiliation, nonprofit corporation with religious affiliation, limited liability company, political subdivision, or state agency. For purposes of this chapter, this definition does not include any type of "partnership", which is defined separately.

(13) Cottage or cottage home--A living arrangement for children who are not receiving treatment services in which:

(A) Each group of children has separate living quarters;

(B) 12 or fewer children are in each group;

(C) Primary caregivers live in the children's living quarters, 24 hours per day for at least four days a week or 15 days a month; and

(D) Other caregivers are used only to meet the child-to-caregiver ratio in an emergency or to supplement care provided by the primary caregivers.

(14) Counseling--A procedure used by professionals from various disciplines in guiding individuals, families, groups, and communities by such activities as delineating alternatives, helping to articulate goals, processing feelings and options, and providing needed information. This definition does not include career counseling.

(15) Days--Calendar days, unless otherwise stated.

(16) De-escalation--Strategies used to defuse a volatile situation, to assist a child to regain behavioral control, and to avoid a physical restraint or other behavioral intervention.

(17) Department--The Department of Family and Protective Services (DFPS).

(18) Discipline--A form of guidance that is constructive or educational in nature and appropriate to the child's age, development, situation, and severity of the behavior.

(19) Emergency Behavior Intervention (EBI)--Interventions used in an emergency situation, including personal restraints, mechanical restraints, emergency medication, and seclusion.

(20) Emergency medication--A type of emergency behavior intervention that uses chemicals or pharmaceuticals through topical application, oral administration, injection, or other means to modify a child's behavior. The use of a medication is not an emergency medication under this chapter if the medication:

(A) Is prescribed by a treating health-care professional;

(B) Is administered solely for a medical or dental reason (e.g. Benadryl for an allergic reaction or medication to control seizures); and

(C) Has a secondary effect of modifying a child's behavior.

(21) Emergency situation--A situation in which attempted preventative de-escalatory or redirection techniques have not effectively reduced the potential for injury, so that intervention is immediately necessary to prevent:

(A) Imminent probable death or substantial bodily harm to the child because the child attempts or continually threatens to commit suicide or substantial bodily harm; or

(B) Imminent physical harm to another because of the child's overt acts, including attempting to harm others. These situations may include aggressive acts by the child, including serious incidents of shoving or grabbing others over their objections. These situations do not include verbal threats or verbal attacks.

(22) Family members--An individual related to another individual within the third degree of consanguinity or affinity. For the definitions of consanguinity and affinity, see Chapter 745 of this title (relating to Licensing). The degree of the relationship is computed as described in Government Code, §573.023 (relating to Computation of Degree of Consanguinity) and §573.025 (relating to Computation of Degree of Affinity).

(23) Field trip--A group activity conducted away from the operation.

(24) Food service--The preparation or serving of meals or snacks.

(25) Full-time--At least 30 hours per week.

(26) Garbage--Food or items that when deteriorating cause offensive odors and/or attract rodents, insects, and other pests.

(27) General Residential Operation--A residential child-care operation that provides child care for 13 or more children or young adults. The care may include treatment services and/or programmatic services. These operations include formerly titled emergency shelters, operations providing basic child care, residential treatment centers, and halfway houses.

(28) Governing body--A group of persons or officers of the corporation or other type of business entity having ultimate authority and responsibility for the operation.

(29) Group of children--Children assigned to a specific caregiver or caregivers. Generally, the group stays with the assigned caregiver(s) throughout the day and may move to different areas throughout the operation, indoors and out. For example, children who are assigned to specific caregivers occupying a unit or cottage are considered a group.

(30) Health-care professional--A licensed physician, licensed advanced practice registered nurse, physician's assistant, licensed vocational nurse (LVN), licensed registered nurse (RN), or other licensed medical personnel providing health care to the child within the scope of the person's license. This does not include medical doctors or medical personnel not licensed to practice in the United States.

(31) High-risk behavior--Behavior of a child that creates an immediate safety risk to self or others. Examples of high-risk behavior include suicide attempt, self-abuse, physical aggression causing bodily injury, chronic running away, substance abuse, fire-setting, and sexual aggression or perpetration.

(32) Human services field--A field of study that contains coursework in the social sciences of psychology and social work including some counseling classes focusing on normal and abnormal human development and interpersonal relationship skills from an accredited college or university. Coursework in guidance counseling does not apply.

(33) Immediate danger--A situation where a prudent person would conclude that bodily harm would occur if there were no immediate interventions. Immediate danger includes a serious risk of suicide, serious physical injury to self or others, or the probability of bodily harm resulting from a child running away if less than 10 years old chronologically or developmentally. Immediate danger does not include:

(A) Harm that might occur over time or at a later time; or

(B) Verbal threats or verbal attacks.

(34) Infant--A child from birth through 17 months.

(35) Livestock--An animal raised for human consumption or an equine animal.

(36) Living quarters--A structure or part of a structure where a group of children reside, such as a building, house, cottage, or unit.

(37) Mechanical restraint--A type of emergency behavior intervention that uses the application of a device to restrict the free movement of all or part of a child's body in order to control physical activity.

(38) Mental health professional--Refers to:

(A) A psychiatrist licensed by the Texas Medical Board;

(B) A psychologist licensed by the Texas State Board of Examiners of Psychologists;

(C) A master's level social worker or higher licensed by the Texas State Board of Social Work Examiners;

(D) A professional counselor licensed by the Texas State Board of Examiners of Professional Counselors;

(E) A marriage and family therapist licensed by the Texas State Board of Examiners of Marriage and Family Therapists; and

(F) A master's level or higher nurse licensed as an Advanced Practice Registered Nurse by the Texas Board of Nursing and board certified in Psychiatric/Mental Health.

(39) Non-ambulatory--A child that is only able to move from place to place with assistance, such as a walker, crutches, a wheelchair, or prosthetic leg.

(40) Non-mobile--A child that is not able to move from place to place, even with assistance.

(41) Operation--General residential operations, including residential treatment centers.

(42) Owner--The sole proprietor, partnership, or corporation or other type of business entity who owns the operation.

(43) Parent--A person who has legal responsibility for or legal custody of a child, including the managing conservator or legal guardian.

(44) Partnership--A partnership may be a general partnership, (general) limited liability partnership, limited partnership, or limited partnership as limited liability partnership.

(45) Permit holder--The owner of the operation that is granted the permit.

(46) Permit is no longer valid--For purposes of this chapter, a permit remains valid through the renewal process. A permit only becomes invalid when your operation voluntarily closes or is required to close through an enforcement action in Subchapter L of Chapter 745 (relating to Enforcement Actions).

(47) Person legally authorized to give consent--The person legally authorized to give consent by the Texas Family Code or a person authorized by the court.

(48) Personal restraint--A type of emergency behavior intervention that uses the application of physical force without the use of any device to restrict the free movement of all or part of a child's body in order to control physical activity. Personal restraint includes escorting, which is when a caregiver uses physical force to move or direct a child who physically resists moving with the caregiver to another location.

(49) Physical force--Pressure applied to a child's body that reduces or eliminates the child's ability to move freely.

(50) PRN--A standing order or prescription that applies "pro re nata" or "as needed according to circumstances."

(51) Prone restraint--A restraint in which the child is placed in a chest-down hold.

(52) Psychosocial assessment--An evaluation by a mental health professional of a child's mental health that includes a:

(A) Clinical interview of the child;

(B) Diagnosis from the Diagnostic and Statistical Manual of Mental Disorders 5 (DSM-5), or statement that rules out a DSM-5 diagnosis;

(C) Treatment plan for the child, including whether further evaluation of the child is needed (for example: is a psychiatric evaluation needed to determine if the child would benefit from psychotropic medication or hospitalization; or is a psychological evaluation with psychometric testing needed to determine if the child has a learning disability or an intellectual disability); and

(D) Written summary of the assessment.

(53) Re-evaluate--Re-assessing all factors required for the initial evaluation for the purpose of determining if any substantive changes have occurred. If substantive changes have occurred, these areas must be fully evaluated.

(54) Regularly--On a recurring, scheduled basis. Note: For the definition for "regularly or frequently present at an operation" as it applies to background checks, see §745.601 of this title (relating to What words must I know to understand this subchapter?).

(55) Residential Treatment Center (RTC)--A general residential operation for 13 or more children or young adults that exclusively provides treatment services for children with emotional disorders.

(56) Sanitize--The use of a product (usually a disinfecting solution) registered by the Environmental Protection Agency (EPA) that substantially reduces germs on inanimate objects to levels considered safe by public health requirements. Many bleach and hydrogen peroxide products are EPA-registered. You must follow the product's labeling instructions for sanitizing (paying particular attention to any instructions regarding contact time and toxicity on surfaces likely to be mouthed by children, such as toys and crib rails). For an EPA-registered sanitizing product or disinfecting solution that does not include labeling instructions for sanitizing (a bleach product, for example), you must conduct these steps in the following order:

(A) Washing with water and soap;

(B) Rinsing with clear water;

(C) Soaking in or spraying on a disinfecting solution for at least two minutes. Rinsing with cool water only those items that a child is likely to place in his mouth; and

(D) Allowing the surface or item to air-dry.

(57) School-age child--A child five years old or older who will attend school in August or September of that year.

(58) Seat belt--A lap belt and any shoulder strap included as original equipment on or added to a motor vehicle.

(59) Seclusion--A type of emergency behavior intervention that involves the involuntary separation of a child from other residents and the placement of the child alone in an area from which the

resident is prevented from leaving by a physical barrier, force, or threat of force.

(60) Service plan--A plan that identifies a child's basic and specific needs and how those needs will be met.

(61) Short personal restraint--A personal restraint that does not last longer than one minute before the child is released.

(62) State or local fire inspector--A fire official who is authorized to conduct fire safety inspections on behalf of the city, county, or state government.

(63) State or local sanitation official--A sanitation official who is authorized to conduct environmental sanitation inspections on behalf of the city, county, or state government.

(64) Substantial physical injury--Physical injury serious enough that a reasonable person would conclude that the injury needs treatment by a medical professional, including dislocated, fractured, or broken bones; concussions; lacerations requiring stitches; second and third degree burns; and damages to internal organs. Evidence that physical injury is serious includes the location and/or severity of the bodily harm and/or age of the child. Substantial physical injury does not include minor bruising, the risk of minor bruising, or similar forms of minor bodily harm that will resolve healthily without professional medical attention.

(65) Supplements--Includes vitamins, herbs, and any supplement labeled dietary supplement.

(66) Supine restraint--Placing a child in a chest up restraint hold.

(67) Swimming activities--Activities related to the use of swimming pools, wading/splashing pools, hot tubs, or other bodies of water.

(68) Toddler--A child from 18 months through 35 months.

(69) Trafficking victim--A child who has been recruited, harbored, transported, provided or obtained for the purpose of forced labor or commercial sexual activity, including any child subjected to an act or practice as specified in Penal Code §20A.02 or §20A.03.

(70) Trauma informed care (TIC)--Care for children that is child-centered and considers the unique culture, experiences, and beliefs of the child. TIC takes into consideration:

(A) The impact that traumatic experiences have on the lives of children;

(B) The symptoms of childhood trauma;

(C) An understanding of a child's personal trauma history;

(D) The recognition of a child's trauma triggers; and

(E) Methods of responding that improve a child's ability to trust, to feel safe, and to adapt to changes in the child's environment.

(71) Treatment director--The person responsible for the overall treatment program providing treatment services. A treatment director may have other responsibilities and may designate treatment director responsibilities to other qualified persons.

(72) Universal precautions--An approach to infection control where all human blood and certain human bodily fluids are treated as if known to be infectious for HIV, HBV, and other blood-borne pathogens.

(73) Unsupervised childhood activities--Childhood activities that a child in care participates in away from the operation and the caregivers. Childhood activities that an operation sponsors, conducts, or supervises are not unsupervised childhood activities. Unsupervised childhood activities may include playing sports, going on field trips, spending the night with a friend, going to the mall, or dating. Unsupervised childhood activities may last one or more days.

(74) Vaccine-preventable disease--A disease that is included in the most current recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

(75) Volunteer--A person who provides:

(A) Child-care services, treatment services, or programmatic services under the auspices of the operation without monetary compensation; or

(B) Any type of services under the auspices of the operation without monetary compensation when the person has unsupervised access to a child in care.

(76) Young adult--An adult whose chronological age is between 18 and 22 years, who is currently in a residential child-care operation, and who continues to need 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.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606274
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

DIVISION 2. SERVICES

40 TAC §748.61, §748.65

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendments implement HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606275
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

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SUBCHAPTER C. ORGANIZATION AND ADMINISTRATION
DIVISION 1. PERMIT HOLDER RESPONSIBILITIES

40 TAC §§748.101, 748.103, 748.105, 748.107, 748.109, 748.111

The repeals are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The repeals implement HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606276
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

♦ ♦ ♦

DIVISION 1. PLANS AND POLICIES REQUIRED FOR THE APPLICATION PROCESS

40 TAC §§748.101, 748.103, 748.105, 748.107, 748.109, 748.111, 748.113, 748.115, 748.117, 748.119, 748.121, 748.123, 748.125, 748.127, 748.129

The new sections are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The new sections implement HRC §42.042.

§748.113. What emergency behavior intervention policies must I develop if my operation is permitted to use emergency behavior intervention?

At a minimum, you must develop emergency behavior intervention policies to implement the requirements in Subchapter N of this chapter (relating to Emergency Behavior Intervention). The policies must include the following:

(1) A complete description of emergency behavior interventions that you permit caregivers to use;

(2) The specific techniques that caregivers can use;

(3) The qualifications for caregivers who assume the responsibility for emergency behavior intervention implementation, including required experience and training, and an evaluation component for determining when a specific caregiver meets the requirements of a caregiver qualified in emergency behavior intervention. You must have an on-going program to evaluate caregivers qualified in emergency behavior intervention and the use of emergency behavior interventions;

(4) Your requirements for and restrictions on the use of permitted emergency behavior interventions;

(5) For the orientation required in §748.1209(b)(6) of this title (relating to What orientation must I provide a child?), how you will:

(A) Explain and document to a child in a manner that the child can understand:

(i) Who can use an emergency behavior intervention;

(ii) The actions a caregiver must first attempt to defuse the situation and avoid the use of emergency behavior intervention;

(iii) The situations in which emergency behavior intervention may be used;

(iv) The types of emergency behavior intervention you permit;

(v) When the use of an emergency behavior intervention must cease;

(vi) What action the child must exhibit to be released from the emergency behavior intervention;

(vii) The way to report an inappropriate emergency behavior intervention;

(viii) The way to provide voluntary comments during or after an emergency behavior intervention; and

(ix) The process for making written comments after an emergency behavior intervention, such as comments regarding the incident that led to the emergency behavior intervention, the manner in which a caregiver intervened, and the manner in which the child was the subject or to which they were a witness. You may create a standardized form that is easily accessible or give children the permission to submit comments on regular paper; and

(B) Obtain each child's input on preferred de-escalation techniques that caregivers can use to assist the child in the de-escalation process;

(6) That you will either:

(A) Post in a place where children and adult clients can view them, the emergency behavior interventions that you permit at your operation; or

(B) Provide the children and adult clients at admission a personal copy of the operation's emergency behavior intervention policies;

(7) Requirements that caregivers must attempt less restrictive and less intrusive emergency behavior interventions as preventive measures and de-escalating interventions to avoid the use of emergency behavior intervention;

(8) Training for emergency behavior intervention. The policy must include a description of the emergency behavior intervention training curriculum that meets the requirements in the rules of this chapter, the amount and type of training required for different levels of

caregivers (if applicable), training content, and how the training will be delivered; and

(9) Prohibitions for discharging or otherwise retaliating against:

(A) An employee, child in care, adult client, resident, or other person for filing a complaint, presenting a grievance, or otherwise providing in good faith information relating to the misuse of emergency behavior intervention at the operation; or

(B) A child in care, adult client, or resident because someone on behalf of the client or resident files a complaint, presents a grievance, or otherwise provides in good faith information relating to the misuse of emergency behavior intervention at the operation.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606277
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

♦ ♦ ♦

DIVISION 2. GOVERNING BODY

40 TAC §748.131, §748.133

The repeals are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The repeals implement HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606278
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

♦ ♦ ♦

DIVISION 2. OPERATIONAL RESPONSIBILITIES AND NOTIFICATIONS

40 TAC §§748.151, 748.153, 748.155, 748.157

The new sections are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The new sections implement HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606279
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

♦ ♦ ♦

DIVISION 3. GENERAL FISCAL REQUIREMENTS

40 TAC §748.161, §748.163

The repeals are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The repeals implement HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606280
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

♦ ♦ ♦

40 TAC §748.161

The new sections are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The new sections implement HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606281
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

♦ ♦ ♦

DIVISION 4. REQUIRED POSTINGS

40 TAC §748.191

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendments implement HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606282
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

♦ ♦ ♦

DIVISION 5. POLICIES AND PROCEDURES

40 TAC §§748.231, 748.233, 748.235, 748.237, 748.239, 748.241

The repeals are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The repeals implement HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606283
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

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SUBCHAPTER D. REPORTS AND RECORD KEEPING

DIVISION 1. REPORTING SERIOUS INCIDENTS AND OTHER OCCURRENCES

40 TAC §§748.301, 748.303, 748.309, 748.313, 748.315

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendments implement HRC §42.042.

§748.303. When must I report and document a serious incident?

(a) You must report and document the following types of serious incidents involving a child in your care. The reports must be made to the following entities, and the reporting and documenting must be within the specified time frames:
Figure: 40 TAC §748.303(a)

(b) If there is a medically pertinent incident, such as a seizure, that does not rise to the level of a serious incident, you do not have to report the incident but you must document the incident in the same manner as a serious incident.

(c) If there is a serious incident involving an adult resident, you do not have to report the incident to Licensing, but you must document the incident in the same manner as a serious incident. You do have to report the incident to:

(1) Law enforcement, as outlined in the chart above;

(2) The parents, if the adult resident is not capable of making decisions about the resident's own care; and

(3) Adult Protective Services through the Texas Abuse and Neglect Hotline if there is reason to believe the adult resident has been abused, neglected or exploited.

(d) You must report and document the following types of serious incidents involving your operation, an employee, a professional level service provider, contract staff, or a volunteer to the following entities within the specified time frame:
Figure: 40 TAC §748.303(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 December 6, 2016.

TRD-201606284

Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

♦ ♦ ♦

40 TAC §748.307

The repeal is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The repeal implements HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606286
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

♦ ♦ ♦

DIVISION 2. OPERATION RECORDS

40 TAC §748.341

The repeal is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The repeal implements HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606287
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

♦ ♦ ♦

40 TAC §§748.341, 748.343, 748.345, 748.347

The new sections are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The new sections implement HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606288
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

♦ ♦ ♦

DIVISION 3. PERSONNEL RECORDS

40 TAC §748.361, §748.363

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendments implement HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606289
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

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DIVISION 4. CHILD RECORDS

40 TAC §748.393, §748.395

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendments implement HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606290
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

♦ ♦ ♦

DIVISION 5. RECORD RETENTION

40 TAC §748.435

The repeal is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The repeal implements HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606291
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

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SUBCHAPTER E. PERSONNEL

DIVISION 1. GENERAL REQUIREMENTS

40 TAC §748.501

The repeal is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The repeal implements HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606292
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

♦ ♦ ♦

40 TAC §748.505

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendment implements HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606293
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

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DIVISION 2. CHILD-CARE ADMINISTRATOR

40 TAC §§748.533, 748.535, 748.539

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendments implement HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606294
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

♦ ♦ ♦

DIVISION 3. PROFESSIONAL LEVEL SERVICE PROVIDERS

40 TAC §§748.563, 748.571, 748.575

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendments implement HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606295
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

♦ ♦ ♦

DIVISION 4. TREATMENT DIRECTOR

40 TAC §748.605

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendment implements HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606296
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

♦ ♦ ♦

DIVISION 5. CAREGIVERS

40 TAC §748.681

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendment implements HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606297
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

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DIVISION 6. CONTRACT STAFF AND VOLUNTEERS

40 TAC §§748.721, 748.724, 748.725, 748.729, 748.731

The amendments and new sections are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendments and new sections implement HRC §42.042.

§748.724. When is a volunteer or contractor who is a part of another organization subject to my policies and procedures?

(a) A volunteer or contractor who is part of another organization is subject to your policies and procedures unless that organization provides screening, training, and supervision to the volunteer/contractor that are adequate to protect the health and safety of children. Before the volunteer/contractor can have contact with children:

(1) The volunteer/contractor must meet the relevant requirements of your policies and procedures; or

(2) You must confirm that the organization provides adequate screening, training, and supervision.

(b) An organization may be another licensed operation.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606298
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

♦ ♦ ♦

40 TAC §748.727, §748.731

The repeals are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The repeals implement HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606299
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

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SUBCHAPTER F. TRAINING AND PROFESSIONAL DEVELOPMENT
DIVISION 1. DEFINITIONS

40 TAC §748.801

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendment implements HRC §42.042.

§748.801. What do certain words and terms mean in this subchapter?

The words and terms used in this subchapter have the following meaning:

(1) CPR--Cardiopulmonary resuscitation.

(2) Hours--Clock hours.

(3) Instructor-led training--Training that is characterized by the communication and interaction that takes place between the student and the instructor. It must include an opportunity for the student to interact with the instructor to obtain clarifications and information beyond the scope of the training material. For such an opportunity to exist, the instructor must be able to answer questions, provide feedback on skills practice, provide guidance or information on additional resources, and proactively interact with students. Examples of this type of training include classroom training, on-line distance learning, video-conferencing, or other group learning experiences.

(4) Self-instructional training--Training designed to be used by one individual working alone and at the individual's own pace to complete lessons or modules. An example of this type of training is web-based training. Self-study training is also a type of self-instructional training.

(5) Self-study training--Non-standardized training where an individual reads written materials, watches a training video, or listens to a recording to obtain certain knowledge that is required for annual training. Self-study training is limited to three hours, see 748.937(d) of this title (relating to What types of hours or instruction can be used to complete the annual training requirements?).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606301
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

♦ ♦ ♦

DIVISION 3. PRE-SERVICE EXPERIENCE AND TRAINING

40 TAC §§748.861, 748.867, 748.869

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendments implement HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606302
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

♦ ♦ ♦

DIVISION 4. GENERAL PRE-SERVICE TRAINING

40 TAC §748.883, §748.885

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendments implement HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606304
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

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DIVISION 6. ANNUAL TRAINING

40 TAC §§748.935, 748.937, 748.939, 748.941, 748.943, 748.945

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendments implement HRC §42.042.

§748.937. What types of hours or instruction can be used to complete the annual training requirements?

(a) If the training complies with the other rules in this division (relating to Annual Training), annual training may include hours or Continuing Education Units earned through:

(1) Workshops or courses offered by local school districts, colleges or universities, or Licensing;

(2) Conferences or seminars;

(3) Self-instructional training, excluding training on emergency behavior intervention and CPR;

(4) Planned learning opportunities provided by child-care associations or Licensing;

(5) Planned learning opportunities provided by a professional contract service provider, child-care administrator, professional level service provider, treatment director, or caregiver who meets minimum qualifications in the rules of this chapter; or

(6) Completed college courses for which a passing grade is earned, with three college credit hours being equivalent to 50 clock hours of required training. College courses do not substitute for required CPR or first-aid certification or required annual training on emergency behavior intervention or psychotropic medication.

(b) For annual training hours, you may count:

(1) The hours of annual training that a person received at another residential child-care operation, if the person:

(A) Received the training within the time period you are using to calculate the person's annual training; and

(B) Provides documentation of the training;

(2) Annual emergency behavior intervention training;

(3) First-aid and CPR training;

(4) Any hours of pre-service training that the person earned in addition to the required pre-service hours, although you may not carry over more than 10 hours of a person's pre-service training hours for use as annual training hours during the upcoming year;

(5) Half of the hours spent developing initial training curriculum that is relevant to the population of children served. No additional credit hours for training curriculum development are permitted for repeated training sessions; and

(6) One-fourth of the hours spent updating and making revisions to training curriculum that is relevant to the population of children served.

(c) For annual training hours, you may not count:

(1) Orientation training;

(2) Required pre-service training;

(3) The hours involved in case staffings and conferences with the supervisor; or

(4) The hours presenting training to others.

(d) No more than one-half of the required annual training hours may come from self-instructional training. No more than three of those self-instructional hours may come from self-study training.

(e) If a person earns more than the minimum number of training hours required during a particular year, the person can carry over to the next year a maximum of 10 training hours.

§748.939. Does Licensing approve training resources or trainers for annual training hours?

(a) No. We do not approve or endorse training resources or trainers for training hours.

(b) However, you must ensure the employees receive reliable training relevant to the population of children served.

(c) Instructor-led training and self-instructional training, excluding self-study training, must include:

(1) Specifically stated learning objectives;

(2) A curriculum, which includes experiential or applied activities;

(3) An evaluation/assessment tool to determine whether the person has obtained the information necessary to meet the stated objectives; and

(4) A certificate, letter, or a signed and dated statement of successful completion from the training 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.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606305
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

♦ ♦ ♦

DIVISION 7. FIRST-AID AND CPR CERTIFICATION

40 TAC §748.985, §748.987

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendments implement HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606306
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

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SUBCHAPTER G. CHILD/CAREGIVER RATIOS

40 TAC §§748.1009, 748.1013, 748.1021

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendments implement HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606307
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

♦ ♦ ♦

SUBCHAPTER H. CHILD RIGHTS

40 TAC §748.1101, §748.1105

The repeals are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The repeals implement HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606308
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

♦ ♦ ♦

40 TAC §§748.1101, 748.1103, 748.1109, 748.1117, 748.1119

The amendments and new sections are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendments and new sections implement HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606309
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

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SUBCHAPTER I. ADMISSION, SERVICE PLANNING, AND DISCHARGE
DIVISION 1. ADMISSION

40 TAC §§748.1205, 748.1207, 748.1209, 748.1211, 748.1213, 748.1215, 748.1217, 748.1219, 748.1223, 748.1225

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of ser-

vices by the health and human services agencies, including the Department of Family and Protective Services.

The amendments implement HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606310
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

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DIVISION 2. EMERGENCY ADMISSION

40 TAC §748.1263, §748.1269

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendments implement HRC §42.042.

§748.1263. What constitutes an emergency admission to my operation?

It is an emergency admission if:

(1) You must place the child within 72 hours;

(2) The child was removed from a situation involving alleged abuse or neglect;

(3) The child is an alleged perpetrator of abuse and cannot be served in the child's current placement due to the child's perpetrating behaviors;

(4) The child displays behavior that is an immediate danger to self or others and cannot function or be served in the child's current setting;

(5) The child was abandoned and after exercising reasonable efforts, the child's identity cannot be immediately determined. You must document the efforts made to obtain information on the child's identity in the child's record;

(6) The child was removed from the child's home or placement, and there is an immediate need to find a residence for the child;

(7) A law enforcement officer or juvenile probation officer released the child to your authorized emergency care program; or

(8) The child is otherwise without adult 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.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606311
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

♦ ♦ ♦

DIVISION 3. EDUCATIONAL SERVICES

40 TAC §748.1303

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendment implements HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606312
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

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DIVISION 4. SERVICE PLANS

40 TAC §§748.1331, 748.1335, 748.1337, 748.1340, 748.1341, 748.1345, 748.1349, 748.1351

The amendments and new sections are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendments and new sections implement HRC §42.042.

§748.1349. To whom do I provide a copy of the child's initial service plan?

(a) You must give a copy or summary of the initial service plan to the:

(1) Child, when appropriate. At a minimum, you must give a copy or summary of the plan to a child 14 years of age or older, unless there is justification for not providing the plan;

(2) Child's parents; and

(3) Child's caregivers.

(b) If you provide a copy or summary of the initial service plan to a child:

(1) The child must review the plan;

(2) The child must sign the plan, or you must document the child's refusal to sign it; and

(3) You must document if the child disagrees with the plan.

(c) If you do not provide a copy or summary of the initial service plan to a child, you must document your justification for not sharing the plan in the child's record.

(d) You must document in the child's record that you provided a copy or summary of the initial service plan to the child's parents.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606313
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

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DIVISION 5. SERVICE PLAN REVIEWS AND UPDATES

40 TAC §§748.1381, 748.1385, 748.1386, 748.1389

The amendments and new sections are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendments and new sections implement HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606314
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

♦ ♦ ♦

DIVISION 6. DISCHARGE AND TRANSFER PLANNING

40 TAC §§748.1433, 738.1435, 748.1437

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendments implement HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606315
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

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SUBCHAPTER J. CHILD CARE

DIVISION 1. DENTAL CARE

40 TAC §748.1501

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendment implements HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606316
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

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DIVISION 2. MEDICAL CARE

40 TAC §§748.1531, 748.1539, 748.1541, 748.1543, 748.1549, 748.1551

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of ser-

vices by the health and human services agencies, including the Department of Family and Protective Services.

The amendments implement HRC §42.042.

§748.1543. What documentation is acceptable for an immunization record?

Acceptable documentation includes:

(1) An official immunization record generated from a state or local health authority, including a record from another state. Examples include a registry, a copy of the current immunization record that is on file at the pre-kindergarten program or school, or the health passport for a child in the conservatorship of DFPS, so long as the record includes:

(A) The child's name and date of birth;

(B) The type of vaccine and number of doses; and

(C) The month, day, and year the child received each vaccination; or

(2) An official immunization record or photocopy, such as from a doctor's office, that includes:

(A) The child's name and date of birth;

(B) The type of vaccine and number of doses;

(C) The month, day, and year the child received each vaccination;

(D) The signature (including a rubber stamp or electronic signature) of the health-care professional who administered the vaccine, or another health-care professional's documentation of the immunization as long as the name of the health-care professional that administered the vaccine is documented; and

(E) Clinic contact information, if the immunization record is generated from an electronic health record system.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606317
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

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DIVISION 3. COMMUNICABLE DISEASES

40 TAC §748.1581

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendment implements HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606318
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

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DIVISION 6. TOBACCO AND E-CIGARETTE USE

40 TAC §748.1661

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendment implements HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606319
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

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DIVISION 7. NUTRITION AND HYDRATION

40 TAC §748.1695, §748.1697

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendments implement HRC §42.042.

§748.1695. What are the specific requirements for feeding an infant?

(a) You must feed the infant:

(1) On demand following the infant's lead on when to feed, how long to feed, and how much to feed; and

(2) Based on the recommendation of the infant's health-care professional, who must approve you giving the infant any milk other than fortified formula.

(b) You must hold the infant while feeding an infant that is:

(1) Birth through six months old; or

(2) Unable to sit unassisted in a high chair or other seating equipment during feeding.

(c) You must never prop a bottle by supporting it with something other than the infant's or adult's hand.

(d) If you care for more than one infant, you must:

(1) Label each bottle and training cup with the child's first name and initial of last name;

(2) Not permit the infant to share bottles or training cups; and

(3) Sanitize high chair trays before each use.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606321
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

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DIVISION 8. ADDITIONAL REQUIREMENTS FOR INFANT CARE

40 TAC §§748.1741, 748.1743, 748.1751, 748.1753, 748.1757, 748.1759, 748.1761, 748.1763, 748.1765

The amendments and new sections are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendments and new sections implement HRC §42.042.

§748.1757. What types of equipment are not allowed for use with infants?

(a) You may not use any of the following types of equipment with infants:

(1) Baby walkers;

(2) Baby doorway jumpers;

(3) Accordion safety gates;

(4) Toys that are not large enough to prevent swallowing or choking; and

(5) Bean bags, waterbeds, and foam pads for use as sleeping equipment.

(b) Except for a tight fitting sheet and as provided in subsection (c) of this section, the crib must be bare for an infant younger than twelve months of age.

(c) A crib mattress cover may be used to protect against wetness, but the cover must:

(1) Be designed specifically for the size and type of crib and crib mattress that it is being used with;

(2) Be tight fitting and thin; and

(3) Not be designed to make the sleep surface softer.

(d) An infant receiving treatment services for primary medical needs may have special items that assist with safe sleep at the written recommendation of a health-care professional. You must keep the recommendation in the child's record.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606322
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

♦ ♦ ♦

40 TAC §748.1753, §748.1765

The repeals are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The repeals implement HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606323
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

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DIVISION 9. ADDITIONAL REQUIREMENTS FOR TODDLER CARE

40 TAC §748.1791, §748.1793

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendments implement HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606326
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

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SUBCHAPTER L. MEDICATION
DIVISION 1. ADMINISTRATION OF MEDICATION

40 TAC §748.2003, §748.2009

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendments implement HRC §42.042.

§748.2009. What are the requirements for administering nonprescription medication and supplements?

(a) For non-prescription medications and supplements, you must:

(1) Follow the label instructions for dosage;

(2) Inform the child's prescribing health-care professional of the administration and dosage of any non-prescription medication or supplements to ensure the nonprescription medication and/or supplements are not contraindicated with any other medication prescribed to the child or the child's medical conditions.

(b) You may give nonprescription medication or supplements to more than one child from one container.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606329
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

♦ ♦ ♦

DIVISION 2. SELF-ADMINISTRATION OF MEDICATION

40 TAC §748.2053

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendment implement HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606332
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

♦ ♦ ♦

DIVISION 3. MEDICATION STORAGE AND DESTRUCTION

40 TAC §748.2101

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendment implements HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606334

Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

♦ ♦ ♦

DIVISION 4. MEDICATION RECORDS

40 TAC §748.2151

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendment implements HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606335
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

♦ ♦ ♦

DIVISION 6. SIDE EFFECTS AND ADVERSE REACTIONS TO MEDICATION

40 TAC §748.2231, §748.2233

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendments implement HRC §42.042.

§748.2233. What must I do if a child experiences side effects from any medications?

(a) A side effect from any medication is an effect of medication in addition to the medication's intended effect, often an undesirable effect.

(b) If a child experiences side effects from any medication, you must:

(1) Document the observed and reported side effects;

(2) Immediately report any serious side effects to the child's prescribing health-care professional and the child's parent; and

(3) Report any other side effect to the prescribing health-care professional within 72 hours.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606336
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

♦ ♦ ♦

SUBCHAPTER M. DISCIPLINE AND PUNISHMENT

40 TAC §748.2309

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendment implements HRC §42.042.

§748.2309. To what extent may I restrict a child's activities as a behavior management tool?

(a) Within limits, a caregiver may restrict a child's activities as a behavior management tool.

(b) Restrictions of activities that will be imposed on a child for more than fourteen days, must have prior approval by the treatment director, service planning team, or professional level service provider.

(c) Restrictions to a particular room or building that will be imposed on a child for more than 24 hours must have prior approval by the treatment director, service planning team, or professional level service provider.

(d) You must inform the child and parent about any restrictions that you place on the child.

(e) Documentation of all approvals, justification for the restriction, and informing the child and parents must be in the child's record.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606337
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

♦ ♦ ♦

SUBCHAPTER N. EMERGENCY BEHAVIOR INTERVENTION

40 TAC §748.2401

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendment implements HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606338
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

♦ ♦ ♦

SUBCHAPTER O. SAFETY AND EMERGENCY PRACTICES

40 TAC §748.3015, §748.3017

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendments implement HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606339
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

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SUBCHAPTER P. PHYSICAL SITE
DIVISION 2. INTERIOR SPACE

40 TAC §§748.3351, 748.3353, 748.3357, 748.3365

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendments implement HRC §42.042.

§748.3365. What are the requirements for beds and bedding?

(a) You must provide each child with an individual bed or bunk bed in the child's bedroom that elevates the mattress off of the floor. For infants and toddlers, a crib is allowable. For crib requirements, see §748.1751 of this title (relating to What specific safety requirements must my cribs meet?).

(b) Each bed being used by a child must have:

(1) A clean and comfortable mattress; and

(2) A mattress with a cover or protector if the child is not provided with a mattress that is waterproof.

(c) You must also provide the child with:

(1) A pillow and linens appropriate for the temperature, including a pillowcase, top sheet, and fitted or bottom sheet;

(2) Extra linens as needed for the child's warmth and comfort, such as a blanket or bedspread; and

(3) Clean linens that are changed or laundered if used by a different child and as often as needed for cleanliness and sanitation, but not less than once a week.

(d) If laundry service is not provided, laundry facilities supplied with hot and cold water under pressure must be provided for all children in care to use.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606340
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

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DIVISION 6. PLAY EQUIPMENT AND SAFETY REQUIREMENTS

40 TAC §748.3481

The repeal is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The repeal implement HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606341
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

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DIVISION 7. PLAYGROUND USE ZONES

40 TAC §748.3535

The repeal is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The repeal implements HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606342
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

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DIVISION 8. PROTECTIVE SURFACING

40 TAC §748.3567

The repeal is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The repeal implements HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606343
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

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DIVISION 9. SWIMMING POOLS, WADING/SPLASHING POOLS, AND HOT TUBS

40 TAC §748.3601, §748.3603

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendments implement HRC §42.042.

§748.3603. What are the additional requirements for a swimming pool located at my operation?

(a) The swimming pool must be built and maintained according to the standards of the Department of State Health Services and any other applicable state or local regulations.

(b) An adult must be present who is able to immediately turn off the pump and filtering system when any child is in a pool.

(c) If the pool is aboveground, it must meet all pool safety requirements specified in this subchapter and have a barrier that prevents a child's unauthorized access to the pool.

(d) Outdoor swimming pools must be enclosed with a six-foot fence or wall that prevents children's access to the pool. It must be constructed, so the fence or wall does not obscure the pool from view.

(e) Doors, operable windows, or gates of living quarters must not be part of the pool enclosure for outdoor swimming pools.

(f) Fence gates leading to the outdoor pool area must have self-closing and self-latching hardware located at least 60 inches from the ground and must be locked when the pool is not in use. An indoor swimming pool must be secured at all times to prevent children's access to the pool when a lifeguard is not on duty.

(g) Fence gates must open outward away from the pool and must not be propped open.

(h) The space between the ground and the bottom of the fence must not exceed four inches.

(i) When a fence is made of horizontal and vertical slats, the horizontal slats must be located on the swimming pool side of the fence.

(j) Doors from the operation leading to the pool area must have a lock that can only be opened by an adult.

(k) The doors and fence gates leading to or through the pool area must not be designated as fire and emergency evacuation exits.

(l) The drain grates, vacuum outlets, and skimmer covers that must be in place, must also be in good repair, and not be able to be removed without using tools.

(m) All indoor/outdoor areas within 50 feet outside of the fence around the pool must be free of furniture and equipment that a

child could use to enter the pool area by scaling a fence or barrier or releasing a lock.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606344
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

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SUBCHAPTER Q. RECREATION ACTIVITIES
DIVISION 1. GENERAL REQUIREMENTS

40 TAC §748.3701, §748.3705

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendments implement HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606345
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

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DIVISION 2. SWIMMING ACTIVITIES

40 TAC §§748.3751, 748.3753, 748.3757, 748.3765

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendments implement HRC §42.042.

§748.3757. What are the child/adult ratios for swimming activities?

(a) The maximum number of children one adult can supervise during swimming activities is based on the age of the youngest child in the group and is specified in the following chart:

Figure: 40 TAC §748.3757(a)

(b) When all of the children in the group are at least four years of age or older, in addition to meeting the required swimming child/adult ratio listed in subsection (a) of this section, at least two adults must supervise four or more children who are actually in the water.

(c) When a child who is non-ambulatory or who is subject to seizures is engaged in swimming activities, you must assign one adult to that one child. This adult must be in addition to the lifeguard on duty in the swimming area. You do not have to meet this requirement if a licensed physician writes orders in which the physician determines that the child:

(1) Is at low risk of seizures and that special precautions are not needed; or

(2) Only needs to wear an approved life jacket while swimming and additional special precautions are not needed.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606346
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

♦ ♦ ♦

DIVISION 3. WATERCRAFT ACTIVITIES

40 TAC §748.3801

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendment implements HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606347
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

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DIVISION 5. TRAMPOLINE USE

40 TAC §748.3891

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendment implements HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606348
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

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DIVISION 6. WEAPONS, FIREARMS, EXPLOSIVE MATERIALS, AND PROJECTILES

40 TAC §748.3931

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendment implements HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606349
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

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SUBCHAPTER R. TRANSPORTATION DIVISION 2. SAFETY RESTRAINTS

40 TAC §748.4041, §748.4047

The repeals are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The repeals implement HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606350
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

♦ ♦ ♦

40 TAC §§748.4041, 748.4043, 748.4045

The new section and amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The new section and amendments implement HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606351
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

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SUBCHAPTER S. ADDITIONAL REQUIREMENTS FOR OPERATIONS THAT PROVIDE EMERGENCY CARE SERVICES DIVISION 1. SERVICE MANAGEMENT

40 TAC §748.4213

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendment implements HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606352
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

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DIVISION 3. RESPITE CHILD-CARE SERVICES

40 TAC §748.4261, §748.4265

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendments implement HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606353
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

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SUBCHAPTER T. ADDITIONAL REQUIREMENTS FOR OPERATIONS THAT PROVIDE AN ASSESSMENT SERVICES PROGRAM

DIVISION 1. REGULATION

40 TAC §748.4301

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendment implements HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606354
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

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SUBCHAPTER U. ADDITIONAL REQUIREMENTS FOR OPERATIONS THAT PROVIDE THERAPEUTIC CAMP SERVICES

DIVISION 1. DEFINITIONS

40 TAC §748.4403

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendment implements HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606355
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

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DIVISION 3. PRIMITIVE CAMPING EXCURSIONS

40 TAC §748.4471, §748.4473

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendments implement HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2016.

TRD-201606356
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: August 26, 2016
For further information, please call: (512) 438-3854

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CHAPTER 748. MINIMUM STANDARDS FOR GENERAL RESIDENTIAL OPERATIONS

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§748.685, 748.863, 748.881, 748.931, 748.1003, 748.1339, and 748.4701; and new §§748.701, 748.703, 748.705, 748.707, 748.709, 748.868, 748.882, and 748.944, in Chapter 748, concerning Minimum Standards for General Residential Operations. The amendment to §748.1339; and new §748.705 and §748.944 are adopted with changes to the proposed text published in the June 10, 2016, issue of the *Texas Register* (41 TexReg 4166). The amendments to §§748.685, 748.863, 748.881, 748.931, 748.1003, and 748.4701; and new §§748.701, 748.703, 748.707, 748.709, 748.868, and 748.882, are adopted without changes to the proposed text and will not be republished.

BACKGROUND AND JUSTIFICATION

The justification of the new rules and amendments are to implement Senate Bill (S.B.) 1407 that was passed by the 84th Texas Legislature in 2015 and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy and for clarity and consistency. Both S.B. 1407 and the federal law require that normalcy requirements apply to General Residential Operations (GROs).

"Normalcy" is the ability of a child in care to live as normal a life as possible, including engaging in childhood activities that are suitable for children of the same age, level of maturity, and developmental level as determined by a reasonable and prudent parent standard.

Some minor changes related to normalcy are also being made to the Chapter 748 rules relating to service planning and children's rights. Since there are other more significant changes being made to the service planning and children's rights rules, those rules are also being adopted in a different rule packet regarding the comprehensive review of Chapter 748, which is being published in the same issue of the *Texas Register.*

New definitions for "childhood activities" and "unsupervised childhood activities" are being added to §748.43 of this title (relating to What do certain words and terms mean in this chapter?). Since there are many other changes being made to definitions in §748.43 in response to the comprehensive review of Chapter 748, the definition changes are being adopted in the comprehensive review packet of Chapter 748, which is being published in same issue of the *Texas Register.* However, for purposes of understanding these adopted changes the adopted §748.43 definitions are as follows: (1) childhood activities--activities that are generally accepted as suitable for children of the same chronological age, level of maturity, and developmental level as determined by a reasonable and prudent parent standard as specified in §748.705 of this title (relating to What is the "reasonable and prudent parent standard"?). Examples of childhood activities include extracurricular activities, in-school and out-of-school activities, enrichment activities, cultural activities, and employment opportunities. Childhood activities include unsupervised childhood activities; and (2) unsupervised childhood activities--childhood activities that a child in care participates in away from the operation and the caregivers. Childhood activities that an operation sponsors, conducts, or supervises are not unsupervised childhood activities. Unsupervised childhood activities may include playing sports, going on field trips, spending the night with a friend, going to the mall, or dating. Unsupervised childhood activities may last one or more days.

Finally, there are some additional rule review changes not related to normalcy that are being adopted in these rules, including: (1) training related to trauma informed care; and (2) updating the language and numbering of tables for consistency and ease of understanding.

Child Care Licensing (CCL) has met with three different workgroups that have provided input and comments regarding these rules related to normalcy. On September 29, 2015, CCL met with a workgroup of providers and advocates that were organized by Texas CASA (Court Appointed Special Advocates); On October 7, 2015, CCL met with the Committee for Advancing Residential Practices; and on December 16, 2015, CCL met with a workgroup of providers.

The sections will function by ensuring that safety of children in care and the quality of their care will be improved by integrating normalcy and trauma informed care into the minimum standards.

COMMENTS

The 30-day comment period ended July 11, 2016. During this period, DFPS did not receive any comments regarding the adoption of the new sections and amendments. However, DFPS is recommending changes to the three following rules: (1) §748.705 to clarify that the reasonable and prudent parent standard of care is used to encourage a child's social growth and development and to clarify two of the items that must be taken into consideration when making a reasonable and prudent decision on whether a child may participate in a childhood activity; (2) §748.944 to correct a typographical error; and (3) §748.1339 to clarify that the child and the parents must be invited to "participate and provide input into the development of the service plan". This will also make this rule more consistent with its sister rule in Chapter 749.

SUBCHAPTER E. PERSONNEL
DIVISION 5. CAREGIVERS

40 TAC §748.685

STATUTORY AUTHORITY

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendments implement HRC §42.042, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 5, 2016.

TRD-201606192
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: June 10, 2016
For further information, please call: (512) 438-3854

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DIVISION 6. NORMALCY

40 TAC §§748.701, 748.703, 748.705, 748.707, 748.709

STATUTORY AUTHORITY

The new rules are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The new rules implement HRC §42.042, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

§748.705. What is the "reasonable and prudent parent standard"?

(a) The reasonable and prudent parent standard is the standard of care that a parent of reasonable judgment, skill, and caution would use to maintain the health, safety, and best interest of the child and encourage the emotional and social growth and development of the child.

(b) When using the reasonable and prudent parent standard, a person must take into consideration the following when deciding whether a child may participate in childhood activities:

(1) The child's age and level of maturity;

(2) The child's cognitive, social, emotional, and physical development level;

(3) The child's behavioral history and ability to safely participate in a proposed activity;

(4) The child's overall abilities;

(5) Whether the activity is a normal childhood activity for a child of that age and level of maturity;

(6) The child's desires;

(7) The surrounding circumstances, hazards, and risks of the activity;

(8) Outside supervision of the activity, if available and appropriate;

(9) The supervision instructions in the child's service plan; and

(10) The importance of providing the child with the most normal family-like living experience possible.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 5, 2016.

TRD-201606196
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: June 10, 2016
For further information, please call: (512) 438-3854

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SUBCHAPTER F. TRAINING AND PROFESSIONAL DEVELOPMENT

DIVISION 3. PRE-SERVICE EXPERIENCE AND TRAINING

40 TAC §748.863, §748.868

STATUTORY AUTHORITY

The new rules and amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The new rules and amendments implement HRC §42.042, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 5, 2016.

TRD-201606199
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: June 10, 2016
For further information, please call: (512) 438-3854

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DIVISION 4. GENERAL PRE-SERVICE TRAINING AND PRE-SERVICE TRAINING REGARDING NORMALCY

40 TAC §748.881, §748.882

STATUTORY AUTHORITY

The new rules and amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The new rules and amendments implement HRC §42.042, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 5, 2016.

TRD-201606201
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: June 10, 2016
For further information, please call: (512) 438-3854

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DIVISION 6. ANNUAL TRAINING

40 TAC §748.931, §748.944

STATUTORY AUTHORITY

The new rules and amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The new rules and amendments implement HRC §42.042, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

§748.944. What curriculum components must be included in the annual normalcy training?

(a) The annual training regarding normalcy must include the curriculum components covered in the pre-service training regarding normalcy, see §748.882 of this title (relating to What curriculum components must be included in the pre-service training regarding normalcy?).

(b) Subsequent annual training regarding normalcy should further develop and refine an employee's knowledge and understanding of normalcy and how it should be implemented.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 5, 2016.

TRD-201606204
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: June 10, 2016
For further information, please call: (512) 438-3854

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SUBCHAPTER G. CHILD/CAREGIVER RATIOS

40 TAC §748.1003

STATUTORY AUTHORITY

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendments implement HRC §42.042, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 5, 2016.

TRD-201606207
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: June 10, 2016
For further information, please call: (512) 438-3854

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SUBCHAPTER I. ADMISSION, SERVICE PLANNING, AND DISCHARGE
DIVISION 4. SERVICE PLANS

40 TAC §748.1339

STATUTORY AUTHORITY

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendments implement HRC §42.042, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also

entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

§748.1339. Who must be involved in developing an initial service plan?

(a) A service planning team must develop the service plan. The team must consist of:

(1) At least one of the child's current caregivers;

(2) A person designated to make decisions regarding a child's participation in childhood activities; and

(3) At least one professional level service provider who provides direct services to the child.

(b) If you are providing treatment services to the child, the team must also consist of two of the following professions, which may or may not include additional members:

(1) A licensed professional counselor;

(2) A psychologist;

(3) A psychiatrist or physician;

(4) A licensed registered nurse;

(5) A licensed masters level social worker;

(6) A licensed or registered occupational therapist; or

(7) Any other person in a related discipline or profession that is licensed or regulated in accordance with state law.

(c) The child, if verbal and developmentally able to participate, and the parents must be invited to a service planning meeting, so that they may participate and provide input into the development of the service plan, including discussions regarding the child's participation in childhood 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.

Filed with the Office of the Secretary of State on December 5, 2016.

TRD-201606210
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: June 10, 2016
For further information, please call: (512) 438-3854

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SUBCHAPTER V. ADDITIONAL REQUIREMENTS FOR OPERATIONS THAT PROVIDE TRAFFICKING VICTIM SERVICES

DIVISION 5. CHILD/CAREGIVER RATIOS

40 TAC §748.4701

STATUTORY AUTHORITY

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendments implement HRC §42.042, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 5, 2016.

TRD-201606213
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: January 1, 2017
Proposal publication date: June 10, 2016
For further information, please call: (512) 438-3854

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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 §151.71, concerning Marking of State Vehicles of the Department of Criminal Justice. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Elsewhere in this issue of the *Texas Register,* the Texas Board of Criminal Justice contemporaneously proposes amendments to §151.71.

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 this notice in the *Texas Register.*

TRD-201606482
Sharon Howell
General Counsel
Texas Department of Criminal Justice
Filed: December 12, 2016

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The Texas Board of Criminal Justice files this notice of intent to review §151.73, concerning Texas Department of Criminal Justice Vehicle Assignments. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Elsewhere in this issue of the *Texas Register,* the Texas Board of Criminal Justice contemporaneously proposes amendments to §151.73.

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 this notice in the *Texas Register.*

TRD-201606490
Sharon Howell
General Counsel
Texas Department of Criminal Justice
Filed: December 12, 2016

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The Texas Board of Criminal Justice files this notice of intent to review §155.23, concerning the Site Selection Process for the Location of Additional Facilities. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Elsewhere in this issue of the *Texas Register,* the Texas Board of Criminal Justice contemporaneously proposes amendments to §155.23.

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 this notice in the *Texas Register.*

TRD-201606502
Sharon Howell
General Counsel
Texas Department of Criminal Justice
Filed: December 12, 2016

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The Texas Board of Criminal Justice files this notice of intent to review §163.21, concerning Administration. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Elsewhere in this issue of the *Texas Register,* the Texas Board of Criminal Justice contemporaneously proposes amendments to §163.21.

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 this notice in the *Texas Register.*

TRD-201606511
Sharon Howell
General Counsel
Texas Department of Criminal Justice
Filed: December 12, 2016

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Texas Department of Licensing and Regulation

Title 16, Part 4

The Texas Department of Licensing and Regulation (Department) files this notice of intent to review and consider for re-adoption, revision, or repeal, Title 16, Texas Administrative Code, Chapter 85, Vehicle Storage Facilities Program. This review and consideration is being conducted in accordance with the requirements of Texas Government Code, §2001.039.

An assessment will be made by the Department as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Department.

Any questions or written comments pertaining to this rule review may be submitted by mail to Neta Lamas, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or by facsimile to (512) 475-3032, or electronically to erule.comments@tdlr.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

Any proposed changes to these rules as a result of the rule review will be published in the Proposed Rule Section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption or repeal by the Department, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

§85.1 Authority.

§85.10 Definitions.

§85.20 Exemptions.

§85.200 License required--Vehicle Storage Facility.

§85.201 License Requirements--Vehicle Storage Facility License.

§85.202 License Approval--Vehicle Storage Facility.

§85.203 License Requirements--Vehicle Storage Facility License Renewal.

§85.204 License Requirements--Vehicle Storage Facility Employee License.

§85.205 Licensing Requirements--Dual Vehicle Storage Facility Employee and Towing Operator License.

§85.206 License Requirements--Vehicle Storage Facility Employee License Renewal; Dual Vehicle Storage Facility Employee and Towing Operator License.

§85.207 License--Notice of Proposed Denial, Opportunity to Comply.

§85.208 Department Notifications to Licensee.

§85.209 Licenses--License Terms.

§85.400 Insurance Requirements.

§85.450 Inspections--General.

§85.451 Periodic Inspections.

§85.452 Risk-based Inspections.

§85.453 Corrective Actions Following Inspection.

§85.650 Towing, Storage, and Booting Advisory Board.

§85.700 Responsibilities of the Licensee--Proof of Exempt Status.

§85.701 Responsibilities of Licensee--Advertising.

§85.702 Responsibilities of Licensee--Changes to VSF Operator and VSF Employee License.

§85.703 Responsibilities of Licensee--Notice to Vehicle Owner or Lienholder.

§85.704 Responsibilities of Licensee--Second Notice; Consent to Sale.

§85.705 Responsibilities of Licensee--Report to Law Enforcement.

§85.706 Responsibilities of Licensee--Documentation and Records.

§85.707 Responsibilities of Licensee--Notice of Complaint Procedure.

§85.708 Responsibilities of Licensee--Rights of Owner or Authorized Representative.

§85.709 Responsibilities of Licensee--Unpermitted Tow Trucks Prohibited.

§85.710 Release of Vehicles.

§85.711 Responsibilities of Licensee--Forms of Payment for Release of Vehicle.

§85.712 Responsibilities of Licensee--Release of Vehicles; Payment by Lienholder or Insurance Company.

§85.713 Responsibilities of Licensee--Release of Vehicles From Law Enforcement.

§85.714 Responsibilities of Licensee--Provide Insurance Information to Vehicle Owner.

§85.715 Responsibilities of Licensee--Publicly Listed Telephone Number.

§85.716 Responsibilities of Licensee--Inspection of Stored Vehicles.

§85.717 Responsibilities of Licensee--Removal of Parts; Dismantling or Demolishing Stored Vehicles.

§85.718 Responsibilities of Licensee--Use of Stored Vehicles Prohibited.

§85.719 Responsibilities of Licensee--Reasonable Storage Efforts; Impoundment of Stored Vehicles; Impoundment Fees.

§85.720 Responsibilities of Licensee--Repair; Alteration of Stored Vehicles Prohibited.

§85.722 Responsibilities of Licensee--Storage Fees and Other Charges.

§85.723 Responsibilities of Licensee--Disposal of Certain Vehicles.

§85.724 Responsibilities of Licensee--Disposition of Abandoned Nuisance Vehicle.

§85.725 Responsibilities of Licensee--Drug Testing Policy.

§85.726 Responsibilities of Licensee--Honesty, Trustworthiness, and Integrity.

§85.800 Fees.

§85.900 Administrative Sanctions and Penalties.

§85.1000 Technical Requirements--Facility Fencing Requirements.

§85.1001 Technical Requirements--Storage Lot Surface.

§85.1002 Technical Requirements--Storage Lot Lighting.

§85.1003 Technical Requirements--Storage Lot Signs.

§85.1004 Technical Requirements--Company Records.

TRD-201606578
Brian E. Francis
Executive Director
Texas Department of Licensing and Regulation
Filed: December 14, 2016

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The Texas Department of Licensing and Regulation (Department) files this notice of intent to review and consider for re-adoption, revision, or repeal, Title 16, Texas Administrative Code, Chapter 86, Vehicle Towing and Booting Program. This review and consideration is being

conducted in accordance with the requirements of Texas Government Code, §2001.039.

An assessment will be made by the Department as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Department.

Any questions or written comments pertaining to this rule review may be submitted by mail to Neta Lamas, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or by facsimile to (512) 475-3032, or electronically to erule.comments@tdlr.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

Any proposed changes to these rules as a result of the rule review will be published in the Proposed Rule Section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption or repeal by the Department, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

§86.1 Authority and Purpose

§86.10 Definitions

§86.200 Tow Truck Permit--Required

§86.201 Tow Truck Permit--Incident Management Towing

§86.202 Tow Truck Permit--Private Property Towing

§86.203 Tow Truck Permit--Consent Towing

§86.204 Tow Truck Permit--Approval and Issuance

§86.205 Tow Truck Permit--Renewal

§86.206 Tow Truck Cab Cards

§86.207 Licensing Requirements--Towing Operator License

§86.208 Towing Operator Licensing--Approval and Issuance

§86.209 Licensing Requirements--Incident Management Towing Operator License

§86.210 Licensing Requirements--Private Property Towing Operator License

§86.211 Licensing Requirements--Consent Towing Operator License

§86.212 Licensing Requirements--Dual Vehicle Storage Facility Employee and Towing Operator License

§86.213 Licensing Requirements--Towing Operator Training License

§86.214 Licensing Renewal--Towing Operators

§86.215 Licensing Requirements--Towing Company License Required

§86.216 Towing Company License--Approval and Issuance

§86.217 Towing Company License Renewal

§86.218 Department Notifications to Licensee or Permit Holder

§86.225 Emergency Consent Tow Truck Permit, Consent Tow Operator License, and Tow Company License

§86.226 Emergency Consent Tow Truck Permit

§86.227 Emergency Consent Tow Operator License

§86.228 Emergency Tow Company License

§86.250 License Requirements--Towing Operator Continuing Education

§86.400 Insurance Requirements--Tow Truck Permits

§86.450 Inspections--General

§86.451 Periodic Inspections

§86.452 Risk-based Inspections

§86.453 Corrective Actions Following Inspection

§86.455 Private Property Tow Fees

§86.458 Fees for Nonconsent Tows, Refunds

§86.500 Reporting Requirements--Towing Company

§86.650 Towing, Storage, and Booting Advisory Board

§86.700 Responsibilities of Tow Truck Permit Holder--Storage of Towed Vehicles

§86.701 Responsibilities of Tow Truck Permit Holder--Tow Truck Signage

§86.702 Responsibilities of Licensee and Permit Holder--Change Name, Address, or Drug and Alcohol Testing Policy

§86.703 Responsibilities of Towing Company--Change of Ownership

§86.705 Responsibilities of Towing Company--Standards of Conduct

§86.706 Responsibilities of Towing Company--Required Postings at Vehicle Storage Facility (VSF)

§86.708 Responsibilities of Towing Company--Tow Truck License Plates

§86.709 Responsibilities of Towing Company--Tow Ticket

§86.710 Responsibilities of Towing Company--Drug and Alcohol Testing Policy

§86.711 Responsibilities of Towing Company--Honesty, Trustworthiness, and Integrity

§86.715 Responsibilities of Towing Operators--Standards of Conduct

§86.800 Fees

§86.900 Sanctions and Administrative Penalties

§86.901 Cease and Desist Order

§86.902 Requirement to Reimburse

§86.903 Enforcement of Unpaid Judgments

§86.1000 Technical Requirements--Tow Truck Safety Equipment and Truck Operations

§86.1001 Technical Requirements--Towing Operator Safety Clothing and Identification

§86.1002 Technical Requirements--Towing Company Records

TRD-201606577
Brian E. Francis
Executive Director
Texas Department of Licensing and Regulation
Filed: December 14, 2016

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Adopted Rule Reviews

Texas A&M Forest Service

Title 4, Part 12

The Texas A&M Forest Service (Agency) adopts the review of Chapter 216 of the Texas Administrative Code, Title 4, Part 12 concerning the Rural Volunteer Fire Department Assistance Program in accordance with Texas Government Code §2001.039. The proposed notice of intent to review the rule was published in the October 21, 2016 issue of the *Texas Register* (41 TexReg 8297). No comments were received on the proposed rule review.

The Agency finds that the reasons for adopting the rule continue to exist. The rule is not obsolete, reflects current legal and policy considerations, and reflects current procedures of the Agency.

TRD-201606406
Robby DeWitt
Associate Director for Finance and Administration
Texas A&M Forest Service
Filed: December 8, 2016

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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 5 and 7, concerning Registered Interior Designers and Administration, respectively.

The rule review was conducted pursuant to Texas Government Code, §2001.039. Notice of the review of 22 TAC Part 1, Chapters 5 and 7 was published in the September 9, 2016, issue of the *Texas Register* (41 TexReg 7139). 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 5 are necessary: §5.5 and §5.34. The proposed amendments to Chapter 5 are being concurrently published elsewhere in this issue of the *Texas Register*.

Subject to the proposed rule changes in Chapter 5, the Board finds that the reasons for initially adopting the rules in Chapter 5 and 7 continue to exist, and readopts each rule in accordance with the requirements of Texas Government Code, §2001.039.

This concludes the review of 22 TAC Part 1, Chapters 5 and 7.

TRD-201606507
Lance Brenton
General Counsel
Texas Board of Architectural Examiners
Filed: December 12, 2016

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Texas Department of Criminal Justice

Title 37, Part 6

The Texas Board of Criminal Justice adopts the review of §163.46, concerning Allocation Formula for Community Corrections Program, in accordance with Texas Government Code §2001.039, which requires rule review every four years.

The proposed rule review was published in the November 4, 2016, issue of the *Texas Register* (41 TexReg 8831).

No comments were received regarding the rule review.

The agency's reason for adopting the rule continues to exist.

TRD-201606518
Sharon Howell
General Counsel
Texas Department of Criminal Justice
Filed: Dcember 12, 2016

♦ ♦ ♦

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 §377.111(b)

Years Providing Services	Percentage of State Support
First year	100%
Second year	90%
Third year	80%
Fourth year	70%
Fifth year	60%
Sixth year	50%
Seventh year and for each year thereafter*	50%

*After the end of the six-year period, HHSC does not provide more than 50 percent of the funding for the local program for any subsequent year.

Figure: 10 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.

Deadline	Documentation Required
12/31/2019	Placement in Service.
Five (5) business days after the date on the Deficiency Notice (without incurring point loss)	Administrative Deficiency Response Deadline (unless an extension has been granted).

Figure: 19 TAC §228.10(b)(1)

Component I: Governance	Evidence
19 TAC §228.20(b): The representative nature of an advisory committee.	Records of advisory committee membership reflecting at least three of the groups listed in this subsection; and Advisory committee meeting attendance records.
19 TAC §228.20(b): Input provided by an advisory committee.	Advisory committee member input reflected in the advisory committee minutes.
19 TAC §228.20(b): EPP informed advisory committee members of their roles and responsibilities.	Advisory committee training materials, date(s), attendance records; or Advisory committee handbook with acknowledgement of receipt by advisory committee member; or Letter of invitation with roles and responsibilities outlined and acknowledged by invitee as to accept or decline; or Bylaws acknowledged receipt by advisory committee member.
19 TAC §228.20(b): Advisory committee meeting.	Dated minutes of each advisory committee meeting.
19 TAC §228.20(e): The EPP provided notice of amendments to its approved program.	Record of notification to TEA.
19 TAC §228.20(f): The EPP provided notice and received approval of amendments to its approved program.	Record of approval or denial from TEA.
19 TAC §228.20(g): The EPP published a calendar of activities.	Calendar posted on EPP website.
19 TAC §228.10(a): The EPP has met the requirements for approval.	EPP accreditation status on file with TEA.
19 TAC §228.10(b): The EPP has met the requirements for continuing approval.	EPP accreditation status on file with TEA.
19 TAC §228.10(c): The EPP has met the requirements to offer clinical teaching.	EPP clinical teaching status on file with TEA.
19 TAC §228.10(d): The EPP has met the requirements to offer a certification class and/or category.	EPP certification class and/or category status on file with TEA.
19 TAC §228.10(e): The EPP provided notice of an additional location.	Record of letter(s) on letterhead signed by an EPP's legally authorized agent or representative sent by email or regular mail.
19 TAC §228.15: The EPP has met the requirements for consolidation or closure.	EPP notice of consolidation or closure; and EPP notification of candidates; and EPP completion of required SBEC and TEA actions. If closing, EPP notification of representative.
19 TAC §228.17: The EPP has met the requirements for changing ownership.	EPP notice of change of ownership.

Component II: Admission	Evidence
19 TAC §227.1(c): The EPP has informed applicants of the required information.	Website; or Recruitment information; or Orientation materials; or Admission material.
19 TAC §227.10(a)(1) and (2): Candidates have met the required institution of higher education (IHE) enrollment or degree requirements.	Original transcripts.
19 TAC §227.10(e): Out-of-country candidates have met the required degree requirement.	Official transcript evaluated by approved entity with equivalent report issued.
19 TAC §227.10(a)(3)(A): Candidates have met the minimum grade point average (GPA) requirement.	Official transcripts; and Documentation of calculations to determine GPA in the last 60 hours.
19 TAC §227.10(a)(3)(B) and (D): Candidates that have been admitted with a GPA less than the 2.5 minimum have met the requirements for the GPA exception.	Program policy; and Documentation signed by the director that certifies each applicant's work, business, or career experience demonstrates achievement equivalent to the academic achievement represented by the GPA requirement; and Pre-Admission Content Test score report.
19 TAC §227.10(a)(4): Applicants demonstrated content knowledge prior to admission.	Official transcripts; and Record of calculation of content hours by course; and Score report for a comparable examination approved by TEA; or Score report for Pre-Admission Content Test.
19 TAC §227.10(a)(5): Applicants demonstrated basic skills prior to admission.	Score reports; or Official transcripts bearing TSI requirements.
19 TAC §227.10(a)(6): Applicants demonstrated proficiency in English language skills prior to admission.	Official transcripts with degree from U.S. university or college; or A letter from the out-of-country institution stating the language of instruction is English; or Official TOEFL scores.
19 TAC §227.10(a)(7): A screening device has been used to determine applicant admission.	Completed application; and Interview with standard questions and evaluated with a cut score or rubric that includes descriptions of levels of performance quality based on a coherent set of criteria; or Other screening instrument evaluated with a cut score or a rubric that includes descriptions of levels of performance quality based on a coherent set of criteria.

Component II: Admission	Evidence
19 TAC §227.10(a)(8): Applicants have met other academic criteria for admission.	Application for admission; and Records of academic requirements; and Academic requirements are published on website, or catalogues, or brochures, or orientation materials.
19 TAC §227.10(b): Applicants have met additional admission requirements.	Records of admission requirements; and Documentation of published requirements in candidate records; and Admission requirements are published on website, or catalogues, or brochures, or orientation materials.
19 TAC §227.10(c): The EPP has appropriately admitted applicants who have transferred from other EPPs.	Transfer form; and Application for admission; and Official transcripts.
19 TAC §227.10(d): Career and Technical Education applicants have been admitted with the required documentation of licensure and experience.	License and/or other supporting documentation of work experience; and Statement of qualifications; and Diploma or Transcript.
19 TAC §227.17(a): Applicants have been formally admitted to the EPP.	Required admission documents; and Written formal admission offer letter; and Written and dated formal admission acceptance letter.
19 TAC §227.17(e) and (f): Candidates were admitted prior to beginning coursework and training or receiving approval to test.	Written and dated formal admission acceptance letter; and Coursework record with start and completion dates; and Testing history.
19 TAC §227.15(a): Applicants admitted on a contingency basis met all admission requirements relating to contingency admission.	Written contingency admission offer letter; and Written and dated contingency admission acceptance letter; and Required admission documents; and Official transcripts; and Information from university confirming date of graduation; and Program records indicating which semester admission applies.
19 TAC §241.5(c), Principal, and 19 TAC §242.5(c), Superintendent: Candidates admitted met all admission requirements.	Screening instrument with rubric and cut score.
19 TAC §242.5(a): Superintendent applicants were admitted with required degree requirements.	Official transcript.

Component III: Curriculum	Evidence
19 TAC §228.30(a): The curriculum is based on approved educator standards.	Charts identifying alignment of educator standards in curriculum; and Application of educator standards identified in syllabi/course outlines; or Application of educator standards identified in course/training lesson plans.
19 TAC §228.30(a): The curriculum addresses the relevant Texas Essential Knowledge and Skills (TEKS).	Charts identifying alignment of educator standards in curriculum; and Syllabi/course outlines identifying training in using TEKS to inform instruction and assessment; or Instructor lesson plans reflecting instruction and use of TEKS.
19 TAC §228.40(a): The EPP uses assessments to measure candidate progress.	Syllabi/course outlines reflecting assessments of knowledge and skills; and Assessments that measure mastery of educator standards.
19 TAC §228.30(b): The curriculum is research-based.	Syllabi/course outlines with bibliographies/references.
19 TAC §228.30(c)-(e): The required subject matter has been included in the curriculum for candidates seeking initial certification in any certification class.	Charts identifying alignment of educator standards in curriculum; and Syllabi/course outlines; or Coursework.

Component IV: Coursework, Training, Program Delivery, and Ongoing Support	Evidence
19 TAC §228.35(a)(1): The EPP provides candidates with adequate preparation and training.	Candidate testing history; and Syllabi/course outlines; and Program benchmarks; and Degree plan/transcripts.
19 TAC §228.35(a)(2): Coursework and/or training meets requirements.	Syllabi/course outline; or Coursework.
19 TAC §228.35(a)(3): Candidates complete coursework and training prior to EPP completion and standard certification.	Program benchmarks; and Attendance records or attendance policies that require a certain level of attendance for a passing grade; and Program schedule of courses/modules; and Degree plan/transcripts for each candidate reviewed.
19 TAC §228.35(a)(4): Late hire candidates may receive a portion of the required coursework and training by their school district or campus.	Certificate of attendance; or Sign-in sheet; or Other written school district verification.

Component IV: Coursework, Training, Program Delivery, and Ongoing Support	Evidence
19 TAC §228.35(a)(5)(A): The EPP has procedures for allowing relevant military experiences.	Policies and procedures in handbooks; and Advisory committee minutes; or Admission information; or Orientation material; or Website information.
19 TAC §228.35(a)(5)(B): The EPP has procedures for allowing prior experience, education, or training.	Policies and procedures in handbooks; and Advisory committee minutes; or Admission information; or Orientation material; or Website information.
19 TAC §228.35(a)(6): Coursework and training that is offered online meets standards.	Accreditation documentation; or Quality assurance documentation; or THECB compliance documentation.
19 TAC §228.35(b): Candidates for initial teacher certification receive the required number of hours of coursework and training.	Document tracking hours for courses; or Degree plans; or Transcripts; or Program Course/Module Schedule; or Benchmarks.
19 TAC §228.35(b)(1): Candidates have completed the field-based experience requirements prior to clinical teaching or internship.	Start date of clinical teaching or internship; and Field-based experience observation log reflecting date, subject area, grade level, campus, district, time in and time out, and interaction with students; verifying signatures of observed teacher; and Written or videotaped reflections of observation.
19 TAC §228.35(b)(2): Candidates have completed the required coursework and/or training prior to clinical teaching or internship.	Start date of clinical teaching or internship; and Document tracking hours for courses; or Degree plans; or Transcripts; or Program Course/Module Schedule; or Benchmarks.
19 TAC §228.35(c): Candidates seeking initial certification in a class other than classroom teacher have completed the required clock hours of coursework and/or training.	Document tracking hours for courses; or Degree plans; or Transcripts; or Program Course/Module Schedule; or Benchmarks.

Component IV: Coursework, Training, Program Delivery, and Ongoing Support	Evidence
19 TAC §228.35(d): Late hire candidates have completed the pre-internship requirements.	Record of coursework completed (start and end dates); and Field-based experience observation log reflecting date, subject area, grade level, campus, district, time in and time out, and interaction with students; verifying signatures of observed teacher; and Reflections of observation; and Record of assignment date.
19 TAC §228.35(e)(1)(A): Teacher candidates complete required field-based experiences.	Field-based experience observation log reflecting date, subject area, grade level, campus, district, time in and time out, and interactions with students; verifying signatures of observed teacher; and Reflections of observation.
19 TAC §228.35(e)(1)(B): Field-based experience via electronic transmission or other video or technology-based method meets requirements.	Field-based observation log reflecting date, subject area, and grade level; verifying signatures of program staff; and Reflections of observation.
19 TAC §228.35(e)(2)(A) and (B): Candidates seeking initial teacher certification have completed clinical teaching.	Clinical teaching placement lists with placement information including start and end dates, start and end time; grade level, subject area, cooperating teacher name, and field supervisor assigned; and Clinical teaching log including dates, start and end times each day; verified by cooperating teacher.
19 TAC §228.35(e)(2)(C)(i): Candidates seeking initial teacher certification have completed an internship.	Completed statement of eligibility; and Internship placement lists with placement information including tests passed, start and end dates, start and end times, district, campus, grade level, subject area, mentor, and field supervisor assigned. If more than 30 days of internship are missed: • Request letter from candidate; and • Approval by appropriate program staff; and • Identified start date and end date of internship; and • Make-up plan if more than thirty days; and • Documentation of make-up time.

Component IV: Coursework, Training, Program Delivery, and Ongoing Support	Evidence
19 TAC §228.35(e)(2)(C)(iii): Candidates complete additional internship assignments that meet requirements for an internship and are appropriately supervised by the EPP.	Record of coursework completed; and Completed statement of eligibility; and Internship placement lists with placement information including tests passed, start and end dates, start and end times, district, campus, grade level, subject areas, mentor, and field supervisor assigned; and Intern or probationary certificates; and Field supervisor observation logs; and Letter from school district.
19 TAC §228.35(e)(2)(C)(iv): Candidates hold probationary or intern certificates while completing internship assignments.	Intern or probationary certificate.
19 TAC §228.35(e)(2)(C)(v): Additional internships recommended by the EPP have met the requirements for allowing candidates to complete additional internships.	Record of successful or unsuccessful internship; and Deficiency plan; and Benchmarks.
19 TAC §228.35(e)(2)(C)(vi)(I): The EPP supports the candidate during an additional internship unless the internship is ended early due to issuance of a standard certificate.	Standard certificate.
19 TAC §228.35(e)(2)(C)(vi)(II) The EPP supports the candidate during an additional internship unless the internship is ended early because the candidate is non-renewed by, resigns from, or is terminated by the employer.	Written notice from candidate; and Written notice to candidate; and Written notice to TEA.
19 TAC §228.35(e)(2)(C)(vi)(III): The EPP supports the candidate during an additional internship unless the internship is ended early because the candidate is released from the EPP.	Written notice to candidate; and Written notice to school or district; and Written notice to TEA.
19 TAC §228.35(e)(2)(C)(vi)(IV): The EPP supports the candidate during an additional internship unless the internship is ended early because the candidate withdraws from the EPP.	Written notice to program; and Written notice to candidate; and Written notice to school or district; and Written notice to TEA.
19 TAC §228.35(e)(2)(E): The EPP requested and was approved for an exception to the clinical teaching option.	Record of approval from SBEC.
19 TAC §228.35(e)(2)(F): Candidate training included experiences with a full range of professional responsibilities including the start of the school year.	Documentation of field-based experiences and/or clinical teaching experiences.

Component IV: Coursework, Training, Program Delivery, and Ongoing Support	Evidence
19 TAC §228.35(e)(3): An internship or clinical teaching experience was completed at a Head Start Program that meets requirements.	Teacher certification and mentor training records; and Federal and TEA approval records; and Records documenting Head Start student population; and Head Start curriculum.
19 TAC §228.35(e)(4) and (5): The internship or clinical teaching experiences take place in setting that meets requirements.	Internship or clinical teaching placement lists with placement information including tests passed, start and end dates, start and end times, district, campus, grade level, subject areas, mentor, and field supervisor assigned; and Statement of eligibility (only required for internship).
19 TAC §228.35(e)(6)(A) and (B): Candidates seeking certification in a class other than classroom teacher complete a practicum that meets the requirements.	Field supervisor observation logs reflecting educator standards based activities; and Practicum information with start and end dates, district, campus, site, and field supervisor assigned.
19 TAC §228.35(e)(6)(C)(i): An intern or probationary certificate has been issued to a candidate for a certification class other than classroom teacher who meets the requirements and conditions.	Statement of eligibility; and Program requirements; and Testing history.
19 TAC §228.35(e)(6)(C)(ii): Additional practicums recommended by the EPP have met the requirements for allowing candidates to complete additional practicums.	Record of successful or unsuccessful practicum; and Deficiency plan; and Benchmarks.
19 TAC §228.35(e)(7): The EPP applied and received approval for a candidate to complete field-based experience, clinical teaching, internship, or practicum in an out-of-state or out-of-country placement.	Record of approval from TEA.
19 TAC §228.35(f): Candidates placed in clinical teaching, internship, or practicum assignments were assigned cooperating teachers, mentors, or site supervisors as appropriate.	Candidate placement information showing date of placement, name of candidate, name of cooperating teacher/mentor/site supervisor, subject area, grade level, supervising administrator name, campus name, and district name.

Component IV: Coursework, Training, Program Delivery, and Ongoing Support	Evidence
19 TAC §228.2(12) and (23): The cooperating teachers and mentors were trained and held the required credentials.	Service record and teaching certificate; or A form signed by the campus or district administrator attesting that the cooperating teachers and mentors meet the certification, experience, and accomplishment as an educator criteria; and Evidence of training; and Evidence of accomplishment as an educator includes: • Evaluations that include evidence of student learning; or • Campus or district reports that include evidence of student learning; or • Letters of recommendation that include evidence of student learning. Documentation from EPP and campus or district administrator is required if an individual with the required credentials is not available.
19 TAC §228.2(30): The site supervisors were trained and held the required credentials.	Service record and educator certificate; or A form signed by the campus or district administrator attesting that the cooperating teachers and mentors meet the certification, experience, and accomplishment as an educator criteria; and Evidence of training; and Evidence of accomplishment as an educator includes: • Evaluations that include evidence of student learning; or • Campus or district reports that include evidence of student learning; or • Letters of recommendation that include evidence of student learning. Documentation from EPP and campus or district administrator is required if an individual with the required credentials is not available.
19 TAC §228.35(f): The EPP provided scientifically-based training to cooperating teachers, mentors, and site supervisors.	Training materials and dated attendance records with signatures; or School district/ESC certificate of completion; or Cooperating teacher/mentor/site supervisor handbook acknowledgement; or Training materials and dated attendance information for online training.

Component IV: Coursework, Training, Program Delivery, and Ongoing Support	Evidence
19 TAC §228.35(g): Candidates have been assigned to field supervisors who held the required credentials.	Candidate placement information showing date of placement and field supervisor assigned; or Field supervisor logs; and Records of field supervisor certification, degree, experience, and/or continuing professional education.
19 TAC §228.35(g) and (h): Field supervisors have been trained.	Training material and dated attendance records with signature of field supervisor; or Handbook acknowledged with field supervisor signature; or Training materials and dated attendance information for online training. After 9/1/2017, certificate of completion of TEA-approved observation training.
19 TAC §228.35(g): Field supervisors made the required initial contact.	Field supervisor log; or Emails; or Phone records; or Other electronic communication; or Course syllabi with first contact class noted with attendance records.
19 TAC §228.35(g): For each observation, the field supervisor has held the required conferences with each candidate. Each candidate has received written feedback that meets the requirements.	Documentation verifying pre-conference and individualized post-conference; and Observation documents signed by candidate and field supervisor with date, start and stop time, subject, and grade level with record of instructional strategies observed.
19 TAC §228.35(g): The field supervisor has provided a copy of the written observation feedback to the required individuals.	Observation instrument with cooperating teacher, mentor, and/or campus supervisor signature; or Email with delivery/read receipt; or Dated copy of letter on program letterhead sent with observation results.
19 TAC §228.35(g): The candidate receives informal observations and ongoing coaching as appropriate.	Field supervisor log; or Email records with delivery/read receipts; or Phone records; or Observation forms; or Other electronic records of observation and coaching.
19 TAC §228.35(g): The field supervisor collaborates with the required individuals.	Field supervisor log; or Email records with delivery/read receipts; or Phone records; or Signed observation forms.

Component IV: Coursework, Training, Program Delivery, and Ongoing Support	Evidence
19 TAC §228.35(g)(1)-(8): Formal observations conducted by field supervisors meet the requirements for duration, frequency, and format.	Observation forms signed by candidate and field supervisor with date, start and stop time, subject, and grade level with record of instructional strategies observed.
19 TAC §228.35(h): Candidates seeking certification in a class other than Classroom Teacher are assigned to field supervisors who have the required education and credentials.	Candidate placement information showing date of placement and field supervisor assigned; and Records of field supervisor certification, degree, experience, and continuing professional education.
19 TAC §228.35(h): Field supervisors make required initial contact with candidates.	Field supervisor log; or Emails; or Phone records; or Other electronic communication; or Course syllabi with first contact class noted with attendance records.
19 TAC §228.35(h): For each observation, the field supervisor has held the required conferences with each candidate. Each candidate has received the required written feedback.	Documentation verifying pre-conference and individualized post-conference; and Observation documents signed by candidate and field supervisor with date, start and stop time, subject, and grade level with record of instructional strategies observed.
19 TAC §228.35(h): The field supervisor has provided a copy of the written observation feedback to the candidate's site supervisor.	Field supervisor log; or Email records with delivery/read receipts; or Signed observation forms.
19 TAC §228.35(h): The field supervisor provides informal observations and coaching as appropriate.	Field supervisor log; or Email records with delivery/read receipts; or Phone records; or Observation forms; or Other electronic records of observation and coaching.
19 TAC §228.35(h): The field supervisor collaborates with the candidate and site supervisor throughout the practicum experience.	Field supervisor log; or Email records with delivery/read receipts; or Phone records; or Signed observation forms.
19 TAC §228.35(h)(1)-(4): Observations conducted by field supervisors meet the requirements for duration, frequency, and format.	Observation forms signed by candidate and field supervisor with date, start and stop time, subject, and grade level, with record of instructional strategies observed; and/or Field supervisor contact log with date and signatures.

Component IV: Coursework, Training, Program Delivery, and Ongoing Support	Evidence
19 TAC §228.35(i): A candidate seeking certification as a teacher has been exempt from completing field-based experience, clinical teaching or internship by meeting requirements.	Record from the THECB documenting exemption eligibility.
19 TAC §228.35(i)(2): A candidate that currently is or was a JROTC instructor has been exempt from completing field-based experience, clinical teaching, or internship by meeting requirements.	Service record; or Record of current employment.
19 TAC §241.10(b), Principal; 19 TAC §242.10(b), Superintendent; 19 TAC §239.10(b), Counselor; 19 TAC §239.50(a), Librarian; 19 TAC §239.82(a), Educational Diagnostician; 19 TAC §239.92(a), Reading Specialist; and 19 TAC §239.100(c), Master Teachers: During the practicum, candidates demonstrate proficiency in the standards.	Field supervisor logs of educator standards based activities with verifying signatures; or Candidate journals which reflect standards; or Completed educator standards based projects and activities.

Component V: Assessment and Evaluation of Candidates and Program	Evidence
19 TAC §228.40(a): The EPP has established benchmarks to measure candidate progress.	Benchmarks.
19 TAC §228.40(b): The EPP has processes to ensure candidates are prepared to be successful on their content examinations.	Candidate document(s) reflecting meeting criteria for testing with date; and Syllabi/course outlines; or Benchmarks.
19 TAC §228.40(c): A candidate who is prepared in different certification in which the candidate was admitted.	Written request of candidate.
19 TAC §228.40(d): The EPP has a process for determining that formally admitted candidates are prepared to take certification examinations.	Criteria for testing published; and Dated record verifying criteria met.
19 TAC §228.40(e): The EPP uses information from a variety of sources to evaluate program design and delivery.	Evaluation plan detailing the activity, timeline, person responsible; and Data results from internal and external sources; and Dated evaluation reports; and Advisory committee minutes.

Component VI: Professional Conduct	Evidence
19 TAC §228.50: EPP staff and candidates adhere to the Educators' Code of Ethics.	Signed statement by staff and candidates of reading, understanding and abiding.

Component VII: Complaints Procedures	Evidence
19 TAC §228.70(b)(1): The EPP has sent a copy of the EPP complaint procedure to TEA.	Complaint process on file with TEA.
19 TAC §228.70(b)(2): The EPP has posted on its website the complaint policy and a link to the TEA complaints website.	Web posting.
19 TAC §228.70(b)(3): The EPP complaint policy is posted on-site.	Notification posting at physical site.
19 TAC §228.70(b)(4): The EPP provides written information about filing complaints.	Written information for candidate available.

Component VIII: Certification Procedures	Evidence
19 TAC §230.13(a)(1): The candidate has met the appropriate degree and/or experience requirements.	Official transcripts; and/or Documentation of experience.
19 TAC §230.13(b)(2): The candidate has met the appropriate preparation, experience, and/or licensure certification, or registration requirements.	Documentation of preparation, experience, and/or licensure certification, or registration requirements.
19 TAC §230.13(a)(2) and (b)(3): The candidate has completed an EPP.	Record of EPP completion.
19 TAC §230.13(a)(3) and (b)(4): The candidate has passing scores on required certification examinations.	Testing history.
19 TAC §241.20, Principal; 19 TAC §242.20, Superintendent; 19 TAC §239.20, Counselor; 19 TAC §239.60, Librarian; 19 TAC §239.84, Educational Diagnostician; 19 TAC §239.93, Reading Specialist; and 19 TAC §239.100, Master Teachers: Candidates have passed appropriate certification examinations.	Testing history.
19 TAC §241.20, Principal; 19 TAC §242.20, Superintendent; 19 TAC §239.20, Counselor; 19 TAC §239.60, Librarian; 19 TAC §239.84, Educational Diagnostician; and 19 TAC §239.93, Reading Specialist: Candidates have met the degree requirement.	Official transcripts.
19 TAC §241.20, Principal, and 19 TAC §239.84, Educational Diagnostician; Candidates have met the certification requirement.	Valid classroom teaching certificate.
19 TAC §242.20, Superintendent: Candidates have met the certificate requirement.	Principal certificate or equivalent.
19 TAC §241.20, Principal; 19 TAC §239.20, Counselor; 19 TAC §239.60, Librarian; 19 TAC §239.84, Educational Diagnostician; and 19 TAC §239.93, Reading Specialist: Candidates have met the creditable years of teaching experience requirement.	Service records.

Component VIII: Certification Procedures	Evidence
19 TAC §241.20, Principal; 19 TAC §242.20, Superintendent; 19 TAC §239.20, Counselor; 19 TAC §239.60, Librarian; 19 TAC §239.84, Educational Diagnostician; and 19 TAC §239.93, Reading Specialist: Candidates have successfully completed an EPP.	Record of EPP completion.
19 TAC §239.101, Master Reading Teacher: Candidates either 1) hold the Reading Specialist Certificate & complete an EPP; OR 2) hold a valid teaching certificate with the required creditable years of service, and complete an EPP.	Reading Specialist Certificate; and Record of EPP completion; or Valid teaching certificate; and Official service records; and Record of EPP completion.
19 TAC §239.102, Master Mathematics Teacher: Candidates hold a valid teaching certificate, the required creditable years teaching experience, and complete an EPP.	Valid teaching certificate; and Official service records; and Record of EPP completion.
19 TAC §239.103, Master Technology Teacher: Candidates either 1) hold the Technology Applications Certificate or the Technology Education Certificate, and complete an EPP; OR 2) hold a valid teaching certificate with the required creditable years of teaching experience and complete an EPP.	Technology Application or Technology Education Certificate; and Record of EPP completion; or Valid teaching certificate; and Official service records; and Record of EPP completion.
19 TAC §239.104, Master Science Teacher: Candidates hold a valid teaching certificate with the required creditable years of teaching experience, and complete an EPP.	Valid teaching certificate; and Official service records; and Record of EPP completion.

Component IX: Integrity of Data Submission	Evidence
19 TAC §229.3(f)(1): The EPP has reported required data in an accurate and timely manner.	Met timeline for reporting; and Accuracy of ASEP reports.

Figure: 30 TAC Chapter 113--Preamble

40 CFR Part 63, Subpart (Chapter 113 Section)	Section Title	Original Incorporation (Commission Adoption)
A (§113.100)	General Provisions	June 25, 1997
G (§113.120)	Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater	June 25, 1997
N (§113.190)	Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks	October 15, 1997
O (§113.200)	Ethylene Oxide Emissions Standards for Sterilization Facilities	October 15, 1997
X (§113.290)	Secondary Lead Smelting	June 25, 1997
Y (§113.300)	Marine Tank Vessel Loading Operations	June 25, 1997
AA (§113.320)	Phosphoric Acid Manufacturing Plants	June 14, 2000
BB (§113.330)	Phosphate Fertilizers Production Plants	June 14, 2000
CC (§113.340)	Petroleum Refineries	October 15, 1997
DD (§113.350)	Off-Site Waste and Recovery Operations	October 7, 1998
GG (§113.380)	Aerospace Manufacturing and Rework Facilities	October 15, 1997
LL (§113.430)	Primary Aluminum Reduction Plants	July 14, 1999
NN (§113.450)	Wool Fiberglass Manufacturing at Area Sources	N/A - New section
YY (§113.560)	Generic Maximum Achievable Control Technology Standards	June 14, 2000
DDD (§113.610)	Mineral Wool Production	June 14, 2000
GGG (§113.640)	Pharmaceuticals Production	July 14, 1999
III (§113.660)	Flexible Polyurethane Foam Production	July 14, 1999
JJJ (§113.670)	Group IV Polymers and Resins	October 7, 1998
LLL (§113.690)	Portland Cement Manufacturing Industry	June 14, 2000
MMM (§113.700)	Pesticide Active Ingredient Production	June 14, 2000
NNN (§113.710)	Wool Fiberglass Manufacturing	June 14, 2000
OOO (§113.720)	Manufacture of Amino/Phenolic Resins	June 14, 2000
PPP (§113.730)	Polyether Polyols Production	June 14, 2000
RRR (§113.750)	Secondary Aluminum Production	June 18, 2003
UUU (§113.780)	Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units	June 18, 2003
XXX (§113.810)	Ferroalloys Production: Ferromanganese and Silicomanganese	June 14, 2000
CCCC (§113.860)	Manufacturing of Nutritional Yeast	June 18, 2003
UUUU (§113.1040)	Cellulose Products Manufacturing	June 18, 2003

40 CFR Part 63, Subpart (Chapter 113 Section)	Section Title	Original Incorporation (Commission Adoption)
ZZZZ (§113.1090)	Reciprocating Internal Combustion Engines	May 25, 2005
DDDDD (§113.1130)	Industrial, Commercial, and Institutional Boilers and Process Heaters Major Sources	July 26, 2013
JJJJJ (§113.1190)	Brick and Structural Clay Products Manufacturing	N/A - New section
KKKKK (§113.1200)	Clay Ceramics Manufacturing	N/A - New section
UUUUU (§113.1300)	Coal- and Oil-Fired Electric Utility Steam Generating Units	July 26, 2013
DDDDDD (§113.1390)	Polyvinyl Chloride and Copolymers Production Area Sources	December 5, 2007

Figure: 30 TAC §285.81(b)

Table I. Potential Percent Reduction

Sewage sources entering the graywater reuse system or combined reuse system	**Potential percent reduction to the effluent disposal system required in §285.33 of this title**
Clothes-washing machine only	20
Showers, bathtubs, hand-washing lavatories, and sinks that are not used for the disposal of hazardous or toxic ingredients	30
Clothes-washing machines, showers, bathtubs, hand-washing lavatories, and sinks that are not used for the disposal of hazardous or toxic ingredients	50

Figure: 30 TAC §285.81(d)

Table II. Adjusted Organic Strength

Sewage sources entering a graywater reuse system or a combined reuse system	Five-day Biochemical Oxygen Demand (BOD_5) design strength for sewage entering on-site sewage facilities milligrams per liter (mg/l)
Clothes-washing machine only	375
Showers, bathtubs, hand-washing lavatories, and sinks that are not used for the disposal of hazardous or toxic ingredients	430
Clothes-washing machines, showers, bathtubs, hand-washing lavatories, and sinks that are not used for the disposal of hazardous or toxic ingredients	600

Figure: 31 TAC §69.8(a)

CACTI

star cactus (*Astrophytum asterias*)

Nellie cory cactus (*Escobaria minima*)

Sneed pincushion cactus (*Escobaria sneedii* var. *sneedii*)

black lace cactus (*Echinocereus reichenbachii* var. *albertii*)

Davis' green pitaya (*Echinocereus davisii*)

Tobusch fishhook cactus (*Sclerocactus brevihamatus* ssp. *tobuschii*)

TREES, SHRUBS, AND SUBSHRUBS

Walker's manioc (*Manihot walkerae*)

Texas snowbells (*Styrax platanifolius ssp. texanus*)

WILDFLOWERS

large-fruited sand verbena (*Abronia macrocarpa*)

South Texas ambrosia (*Ambrosia cheiranthifolia*)

Texas ayenia (*Ayenia limitaris*)

Texas poppy mallow (*Callirhoe scabriuscula*)

Terlingua Creek cat's-eye (*Cryptantha crassipes*)

slender rush-pea (*Hoffmannseggia tenella*)

Texas prairie dawn (*Hymenoxys texana*)

white bladderpod (*Physaria pallida*)

Texas trailing phlox (Phlox nivalis ssp. texensis)

Texas golden gladecress (*Leavenworthia texana*)

ashy dogweed (*Thymophylla tephroleuca*)

Zapata bladderpod *(Physaria thamnophila)*

ORCHIDS

Navasota ladies'-tresses (*Spiranthes parksii*)

GRASSES AND GRASS-LIKE PLANTS

Little Aguja pondweed (*Potamogeton clystocarpus*)

Texas wild-rice (*Zizania texana*)

Figure: 40 TAC §747.1107(8)

Education	Experience
(A) A bachelor's degree with 12 college credit hours in child development and three college credit hours in [~~business~~] management,	and at least one year of experience in a licensed child-care center or licensed or registered child-care home;
(B) An associate's of applied science degree in child development or a closely related field with six college credit hours in child development and three college credit hours in [~~business~~] management. A "closely related field" is any educational instruction pertaining to the growth, development, physical or mental care, or education of children ages birth through 13 years,	and at least one year of experience in a licensed child-care center or licensed or registered child-care home;
(C) Sixty college credit hours with six college credit hours in child development and three college credit hours in [~~business~~] management,	and at least one year of experience in a licensed child-care center or licensed or registered child-care home;
(D) A Child Development Associate credential or Certified Child-Care Professional credential with three college credit hours in [~~business~~] management,	and at least one year of experience in a licensed child-care center or licensed or registered child-care home;
(E) A child-care administrator's certificate from a community college with at least 15 college credit hours in child development and three college credit hours in [~~business~~] management,	and at least two years of experience in a licensed child-care center or licensed or registered child-care home;
(F) A day-care administrator's credential issued by a professional organization or an educational institution and approved by Licensing based on criteria specified in Subchapter P of Chapter 745 of this title (relating to Day-Care Administrator's Credential Program),	and at least two years of experience in a licensed child-care center or licensed or registered child-care home; or
(G) Seventy-two clock hours of training in child development and 30 clock hours in [~~business~~] management,	and at least three years of experience in a licensed child-care center or licensed or registered child-care home.

Figure: 40 TAC §747.1303

Type of training:	Who is required to take the training?
(1) Orientation to your child-care home, as specified §747.1301 of this title (relating to What must orientation for caregivers at my child-care home include?), within seven days of employment;	All caregivers.
(2) 15 clock hours of annual training, as specified in §747.1305 of this title (relating to What topics must the annual training for caregivers include?);	Caregivers in a registered child-care home.
(3) 24 clock hours of annual training, as specified in §747.1305 of this title (relating to What topics must the annual training for caregivers include?);	Caregivers in a licensed child-care home.
(4) CPR and first-aid training; and	Caregivers as specified in §747.1313 of this title (relating to Who must have first-aid and CPR training?).
(5) Transportation training.	Any caregiver who transports a child whose chronological or developmental age is younger than nine years old, as specified in §747.1314 of this title (relating to What additional training must a person have in order to transport a child in care?).

Figure: 40 TAC §748.303(a)

Serious Incident	(i)To Licensing? (ii) If so, when?	(i) To Parents? (ii) If so, when?	(i) To Law enforcement? (ii) If so, when?
(1) A child dies while in your care.	(A)(i) YES (A)(ii) Within 2 hours after the child's death.	(B)(i) YES (B)(ii) Within 2 hours after the child's death.	(C)(i) YES (C)(ii) Immediately, but no later than 1 hour after the child's death.
(2) A substantial physical injury or critical illness that a reasonable person would conclude needs treatment by a medical professional or hospitalization.	(A)(i) YES (A)(ii) Report as soon as possible, but no later than 24 hours after the incident or occurrence.	(B)(i) YES (B)(ii) Report as soon as possible, but no later than 24 hours after the incident or occurrence.	(C)(i) NO (C)(ii) Not Applicable.
(3) Allegations of abuse, neglect, or exploitation of a child; or any incident where there are indications that a child in care may have been abused, neglected, or exploited.	(A)(i) YES (A)(ii) As soon as you become aware of it.	(B)(i) YES (B)(ii) As soon as you become aware of it.	(C)(i) NO (C)(ii) Not applicable.
(4) Physical abuse committed by a child against another child. For the purpose of this subsection, physical abuse occurs when there is substantial physical injury, excluding any accident; or failure to make a reasonable effort to prevent an action by another person that results in substantial physical injury to a child.	(A)(i) YES (A)(ii) As soon as you become aware of it.	(B)(i) YES (B)(ii) As soon as you become aware of it.	(C)(i) NO (C)(ii) Not applicable.
(5) Sexual abuse committed by a child against another child. For the purpose of this subsection, sexual abuse is: conduct harmful to a child's mental, emotional or physical welfare, including nonconsensual sexual activity	(A)(i) YES (A)(ii) As soon as you become aware of it.	(B)(i) YES (B)(ii) As soon as you become aware of it	(C)(i) NO (C)(ii) Not applicable.

Serious Incident	(i)To Licensing? (ii) If so, when?	(i) To Parents? (ii) If so, when?	(i) To Law enforcement? (ii) If so, when?
between children of any age, and consensual sexual activity between children with more than 24 months difference in age or when there is a significant difference in the developmental level of the children; or failure to make a reasonable effort to prevent sexual conduct harmful to a child.			
(6) A child is indicted, charged, or arrested for a crime, not including being issued a ticket at school by law enforcement or any other citation that does not result in the child being detained; or when law enforcement responds to an alleged incident at the operation.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after you become aware of it.	(B)(i) YES (B)(ii) As soon as you become aware of it.	(C)(i) NO (C)(ii) Not applicable.
(7) A child developmentally or chronologically under 6 years old is absent from your operation and cannot be located, including the removal of a child by an unauthorized person.	(A)(i) YES (A)(ii) Within 2 hours of notifying law enforcement.	(B)(i) YES (B)(ii) Within 2 hours of notifying law enforcement.	(C)(i) YES (C)(ii) Immediately upon determining the child is not on the premises and the child is still missing.
(8) A child developmentally or chronologically 6 to 12 years old is absent from your operation and cannot be located, including the removal of a child by an unauthorized person.	(A)(i) YES (A)(ii) Within 2 hours of notifying law enforcement, if the child is still missing.	(B)(i) YES (B)(ii) Within 2 hours of determining the child is not on the premises, if the child is still missing.	(C)(i) YES (C)(ii) Within 2 hours of determining the child is not on the premises, if the child is still missing.
(9) A child 13 years old or older is absent from your operation and cannot be located, including the removal of a child by an unauthorized person.	(A)(i) YES (A)(ii) No later than 6 hours from when the child's absence is discovered and the	(B)(i) YES (B)(ii) No later than 6 hours from when the child's absence is discovered and the	(C)(i) YES (C)(ii) No later than 6 hours from when the child's absence is discovered and the

Serious Incident	(i)To Licensing? (ii) If so, when?	(i) To Parents? (ii) If so, when?	(i) To Law enforcement? (ii) If so, when?
	child is still missing. However, you must report the child's absence immediately if the child has previously been alleged or determined to be a trafficking victim, or you believe the child has been abducted or has no intention of returning to the operation.	child is still missing. However, you must report the child's absence immediately if the child has previously been alleged or determined to be a trafficking victim, or you believe the child has been abducted or has no intention of returning to the operation.	child is still missing. However, you must report the child's absence immediately if the child has previously been alleged or determined to be a trafficking victim, or you believe the child has been abducted or has no intention of returning to the operation.
(10) A child in your care contracts a communicable disease that the law requires you to report to the Department of State Health Services (DSHS) as specified in 25 TAC Chapter 97, Subchapter A, (relating to Control of Communicable Diseases).	(A)(i) YES, unless the information is confidential. (A)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.	(B)(i) YES, if their child has contracted the communicable disease or has been exposed to it. (B)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.	(C)(i) NO (C)(ii) Not applicable.
(11) A suicide attempt by a child.	(A)(i) YES (A)(ii) As soon as you become aware of the incident.	(B)(i) YES (B)(ii) As soon as you become aware of the incident.	(C)(i) NO (C)(ii) Not applicable.

Figure: 40 TAC §748.303(d)

Serious Incident	(i) To Licensing? (ii) If so, when?	(i) To Parents? (ii) If so, when?
(1) Any incident that renders all or part of your operation unsafe or unsanitary for a child, such as a fire or a flood.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after the incident.	(B)(i) YES (B)(ii) As soon as possible, but no later than 24 hours after the incident.
(2) A disaster or emergency that requires your operation to close.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after the incident.	(B)(i) YES (B)(ii) As soon as possible, but no later than 24 hours after the incident.
(3) An adult who has contact with a child in care contracts a communicable disease noted in 25 TAC 97, Subchapter A, (relating to Control of Communicable Diseases).	(A)(i) YES, unless the information is confidential. (A)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.	(B)(i) YES, if their child has contracted the communicable disease or has been exposed to it. (B)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.
(4) An allegation that a person under the auspices of your operation who directly cares for or has access to a child in the operation has abused drugs within the past seven days.	(A)(i) YES (A)(ii) Within 24 hours after learning of the allegation.	(B)(i) NO (B)(ii) Not applicable.
(5) An investigation of abuse or neglect by an entity other than Licensing of an employee, professional level service provider, contract staff, volunteer, or other adult at the operation.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after you become aware of the investigation.	(B)(i) NO (B)(ii) Not applicable.
(6) An arrest; indictment; a county or district attorney accepts an "Information" regarding an official complaint against an	(A)(i) YES (A)(ii) As soon as	(B)(i) NO (B)(ii) Not

Serious Incident	(i) To Licensing? (ii) If so, when?	(i) To Parents? (ii) If so, when?
employee, professional level service provider, contract staff, volunteer, or other adult at the operation alleging commission of any crime as provided in §745.651 of this title (relating to What types of criminal convictions may affect a person's ability to be present at an operation?); or when law enforcement responds to an alleged incident to the operation.	possible, but no later than 24 hours after you become aware of the situation.	applicable.

Figure: 40 TAC §748.3757(a)

If the age of the youngest child is…	Then the Swimming Child/Adult Ratio is
0 to 23 months old	1:1
2 years old	2:1
3 years old	3:1
4 years old	4:1
5 years old or older	You must meet the applicable child/caregiver ratios as provided in §748.1003 of this title (relating to For purposes of the child/caregiver ratio, how many children can a single caregiver care for during the children's waking hours?).

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

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 November 2016 is $35.48 per barrel for the three-month period beginning on August 1, 2016, and ending October 31, 2016. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of November 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 November 2016 is $1.72 per mcf for the three-month period beginning on August 1, 2016, and ending October 31, 2016. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of November 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 November 2016 is $45.87 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 November 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 November 2016 is $2.88 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 November 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.

This agency hereby certifies that this notice has been reviewed by legal counsel and found to be within the agency's authority to publish.

TRD-201606495
Lita Gonzalez
General Counsel
Comptroller of Public Accounts
Filed: December 12, 2016

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Local Sales Tax Rate Changes Effective January 1, 2017

An additional 1/4 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 January 1, 2017 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Los Indios (Cameron Co)	2031174	.020000	.082500

An additional 1/2 percent city sales and use tax that includes the adoption of a 3/8 percent sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code and adoption of an additional 1/8 percent as permitted under Chapter 505 of the Texas Local Government Code, Type B Corporations (4B) will become effective January 1, 2017 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Friendswood (Galveston Co)	2084054	.020000	.082500
Friendswood (Harris Co)	2084054	.020000	.082500

ADDENDUM TO LOCAL SALES TAX RATE CHANGES EFFECTIVE APRIL 1, 2016

The 2 percent city sales and use tax was abolished effective March 31, 2016 in the city listed below.

City NAME	LOCAL CODE	NEW RATE	TOTAL RATE
Lincoln Park (Denton Co)	2061097	.000000	.062500

TRD-201606497
Don Neal
Chief Deputy General Counsel
Comptroller of Public Accounts
Filed: December 12, 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 12/19/16 - 12/25/16 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 12/19/16 - 12/25/16 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-201606565
Leslie Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: December 13, 2016

♦ ♦ ♦

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is January 27, 2017. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on January 27, 2017. 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.

COMPANY: Aqua Utilities, Incorporated; DOCKET NUMBER: 2016-0431-PWS-E; IDENTIFIER: RN101189272; LOCATION: Wheeler, Brazoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to obtain sanitary control easements that cover the land within 150 feet of the facility's Well Numbers 1 and 2, or obtain exceptions to the sanitary control easement requirement; 30 TAC §290.46(f)(2) and (3)(B)(v), by failing to maintain water works operation and maintenance records and make them readily available for review by commission personnel upon request; 30 TAC §290.46(s)(1), by failing to calibrate the facility's two well meters at least once every three years; and 30 TAC §290.46(n)(2), by failing to provide an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; PENALTY: $549; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

COMPANY: Aqua Utilities, Incorporated; DOCKET NUMBER: 2016-0353-PWS-E; IDENTIFIER: RN101209773; LOCATION: Dayton, Chambers County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(f)(2), (3)(A)(ii)(III) and (iv) and (D)(ii), by failing to make water works operation and maintenance records available for review by commission personnel during the investigation; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.45(b)(1)(A)(i) and Texas Health and Safety Code, §341.0315(c), by failing to provide a well capacity of 1.5 gallons per minute per connection; 30 TAC §290.42(l), by failing to provide a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.46(n)(2), by failing to provide an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; and 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meter at least once every three years; PENALTY: $758; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

COMPANY: Bloomfield Homes, L.P.; DOCKET NUMBER: 2016-1140-WQ-E; IDENTIFIER: RN106436389; LOCATION: Aubrey, Denton County; TYPE OF FACILITY: residential development site; RULES VIOLATED: 30 TAC §281.25(a)(4) and Texas Pollutant Discharge Elimination System (TPDES) General Permit (GP) Number TX15UJ76, Part III, Section F(2)(a)(ii), by failing to properly select, install, and maintain control measures; TWC, §26.121(a)(1), 30 TAC §281.25(a)(4), and TPDES GP Number TX15UJ76, Part III, Section F(2)(c)(i)(A)(3) and Part VII, Number 8, by failing to take all reasonable steps to prevent the discharge of sediment that has a reasonable likelihood of adversely affecting the environment, into or adjacent to water in the state due to failing to properly design, install, and maintain sediment control measures; and 30 TAC §281.25(a)(1) and TPDES GP Number TX15UJ76, Part III, Section F(7)(e), by failing to provide inspection reports that summarize the scope of the inspection results; PENALTY: $2,488; ENFORCEMENT COORDINATOR: Melissa Castro, (512) 239-0855; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

COMPANY: Burleson Independent School District; DOCKET NUMBER: 2016-1601-PST-E; IDENTIFIER: RN102481710; LOCATION: Burleson, Johnson County; TYPE OF FACILITY: fleet fueling 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:

$3,375; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (512) 239-2601; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

COMPANY: Canh Nguyen Minh dba Texaco Food Mart; DOCKET NUMBER: 2016-1263-PST-E; IDENTIFIER: RN102778644; LOCATION: Converse, 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 tank for releases at a frequency of at least once every month; PENALTY: $3,505; ENFORCEMENT COORDINATOR: Steven Stump, (512) 239-1343; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

COMPANY: Carol Pulido dba Dollar General Store 15541 and Robert Pulido, Sr. dba Dollar General Store 15541; DOCKET NUMBER: 2016-1739-PWS-E; IDENTIFIER: RN109295014; LOCATION: Azle, Parker County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(b)(1) and (e)(3), by failing to provide disinfection facilities for the groundwater supply to ensure that continuous and effective disinfection can be secured under all conditions for the purpose of microbiological control throughout the distribution system; 30 TAC §290.41(c)(3)(A), by failing to submit well completion data for review and approval prior to placing the facility's public drinking water well into service; and 30 TAC §290.39(e)(1) and (h)(1) and Texas Health and Safety Code, §341.035(a), by failing to submit plans and specifications to the executive director for review and approval prior to the construction of a new public water supply; PENALTY: $505; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

COMPANY: CHOICES GROCERS INCORPORATED; DOCKET NUMBER: 2016-0702-PST-E; IDENTIFIER: RN104514435; LOCATION: Malakoff, Henderson 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: $3,693; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

COMPANY: City of Alvin; DOCKET NUMBER: 2016-1389-PST-E; IDENTIFIER: RN102034402; LOCATION: Alvin, Brazoria County; TYPE OF FACILITY: fleet fueling facility; RULES VIOLATED: 30 TAC §334.50(b)(2)(A)(i)(III) and (d)(1)(B)(iii)(I) and TWC, §26.3475(a) and (c)(1), by failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day and failed to test the line leak detector at least once per year for performance and operational reliability; 30 TAC §334.49(c)(4) and TWC, §26.3475(d), by failing to test the corrosion protection system for operability and adequacy of protection at a frequency of at least once every three years; 30 TAC §334.51(b)(2)(C) and TWC, §26.3475(c)(2), by failing to equip each tank with overfill prevention equipment; 30 TAC §334.42(i) and TWC, §26.3475(c)(2), by failing to inspect all sumps, manways, overfill containers or catchment basins associated with a underground storage tank system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid tight and free of any liquid or debris; 30 TAC §334.74, by failing to investigate a suspected release of a regulated substance within 30 days of discovery; and 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; PENALTY: $15,689; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

COMPANY: City of Clarksville; DOCKET NUMBER: 2016-1202-MLM-E; IDENTIFIER: RN102654266; LOCATION: Clarksville, Red River County; TYPE OF FACILITY: unauthorized waste disposal site; RULES VIOLATED: 30 TAC §324.15, Texas Health and Safety Code, §371.041, and 40 Code of Federal Regulations (CFR) §279.22(d), by failing to abate and remediate spills of used oil; 30 TAC §324.1 and 40 CFR §279.22(c)(1), by failing to mark or clearly label used oil storage containers with the words 'Used Oil'; 30 TAC §328.56(a)(1) and (d)(2), by failing to obtain a scrap tire storage registration for the site prior to storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tires in enclosed and lockable contianers; and 30 TAC §330.15(a), by failing to not cause, suffer, allow, or permit the unauthorized disposal of municipal solid waste; PENALTY: $14,500; ENFORCEMENT COORDINATOR: Holly Kneisley, (817) 588-5856; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

COMPANY: City of Clarksville; DOCKET NUMBER: 2016-0362-PWS-E; IDENTIFIER: RN102929734; LOCATION: Clarksville, Red River County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.111(h), by failing to properly complete the Surface Water Monthly Operating Reports submitted to the commission; 30 TAC §290.46(f)(2), (3)(A)(iii) and (iv), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director upon request; 30 TAC §290.46(m)(1)(A) and (C), by failing to inspect the clearwell annually to determine that the vents are in place and properly screened, the roof hatches closed and locked, flap valves and gasketing provide adequate protection against insects, rodents, and other vermin, the interior and exterior coating systems are continuing to provide adequate protection to all metal surfaces, the tank remains in a watertight condition, and to determine that instrumentation and controls are working properly; 30 TAC §290.41(e)(3), by failing to locate the raw water pump station in a well-drained area and design the raw water pump station to remain in operation during flood events; 30 TAC §290.43(c)(4), by failing to equip the 0.5 million gallon elevated strorgae tank with a liquid level indicator; 30 TAC §290.42(d)(13), by failing to identify the influent, effluent, waste backwash, and chemical feed lines by the use of labels or various colors of paint; 30 TAC §290.46(s)(2), by failing to properly calibrate laboratory equipment used for compliance testing; 30 TAC §290.42(e)(3)(D), by failing to provide facilities for determining the amount of disinfectant used daily and the amount of disinfectant remaining for use; 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; 30 TAC §290.42(f)(1)(E)(ii)(I), by failing to provide adequate containment facilities for all liquid chemical storage tanks large enough to hold the maximum amount of chemical that can be stored with a minimum freeboard of six vertical inches or to hold 110% of the tank volume; 30 TAC §290.41(e)(4), by failing to provide an all weather road to the raw water pump station; and 30 TAC §290.43(c)(8), by failing to maintain the facility's storage tanks in strict accordance with current American Water Works Association standards; PENALTY: $3,764; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

COMPANY: City of Rotan; DOCKET NUMBER: 2016-1748-PWS-E; IDENTIFIER: RN101428282; LOCATION: Rotan, Fisher County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30

TAC §290.117(c)(2)(A), (h), and (i)(1) and §290.122(c)(2)(A) and (f), by failing to collect lead and copper tap samples at the required 20 sample sites for the July 1, 2012 - December 31, 2012, July 1, 2013 - December 31, 2013, January 1, 2014 - June 30, 2014, July 1, 2014 - December 31, 2014, January 1, 2015 - June 30, 2015, July 1, 2015 - December 31, 2015, and January 1, 2016 - June 30, 2016, monitoring periods, 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 collect lead and copper tap samples for the July 1, 2012 - December 31, 2012, July 1, 2013 - December 31, 2013, and July 1, 2015 - December 31, 2015, monitoring periods; PENALTY: $1,312; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

COMPANY: DCP Midstream, LP; DOCKET NUMBER: 2016-1281-AIR-E; IDENTIFIER: RN100220052; LOCATION: Dumas, Moore County; TYPE OF FACILITY: natural gas compressor station; RULES VIOLATED: 30 TAC §101.201(a)(1)(B) and §122.143(4), Texas Health and Safety Code (THSC), §382.085(b), and Federal Operating Permit (FOP) Number O2568, General Terms and Conditions, by failing to submit an initial notification for Incident Number 231584 no later than 24 hours after the discovery of the emissions event; and 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), THSC, §382.085(b), FOP Number O2568, Special Terms and Conditions Number 8, and New Source Review Permit Numbers 83193 and PSDTX1104, Special Conditions Number 1, by failing to prevent unauthorized emissions; PENALTY: $12,725; Supplemental Environmental Project offset amount of $5,090; ENFORCEMENT COORDINATOR: Shelby Orme, (512) 239-4575; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

COMPANY: EVERETT SQUARE INCORPORATED; DOCKET NUMBER: 2016-0540-PWS-E; IDENTIFIER: RN101176865; LOCATION: Magnolia, Montgomery County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 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 the second six-month monitoring period (July 1, 2015 - December 31, 2015) following the January 1, 2012 - 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); 30 TAC §290.117(e)(2), (h), and (i)(3) and §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 sites for two consecutive six-month periods (January 1, 2015 - June 30, 2015 and July 1, 2015 - December 31, 2015) following the January 1, 2012 - 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 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, 2012 - 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, 2012 - 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 §290.117(d)(2)(A), (h), and (i)(2) and §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, 2012 - 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 provide 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, 2012 - December 31, 2014, monitoring period; PENALTY: $1,196; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

COMPANY: Garcia's River Camp, LLC; DOCKET NUMBER: 2016-1783-PWS-E; IDENTIFIER: RN109268938; LOCATION: Gonzales, Gonzales County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(b)(1) and (e)(2), by failing to provide disinfection facilities for the groundwater supply for the purpose of microbiological control and distribution protection; and 30 TAC §290.39(e)(1) and (h)(1) and Texas Health and Safety Code, §341.035(a), by failing to submit plans and specifications to the executive director for review and approval prior to the construction of a new public water system; PENALTY: $350; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

COMPANY: HALL OIL COMPANY, INCORPORATED; DOCKET NUMBER: 2016-1425-PST-E; IDENTIFIER: RN102026176; LOCATION: Sulphur Springs and Saltillo, Hopkins County; TYPE OF FACILITY: common carrier; RULES VIOLATED: 30 TAC §334.5(b)(1)(A) and TWC, §26.3467(d), by failing to deposit a regulated substance into a regulated underground storage tank system that was covered by a valid, current TCEQ delivery certificate; PENALTY: $5,733; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

COMPANY: HERITAGE FINANCIAL GROUP, INCORPORATED; DOCKET NUMBER: 2016-1303-PWS-E; IDENTIFIER: RN101512614; LOCATION: Longview, Harrison County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: $195; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

COMPANY: J and S Water Company, LLC; DOCKET NUMBER: 2016-0347-MWD-E; IDENTIFIER: RN101613479; LOCATION: Highlands, Chambers County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §30.350(d) and §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0011720001, Other Requirements Number 1, by failing to ensure that the facility is supervised by an operator in charge for each shift that requires on-site supervision by a licensed chief operator; 30 TAC §312.145(a), by failing to maintain complete records for sludge

collection; 30 TAC §§305.125(1) and (11)(A), 319.4, and 319.5(b) and TPDES Permit Number WQ0011720001, Monitoring and Reporting Requirements Number 3(a), by failing to collect and analyze effluent samples at the required frequency; TWC, §26.121(a)(1), 30 TAC §305.125(1) and (4), and TPDES Permit Number WQ0011720001, Permit Conditions Number 2(d), by failing to take reasonable steps to minimize or prevent any discharge or sludge use or disposal which has a reasonable likelihood of adversely affecting human health or the environment; and TWC, §26.121(a)(1), 30 TAC §305.125(1) and (4), and TPDES Permit Number WQ0011720001, Permit Conditions Number 2(g), by failing to prevent the unauthorized discharge of wastewater; PENALTY: $56,219; ENFORCEMENT COORDINATOR: Ross Luedtke, (512) 239-3157; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

COMPANY: JUSTICE SAND COMPANY, INCORPORATED; DOCKET NUMBER: 2016-1779-WQ-E; IDENTIFIER: RN105275234; LOCATION: Sweeny, Brazoria County; TYPE OF FACILITY: sand and mining operation; RULES VIOLATED: 30 TAC §281.25(a)(4) and Texas Pollutant Discharge Elimination System (TPDES) General Permit (GP) Number TXR05V349, Part III. Section A. General Storm Water Pollution Prevention Plan (SWP3) Requirements, by failing to develop and implement a SWP3 as required by TPDES GP Number TXR05V349; and TWC, §26.121(a)(2) and TPDES GP Number TXR05V349, Part III. Section E. Standard Permit Conditions Number 2(b), by failing to take all reasonable steps to minimize or prevent any discharge that has a reasonable likelihood of adversely affecting human health or the environment; PENALTY: $3,188; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

COMPANY: Lake Livingston Water Supply and Sewer Service Corporation; DOCKET NUMBER: 2016-1472-PWS-E; IDENTIFIER: RN101239333; LOCATION: Onalaska, Polk County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(D)(i) and Texas Health and Safety Code, §341.0315(c), by failing to provide the minimum well capacity; and 30 TAC §290.121(a) and (b), by failing to 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; PENALTY: $650; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

COMPANY: Lone Star Carriers, Incorporated; DOCKET NUMBER: 2016-1331-PST-E; IDENTIFIER: RN109187518; LOCATIONS: Waco, McLennan County and Hillsboro and Itasca, Hill County; TYPE OF FACILITY: common carrier; RULES VIOLATED: 30 TAC §334.5(b)(1)(A) and TWC, §26.3467(d), by failing to deposit a regulated substance into a regulated underground storage tank system that was covered by a valid, current TCEQ delivery certificate; PENALTY: $9,213; ENFORCEMENT COORDINATOR: Holly Kneisley, (817) 588-5856; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

COMPANY: Motiva Enterprises LLC; DOCKET NUMBER: 2016-0846-AIR-E; IDENTIFIER: RN100209451; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §101.201(a)(1)(B) and (b) and §122.143(4), Texas Health and Safety Code (THSC), §382.085(b), and Federal Operating Permit (FOP) Number O1386, Special Terms and Conditions (STC) Number 2F, by failing to submit an initial notification within 24 hours of discovery of the emissions event and a final record within 14 days after the end of the emissions event; 30 TAC §§101.20(3), 116.115(c), and 122.143(4), THSC, §382.085(b), New Source Review (NSR) Permit Numbers 8404 and PSDTX1062M1, Special Conditions (SC) Number 1, and FOP Number O1386, STC Number 16, by failing to prevent unauthorized emissions; and 30 TAC §§101.20(3), 101.221(a), 116.115(b)(2)(G) and (c), and 122.143(4), THSC, §382.085(b), NSR Permit Numbers 8404 and PSDTX1062M1, SC Number 1, and FOP Number O1386, STC Number 16, by failing to prevent unauthorized emissions and maintain an emission control device; PENALTY: $20,688; Supplemental Environmental Project offset amount of $10,344; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

COMPANY: NAQSH INVESTMENTS, INCORPORATED dba Bag A Bag; DOCKET NUMBER: 2016-1443-PST-E; IDENTIFIER: RN101433886; LOCATION: Brazoria, Brazoria County; TYPE OF FACILITY: convenience store with retail sales of gasoline and diesel fuel; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) at a frequency of at least once every month; and 30 TAC §334.7(d)(3) and (e)(2), by failing to provide an amended registration for any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition; PENALTY: $4,375; ENFORCEMENT COORDINATOR: James Baldwin, (512) 239-1337; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

COMPANY: Naresh P. Patel dba Westside Grocery; DOCKET NUMBER: 2016-1490-PST-E; IDENTIFIER: RN103024840; LOCATION: Bridgeport, Wise County; TYPE OF FACILITY: retail convenience 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: $3,375; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (512) 239-2601; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

COMPANY: OPM TEXAS INVESTMENTS, LLC dba Palmetto Food Mart; DOCKET NUMBER: 2016-1348-PST-E; IDENTIFIER: RN102015419; LOCATION: Gonzales, Gonzales County; TYPE OF FACILITY: retail convenience facility; 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 UST; PENALTY: $1,301; ENFORCEMENT COORDINATOR: Austin Henck, (512) 239-6155; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

COMPANY: PINCO INCORPORATED dba Thelma Food Store; DOCKET NUMBER: 2016-1558-PST-E; IDENTIFIER: RN102828944; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

COMPANY: PRITEN YOGESH PATEL LLC.; DOCKET NUMBER: 2016-1330-PST-E; IDENTIFIER: RN103036679; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: facility with three inactive underground storage tanks (USTs); RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial as-

surance 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; 30 TAC §334.50 and §334.54(b)(2) and (c)(2), and TWC, §26.3475(c)(1), by failing to maintain all piping, pumps, manways, tank access points and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons, and failing to monitor a temporarily out-of-service UST system for releases; and 30 TAC §334.42(i) and TWC, §26.3475(c)(2), by failing to inspect all sumps, manways, overspill containers or catchment basins associated with a UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid tight; PENALTY: $9,060; ENFORCEMENT COORDINATOR: Holly Kneisley, (817) 588-5856; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

COMPANY: Red Creek Municipal Utility District; DOCKET NUMBER: 2016-0486-PWS-E; IDENTIFIER: RN101453082; LOCATION: San Angelo, Tom Green County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 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 20 sample sites for the first six-month monitoring period (January 1, 2015 - June 30, 2015) following the January 1, 2012 - December 31, 2014, monitoring period during which the lead action level was exceeded, have the samples analyzed, and report the results to the executive director (ED); 30 TAC §290.117(e)(2), (h), and (i)(3) and §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 sites for two consecutive six-month periods (January 1, 2015 - June 30, 2015 and July 1, 2015 - December 31, 2015) following the January 1, 2012 - December 31, 2014, monitoring period during which the lead action level was exceeded, have the samples analyzed, and report the results to the 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(d)(2)(A), (h), and (i)(2) and §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, 2012 - December 31, 2014, monitoring period during which the lead action level was exceeded, have the samples analyzed, and report the results to the ED, and failing to provide 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, 2012 - December 31, 2014, 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, 2012 - December 31, 2014, monitoring period during which the lead 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, 2012 - December 31, 2014, monitoring period during which the lead 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(b)(2)(A) and (f) and 40 CFR §141.85(a) and (b) and §141.90(f)(1), by failing to issue public notification and submit a copy of the public notification to the ED regarding the failure to deliver the public education materials following the lead action level exceedence that occurred during the January 1, 2012 - December 31, 2014, monitoring period; PENALTY: $802; ENFORCEMENT COORDINATOR: Sarah Kim, (512) 239-4728; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

COMPANY: RESEARCH LABORATORIES INCORPORATED; DOCKET NUMBER: 2016-1326-TTR-E; IDENTIFIER: RN106546476; LOCATION: Houston, Harris County; TYPE OF FACILITY: chemical formulating, mixing, and packaging facility; RULES VIOLATED: 25 TAC §295.182(b)(4)(A) and 40 Code of Federal Regulations §370.45(a), by failing to submit an initial Tier Two form and the appropriate filing fee within 90 days after acquiring one or more hazardous chemicals or extremely hazardous substances which meet or exceed any of the current Tier Two thresholds; PENALTY: $5,000; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

COMPANY: Saad Ali Azmat, Incorporated dba Quick Stop; DOCKET NUMBER: 2016-1392-PST-E; IDENTIFIER: RN102044096; LOCATION: Waco, McLennan 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: Ronica Rodriguez, (512) 239-2601; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

COMPANY: SafZone Field Services, LLC dba SafZone Storage; DOCKET NUMBER: 2016-1366-MSW-E; IDENTIFIER: RN109231498; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: oil and gas secondary containment liners storage site; RULES VIOLATED: 30 TAC §330.15(a)(1) and TWC, §26.121(a), by failing to not cause, suffer, allow, or permit the unauthorized discharge of municipal solid waste into or adjacent to waters in the state; PENALTY: $13,379; ENFORCEMENT COORDINATOR: Jonathan Nguyen, (512) 239-1661; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

COMPANY: SAHIL MERCHANT, INCORPORATED dba T Mart; DOCKET NUMBER: 2016-1465-PST-E; IDENTIFIER: RN102217916; LOCATION: Pasadena, 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 tank for releases at a frequency of at least once every month; and 30 TAC §334.603(b)(1), by failing to ensure that a current Class A and Class B operator training certificate is maintained at the facility; PENALTY: $6,688; ENFORCEMENT COORDINATOR: Sandra Douglas, (512) 239-2549; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

COMPANY: Sherry Milner dba Lakeview; DOCKET NUMBER: 2016-0580-PWS-E; IDENTIFIER: RN101611390; LOCATION: Zavalla, Angelina County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(l)(4) and (5), by failing to meet the conditions for an issued exception; 30 TAC §290.44(h)(1)(A), by failing to install the appropriate backflow prevention assemblies at all residences or establishments where an actual or potential contamination hazard exists, as identified in 30 TAC §290.47(f); 30 TAC §290.45(c)(1)(B)(i) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a minimum well capacity of 0.6 gallons per minute per accommodation unit; 30

TAC §290.45(c)(1)(B)(iv) and THSC, §341.0315(c), by failing to provide a minimum pressure tank capacity of ten gallons per unit; 30 TAC §290.42(l), by failing to develop and maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.46(n)(2), by failing to provide an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; and 30 TAC §290.121(a) and (b), by failing to develop and maintain a complete and 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; PENALTY: $1,625; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

COMPANY: Sky Lakes Water Supply Corporation; DOCKET NUMBER: 2016-1551-PWS-E; IDENTIFIER: RN101454478; LOCATION: Waller, Waller County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(i)(1), by failing to timely report lead and copper tap sample results to the executive director (ED) for the January 1, 2016 - June 30, 2016, monitoring period; 30 TAC §290.117(d)(2)(A), (h), and (i)(2) and §290.122(c)(2)(A) and (f), 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, 2013 - December 31, 2015, monitoring period during which the lead action level was exceeded, have the samples analyzed, and report the results to the ED, and failing to provide 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, 2013 - December 31, 2015, monitoring period; 30 TAC §290.117(g)(2)(A) and §290.122(b)(2)(A) and (f), by failing to submit a recommendation to the ED for source water treatment within 180 days after the end of the January 1, 2013 - December 31, 2015, monitoring period during which the lead 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 §290.117(f)(3)(A) and §290.122(b)(2)(A) and (f), by failing to submit a recommendation to the ED for optimal corrosion control treatment within six months after the end of the January 1, 2013 - December 31, 2015, monitoring period during which the lead 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; PENALTY: $337; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

COMPANY: SRC Ventures Incorporated dba Trinity Food Mart; DOCKET NUMBER: 2016-1350-PST-E; IDENTIFIER: RN102489853; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales 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 a petroleum underground storage tank; PENALTY: $813; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

COMPANY: Star Transport, L.L.C.; DOCKET NUMBER: 2016-1421-PST-E; IDENTIFIER: RN107747123; LOCATION: Houston, Harris County; TYPE OF FACILITY: common carrier; RULES VIOLATED: 30 TAC §334.5(b)(1)(A) and TWC, §26.3467(d), by failing to deposit a regulated substance into a regulated underground storage tank system that was covered by a valid, current TCEQ delivery certificate; PENALTY: $6,106; ENFORCEMENT COORDINATOR: Farhaud Abbaszadeh, (512) 239-0779; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

COMPANY: T and W WATER SERVICE COMPANY; DOCKET NUMBER: 2016-0490-PWS-E; IDENTIFIER: RN101190239; LOCATION: Cleveland, Liberty County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(c)(2)(A), (h), and (i)(1) and §290.122(c)(2)(A) and (f), 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 two consecutive six-month periods (January 1, 2015 - June 30, 2015 and July 1, 2015 - December 31, 2015) following the January 1, 2012 - December 31, 2014, monitoring period during which the lead 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 collect lead and copper tap samples for the January 1, 2015 - June 30, 2015, monitoring period; 30 TAC §290.117(d)(2)(A), (h), and (i)(2) and §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, 2012 - December 31, 2014, monitoring period during which the lead action level was exceeded, have the samples analyzed, and report the results to the ED, and failing to provide 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, 2012 - December 31, 2014, monitoring period; 30 TAC §290.117(e)(2), (h), and (i)(3) and §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, 2012 - December 31, 2014, monitoring period during which the lead action level was exceeded, have the samples analyzed, and report the results to the 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(i)(5) and (k) and §290.122(b)(2)(A) and (f), and 40 CFR §141.85(a) and (b) and §141.90(f)(1), by failing to deliver the public education materials following the lead action level exceedance that occurred during the January 1, 2012 - December 31, 2014, monitoring period and failing to provide the ED with copies of the public education materials and certification that distribution of said materials is being conducted in a manner consistent with TCEQ requirements, and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to deliver the public education materials; 30 TAC §290.117(i)(6) and (j) and 40 CFR §141.85(d) and §141.90(f)(3), by failing to provide a consumer notification of lead tap water monitoring results to persons served at the sites (taps) that were tested, and failing to mail a copy of the consumer notification of tap results to the ED along with certification that the consumer notification has been distributed for the January 1, 2012 - December 31, 2014, 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, 2012 - December 31, 2014, monitoring period during which the lead 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; and 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, 2012 - December 31, 2014, monitoring period during which the lead 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; PENALTY: $2,939; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

COMPANY: Tarrant County; DOCKET NUMBER: 2016-1445-PST-E; IDENTIFIER: RN102480365; 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: $3,375; Supplemental Environmental Project offset amount of $2,700; ENFORCEMENT COORDINATOR: Melissa Castro, (512) 239-0855; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

COMPANY: Tonya DeMary; DOCKET NUMBER: 2015-0865-PWS-E; IDENTIFIER: RN107797144; LOCATION: Kountze, Hardin County; TYPE OF FACILITY: public water supply (PWS); RULES VIOLATED: 30 TAC §290.39(e)(1) and (h)(1) and Texas Health and Safety Code, §341.035(a), by failing to submit plans and specifications to the executive director for review and approval prior to the establishment of a new PWS; and 30 TAC §290.42(b)(1) and (e)(3), by failing to provide disinfection facilities for the groundwater supply for the purpose of microbiological control and distribution protection; PENALTY: $350; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

COMPANY: Vander Horst Enterprises, LLC and MW DAIRY FARM, LLC; DOCKET NUMBER: 2016-1488-AGR-E; IDENTIFIER: RN102065265; LOCATION: Stephenville, Erath County; TYPE OF FACILITY: dairy farm; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §§305.125(1), 321.31(a) and 321.40(d), and Texas Pollutant Discharge Elimination System Permit Number WQ0005008000, Part VI.A., by failing to prevent the unauthorized discharge of wastewater from a concentrated animal feeding operation into or adjacent to any water in the state; PENALTY: $813; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

COMPANY: West Jefferson County Municipal Water District; DOCKET NUMBER: 2016-1023-MWD-E; IDENTIFIER: RN102335619; LOCATION: Taylor Bayou, Jefferson County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014899001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; and 30 TAC §§305.125(1), 305.125(17), 319.7(d) and TPDES Permit Number WQ0014899001, Monitoring and Reporting Requirements Number 1, by failing to timely submit results at the intervals specified in the permit; PENALTY: $4,350; Supplemental Environmental Project offset amount of $3,480; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

COMPANY: WOODLAKE-JOSSERAND WATER SUPPLY CORPORATION; DOCKET NUMBER: 2016-1302-PWS-E; IDENTIFIER: RN101452621; LOCATION: Groveton, Trinity County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and §290.122(b)(2)(A) and (f), and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.080 milligrams per liter for total trihalomethanes (TTHM), based on the locational running annual average and failed to provide public notification and submit a copy of the public notification to the executive director regarding the failure to comply with the MCL for TTHM; and 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st of each year and failed to submit to the TCEQ by July 1st of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data for the calendar year 2014; PENALTY: $577; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

COMPANY: YES Companies EXP2, LLC; DOCKET NUMBER: 2016-1379-PWS-E; IDENTIFIER: RN101439578; LOCATION: Aledo, Parker County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(f)(4) and §290.106(e), by failing to timely provide the results of quarterly nitrate sampling to the executive director (ED) for the second and third quarters of 2015; and 30 TAC §290.117(c)(2)(C), (h), and (i)(1), by failing to collect the triennial lead and copper tap sampling at the required five sample sites for the January 1, 2013 - December 31, 2015, monitoring period, have the samples analyzed, and report the results to the ED; PENALTY: $422; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

COMPANY: ZNY Enterprises, Incorporated dba RAE JS Bait; DOCKET NUMBER: 2016-1468-PST-E; IDENTIFIER: RN103065884; LOCATION: Arlington, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(c)(4)(C) and TWC, §26.3475(d), by failing to inspect and test the corrosion protection system for operability and adequacy of protection at a frequency of at least once every three years; and 30 TAC §334.50(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: $6,563; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201606562
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 13, 2016

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Enforcement Orders

An agreed order was adopted regarding Western Refining Wholesale, LLC, Docket No. 2015-0586-PST-E on December 13, 2016, assessing $1,350 in administrative penalties with $270 deferred. Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Seguin, Docket No. 2015-1774-WQ-E on December 13, 2016, assessing $3,937 in administrative penalties with $787 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Parker, Docket No. 2015-1815-WQ-E on December 13, 2016, assessing $7,125 in administrative penalties with $1,425 deferred. Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Hampton Enterprises, LLC dba Bar-H Country Store & BBQ, Docket No. 2016-0030-PST-E on December 13, 2016, assessing $5,114 in administrative penalties with $1,022 deferred. Information concerning any aspect of this order may be obtained by contacting Huan Nguyen, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Texas Concrete Sand and Gravel, Inc., Docket No. 2016-0143-WQ-E on December 13, 2016, assessing $6,250 in administrative penalties with $1,250 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Temple, Docket No. 2016-0415-PWS-E on December 13, 2016, assessing $3,442 in administrative penalties with $688 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Ranger, Docket No. 2016-0488-PWS-E on December 13, 2016, assessing $3,768 in administrative penalties with $753 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Mansoor Trading Corporation dba Express Food Mart 2, Docket No. 2016-0583-PST-E on December 13, 2016, assessing $4,500 in administrative penalties with $900 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Stump, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Avery, Docket No. 2016-0643-MWD-E on December 13, 2016, assessing $5,400 in administrative penalties with $1,080 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding AARIC, LLC dba Prime Mart 30, Docket No. 2016-0655-PST-E on December 13, 2016, assessing $5,439 in administrative penalties with $1,087 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Jaguars Holdings, Inc., Docket No. 2016-0671-PWS-E on December 13, 2016, assessing $172 in administrative penalties with $172 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Jim Ned Consolidated Independent School District, Docket No. 2016-0690-MWD-E on December 13, 2016, assessing $3,639 in administrative penalties with $727 deferred. Information concerning any aspect of this order may be obtained by contacting Austin Henck, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ZSS INVESTMENT INC dba Neighbor Mini Mart, Docket No. 2016-0697-PST-E on December 13, 2016, assessing $6,626 in administrative penalties with $1,325 deferred. Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Ashmal Food Mart Inc. dba Diamond Shamrock 1344, Docket No. 2016-0704-PST-E on December 13, 2016, assessing $2,813 in administrative penalties with $562 deferred. Information concerning any aspect of this order may be obtained by contacting Anthony Rios, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Rajvir Petroleum Inc. dba One Star Exxon, Docket No. 2016-0731-PST-E on December 13, 2016, assessing $3,375 in administrative penalties with $675 deferred. Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TFA Management, LLC dba Shaver Food Mart, Docket No. 2016-0732-PST-E on December 13, 2016, assessing $4,500 in administrative penalties with $900 deferred. Information concerning any aspect of this order may be obtained by contacting Huan Nguyen, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding KELLY-MOORE PAINT COMPANY, INC, Docket No. 2016-0735-IHW-E on December 13, 2016, assessing $3,291 in administrative penalties with $658 deferred. Information concerning any aspect of this order may be obtained by contacting Jessica Bland, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding AllDoc's Inc., Docket No. 2016-0753-PST-E on December 13, 2016, assessing $7,255 in administrative penalties with $1,451 deferred. Information concerning any aspect of this order may be obtained by contacting Sandra Douglas, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Tark Properties, LLC, Docket No. 2016-0782-EAQ-E on December 13, 2016, assessing $1,875 in administrative penalties with $375 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding H Sunny Inc., Docket No. 2016-0791-PST-E on December 13, 2016, assessing $7,256 in administrative penalties with $1,451 deferred. Information concerning any aspect of this order may be obtained by contacting James Boyle, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Jose Librado Deleon, Docket No. 2016-0806-MSW-E on December 13, 2016, assessing $3,750 in administrative penalties with $750 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding DANAM ENTERPRISES INC. dba Hildebrand Grocery, Docket No. 2016-0850-PST-E on December 13, 2016, assessing $5,688 in administrative penalties with $1,137 deferred. Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Sherman/Grayson Hospital, LLC dba Wilson N Jones Regional Medical Center, Docket No. 2016-0857-PST-E on December 13, 2016, assessing $5,468 in administrative penalties with $1,093 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Sprint Communications Company L.P., Docket No. 2016-0869-PST-E on December 13, 2016, assessing $3,375 in administrative penalties with $675 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Stump, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding STUEBNER EXPRESS INC. dba H & M Food Market, Docket No. 2016-0880-PST-E on December 13, 2016, assessing $5,114 in administrative penalties with $1,022 deferred. Information concerning any aspect of this order may be obtained by contacting Huan Nguyen, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding G & R Kunwar Inc dba Bob and Fred Convenience Store, Docket No. 2016-0881-PST-E on December 13, 2016, assessing $7,461 in administrative penalties with $1,492 deferred. Information concerning any aspect of this order may be obtained by contacting James Baldwin, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding 3 BVM TRINITY, Inc. dba Circle Q 2, Docket No. 2016-0883-PST-E on December 13, 2016, assessing $3,375 in administrative penalties with $675 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Steve Baker, Docket No. 2016-0922-WQ-E on December 13, 2016, assessing $6,000 in administrative penalties with $1,200 deferred. Information concerning any aspect of this order may be obtained by contacting Austin Henck, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Texas Municipal Power Agency, Docket No. 2016-0925-AIR-E on December 13, 2016, assessing $2,813 in administrative penalties with $562 deferred. Information concerning any aspect of this order may be obtained by contacting Raime Hayes-Falero, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Pejoma, LLC dba 281 Korner Store, Docket No. 2016-0933-PST-E on December 13, 2016, assessing $3,504 in administrative penalties with $700 deferred. Information concerning any aspect of this order may be obtained by contacting Huan Nguyen, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Nahia Barsoum dba Nichols Mobil Station, Docket No. 2016-0949-PST-E on December 13, 2016, assessing $3,375 in administrative penalties with $675 deferred. Information concerning any aspect of this order may be obtained by contacting Holly Kneisley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding PANTRY CONVENIENCE STORES, INC. dba Pantry South, Docket No. 2016-0959-PST-E on December 13, 2016, assessing $6,000 in administrative penalties with $1,200 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding IZZY Properties, Inc. dba KCS Stop N Shop, Docket No. 2016-0992-PST-E on December 13, 2016, assessing $3,750 in administrative penalties with $750 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MOUNT OLIVET CEMETERY ASSOCIATION dba Greenwood Memorial Park, Docket No. 2016-0994-PST-E on December 13, 2016, assessing $3,251 in administrative penalties with $650 deferred. Information concerning any aspect of this order may be obtained by contacting Holly Kneisley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Pinak Corporation dba Korner Food Mart 4, Docket No. 2016-0998-PST-E on December 13, 2016, assessing $3,375 in administrative penalties with $675 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding YOAKUM, INC. dba Get N Go Food Mart 2, Docket No. 2016-1000-PST-E on December 13, 2016, assessing $4,629 in administrative penalties with $925 deferred. Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding CHRISTUS HEALTH dba Villa de Matel, Docket No. 2016-1004-PST-E on December 13, 2016, assessing $4,688 in administrative penalties with $937 deferred. Information concerning any aspect of this order may be obtained by contact-

ing Huan Nguyen, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Nerro Supply, LLC, Docket No. 2016-1009-PWS-E on December 13, 2016, assessing $539 in administrative penalties with $107 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding sewa ro Inc. dba Bardwell Food Mart, Docket No. 2016-1044-PST-E on December 13, 2016, assessing $3,563 in administrative penalties with $712 deferred. Information concerning any aspect of this order may be obtained by contacting Melissa Castro, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Sweny, Inc. dba Pleasanton Rd Food Mart, Docket No. 2016-1050-PST-E on December 13, 2016, assessing $3,130 in administrative penalties with $626 deferred. Information concerning any aspect of this order may be obtained by contacting Huan Nguyen, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Enbridge Pipelines (Texas Gathering) L.P., Docket No. 2016-1056-AIR-E on December 13, 2016, assessing $7,500 in administrative penalties with $1,500 deferred. Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Lakeby LLC dba My Stop, Docket No. 2016-1075-PST-E on December 13, 2016, assessing $2,566 in administrative penalties with $513 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding LUCKY RIVER, INC. dba Stop N Save, Docket No. 2016-1093-PST-E on December 13, 2016, assessing $3,375 in administrative penalties with $675 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Mansfield Independent School District, Docket No. 2016-1097-PST-E on December 13, 2016, assessing $3,750 in administrative penalties with $750 deferred. Information concerning any aspect of this order may be obtained by contacting Larry Butler, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Highway Transport Chemical, LLC, Docket No. 2016-1111-PST-E on December 13, 2016, assessing $3,375 in administrative penalties with $675 deferred. Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Bona Yean dba K Express 11, Docket No. 2016-1134-PST-E on December 13, 2016, assessing $2,568 in administrative penalties with $513 deferred. Information concerning any aspect of this order may be obtained by contacting Claudia Corrales, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding KYLE'S KWIK STOP #5 LLC, Docket No. 2016-1150-PST-E on December 13, 2016, assessing $6,404 in administrative penalties with $1,280 deferred. Information concerning any aspect of this order may be obtained by contacting Holly Kneisley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Swapna Enterprises Inc. dba Casstevens Cash & Carry, Docket No. 2016-1156-PST-E on December 13, 2016, assessing $3,000 in administrative penalties with $600 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Wilsonart LLC, Docket No. 2016-1163-AIR-E on December 13, 2016, assessing $2,626 in administrative penalties with $525 deferred. Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Joe D. Clifton dba Hills Grocery, Docket No. 2016-1164-PST-E on December 13, 2016, assessing $2,551 in administrative penalties with $510 deferred. Information concerning any aspect of this order may be obtained by contacting Huan Nguyen, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding NTA ENTERPRISES, INC. dba Lucky 7 Quick Stop 3, Docket No. 2016-1171-PST-E on December 13, 2016, assessing $4,500 in administrative penalties with $900 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SOUTHERN C-STORE CORPORATION dba Clark Road Mobil, Docket No. 2016-1177-PST-E on December 13, 2016, assessing $3,692 in administrative penalties with $738 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding LAKEOAK ENTERPRISE INC. dba The Korner Store, Docket No. 2016-1184-PST-E on December 13, 2016, assessing $3,375 in administrative penalties with $675 deferred. Information concerning any aspect of this order may be obtained by contacting Anthony Rios, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Rockwall Independent School District, Docket No. 2016-1191-PST-E on December 13, 2016, assessing $3,488 in administrative penalties with $697 deferred. Information concerning any aspect of this order may be obtained by contacting Jessica Bland, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ASFIYA BUSINESS INC dba Beasley Food Mart, Docket No. 2016-1215-PST-E on December 13, 2016, assessing $5,581 in administrative penalties with $1,116 deferred. Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Texas Quality Products, LLC, Docket No. 2016-1224-WQ-E on December 13, 2016, assessing $5,000 in administrative penalties with $1,000 deferred. Information concerning any aspect of this order may be obtained by contacting Claudia Corrales, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Simin Enterprises Inc. dba Jonestown Exxon, Docket No. 2016-1268-PST-E on December 13, 2016, assessing $3,000 in administrative penalties with $600 deferred. Information concerning any aspect of this order may be obtained by contacting Huan Nguyen, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Flournoy Property Management LLC, Docket No. 2016-1273-MLM-E on December 13, 2016, assessing $5,000 in administrative penalties with $1,000 deferred. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding FARMERS COOPERATIVE SOCIETY NO.1 OF JAYTON, TEXAS, Docket No. 2016-1274-PST-E on December 13, 2016, assessing $3,251 in administrative penalties with $650 deferred. Information concerning any aspect of this order may be obtained by contacting Holly Kneisley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Laith Jabali dba LJS Food Store, Docket No. 2016-1320-PST-E on December 13, 2016, assessing $4,500 in administrative penalties with $900 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Calumet Penreco, LLC, Docket No. 2016-1323-AIR-E on December 13, 2016, assessing $3,638 in administrative penalties with $727 deferred. Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ZERIQ MOMIN INC dba Quality Star Food Mart, Docket No. 2016-1393-PST-E on December 13, 2016, assessing $3,375 in administrative penalties with $675 deferred. Information concerning any aspect of this order may be obtained by contacting Claudia Corrales, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SS & SY INVESTMENTS, INC. dba Newark Food Mart, Docket No. 2016-1478-PST-E on December 13, 2016, assessing $4,125 in administrative penalties with $825 deferred. Information concerning any aspect of this order may be obtained by contacting Huan Nguyen, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201606575
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality,
Filed: December 14, 2016

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Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant With Enhanced Controls Proposed Air Quality Registration Number 143780

APPLICATION. BURNCO Texas LLC, 8505 Freeport Parkway, Suite 150, Irving, Texas 75063-2505 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number 143780 to authorize the operation of a permanent concrete batch plant. The facility is proposed to be located at the following driving directions: from the intersection of Preston Road (Highway 289) and County Road 53, travel west on County Road 53 for 0.5 mile, site will be to the south on the west side of the railroad tracks, Celina, Collin County, Texas 75009. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=33.292377&lng=-96.793864&zoom=13&type=r. This application was submitted to the TCEQ on November 7, 2016. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on November 14, 2016.

PUBLIC COMMENT / PUBLIC HEARING. Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, TX 78711-3087, or electronically at www.tceq.texas.gov/about/comments.html. If you choose to communicate with the TCEQ electronically, please be aware that your email address, like your physical mailing address, will become part of the agency's public record.

A public hearing has been scheduled, that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. Written comments about this application may also be submitted at any time during the hearing. The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. The public hearing is not an evidentiary proceeding.

The Public Hearing is to be held:

Tuesday, January 17, 2017, at 6:00 p.m.

Hampton Inn & Suites - Frisco Fieldhouse

6070 Sports Village Road

Frisco, Texas 75033

RESPONSE TO COMMENTS. A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

CENTRAL/REGIONAL OFFICE. The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Dallas/Fort Worth Regional Office, located at 2309 Gravel Dr, Fort Worth, Texas 76118-6951, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from BURNCO Texas LLC, 8505 Freeport Parkway, Suite 150, Irving, Texas 75063-2505, or by calling Ms. Andrea Kidd, Environmental Specialist, Westward Environmental, Inc. at (830) 249-8284.

TRD-201606582
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 14, 2016

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Notice of District Petition

Notice issued November 16, 2016

TCEQ Internal Control No. D-09292016-054; MSR International, LLC (Petitioner) filed a petition for creation of Brazoria County Municipal Utility District No. 67 (District) with the Texas Commission on Environmental Quality. The petition was filed pursuant to Article XVI, § 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there is only one lienholder, Integrity Bank, SSB on the property to be included in the proposed District; (3) the proposed District will contain approximately 381.1135 acres located within Brazoria County, Texas; and (4) all of the land within the proposed District is within Brazoria County, Texas, and no portion of the land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any city, town or village in Texas. The Petitioner has also provided the TCEQ with a certificate evidencing the consent of Integrity Bank, SSB to the creation of the proposed District. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner, from the information available at this time, that the cost of said project will be approximately $40,260,000 ($20,000,000 utilities plus $20,260,000 roads).

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.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-201606573
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 14, 2016

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Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of Giving Good Luck Inc D/B/A Four Seasons Mart and C K Group Enterprise, Inc.

SOAH Docket No. 582-17-1421

TCEQ Docket No. 2016-0359-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - January 12, 2017

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed August 26, 2016 concerning assessing administrative penalties against and requiring certain actions of GIVING GOOD LUCK INC d/b/a Four Seasons Mart and C K Group Enterprise, Inc., for violations in Aransas County, Texas, of: Texas Water Code §26.3475(a), (c)(1), and (d) and 30 Texas Admin.

Code §§37.815(a) and (b), 334.7(d)(3), 334.49(a)(2), 334.50(b)(1)(A) and (b)(2).

The hearing will allow GIVING GOOD LUCK INC d/b/a Four Seasons Mart and C K Group Enterprise, Inc., the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford GIVING GOOD LUCK INC d/b/a Four Seasons Mart and C K Group Enterprise, Inc., the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. Upon failure of **GIVING GOOD LUCK INC d/b/a Four Seasons Mart and C K Group Enterprise, Inc.** to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's **Preliminary** Report and Petition, attached hereto and incorporated herein for all purposes. GIVING GOOD LUCK INC d/b/a Four Seasons Mart and C K Group Enterprise, Inc., the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Texas Water Code §7.054 and chs. 7 and 26 and 30 Texas Admin. Code chs. 37, 70, and 334; Texas Water Code § 7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Admin. Code §§70.108 and 70.109 and ch. 80, and 1 Texas Admin. Code ch. 155.

Further information regarding this hearing may be obtained by contacting Lena Roberts, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P. O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at http://www.tceq.texas.gov/goto/eFilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

TRD-201606583
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 14, 2016

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Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of HH&K, LLC D/B/A Get N Go

SOAH Docket No. 582-17-1626

TCEQ Docket No. 2016-0333-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - January 12, 2017

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed September 20, 2016 concerning assessing administrative penalties against and requiring certain actions of HH&K, LLC d/b/a Get N Go, for violations in Newton County, Texas, of: Texas Water Code §26.3475(c)(1) and 30 Texas Admin. Code §§334.8(c)(5)(C), 334.10(b)(1)(B), 334.42(i), 334.50(b)(1)(A), (d)(9)(A)(iv) and (v), 334.72, 334.74, 334.602(a)(4), and Default Shutdown Order Docket No. 2012-1088-PST-E Ordering Provision No. 10.a.

The hearing will allow HH&K, LLC d/b/a Get N Go, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford HH&K, LLC d/b/a Get N Go, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. Upon failure of HH&K, LLC d/b/a Get N Go to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes. HH&K, LLC d/b/a Get N Go, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Texas Water Code §7.054 and chs. 7 and 26 and 30 Texas Admin. Code chs. 70 and 334; Texas Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Admin. Code §§70.108 and 70.109 and ch. 80, and 1 Texas Admin. Code ch. 155.

Further information regarding this hearing may be obtained by contacting Eric Grady, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P. O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at http://www.tceq.texas.gov/goto/eFilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box

13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

TRD-201606584
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 14, 2016

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Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of

HICKS OIL & BUTANE CO.

SOAH Docket No. 582-17-1456

TCEQ Docket No. 2015-1734-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - January 12, 2017

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed July 25, 2016, concerning assessing administrative penalties against and requiring certain actions of HICKS OIL & BUTANE CO., for violations in Cameron County, Texas, of: Tex. Water Code §26.3475(c)(1), 30 Tex. Admin. Code §§334.50(b)(1)(A) and 334.54(c)(2), and Agreed Order Docket No. 2012-1668-PST-E Ordering Provision No. 2.a.

The hearing will allow HICKS OIL & BUTANE CO., the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford HICKS OIL & BUTANE CO., the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. Upon failure of HICKS OIL & BUTANE CO. to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes. HICKS OIL & BUTANE CO., the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054 and Tex. Water Code chs. 7 and 26 and 30 Tex. Admin. Code chs. 70 and 334; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Tex. Admin. Code §§70.108 and 70.109 and ch. 80, and 1 Tex. Admin. Code ch. 155.

Further information regarding this hearing may be obtained by contacting Clayton Smith, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at *http://www.tceq.texas.gov/goto/eFilings* or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: December 13, 2016

TRD-201606585
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 14, 2016

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Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of

PRADHAN AND COMPANY, INC. DBA EXPRESS FOOD

SOAH Docket No. 582-17-1688

TCEQ Docket No. 2016-0290-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - January 12, 2017

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed August 26, 2016, concerning assessing administrative penalties against and requiring certain actions of Pradhan and Company, Inc. dba Express Food, for violations in Tarrant County, Texas, of: Tex. Water Code §26.3475(c)(1) and 30 Tex. Admin. Code §334.50(b)(1)(A).

The hearing will allow Pradhan and Company, Inc. dba Express Food, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such

penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Pradhan and Company, Inc. dba Express Food, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. Upon failure of Pradhan and Company, Inc. dba Express Food to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes. Pradhan and Company, Inc. dba Express Food, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054, chs. 7 and 26, and 30 Tex. Admin. Code chs. 70 and 334; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Tex. Admin. Code §§70.108 and 70.109 and ch. 80, and 1 Tex. Admin. Code ch. 155.

Further information regarding this hearing may be obtained by contacting Clayton Smith, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at *http://www.tceq.texas.gov/goto/eFilings* or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: December 13, 2016

TRD-201606586
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 14, 2016

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Notice of Water Rights Application

Notice issued December 9, 2016

APPLICATION NO. 12733; Angelina & Neches River Authority (ANRA) P.O. Box 387, Lufkin, Texas 75902, Applicant, have applied for a term permit to divert and use not to exceed 10,000 acre-feet of water per year for a period of ten years, from all tributaries of the Angelina River, Neches River Basin, in Sabine, San Augustine, Shelby, Nacogdoches, and Rusk Counties, upstream of and terminating at the north and northeast shore of Sam Rayburn Reservoir, for mining purposes, and for storage in future off-channel reservoirs for subsequent diversion and use for mining purposes. The application and fees were received on August 4, 2011. Additional information and fees were received on January 6, 2012, and February 6, 2012; and February 1, 2016, and July 6, 2016. The application was declared administratively complete and filed with the Office of the Chief Clerk on February 21, 2012. The Texas Commission on Environmental Quality (TCEQ) Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would contain a number of special conditions including, but not limited to, special conditions related to conservation, accounting for authorized water diversions, and streamflow restrictions. 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, TX 78753. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided below, within 30 days of the date of newspaper publication of the notice.

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 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, TX 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.texas.gov. Si desea información en Español, puede llamar al (800) 687-4040.

TRD-201606574
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 14, 2016

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Texas Facilities Commission

Request for Proposals #303-8-20585

The Texas Facilities Commission (TFC), on behalf of the Department of Public Safety - Highway Patrol (DPS) announces the issuance of Request for Proposals (RFP) #303-8-20585. TFC seeks a five (5) or ten (10) year lease of approximately 2,626 square feet of office space in Roma, Texas.

The deadline for questions is January 10, 2017 and the deadline for proposals is January 24, 2017 at 3:00 p.m. The award date is February 15, 2017. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=129809.

TRD-201606409
Kay Molina
General Counsel
Texas Facilities Commission
Filed: December 8, 2016

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Request for Proposals #303-8-20588

The Texas Facilities Commission (TFC), on behalf of the Texas Parks and Wildlife Department (TPWD), announces the issuance of Request for Proposals (RFP) #303-8-20588. TFC seeks a five (5) or ten (10) year lease of approximately 1,392 square feet of office space in Hays County, Texas.

The deadline for questions is December 30, 2016, and the deadline for proposals is January 13, 2017, at 3:00 p.m. The award date is February 15, 2017. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=129748.*

TRD-201606394
Kay Molina
General Counsel
Texas Facilities Commission
Filed: December 7, 2016

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Request for Proposals #303-8-20589

The Texas Facilities Commission (TFC), on behalf of the Texas Soil and Water Conservation Board (TSWCB) announces the issuance of Request for Proposals (RFP) #303-8-20589. TFC seeks a five (5) or ten (10) year lease of approximately 1,016 square feet of office space in Nacogdoches, Texas.

The deadline for questions is January 6, 2016 and the deadline for proposals is January 17, 2016 at 3:00 P.M. The award date is February 15, 2017. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=129802.

TRD-201606424
Kay Molina
General Counsel
Texas Facilities Commission
Filed: December 9, 2016

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General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of December 9, 2016 through December 16, 2016. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, December 16, 2016. The public comment period for this project will close at 5:00 p.m. on Thursday, January 16, 2017.

FEDERAL AGENCY ACTIONS:

Applicant: John Nau

Location: The project site is located in Aransas Bay at 1 Finisterre Street in the Key Allegro Subdivision, in Rockport, Aransas County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Rockport, Texas.

LATITUDE & LONGITUDE (NAD 83): 28.031787 North; -97.026465 West

Project Description: The applicant proposes to construct a new bulkhead in front of a failed, existing bulkhead for erosion control and to reclaim land that has eroded into waters of the United States (U.S.). Approximately 889 cubic yards (cy) of material would be placed below the annual high tide elevation (481 cy of fill behind the proposed bulkhead, 118 cy of concrete fill, and 290 cy of riprap at a 3:1 slope), which would fill approximately 0.22 acre of unvegetated jurisdictional waters of the U.S. The bulkhead would be approximately 230 feet long and would be located approximately 35 feet in front of the existing shoreline. The proposed site is sandy bay bottom with water depths that range from -0.4 to -3.0 feet mean high water. The applicant states the project is needed to "provide long-term protection from shoreline erosion and temporary stabilization structure failure." The applicant further states that impacts to the residential street (Finisterre Street) will continue until the shoreline is properly stabilized. An Alternatives Analysis for the project has not yet been submitted.

CMP Project No: 17-1027-F1

Type of Application: U.S. Army Corps of Engineers (USACE) permit application #SWG-2011-00880. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (CWA).

Applicant: Gulf Coast Energy Resources, LLC

Location: The project is located in the Outer Continental Shelf, Lease # G34399, Area/Block: Main Pass 316, Gulf of Mexico

LATITUDE & LONGITUDE (NAD 83): 29.145447 -88.641775

Project Description: Under this exploration plan, the applicant proposed to drill and complete one well in Main Pass 316. The wells will be drilled with a jack-up mobile offshore drilling unit (MODU), and are located in approximately 310 feet of water. The surface and bottom-hole location is located in the OCS, Lease #G34399, Main Pass 316

CMP Project No: 17-1071-F4

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from Mr. Jesse Solis, P.O. Box 12873, Austin, Texas 78711-2873, or via email at federal.consistency@glo.texas.gov. Comments should be sent to Mr. Solis at the above address or by email.

TRD-201606580
Anne L. Idsal
Chief Clerk / Deputy Land Commissioner
General Land Office
Filed: December 14, 2016

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Office of the Governor, Economic Development and Tourism Office

Notice of Proposed Redesignation of the Alamo Workforce Development Area and the Coastal Bend Workforce Development Area

Pursuant to Government Code §2308.252(a), the Office of the Governor hereby provides notice of the proposed redesignation of the Alamo Workforce Development Area ("WDA" and the Coastal Bend Workforce Development Area ("BWDA". The proposed redesignation would result in the transfer of McMullen County from the CBWDA to the AWDA.

Written comments on this proposal may be submitted by mail to James Person, Assistant General Counsel, P.O. Box 12428, Austin, Texas 78711; by facsimile at (512) 463-1932; or by email to twic@gov.texas.gov. The deadline for written comments is 30 days after publication of this notice in the *Texas Register*.

TRD-201606462
James Person
Assistant General Counsel
Office of the Governor, Economic Development and Tourism Office
Filed: December 12, 2016

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Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rates for Residential Care Program, Assisted Living Services, and Personal Care 3 Services

Hearing. The Health and Human Services Commission (HHSC) will conduct a public hearing on January 11, 2017, at 3:30 p.m. to receive public comment on proposed Medicaid payment rates for the Residential Care (RC) program and for the proxy rates for Assisted Living (AL) and Personal Care 3 (PC3) services used in the calculation of the STAR+PLUS managed care capitation rates for the Home and Community-Based Services risk group.

The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements. The hearing will be held in the Public Hearing Room of the John H. Winters Building, located at 701 West 51st Street, Austin, Texas. Entry is through Security at the main entrance of the building, which faces 51st Street.

Proposal. HHSC proposes to decrease the facility cost area rates for the RC program, AL services and PC3 services to reflect the most recent increase in federal Supplemental Security Income (SSI) payments in accordance with the rate-setting methodologies below. The methodologies require that when SSI is increased, the per diem reimbursement be decreased by an amount equal to that increase. The payment rates are proposed to be effective February 1, 2017.

Methodology and justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

§355.509(c)(2), which addresses the reimbursement methodology for the RC program;

§355.503(c)(2)(B), which addresses the reimbursement methodology for AL services; and

§355.503(c)(2)(D), which addresses the reimbursement methodology for PC3 services.

Briefing package. A briefing package describing the proposed reimbursement rates will be available at http://www.hhsc.state.tx.us/rad/rate-packets.shtml on or after December 23, 2016. Interested parties may also obtain a copy of the briefing package before the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail to RAD-LTSS@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Rate Analysis Department, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to RAD-LTSS@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to the Texas Health and Human Services Commission, Rate Analysis Department, Mail Code H-400, Brown Heatly Building, 4900 North Lamar Blvd., Austin, Texas 78751-2316.

Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Rate Analysis by calling (512) 730-7401 at least 72 hours prior to the hearing so appropriate arrangements can be made.

TRD-201606579
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: December 14, 2016

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Department of State Health Services

Amendment to the Texas Controlled Substances Schedules

This amendment to the Texas Schedules of Controlled Substances was signed by the Commissioner of the Department of State Health Services, and will take effect 21 days following publication of this notice in the *Texas Register*.

The Drug Enforcement Administration (DEA) is placing the substance 3,4-Dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide (Other name: U47700) including its isomers, esters, ethers, salts and salts of isomers, esters and ethers temporarily into Schedule I of the Controlled Substances Act effective November 14, 2016. The final order was published in the Federal Register, Volume 81, Number 219, pages 79389-79393. The DEA has taken this action based on the following.

1. U-47700 has a high potential for abuse;

2. U-47700 has no currently accepted medical use in treatment in the United States;

3. There is a lack of accepted safety for use of U-47700 under medical supervision; and

4. U-47700 poses an imminent hazard to public safety.

Pursuant to Section 481.034(g), as amended by the 75th legislature, of the Texas Controlled Substances Act, Health and Safety Code, Chapter 481, at least thirty-one days have expired since notice of the above referenced actions were published in the Federal Register; and, in the capacity as Commissioner of the Texas Department of State Health Services, John Hellerstedt, M.D., does hereby order that the substance U-47700 placed temporarily into schedule I.

SCHEDULE I

Schedule I consists of:

- Schedule I opiates

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- Schedule I opium derivatives

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- Schedule I hallucinogenic substances

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- Schedule I stimulants

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- Schedule I depressants

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- Schedule I Cannabimimetic agents

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- Schedule I temporarily listed substances subject to emergency scheduling by the United States Drug Enforcement Administration.

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances or that contains any of the substance's salts, isomers, esters, ethers and salts of isomers, esters and ethers if the existence of the salts, isomers, esters, ethers and salts of isomers is possible within the specific chemical designation.

(1) 4-methyl-N-ethylcathinone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: 4-MEC; 2-(ethylamino)-1-(4-methylphenyl)propan-1-one);

(2) 4-methyl-alpha-pyrrolidinopropiophenone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: 4-MePPP; MePPP; 4-methyl-[alpha]-

pyrrolidinopropiophenone; 1-(4-methylphenyl)-2-(pyrrolidin-1-yl)-propan-1-one);

(3) alpha-pyrrolidinopentiophenone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: [alpha]-PVP; [alpha]-pyrrolidinovalerophenone; 1-phenyl-2-(pyrrolidin-1-yl)pentan-1-one);

(4) Butylone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: bk-MBDB; 1-(1,3-benzodioxol-5-yl)-2-(methylamino)butan-1-one);

(5) Pentedrone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: [alpha]-methylaminovalerophenone; 2-(methylamino)-1-phenylpentan-1-one);

(6) Pentylone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: bk-MBDP; 1-(1,3-benzodioxol-5-yl)-2-(methylamino)pentan-1-one);

(7) 4-fluoro-N-methylcathinone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: 4-FMC; flephedrone; 1-(4-fluorophenyl)-2-(methylamino)propan-1-one);

(8) 3-fluoro-N-methylcathinone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: 3-FMC; 1-(3-fluorophenyl)-2-(methylamino)propan-1-one);

(9) Naphyrone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: naphthylpyrovalerone; 1-(naphthalen-2-yl)-2-(pyrrolidin-1-yl)pentan-1-one);

(10) alpha-pyrrolidinobutiophenone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: [alpha]-PBP; 1-phenyl-2-(pyrrolidin-1-yl)butan-1-one);

(11) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide (Other names: "AB-CHMINACA");

(12) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide (Other names: "AB-PINACA");

(13) [1-(5-fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone (Other names: "THJ-2201");

(14) N-(1-phenethylpiperindin-4-yl)-N-phenylacetamide (Other names: acetyl fentanyl);

(15) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide (common names: MAB-CHMINACA and ABD-CHMINACA);

(16) N-(1-phenethylpiperidin-4-yl)-N-phenylbutyramide, also known as N-(1-phenethylpiperidin-4-yl)-N-phenylbutanamide (Other name: butyryl fentanyl);

(17) N-[1-[2-hydroxy-2-(thiophen-2-yl)ethyl]piperidin-4-yl]-N-phenylproprionamide, also known as N-[1-[2-hydroxy-2-(2-thienyl)ethyl]-4-piperidnyl]-N-phenylpropanamide (Other name: beta-hydroxythiofentanyl); and,

*(18) 3,4-Dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide (Other name: U47700).

Changes to the schedules are designated by an asterisk (*).

TRD-201606563

Lisa Hernandez
General Counsel
Department of State Health Services
Filed: December 13, 2016

♦ ♦ ♦

Texas Department of Licensing and Regulation

Enforcement Plan - Combative Sports Penalty Matrix

(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 tables are not included in the print version of the Texas Register. The tables are available in the html version of the December 23, 2016 issue of the Texas Register on-line.)

The Texas Commission of Licensing and Regulation (Commission) provides this public notice that at their regularly scheduled meeting held November 16, 2016, the Commission adopted the Texas Department of Licensing and Regulation's (Department) revised enforcement plan which was established in compliance with Texas Occupations Code, §51.302(c).

The enforcement plan gives all license holders notice of the specific ranges of penalties and license sanctions that apply to specific alleged violations of the statutes and rules enforced by the Department. The enforcement plan also presents the criteria that are considered by the Department's Enforcement staff in determining the amount of a proposed administrative penalty or the magnitude of a proposed sanction. The enforcement plan is revised to update the penalty matrix for the Combative Sports program.

The revised matrix was updated to bring the violations and citations in line with Texas Occupations Code, Chapter 2052 and 16 Texas Administrative Code, Chapter 61. The statute has been amended several times, however the most significant changes remove licensing requirements for ringside physicians and timekeepers. Generally, the rules have been amended to incorporate statutory changes and clearer regulation. The most significant change is the separation of drugs into different categories based on research conducted by the United States Anti-Doping Association. The updated matrix also creates a penalty matrix for event coordinators. Editorial changes were made to cleanup general language and to account for all existing violations.

The Combative Sports Advisory Board recommended approval of the revised matrix at their meeting held September 30, 2016. The revised matrix was presented to the Commission on November 16, 2016, and was adopted as recommended.

A copy of the revised enforcement plan is posted on the Department's website and may be downloaded at www.tdlr.texas.gov. You may also contact the Enforcement Division at (512) 539-5600 or by e-mail at enforcement@tdlr.texas.gov to obtain a copy of the revised plan.

TRD-201606564
Brian E. Francis
Executive Director
Texas Department of Licensing and Regulation
Filed: December 13, 2016

♦ ♦ ♦

Texas Lottery Commission

Scratch Ticket Game Number 1872 "Double Match"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1872 is "DOUBLE MATCH". The play style is "multiple games".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 1872 shall be $2.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 1872.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, $2.00, $4.00, $5.00, $10.00, $20.00, $40.00, $100, $500, $1,000 and $30,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1872 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
$2.00	TWO$
$4.00	FOR$
$5.00	FIV$
$10.00	TEN$
$20.00	TWY$
$40.00	FRTY$
$100	ONHN
$500	FVHN
$1,000	ONTH
$30,000	30TH

E. Serial Number - A unique 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. 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.

G. Pack-Scratch Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1872), 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: 1872-0000001-001.

H. Pack - A Pack of the "DOUBLE MATCH" Scratch Ticket Game contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). 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 Pack will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 125 will be shown on the back of the Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "DOUBLE MATCH" Scratch Ticket Game No. 1872.

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 "DOUBLE MATCH" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 22 (twenty-two) Play Symbols. In Game 1, if a player matches any of the YOUR NUMBERS Play Symbols to either of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. In Game 2, if a player reveals three (3) matching prize amounts, the player wins that amount. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 22 (twenty-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 22 (twenty-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 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 22 (twenty-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.

Programmed Game Parameters.

A. A Ticket can win up to ten (10) times in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have matching Play Symbol and Prize Symbol patterns. Two (2) Tickets have matching Play Symbol and Prize Symbol patterns if they have the same Play Symbols and Prize Symbols in the same spots.

C. The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

D. On all Tickets, the "WINNING NUMBERS" Play Symbols will be different.

E. Non-winning "YOUR NUMBERS" Play Symbols will all be different.

F. No prize amount in a non-winning spot will correspond with the "YOUR NUMBERS" Play Symbol (e.g., 5 and $5).

G. Non-winning Prize Symbols will never appear more than two (2) times.

H. There will never be more than three (3) matching Prize Symbols on any game.

I. Non-Winning Tickets will never contain three (3) pairs of matching Prize Symbols.

J. Non-winning Prize Symbols will not match winning Prize Symbols on winning Tickets.

K. There will never be more than one (1) set of three (3) matching Prize Symbols on a Ticket.

L. There will never be more than two (2) $30,000 Prize Symbols on a Ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "DOUBLE MATCH" Scratch Ticket Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $40.00, $100 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $40.00, $100 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "DOUBLE MATCH" Scratch Ticket Game prize of $1,000 or $30,000, 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 "DOUBLE MATCH" 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 Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "DOUBLE MATCH" 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 "DOUBLE MATCH" 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 7,080,000 Scratch Tickets in Scratch Ticket Game No. 1872. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1872 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$2	637,200	11.11
$4	623,040	11.36
$5	113,280	62.50
$10	127,440	55.56
$20	56,640	125.00
$40	11,505	615.38
$100	13,157	538.12
$500	944	7,500.00
$1,000	64	110,625.00
$30,000	6	1,180,000.00

*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 4.47. 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. 1872 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. 1872, 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-201606556
Bob Biard
General Counsel
Texas Lottery Commission
Filed: December 12, 2016

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Panhandle Regional Planning Commission

Legal Notice

The Panhandle Regional Planning Commission (PRPC) will submit to the Texas Workforce Commission (TWC) the Panhandle Workforce Development Area FY 2017-2020 Integrated Plan, on or before February 28, 2017.

Interested parties may examine the proposed Strategic Section of the FY 2017-2020 Plan on the PRPC website at: http://theprpc.org/programs/workforcedevelopment/default.html, beginning January 3, 2017. Copies may also be requested by email using the contact information listed below.

PRPC will accept written public comments on the proposed strategic section of the FY 2017-2020 Plan submitted by COB February 2, 2017. Written comments may be sent to Georgette Pond, Workforce Development Planning Coordinator, by email: gpond@theprpc.org., or by mail: Panhandle Regional Planning Commission, P.O. Box 9257, Amarillo, TX 79105-9257.

TRD-201606551
Georgette Pond
Workforce Development Planning Coordinator
Panhandle Regional Planning Commission
Filed: December 12, 2016

♦ ♦ ♦

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 December 9, 2016, for retail electric provider certification, pursuant to Public Utility Regulatory Act (PURA) §39.352.

Docket Title and Number: Application of GPPOWER, LLC for Retail Electric Provider Certification, Docket Number 46656.

Applicant requests an Option I retail electric certificate for the entire state of Texas.

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 46656.

TRD-201606572
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 13, 2016

♦ ♦ ♦

Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on December 7, 2016, pursuant to the Texas Water Code.

Docket Style and Number: Application of Lannius Municipal Utility District a/k/a Lannius Water Supply Corporation and Bois D'arc Municipal Utility District for Sale, Transfer, or Merger of Facilities and Certificate Rights in Fannin County, Docket Number 46644.

The Application: Lannius Municipal Utility District and Bois D'Arc Municipal Utility District filed an application for sale, transfer, or merger of facilities and certificate of convenience and necessity rights in Fannin County. Specifically, Bois D'Arc Municipal Utility District seeks approval to acquire the water system of Lannius Municipal Utility District. The area to be transferred includes 420 acres and 112 current customers.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the commission as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 46644.

TRD-201606410
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 9, 2016

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Notice of Application to Amend a Service Provider Certificate of Operating Authority

On December 7, 2016, Time Warner Cable Information Services (Texas) LLC d/b/a Time Warner Cable, Inc. filed an application with the Public Utility Commission of Texas to amend service provider certificate of operating authority number 60670, reflecting a name change.

Docket Style and Number: Application of Time Warner Cable Information Services (Texas) LLC d/b/a Time Warner Cable, Inc. for an Amendment to a Service Provider Certificate of Operating Authority, Docket Number 46651.

Persons wishing to comment on the action sought 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 1-888-782-8477 no later than December 23, 2016. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46651.

TRD-201606411
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 9, 2016

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Notice of Application to Amend a Service Provider Certificate of Operating Authority

On December 7, 2016, Charter Fiberlink TX-CCO, LLC filed an application with the Public Utility Commission of Texas to amend service provider certificate of operating authority number 60726, reflecting a name change.

Docket Style and Number: Application of Charter Fiberlink TX-CCO, LLC for an Amendment to a Service Provider Certificate of Operating Authority, Docket Number 46650.

Persons wishing to comment on the action sought 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 1-888-782-8477 no later than December 23, 2016. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46650.

TRD-201606412
Adriana Gonzales
Rules Coordinator
Public Utility Commission
Filed: December 9, 2016

♦ ♦ ♦

Notice of Application to Amend a Water 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 amend a water certificate of convenience and necessity (CCN) in Hood and Somervell Counties.

Docket Style and Number: Application of Application of Aqua Texas, Inc. d/b/a Aqua Texas to Amend a Water Certificate of Convenience and Necessity in Hood and Somervell Counties, Docket Number 46639.

The Application: Aqua Texas filed an application to amend its water CCN Number 13201 in Hood and Somervell Counties. The total area being requested includes approximately 191 acres of land. There are zero current customers.

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 46639.

TRD-201606445
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 9, 2016

♦ ♦ ♦

Notice of Intent to Implement a Minor Rate Change Pursuant to 16 TAC §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (Commission) on December 6, 2016, to implement a minor rate change pursuant to 16 Texas Administrative Code §26.171.

Tariff Control Title and Number: Notice of Big Bend Telephone Company for Approval of a Minor Rate Change Pursuant to 16 Texas Administrative Code §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 46640.

The Application: Big Bend Telephone Company filed an application with the Commission for revisions to its Local Exchange Tariff. Brazoria proposed an effective date of January 1, 2017. The estimated revenue increase to be recognized by the Applicant is $155,206 in gross annual intrastate revenues. The Applicant has 3,029 residential access lines in service in the state of Texas.

If the Commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by January 2, 2017, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the Commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by January 2, 2017. Requests to intervene should be filed with the Commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the Commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 46640.

TRD-201606395
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 7, 2016

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Notice of Intent to Implement a Minor Rate Change Pursuant to 16 TAC §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (Commission) on December 6, 2016, to implement a minor rate change pursuant to 16 Texas Administrative Code §6.171.

Tariff Control Title and Number: Notice of Brazoria Telephone Company for Approval of a Minor Rate Change Pursuant to 16 Texas Administrative Code §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 46641.

The Application: Brazoria Telephone Company filed an application with the Commission for revisions to its General Exchange Tariff. Brazoria proposed an effective date of January 1, 2017. The estimated revenue increase to be recognized by the Applicant is $158,346 in gross annual intrastate revenues. The Applicant has 2,778 residential access lines in service in the state of Texas.

If the Commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by January 2, 2017, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the Commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by January 2, 2017. Requests to intervene should be filed with the Commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the Commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 46641.

TRD-201606396
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 7, 2016

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Notice of Petition for Amendment to Certificate of Convenience and Necessity by Expedited Release

Notice is given to the public of the December 7, 2016, filing of a petition to amend a certificate of convenience and necessity by expedited release in Harris County.

Docket Style and Number: Petition by McAlister Opportunity Fund 2012, L.P. to Amend HMW Special Utility District's Water Certificate of Convenience and Necessity in Harris County by Expedited Release, Docket No. 46648.

The Petition: McAlister Opportunity Fund 2012, L.P. filed a petition for expedited release of 585.23 acres from HMW Special Utility District's water certificate of convenience and necessity 10342 under Texas Water Code §13.254(a-5) and 16 Texas Administrative Code §24.113(r).

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas no later than January 6, 2017, 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 46648.

TRD-201606413
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 9, 2016

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Notice of Petition for Amendment to Certificate of Convenience and Necessity by Expedited Release

Notice is given to the public of the December 7, 2016, filing of a petition to amend a certificate of convenience and necessity by expedited release in Harris County.

Docket Style and Number: Petition by McAlister Opportunity Fund 2014, L.P. to Amend HMW Special Utility District's Water Certificate of Convenience and Necessity in Harris County by Expedited Release, Docket No. 46649.

The Petition: McAlister Opportunity Fund 2014, L.P. filed a petition for expedited release of 49.61 acres from HMW Special Utility District's water certificate of convenience and necessity 10342 under Texas Water Code §13.254(a-5) and 16 Texas Administrative Code § 24.113(r).

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas no later than January 6, 2017, 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 46649.

TRD-201606414
Adriana Gonzales
Rules Coordinator
Public Utility Commission
Filed: December 9, 2016

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Texas Department of Transportation

Aviation Division - Request for Proposal for Professional Services

The Texas Department of Transportation (TxDOT), Aviation Division, intends to engage multiple firms for a five year contract term 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 Texas

Government Code. TxDOT Aviation Division will solicit and receive responses from firms as described below.

Sponsor: Various

TxDOT Project Number: 4217AVEVALS

TxDOT Project Manager: Robert W. Jackson

Project Description and Work to be Performed:

TxDOT, acting as agent for various airports to be determined, intends to enter into multiple contracts with firms to perform environmental services. The work to be performed consists of preparation of documented Categorical Exclusions and Environmental Assessments in accordance with Federal Aviation Administration Orders 5050.4B and 1050.1F. Separate deliverables may include: conduct biological evaluations; conduct preliminary and approved jurisdictional determinations and delineations of waters of the United States, including wetlands; write and coordinate Clean Water Act Section 404 permits; conduct and coordinate archeological and historic resource studies; conduct Environmental Due Diligence Audits; conduct environmental justice analysis; conduct airport noise studies and air emission inventories; and any other category of environmental impact analysis identified in *1050.1F Desk Reference: Federal Aviation Administration, Office of Environment and Energy (July 2015).*

Work will be performed at various airport locations within the state of Texas. The Scope of Work and Evaluation Criteria can be found at *http://www.txdot.gov/inside-txdot/division/aviation/projects.html* by selecting Notice to Consultants.

Seven unfolded copies of the proposal **must be received** by TxDOT, Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than 4:00 p.m. (CST) on January 24, 2017. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Beverly Longfellow.

For procedural questions, please contact Beverly Longfellow, Grant Manager at 1-800-68-PILOT (74568). For technical questions, please contact Robert W. Jackson, Environmental Specialist/Project Manager at 1-800-68-PILOT (74568).

TRD-201606571
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: December 13, 2016

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Request for Proposal - Private Consultant Services

The Texas Department of Transportation (department) announces a Request for Proposal (RFP) for private consultant services pursuant to Government Code, Chapter 2254, Subchapter B. The term of the contract will be from project initiation to August 31, 2019. The department will administer the contract. The RFP will be released on December 23, 2016, and is contingent on the finding of necessity from the Governor's Office.

Purpose: This solicitation is to provide Independent Verification and Validation (IV&V) advice, assistance and support services related to the Texas Department of Transportation's (TxDOT) purchase of software and system integrator services to design and implement a modern enterprise solution to automate the agency's transportation programs including: portfolio management, project management, asset management, contract management, and letting. The Respondent shall provide a comprehensive set of IV&V consultant services to support the implementation of the solution, meeting the objectives, project and implementation timing, and required functions and services specified in the solicitation.

Eligible Applicants: Eligible applicants include, but are not limited to, organizations that provide IV & V services.

Program Goal: To obtain independent and specialized advice, assistance, and support to provide TxDOT the expertise to support the implementation of the solution, meeting the objectives, project and implementation timing, and required functions and services specified in the solicitation.

Review and Award Criteria: Each application will first be screened for completeness and timeliness. Proposals that are deemed incomplete or arrive after the deadline will not be reviewed. A team of reviewers from the department will evaluate the proposals as to the private consultant's competence, knowledge, and qualifications and as to the reasonableness of the proposed fee for the services. The criteria and review process are further described in the RFP.

Deadlines: The department must receive proposals prepared according to instructions in the RFP package on or before January 20, 2017, at 3:00 p.m.

To Obtain a Copy of the RFP: Requests for a copy of the RFP should be submitted to Sheryl Allen, Contract Services Division, 125 East 11th Street, Austin, Texas 78701-2483, email Sheryl.Allen@txdot.gov, telephone number (512) 416-4676. Copies will also be available on the Electronic State Business Daily at: http://esbd.cpa.state.tx.us/

TRD-201606393
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: December 7, 2016

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Workforce Solutions for the Heart of Texas

Notice to Public

The Heart of Texas Workforce Development Board, Inc. (Board) hereby provides notice of the availability of the draft Strategic Plan addressing program years 2017- 2020. The Board is responsible for the planning, oversight and implementation of federally funded workforce development programs throughout the area, which includes the counties of: Bosque, Falls, Freestone, Hill, Limestone, and McLennan. The final plan will be submitted to the Texas Workforce Commission by February 28, 2017. A copy of the draft Strategic Plan will be made available on the Board's website at www.hotworkforce.com beginning Wednesday, December 14, 2016 by 4:00 p.m. Interested parties may obtain a copy of the draft Strategic Plan by contacting Judy Hedge at (254) 296-5393 between 8:00 a.m. and 5:00 p.m. Monday through Friday or via e-mail at judy.hedge@hotworkforce.com.

Comments regarding the plan may be submitted in writing to the address below, faxed to (254) 753-3173 or sent via e-mail to eunice.williams@hotworkforce.com no later than 4:00 p.m. on January 13, 2017. All comments will be addressed in the final plan submitted to the Texas Workforce Commission.

Heart of Texas Workforce Development Board, Inc.

dba Workforce Solutions for the Heart of Texas

Administrative Office801 Washington Avenue, Suite 700

Waco, Texas 76701

The Heart of Texas Workforce Development Board, Inc. is an equal opportunity employer/programs and auxiliary aids and services are available upon request to include individuals with disabilities. TTY/TDD via RELAY Texas services at 711 or (TDD) (800) 735-2989/ (800) 735-2988 (Voice).

TRD-201606576
Anthony Billings
Executive Director
Workforce Solutions for the Heart of Texas
Filed: December 14, 2016

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How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 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)*

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