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 355. REIMBURSEMENT RATES

### SUBCHAPTER C. REIMBURSEMENT METHODOLOGY FOR NURSING FACILITIES

**1 TAC §355.312**

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §355.312, concerning Reimbursement Setting Methodology--Liability Insurance Costs.

BACKGROUND AND PURPOSE

The purpose of this proposal is to revise the methodology for liability insurance add-on rates for nursing facility providers. The proposed amendment clarifies HHSC will pay the same add-on rate for providers who purchase general liability insurance without professional liability insurance, providers who purchase professional liability insurance without general liability insurance, and providers who purchase both general and professional liability insurance. This change ensures that HHSC is applying the appropriation uniformly across all nursing facility providers that carry liability insurance.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §355.112(d) clarifies the calculation of the rate add-ons before and after September 1, 2025, due to the anticipated implementation of Patient Driven Payment Model Long-Term Care. The amendment also clarifies the same add-on reimbursement rate will apply for providers who purchase general liability insurance without professional liability insurance, providers who purchase professional liability insurance without general liability insurance, and providers who purchase both general and professional liability insurance. The proposed amendment deletes text that is no longer applicable.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rule will be in effect:

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

(2) implementation of the proposed rule will not affect the number of HHSC employee positions;

(3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;

(4) the proposed rule will not affect fees paid to HHSC;

(5) the proposed rule will not create a new regulation;

(6) the proposed rule will not expand, limit, or repeal existing regulation;

(7) the proposed rule will not change the number of individuals subject to the rule; and

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

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

The rule does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Victoria Grady has determined for each year of the first five years the rule is in effect, the public benefit will be improved transparency in the payment of rate add-ons.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the proposed amendment does not result in a rate change for regulated persons.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4601 West Guadalupe

Street, Austin, Texas 78751; or emailed to HHSRulesCoordinationOffice@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 25R002" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §524.0151, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §32.021 and Texas Government Code §532.0051(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §532.0057(a), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32; and Texas Government Code §540.0051, which authorizes HHSC to implement the Medicaid managed care program.

The amendment affects Texas Government Code §524.0151, Chapter 532 and 540. The amendment also affects Texas Human Resources Code Chapter 32.

*§355.312. Reimbursement Setting Methodology--Liability Insurance Costs.*

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

(d) Payment rates. Payment rates for purchased general and professional liability insurance will be determined as follows.

(1) Before September 1, 2025, determine [~~Determine~~] the portion of the general and administration rate component from §355.307 of this subchapter (relating to Reimbursement Setting Methodology before September 1, 2025) attributable to allowable liability insurance costs. After September 1, 2025, determine the portion of the Non-Case-Mix rate component from §355.318 of this subchapter (relating to Reimbursement Setting Methodology for Nursing Facilities on or after September 1, 2025) attributable to allowable liability insurance costs.

(2) Determine the total number of [~~amount of total~~] dollars that would be expended if the liability rate component from paragraph (1) of this subsection were paid uniformly to all providers during the rate effective period.

(3) Estimate the number of days of service that will be covered by purchased liability insurance during the rate period.

(4) Divide the total dollars available for liability insurance from paragraph (2) of this subsection by the estimated number of days of service that will be covered by purchased liability insurance during the rate period from paragraph (3) of this subsection. [~~Estimate the proportion of this per diem amount accruing from general liability insurance and the proportion accruing from professional liability insurance to determine the payment rate for each day of purchased general liability insurance and the payment rate for each day of purchased professional liability insurance.~~]

(5) Payment rates for purchased [~~general and professional~~] liability insurance may be adjusted as often as HHSC determines is necessary to ensure that the total dollars expended during the rate period do not exceed the amount appropriated for this purpose.

(6) Since these payment rates are determined through an allocation of available appropriations among estimated units of service covered by purchased liability insurance, a public rate hearing is not required when adjustments are made to the payment rates.

(7) Providers will be notified, in a manner determined by HHSC, of adjustments to the payment rates for purchased general and professional liability insurance.

(8) HHSC will pay the same add-on rate for providers who purchase general liability insurance without professional liability insurance, providers who purchase professional liability insurance without general liability insurance, and providers who purchase both general and professional liability insurance. [~~Providers who purchase general liability insurance without professional liability insurance are only eligible to receive payment of the rate for purchased general liability insurance. Providers who purchase professional liability insurance without general liability insurance are only eligible to receive payment of the rate for purchased professional liability insurance. Providers who purchase both general and professional liability insurance are eligible to receive payment of both rates.~~]

(e) - (j) (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 April 29, 2025.

TRD-202501412
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: June 15, 2025
For further information, please call: (737) 867-7817

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# TITLE 19. EDUCATION

## PART 2. TEXAS EDUCATION AGENCY

### CHAPTER 61. SCHOOL DISTRICTS
### SUBCHAPTER BB. COMMISSIONER'S RULES ON REPORTING REQUIREMENTS

**19 TAC §61.1021, §61.1022**

The Texas Education Agency (TEA) proposes the repeal of §61.1021 and §61.1022, concerning the school report card and the Texas Academic Performance Report. The proposed repeals would relocate the existing requirements to 19 TAC Chapter 97 with no changes to the content of the rules.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 61.1021 establishes requirements for a campus's dissemination of the annual school report card. The proposed repeal of §61.1021 would move the existing language to proposed new 19 TAC §97.1007 with no changes to the content of the rule.

Section 61.1022 establishes requirements for a school district's dissemination of the annual Texas Academic Performance Report, including holding a public hearing on the report. The proposed repeal of §61.1022 would move the existing language to proposed new 19 TAC §97.1008 with no changes to the content of the rule.

The relocations are necessary due to a comprehensive reorganization of Chapter 61.

FISCAL IMPACT: Iris Tian, deputy commissioner of analytics, assessment, and reporting, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would repeal existing regulations to relocate the requirements.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand or limit an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Tian has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to allow for TEA rules to be reorganized. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins May 16, 2025, and ends June 16, 2025. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on May 16, 2025. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/.

STATUTORY AUTHORITY. The repeals are proposed under Texas Education Code (TEC), §39.305, which requires the commissioner to adopt rules requiring dissemination of campus report cards annually to the parent or person standing in parental relation to each student at the campus; and TEC, §39.306, which authorizes the commissioner to adopt rules concerning dissemination of the annual school district and campus performance report.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code (TEC), §39.305, for §61.1021; and TEC, §39.306, for §61.1022.

*§61.1021. School Report Cards.*

*§61.1022. Texas Academic Performance 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 May 5, 2025.

TRD-202501522
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: June 15, 2025
For further information, please call: (512) 475-1497



## CHAPTER 97. PLANNING AND ACCOUNTABILITY
## SUBCHAPTER AA. ACCOUNTABILITY AND PERFORMANCE MONITORING

### 19 TAC §97.1007, §97.1008

The Texas Education Agency (TEA) proposes new §97.1007 and §97.1008, concerning the school report card and the Texas Academic Performance Report. The proposed new sections would relocate existing requirements from 19 TAC Chapter 61 with no changes to the content of the rules.

BACKGROUND INFORMATION AND JUSTIFICATION: Proposed new §97.1007 would move existing language from 19 TAC §61.1021, which establishes requirements for a campus's dissemination of the annual school report card. The relocation is necessary due to a comprehensive reorganization of Chapter 61. No changes from the existing rule are proposed.

Proposed new §97.1008 would move existing language from 19 TAC §61.1022, which establishes requirements for a school district's dissemination of the annual Texas Academic Performance Report, including holding a public hearing on the report. The relocation is necessary due to a comprehensive reorganization of Chapter 61. No changes from the existing rule are proposed.

FISCAL IMPACT: Iris Tian, deputy commissioner of analytics, assessment, and reporting, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create new regulations to relocate existing requirements.

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

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Tian has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to allow for TEA rules to be reorganized. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins May 16, 2025, and ends June 16, 2025. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on May 16, 2025. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/.

STATUTORY AUTHORITY. The new sections are proposed under Texas Education Code (TEC), §39.305, which requires the commissioner to adopt rules requiring dissemination of campus report cards annually to the parent or person standing in parental relation to each student at the campus; and TEC, §39.306, which authorizes the commissioner to adopt rules concerning dissemination of the annual school district and campus performance report.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code (TEC), §39.305, for §97.1007; and TEC, §39.306, for §97.1008.

*§97.1007. School Report Cards.*

(a) The campus report card disseminated by the Texas Education Agency (TEA) under Texas Education Code, §39.305, shall be termed the "school" report card (SRC).

(b) The intent of the SRC is to inform each student's parents or guardians about the school's performance and characteristics. Where possible, the SRC will present the school information in relation to the district, the state, and a comparable group of schools. The SRC will present the student, staff, financial, and performance information required by statute, as well as any explanations and additional information deemed appropriate to the intent of the report.

(c) The SRC must be disseminated within six weeks after it is received from TEA.

(d) The campus administration may provide the SRC in the same manner it would normally transmit official communications to parents and guardians, such as: including the SRC in a weekly folder sent home with each student, mailing it to the student's residence, providing it at a teacher-parent conference, enclosing it with the student report card, or sending it via electronic mail.

(e) The school may not alter the report provided by TEA; however, it may concurrently provide additional information to the parents or guardians that supplements or explains information in the SRC.

*§97.1008. Texas Academic Performance Report.*

(a) The performance report provided by the Texas Education Agency (TEA) under Texas Education Code, §39.306, shall be termed the Texas Academic Performance Report.

(b) The intent of the Texas Academic Performance Report is to inform the public about the educational performance of the district and of each campus in the district in relation to the district, the state, and a comparable group of schools. The Texas Academic Performance Report will present the campus performance information as well as student, staff, and financial information required by statute. It will also include any explanations and additional information deemed appropriate to the intent of the report.

(c) The hearing for public discussion of the Texas Academic Performance Report must be held within 90 days after the report is received from TEA. This hearing may take place during a regularly scheduled or special meeting of the local board of trustees.

(d) The Texas Academic Performance Report must be published within two weeks after the public hearing. It must be published in the same format as it was received from TEA.

(e) The district may not alter the report provided by TEA; however, it may concurrently provide additional information to the public that supplements or explains information in the Texas Academic Performance Report.

(f) The local board of trustees shall disseminate the report by posting it on the school district website and in public places, such as each school office, local businesses, and public libraries.

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 May 5, 2025.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: June 15, 2025
For further information, please call: (512) 475-1497

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

## SUBCHAPTER B. HIGH SCHOOL

### 19 TAC §127.15

The State Board of Education (SBOE) proposes new §127.15, concerning Texas Essential Knowledge and Skills (TEKS) for career development and career and technical education (CTE). The proposed new section would establish TEKS in employability skills for effective performance in the workplace. The employability skills standards would be required to be taught as a part of each CTE course.

BACKGROUND INFORMATION AND JUSTIFICATION: In accordance with statutory requirements that the SBOE identify by rule the essential knowledge and skills of each subject in the required curriculum, the SBOE follows a board-approved cycle to review and revise the essential knowledge and skills for each subject. A full revision of the CTE TEKS was conducted in 2009 and 2014. As part of the 2014 review, the educator review committees recommended the inclusion in the TEKS for all CTE courses a strand in employability skills for effective performance in the workplace. The SBOE approved CTE TEKS with the employability skills strand for courses in the 16 career clusters that existed at that time to be effective August 28, 2017.

Since the 2014 CTE TEKS review, any revisions to the TEKS for CTE courses have included an employability skills strand; however, the employability skills vary across the current 14 CTE career clusters and in some instances vary among courses within the same career cluster. At the January 2025 SBOE meeting, the board discussed the option to develop a universal set of CTE TEKS in employability skills that would be required to be taught as part of each CTE course. The discussion included establishing one universal set of employability skills standards for courses identified as Level 1 and 2 in a CTE program of study and a second universal set of advanced employability skills standards for courses identified as Level 3 and 4 in a CTE program of study.

Proposed new §127.15, Career and Technical Education Employability Skills, Adopted 2025, would identify standards to be taught as part of each CTE course.

The SBOE approved the proposed new rule for first reading and filing authorization at its April 11, 2025 meeting.

FISCAL IMPACT: Monica Martinez, associate commissioner for standards and programs, has determined that for the first five years the proposal is in effect, there may be fiscal implications for school districts and charter schools to implement the proposed new employability skills standards, which may include the need for professional development and revisions to district-developed databases, curriculum, and scope and sequence documents. Since curriculum and instruction decisions are made at the local district level, it is difficult to estimate the fiscal impact on any given district.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: Texas Education Agency (TEA) staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create a new regulation by requiring school districts to include new employability skills into instruction provided for CTE courses.

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

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Martinez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to support student learning in skills that are needed for effective performance in the workplace. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data or reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins May 16, 2025, and ends at 5:00 p.m. on June 16, 2025. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/about-tea/laws-and-rules/sboe-rules-tac/proposed-state-board-of-education-rules. The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in June 2025 in accordance with the SBOE board operating policies

and procedures. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on May 16, 2025.

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to identify by rule the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §28.025(a), which requires the SBOE to determine by rule the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under TEC, §28.002.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §§7.102(c)(4); 28.002(a) and (c); and 28.025(a).

*§127.15. Career and Technical Education Employability Skills, Adopted 2025.*

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2025-2026 school year.

(b) General requirements. These standards may not be offered as a standalone course. These standards shall be offered together with the essential knowledge and skills for career and technical education (CTE) courses in this chapter.

(c) Introduction.

(1) CTE instruction provides content aligned with challenging academic standards, industry-relevant technical knowledge, and college and career readiness skills for students to further their education and succeed in current and emerging professions.

(2) The goal of the employability skills standards is to ensure that students develop essential skills for effective performance in the workplace, regardless of the occupation.

(3) These standards are required to be addressed in their entirety as part of each CTE course based on the level of the course in a CTE program of study.

(A) CTE courses identified as Level 1 or Level 2 courses in a CTE program of study must address the employability skills standards identified in subsection (d)(1) of this section.

(B) CTE courses identified as Level 3 or Level 4 courses in a CTE program of study must address the employability skills standards identified in subsection (d)(2) of this section.

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

(d) Knowledge and skills.

(1) Employability skills--Levels 1 and 2. In a CTE course identified as a Level 1 or Level 2 course in a CTE program of study, the student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) explain the importance of dressing appropriately, speaking politely, and conducting oneself in a manner appropriate for the profession and work site;

(B) describe teamwork, group dynamics, and conflict resolution and how they can impact the collective outcome;

(C) present written and oral technical communication in a clear, concise, and effective manner for a variety of purposes and audiences;

(D) identify time-management skills such as prioritizing tasks, following schedules, and tending to goal-relevant activities and how these practices optimize efficiency and results;

(E) define work ethic and discuss the characteristics of a positive work ethic, including punctuality, dependability, reliability, and responsibility for reporting for duty and performing assigned tasks;

(F) demonstrate respect for differences in the workplace;

(G) identify the importance and benefits of meritocracy, a hard work ethic, and equal opportunity in the workplace;

(H) identify consequences relating to discrimination and harassment;

(I) demonstrate knowledge of personal and occupational health and safety practices, including first aid, in the workplace;

(J) describe the roles and responsibilities of managers;

(K) identify career development and entrepreneurship opportunities in the field;

(L) identify appropriate training, education, or certification in the field; and

(M) identify legal and ethical responsibilities in relation to the field.

(2) Employability skills--Levels 3 and 4. In a CTE course identified as a Level 3 or Level 4 course in a CTE program of study, the student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) demonstrate dressing appropriately, speaking politely, and conducting oneself in a manner appropriate for the profession and work site;

(B) analyze how teams can produce better outcomes through cooperation, contribution, and collaboration from members of the team;

(C) present written and oral technical communication in a clear, concise, and effective manner for a variety of purposes and audiences, including explaining and justifying decisions;

(D) use time-management skills independently and in groups to prioritize tasks, follow schedules, and tend to goal-relevant activities in a way that optimizes efficiency and results;

(E) describe the importance of and demonstrate punctuality, dependability, reliability, and responsibility in reporting for duty and performing assigned tasks as directed;

(F) demonstrate respect for differences in the workplace;

(G) identify the importance and benefits of meritocracy, a hard work ethic, and equal opportunity in the workplace;

(H) identify consequences relating to discrimination and harassment;

(I) demonstrate knowledge of personal and occupational health and safety, applicable regulations, and first aid in the workplace and discuss why it is critical for employees and employers to maintain a safe work environment;

(J) compare skills and characteristics of managers and leaders in the workplace; and

(K) identify career development opportunities in the field:

*(i)* education and training;

*(ii)* credentialing;

*(iii)* internships and apprenticeships; and

*(iv)* entrepreneurship opportunities; and

(L) demonstrate an understanding of legal and ethical responsibilities in relation to the field.

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 May 5, 2025.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: June 15, 2025
For further information, please call: (512) 475-1497

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# TITLE 25. HEALTH SERVICES

## PART 1. DEPARTMENT OF STATE HEALTH SERVICES

### CHAPTER 217. MILK AND DAIRY

### SUBCHAPTER A. GRADE SPECIFICATIONS AND REQUIREMENTS FOR MILK

**25 TAC §217.2**

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes an amendment to 25 Texas Administrative Code (TAC) §217.2, concerning Adopted Regulations and Standards.

BACKGROUND AND PURPOSE

The proposal is necessary to reflect the current revision of the Pasteurized Milk Ordinance (PMO). This proposal is also necessary to adopt the current revision of three additional sets of federal standards and regulations which, like the PMO, are published as a joint effort between the United States Department of Health and Human Services (USDHHS), United States Food and Drug Administration (FDA), United States Public Health Service (USPHS), and National Conference of Interstate Milk Shipments (NCIMS). The additional standards and regulations are entitled:

1) Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program of the National Conference on Interstate Milk Shipments (Procedures);

2) Methods for Making Sanitation Ratings of Milk Shippers and the Certifications/Listings of Single-Service Containers and/or Closures for Milk and/or Milk Product Manufacturers (Methods); and

3) Evaluation of Milk Laboratories (EML).

SECTION-BY-SECTION SUMMARY

Proposed amendment to §217.2, Adopted Regulations and Standards, includes the adoption of the current revisions of the PMO, Procedures, Methods, and EML as a reference for milk and dairy farm, processor, and laboratory inspections and surveys.

FISCAL NOTE

Christy Havel Burton, Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

DSHS has determined that during the first five years that the rule will be in effect:

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

(2) implementation of the proposed rule will not affect the number of DSHS employee positions;

(3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;

(4) the proposed rule will not affect fees paid to DSHS;

(5) the proposed rule will not create a new regulation;

(6) the proposed rule will not expand, limit, or repeal existing regulations;

(7) the proposed rule will not change the number of individuals subject to the rule; and

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

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Christy Havel Burton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the rule does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rule.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas and the rule does not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Dr. Timothy Stevenson, Deputy Commissioner, Consumer Protection Division, has determined that for the first five years the rule is in effect, the public will benefit from the updated language reflecting current milk and dairy practices.

Christy Havel Burton has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4601 West Guadalupe Street, Austin, Texas 78751; or emailed to HHSRulesCoordinationOffice@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 25R015" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Health and Safety Code 435, which authorizes the executive commissioner to adopt rules providing specifications for the production and handling of milk and milk products; Texas Government Code §524.0151 and Texas Health and Safety Code §1001.075, which provide that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

The amendment implements Texas Government Code §524.0151 and Texas Health and Safety Code Chapter 1001.

*§217.2. Adopted Regulations and Standards.*

(a) The Department of State Health Services (DSHS) adopts by reference the most current revision of the [~~document entitled,~~] "Grade A Pasteurized Milk Ordinance," published by the United States Department of Health and Human Services, Public Health Service/Food and Drug Administration. [~~The document consists of the following parts: The Grade A Pasteurized Milk Ordinance with Administrative Procedures; illustrations, tables, supplements, appendices; and an index.~~]

(b) DSHS [~~The Department of State Health Services~~] adopts by reference the most current revision of[~~;~~] 21 Code of Federal Regulations (CFR) Part 117, Subpart [~~Subparts~~] A, General Provisions, Subpart B, Current Good Manufacturing Practice, and Subpart C, Hazard Analysis and Risk-Based Preventative Controls.

(c) DSHS adopts by reference the most current revision of the documents published by the United States Department of Health and Human Services, Public Health Service/Food and Drug Administration entitled:

(1) Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program of the National Conference on Interstate Milk Shipments;

(2) Methods for Making Sanitation Ratings of Milk Shippers and the Certifications/Listings of Single-Service Containers and/or Closures for Milk and/or Milk Product Manufacturers; and

(3) Evaluation of Milk Laboratories.

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 April 30, 2025.

TRD-202501426
Cynthia Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: June 15, 2025
For further information, please call: (512) 289-1704

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# CHAPTER 401. MENTAL HEALTH SYSTEM ADMINISTRATION

## SUBCHAPTER G. LOCAL MENTAL HEALTH AUTHORITY NOTIFICATION AND APPEAL

### 25 TAC §401.464

The executive commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of Chapter 401, consisting of §401.464, concerning Notification and Appeals Process.

BACKGROUND AND PURPOSE

The purpose of the proposal is to repeal an obsolete rule in Title 25, Texas Administrative Code (TAC), Chapter 401, Subchapter G, adopted in 1994. HHSC addresses the topic of this rule in similar rules located in 26 TAC, Chapter 301, Subchapter D.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §401.464 deletes the rule because the content of the rule is in 26 TAC, Chapter 301, Subchapter D.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rule repeal will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the repeal will be in effect:

(1) the proposed repeal will not create or eliminate a government program;

(2) implementation of the proposed repeal will not affect the number of HHSC employee positions;

(3) implementation of the proposed repeal will result in no assumed change in future legislative appropriations;

(4) the proposed repeal will not affect fees paid to HHSC;

(5) the proposed repeal will not create a new regulation;

(6) the proposed repeal will repeal existing regulations;

(7) the proposed repeal will not change the number of individuals subject to the rule; and

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

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the rule will be removed and does not require any change in business processes or additional costs.

LOCAL EMPLOYMENT IMPACT

The proposed repeal will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Trina Ita, Deputy Executive Commissioner of Behavioral Health Services, has determined that for each year of the first five years the repeal is in effect, the public benefit will be enhanced clarity and accuracy of behavioral health requirements within the TAC.

Trey Wood has also determined that for the first five years the repeal is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the content of the rule is in Title 26, Chapter 301, Subchapter D.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4601 West Guadalupe Street, Austin, Texas 78751; or emailed to *HHSRulesCoordinationOffice@hhs.texas.gov*.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 25R012" in the subject line.

STATUTORY AUTHORITY

The proposed repeal is authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; Texas Health and Safety Code §534.052, which requires the executive commissioner to adopt rules necessary and appropriate to ensure the adequate provision of community-based mental health services through a local mental health authority; and Texas Health and Safety Code §534.0675, which requires the executive commissioner to establish by rule a uniform procedure that each local mental health authority shall use relating to the right to appeal denial, reduction, or termination of services.

The repeal affects Texas Government Code §524.0151, and Texas Health and Safety Code §534.052, and §534.0675.

*§401.464. Notification and Appeals Process.*

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

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Karen Ray
Chief Counsel
Department of State Health Services
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For further information, please call: (737) 704-9063

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## CHAPTER 404. PROTECTION OF CLIENTS AND STAFF--MENTAL HEALTH SERVICES SUBCHAPTER E. RIGHTS OF PERSONS RECEIVING MENTAL HEALTH SERVICES

### 25 TAC §404.168, §404.169

The executive commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of Chapter 404, consisting of §404.168, concerning References; and §404.169, concerning Distribution.

BACKGROUND AND PURPOSE

The purpose of the proposal is to repeal obsolete rules in Title 25, Texas Administrative Code (TAC), Chapter 404, Subchapter E, adopted in 1996. The rules are no longer necessary.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §404.168 and §404.169 deletes rules that are no longer necessary.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the repeals will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

(1) the proposed repeals will not create or eliminate a government program;

(2) implementation of the proposed repeals will not affect the number of HHSC employee positions;

(3) implementation of the proposed repeals will result in no assumed change in future legislative appropriations;

(4) the proposed repeals will not affect fees paid to HHSC;

(5) the proposed repeals will not create a new regulation;

(6) the proposed repeals will repeal existing regulations;

(7) the proposed repeals will not change the number of individuals subject to the rules; and

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

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the rules will be removed and do not require any change in business processes or additional costs.

LOCAL EMPLOYMENT IMPACT

The repealed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Trina Ita, Deputy Executive Commissioner of Behavioral Health Services, has determined that for each year of the first five years the repeals are in effect, the public benefit will be enhanced clarity and accuracy of behavioral health requirements within the TAC.

Trey Wood has also determined that for the first five years the repeals are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the titles and content of the rules are no longer used in rulemaking.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4601 West Guadalupe Street, Austin, Texas 78751; or emailed to *HHSRulesCoordinationOffice@hhs.texas.gov*.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 25R012" in the subject line.

STATUTORY AUTHORITY

The proposed repeals are authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system.

The repeals affect Texas Government Code §524.0151.

*§404.168. References.*

*§404.169. Distribution.*

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 April 30, 2025.

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Karen Ray
Chief Counsel
Department of State Health Services
Earliest possible date of adoption: June 15, 2025
For further information, please call: (737) 704-9063

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## CHAPTER 405. PATIENT CARE--MENTAL HEALTH SERVICES
## SUBCHAPTER E. ELECTROCONVULSIVE THERAPY (ECT)

### 25 TAC §405.116

The executive commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of Chapter 405, consisting of §405.116, concerning Distribution.

BACKGROUND AND PURPOSE

The purpose of the proposal is to repeal an obsolete rule in Title 25, Texas Administrative Code (TAC), Chapter 405, Subchapter E, adopted in 1993. Senate Bill 800, 87th Legislature, Regular Session, 2021, repealed the requirement to submit an annual report.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §405.116 deletes a rule that is no longer necessary.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rule repeal will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the repeal will be in effect:

(1) the proposed repeal will not create or eliminate a government program;

(2) implementation of the proposed repeal will not affect the number of HHSC employee positions;

(3) implementation of the proposed repeal will result in no assumed change in future legislative appropriations;

(4) the proposed repeal will not affect fees paid to HHSC;

(5) the proposed repeal will not create a new regulation;

(6) the proposed repeal will repeal existing regulations;

(7) the proposed repeal will not change the number of individuals subject to the rule; and

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

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the rule will be removed and does not require any change in business processes or additional costs.

LOCAL EMPLOYMENT IMPACT

The repealed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Trina Ita, Deputy Executive Commissioner of Behavioral Health Services, has determined that for each year of the first five years the repeal is in effect, the public benefit will be enhanced clarity and accuracy of behavioral health requirements within the TAC.

Trey Wood has also determined that for the first five years the repeal is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rule is no longer necessary.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4601 West Guadalupe Street, Austin, Texas 78751; or emailed to *HHSRulesCoordinationOffice@hhs.texas.gov*.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 25R012" in the subject line.

STATUTORY AUTHORITY

The proposed repeal is authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system.

The repeal affects Texas Government Code §524.0151.

*§405.116. Distribution.*

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 April 30, 2025.

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Karen Ray
Chief Counsel
Department of State Health Services
Earliest possible date of adoption: June 15, 2025
For further information, please call: (737) 704-9063

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# CHAPTER 411. STATE MENTAL HEALTH AUTHORITY RESPONSIBILITIES

## SUBCHAPTER B. INTERAGENCY AGREEMENTS

### 25 TAC §§411.61, 411.62, 411.64

The executive commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of Chapter 411, consisting of §411.61, concerning Memorandum of Understanding Concerning Capacity Assessment for Self Care and Financial Management; §411.62, concerning Memorandum of Understanding concerning Continuity of Care System for Offenders with Mental Impairments; and §411.64, concerning Memorandum of Understanding (MOU) on Relocation Pilot Program.

BACKGROUND AND PURPOSE

The purpose of the proposed repeals is to delete obsolete rules in Title 25, Texas Administrative Code (TAC), Chapter 411, Subchapter B, adopted in 1999 and 2003. Texas Health and Safety Code §533.044 and 40 TAC, §71.104, have been repealed. Additionally, Texas Health and Safety Code §614.013 no longer requires an MOU to be formally adopted by rule.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §411.61 and §411.64 deletes the rules because the requirements have been repealed in statute. The proposed repeal of §411.62 deletes the rule because the MOU is not required to be formally adopted by rule.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rule repeals will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the repeals will be in effect:

(1) the proposed repeals will not create or eliminate a government program;

(2) implementation of the proposed repeals will not affect the number of HHSC employee positions;

(3) implementation of the proposed repeals will result in no assumed change in future legislative appropriations;

(4) the proposed repeals will not affect fees paid to HHSC;

(5) the proposed repeals will not create a new regulation;

(6) the proposed repeals will repeal existing regulations;

(7) the proposed repeals will not change the number of individuals subject to the rules; and

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

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the rules will be removed and do not require any change in business processes or additional costs.

LOCAL EMPLOYMENT IMPACT

The repealed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Trina Ita, Deputy Executive Commissioner of Behavioral Health Services, has determined that for each year of the first five years the repeals are in effect, the public benefit will be enhanced clarity and accuracy of behavioral health requirements within the TAC.

Trey Wood has also determined that for the first five years the repeals are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the rules have been repealed in statute or are no longer necessary.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4601 West Guadalupe Street, Austin, Texas 78751; or emailed to *HHSRulesCoordinationOffice@hhs.texas.gov*.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 25R012" in the subject line.

STATUTORY AUTHORITY

The proposed repeals are authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system.

The repeals affect Texas Government Code §524.0151.

*§411.61. Memorandum of Understanding Concerning Capacity Assessment for Self Care and Financial Management.*

*§411.62. Memorandum of Understanding concerning Continuity of Care System for Offenders with Mental Impairments.*

*§411.64. Memorandum of Understanding (MOU) on Relocation Pilot Program.*

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

Filed with the Office of the Secretary of State on April 30, 2025.

TRD-202501430
Karen Ray
Chief Counsel
Department of State Health Services
Earliest possible date of adoption: June 15, 2025
For further information, please call: (737) 704-9063



## CHAPTER 412. LOCAL MENTAL HEALTH AUTHORITY RESPONSIBILITIES

The executive commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of Chapter 412, consisting of §412.63 concerning References; §412.64, concerning Distribution; §412.114, concerning References; and §412.115, concerning Distribution.

BACKGROUND AND PURPOSE

The purpose of the proposed repeal is to delete obsolete rules in Title 25, Texas Administrative Code (TAC), Chapter 412, Local Mental Health Authority Responsibilities, Subchapter B and Subchapter C. The rules are outdated and no longer necessary.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §§412.63, 412.64, 412.114, and §412.115 deletes the rules because the rules are outdated and no longer necessary.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rule repeals will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the repeals will be in effect:

(1) the proposed repeals will not create or eliminate a government program;

(2) implementation of the proposed repeals will not affect the number of HHSC employee positions;

(3) implementation of the proposed repeals will result in no assumed change in future legislative appropriations;

(4) the proposed repeals will not affect fees paid to HHSC;

(5) the proposed repeals will not create a new regulation;

(6) the proposed repeals will repeal existing regulations;

(7) the proposed repeals will not change the number of individuals subject to the rules; and

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

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the rules will be removed and do not require any change in business processes or additional costs.

LOCAL EMPLOYMENT IMPACT

The repealed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Trina Ita, Deputy Executive Commissioner of Behavioral Health Services, has determined that for each year of the first five years the repeals are in effect, the public benefit will be enhanced clarity and accuracy of behavioral health requirements within the TAC.

Trey Wood has also determined that for the first five years the repeals are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the rules are outdated and no longer necessary.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4601 West Guadalupe Street, Austin, Texas 78751; or emailed to *HHSRulesCoordinationOffice@hhs.texas.gov*.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 25R012" in the subject line.

## SUBCHAPTER B. CONTRACTS MANAGEMENT FOR LOCAL AUTHORITIES

### 25 TAC §412.63, §412.64

STATUTORY AUTHORITY

The proposed repeals are authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system.

The repeals affect Texas Government Code §524.0151.

*§412.63. References.*

*§412.64. Distribution.*

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 April 30, 2025.

TRD-202501431
Karen Ray
Chief Counsel
Department of State Health Services
Earliest possible date of adoption: June 15, 2025
For further information, please call: (737) 704-9063

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## SUBCHAPTER C. CHARGES FOR COMMUNITY SERVICES

### 25 TAC §412.114, §412.115

STATUTORY AUTHORITY

The proposed repeals are authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system.

The repeals affect Texas Government Code §524.0151.

*§412.114. References.*
*§412.115. Distribution.*

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 April 30, 2025.

TRD-202501432
Karen Ray
Chief Counsel
Department of State Health Services
Earliest possible date of adoption: June 15, 2025
For further information, please call: (737) 704-9063

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# CHAPTER 414. RIGHTS AND PROTECTIONS OF PERSONS RECEIVING MENTAL HEALTH SERVICES

The executive commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of Chapter 414, consisting of: §414.414, concerning References; §414.415 concerning Distribution; §414.508, concerning References; §414.509, concerning Distribution; §414.551, concerning Purpose; §414.552, concerning Application; §414.553, concerning Definitions; §414.554, concerning Responsibilities of Local Authorities, Community Centers, and Contractors; §414.555, concerning Information To Be Provided to Victim or Alleged Victim and Others; §414.556, concerning Investigations Conducted by the Texas Department of Protective and Regulatory Services (TDPRS); §414.557, concerning Disciplinary and Other Action; §414.558, concerning Data Reporting Responsibilities; §414.559, concerning Confidentiality of Investigative Process and Report; §414.560, concerning Competency of Employees and Agents; §414.561, concerning TDMHMR Oversight

Responsibilities; §414.562, concerning Exhibits; §414.563, concerning References; and §414.564 concerning Distribution.

BACKGROUND AND PURPOSE

The proposal repeals obsolete rules in Title 25, Texas Administrative Code (TAC), Chapter 414, Subchapter I and Subchapter K, adopted in 2004. The rules are outdated and no longer necessary.

Additionally, the proposal repeals obsolete rules in 25 TAC Chapter 414, Subchapter L, adopted in 2001. HHSC addresses the topic of these rules in similar rules located in 26 TAC, Chapter 301, Subchapter M.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §§414.414, 414.415, 414.508, and 414.509 deletes the rules because the titles and content of the rules are no longer used by the HHSC in rulemaking. The proposed repeal of §§414.551 - 414.564 deletes the rules because the content of the rules exists in 26 TAC, Chapter 301, Subchapter M.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rule repeals will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the repeals will be in effect:

(1) the proposed repeals will not create or eliminate a government program;

(2) implementation of the proposed repeals will not affect the number of HHSC employee positions;

(3) implementation of the proposed repeals will result in no assumed change in future legislative appropriations;

(4) the proposed repeals will not affect fees paid to HHSC;

(5) the proposed repeals will not create a new regulation;

(6) the proposed repeals will repeal existing regulations;

(7) the proposed repeals will not change the number of individuals subject to the rules; and

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

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the rules will be removed and do not require any change in business processes or additional costs.

LOCAL EMPLOYMENT IMPACT

The repealed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Trina Ita, Deputy Executive Commissioner of Behavioral Health Services, has determined that for each year of the first five years the repeals are in effect, the public benefit will be enhanced clarity and accuracy of behavioral health requirements within the TAC.

Trey Wood has also determined that for the first five years the repeals are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules. HHSC addresses the topic of these rules in similar rules located in 26 TAC, Chapter 301, Subchapter M.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4601 West Guadalupe Street, Austin, Texas 78751; or emailed to *HHSRulesCoordinationOffice@hhs.texas.gov*.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 25R012" in the subject line.

## SUBCHAPTER I. CONSENT TO TREATMENT WITH PSYCHOACTIVE MEDICATION--MENTAL HEALTH SERVICES

### 25 TAC §414.414, §414.415

STATUTORY AUTHORITY

The proposed repeals are authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, and Texas Health and Safety Code §534.052, which requires the executive commissioner to adopt rules necessary and appropriate to ensure the adequate provision of community-based mental health services through a local mental health authority.

The repeals affect Texas Government Code §524.0151 an Texas Health and Safety Code §534.052.

*§414.414. References.*

*§414.415. Distribution.*

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 April 30, 2025.

TRD-202501433

Karen Ray
Chief Counsel
Department of State Health Services
Earliest possible date of adoption: June 15, 2025
For further information, please call: (737) 704-9063

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## SUBCHAPTER K. CRIMINAL HISTORY AND REGISTRY CLEARANCES

**25 TAC §414.508, §414.509**

STATUTORY AUTHORITY

The proposed repeals are authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, and Texas Health and Safety Code §534.052, which requires the executive commissioner to adopt rules necessary and appropriate to ensure the adequate provision of community-based mental health services through a local mental health authority.

The repeals affect Texas Government Code §524.0151 an Texas Health and Safety Code §534.052.

*§414.508. References.*

*§414.509. Distribution.*

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

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Karen Ray
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For further information, please call: (737) 704-9063

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## SUBCHAPTER L. ABUSE, NEGLECT, AND EXPLOITATION IN LOCAL AUTHORITIES AND COMMUNITY CENTERS

**25 TAC §§414.551 - 414.564**

STATUTORY AUTHORITY

The proposed repeals are authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, and Texas Health and Safety Code §534.052, which requires the executive commissioner to adopt rules necessary and appropriate to ensure the adequate provision of community-based mental health services through a local mental health authority.

The repeals affect Texas Government Code §524.0151 an Texas Health and Safety Code §534.052.

*§414.551. Purpose.*

*§414.552. Application.*

*§414.553. Definitions.*

*§414.554. Responsibilities of Local Authorities, Community Centers, and Contractors.*

*§414.555. Information To Be Provided to Victim or Alleged Victim and Others.*

*§414.556. Investigations Conducted by the Texas Department of Protective and Regulatory Services (TDPRS).*

*§414.557. Disciplinary and Other Action.*

*§414.558. Data Reporting Responsibilities.*

*§414.559. Confidentiality of Investigative Process and Report.*

*§414.560. Competency of Employees and Agents.*

*§414.561. TDMHMR Oversight Responsibilities.*

*§414.562. Exhibits.*

*§414.563. References.*

*§414.564. Distribution.*

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

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# CHAPTER 415. PROVIDER CLINICAL RESPONSIBILITIES--MENTAL HEALTH SERVICES

## SUBCHAPTER A. PRESCRIBING OF PSYCHOACTIVE MEDICATION

**25 TAC §§415.4, 415.9, 415.13, 415.14**

The executive commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of §415.4, concerning Philosophy; §415.9, concerning Consent and Patient Education; §415.13, concerning References; and §415.14, concerning Distribution.

BACKGROUND AND PURPOSE

The purpose of the proposal is to repeal obsolete rules in Title 25, Texas Administrative Code (TAC), Chapter 415, Subchapter A, adopted in 2004. The rules are duplicative or are no longer necessary.

SECTION-BY-SECTION SUMMARY

The proposed repeal to §415.9 deletes requirements regarding consent to treatment with psychoactive medications because they are duplicative, and are currently located in 26 TAC, Chapter 320, Subchapter B. The proposed repeal of §§415.4, 415.13, and 415.14 deletes rules that are no longer necessary.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rule repeals will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the repeals will be in effect:

(1) the proposed repeals will not create or eliminate a government program;

(2) implementation of the proposed repeals will not affect the number of HHSC employee positions;

(3) implementation of the proposed repeals will result in no assumed change in future legislative appropriations;

(4) the proposed repeals will not affect fees paid to HHSC;

(5) the proposed repeals will not create a new regulation;

(6) the proposed repeals will repeal existing regulations;

(7) the proposed repeals will not change the number of individuals subject to the rules; and

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

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the rules will be removed and do not require any change in business processes or additional costs.

LOCAL EMPLOYMENT IMPACT

The repealed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Trina Ita, Deputy Executive Commissioner of Behavioral Health Services, has determined that for each year of the first five years the repeals are in effect, the public benefit will be enhanced clarity and accuracy of behavioral health requirements within the TAC.

Trey Wood has also determined that for the first five years the repeals are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the rules are duplicative or are no longer necessary.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4601 West Guadalupe Street, Austin, Texas 78751; or emailed to *HHSRulesCoordinationOffice@hhs.texas.gov*.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 25R012" in the subject line.

STATUTORY AUTHORITY

The proposed repeals are authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system and Texas Health and Safety Code §534.052, which requires the executive commissioner to adopt rules necessary and appropriate to ensure the adequate provision of community-based mental health services through a local mental health authority.

The repeals affect Texas Government Code §524.0151 and Texas Health and Safety Code §534.052.

*§415.4. Philosophy.*

*§415.9. Consent and Patient Education.*

*§415.13. References.*

*§415.14. Distribution.*

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

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Karen Ray
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Department of State Health Services
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For further information, please call: (737) 704-9063

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# TITLE 26. HEALTH AND HUMAN SERVICES

## PART 1. HEALTH AND HUMAN SERVICES COMMISSION

### CHAPTER 271. COMMUNITY CARE SERVICES ELIGIBILITY [~~FOR AGED AND DISABLED~~]

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §271.1, concerning Definitions of Program Terms; §271.5, concerning Community Care Interest Lists; §271.7, concerning Enrollment; §271.51, concerning Eligibility for Services; §271.53, concerning Income and Income Eligibles; §271.55, Determination of Countable Income; §271.57, concerning Income from Excludable Sources; §271.59, concerning Income from Exempt Sources; §271.61, concerning Age; §271.63, concerning Need; §271.65, concerning Indian-related Exemptions; §271.69, concerning Family Care; §271.71, concerning Home-Delivered Meals; §271.73, concerning Adult Foster Care; §271.75, concerning Special Services to Persons with Disabilities; §271.77, concerning Day Activity and Health

Services; §271.79, concerning Case Management Services; §271.81, concerning Primary Home Care or Community Attendant Services; §271.83, concerning Time Allocation for Escort Services; §271.85, concerning Residential Care; §271.87, concerning Emergency Care; §271.89, concerning Resource Limits; §271.91, concerning Countable Resources; §271.93, concerning Resource Exclusions; §271.95, concerning Emergency Response Services; §271.97, concerning Residential Care Services; §271.151, concerning Application for Services; §271.153, concerning Recertification; §271.155, concerning Denial, Reduction, and Termination of Benefits; §271.159, concerning Adult Foster Care Client Rights and Responsibilities, and the repeal of §271.3, concerning Definitions.

BACKGROUND AND PURPOSE

Senate Bill (S.B.) 200, 84th Legislature, Regular Session, 2015, abolished the Texas Department of Aging and Disability Services (DADS) and transferred its functions to the Texas Health and Human Services Commission (HHSC), including Community Care for Aged and Disabled (CCAD). The program name was subsequently renamed to Community Care Services Eligibility (CCSE) on September 1, 2016. The rules for CCSE were administratively transferred from Title 40 Texas Administrative Code (TAC) to Title 26. The purpose of this proposal is to update references and terms in the rules to reflect the transition of the program from DADS to HHSC.

Currently, references to DADS and CCAD remain where HHSC and CCSE are the appropriate oversight agency and program. Additionally, there are references to outdated terms and program names such as "food stamps" or "aid to families with dependent children." The proposal updates those references to align 26 TAC, Part 1, Chapter 271, with both the agency's person-centered language policy and Texas Government Code Chapter 392. Eligibility requirements for the program are not changing.

SECTION-BY-SECTION SUMMARY

The proposal includes renaming the chapter title from Community Care for Aged and Disabled to Community Care Services Eligibility.

The proposed amendment to §271.1 makes grammatical changes for improved wording. References to DADS and CCAD have been replaced with HHSC and CCSE. Outdated or missing terms have been corrected and updated. Text has been updated to person-centered and plain language. References to outdated programs and terms have been removed. Definitions of abuse, neglect, and exploitation have been updated.

Section 271.3 is proposed for repeal. All relevant definitions are included in the proposed amendment to §271.1.

The proposed amendment to §271.5 makes grammatical changes for improved wording. References to DADS and CCAD have been replaced with HHSC and CCSE. Outdated or missing terms have been corrected and updated. Text has been updated to person-centered and plain language. References to outdated programs, their citations, and terms have been removed.

The proposed amendment to §271.7 updates the citations to sections of the subchapter, as it previously used §48.1302(d), when the chapter was in Title 40. The proposed amendment makes grammatical changes for improved wording. References to DADS and CCAD have been replaced with HHSC and CCSE. Outdated or missing terms have been corrected and updated. Text has been updated to person-centered and plain language. References to outdated programs and terms have been removed.

The proposed amendment to §271.51 makes grammatical changes for improved wording. References to DADS and CCAD have been replaced with HHSC and CCSE. Outdated or missing terms have been corrected and updated. Text has been updated to person-centered and plain language. References to outdated programs, their citations, and terms have been removed.

The proposed amendment to §271.53 makes grammatical changes for improved wording. References to DADS and CCAD have been replaced with HHSC and CCSE. Outdated or missing terms have been corrected and updated. Text has been updated to person-centered and plain language. References to outdated programs, their citations, and terms have been removed.

The proposed amendment to §271.55 updates the citations to sections of the subchapter, as the previous citation was §48.2904 and §48.2905 when the chapter was in Title 40. The proposed amendment makes grammatical changes for improved wording. References to DADS and CCAD have been replaced with HHSC and CCSE. Outdated or missing terms have been corrected and updated. Text has been updated to person-centered and plain language. References to outdated programs have been removed.

The proposed amendment to §271.57 makes grammatical changes for improved wording. References to DADS and CCAD have been replaced with HHSC and CCSE. Outdated or missing terms have been corrected and updated. Text has been updated to person-centered and plain language. The proposed amendment also amends a figure and renames it with the correct citation.

The proposed amendment to §271.59 makes grammatical changes for improved wording. References to DADS and CCAD have been replaced with HHSC and CCSE. Outdated or missing terms have been corrected and updated. Text has been updated to person-centered and plain language. References to outdated programs and terms have been removed.

The proposed amendment to §271.61 makes grammatical changes for improved wording. References to DADS and CCAD have been replaced with HHSC and CCSE. Outdated or missing terms have been corrected and updated. Text has been updated to person-centered and plain language.

The proposed amendment to §271.63 makes grammatical changes for improved wording. References to DADS and CCAD have been replaced with HHSC and CCSE. Outdated or missing terms have been corrected and updated. Text has been updated to person-centered and plain language.

The proposed amendment to §271.65 makes grammatical changes for improved wording. References to DADS and CCAD have been replaced with HHSC and CCSE. Outdated or missing terms have been corrected and updated. Text has been updated to person-centered and plain language. The proposed amendment also amends a figure and renames it with the correct citation. The proposed amendment adds the previously omitted income and resource exemptions of P.L. 103-444, payments made, or benefits granted by the Crow Boundary Settlement Act of 1994, and P.L. 108-270, per capita distribution judgment funds granted by the Western Shoshone Claims Distribution Act of 2004.

The proposed amendment to §271.69 makes grammatical changes for improved wording. References to DADS and CCAD

have been replaced with HHSC and CCSE. Outdated or missing terms have been corrected and updated. Text has been updated to person-centered and plain language. References to outdated programs, their citations, and terms have been removed. The proposed amendment also updates the citations to sections of the subchapter, as §§48.2902, 48.2903, 48.2922, and 48.2923 were previously used when the chapter was in Title 40.

The proposed amendment to §271.71 makes grammatical changes for improved wording. Text has been updated to person-centered and plain language.

The proposed amendment to §271.73 makes grammatical changes for improved wording. References to CCAD have been replaced with CCSE. Text has been updated to person-centered and plain language.

The proposed amendment to §271.75 makes grammatical changes for improved wording. Text has been updated to person-centered and plain language.

The proposed amendment to §271.77 makes grammatical changes for improved wording. References to DADS and CCAD have been replaced with HHSC and CCSE. Outdated or missing terms have been corrected and updated. Text has been updated to person-centered and plain language. The location of the CCSE Handbook has been updated to www.hhs.texas.gov. The proposed amendment also updates the citations to sections of the subchapter, as §§48.2902, 48.2903, 48.2903, 48.2922, and 48.2923 were previously used when the chapter was in Title 40. The proposed amendment replaces references to §98.203 and §98.204 with §211.203 and §211.204.

The proposed amendment to §271.79 makes grammatical changes for improved wording. References to CCAD have been replaced with CCSE. Text has been updated to person-centered and plain language.

The proposed amendment to §271.81 makes grammatical changes for improved wording. References to DADS and CCAD have been replaced with HHSC and CCSE. Outdated or missing terms have been corrected and updated. Text has been updated to person-centered and plain language. References to outdated programs and terms have been removed.

The proposed amendment to §271.83 makes grammatical changes for improved wording. Text has been updated to person-centered and plain language.

The proposed amendment to §271.85 makes grammatical changes for improved wording. Text has been updated to person-centered and plain language.

The proposed amendment to §271.87 makes grammatical changes for improved wording. Text has been updated to person-centered and plain language.

The proposed amendment to §271.89 makes grammatical changes for improved wording. References to CCAD have been replaced with CCSE. Text has been updated to person-centered and plain language.

The proposed amendment to §271.91 makes grammatical changes for improved wording. References to CCAD have been replaced with CCSE. Text has been updated to person-centered and plain language.

The proposed amendment to §271.93 makes grammatical changes for improved wording. References to DADS and CCAD have been replaced with HHSC and CCSE. Outdated or missing terms have been corrected and updated. Text has been updated to person-centered and plain language. References to outdated programs and terms have been removed.

The proposed amendment to §271.95 makes grammatical changes for improved wording. References to Department of Human Services (DHS) and CCAD have been replaced with HHSC and CCSE. Text has been updated to person-centered and plain language.

The proposed amendment to §271.97 makes grammatical changes for improved wording. Text has been updated to person-centered and plain language.

The proposed amendment to §271.151 makes grammatical changes for improved wording. References to Department of Human Services (DHS) and CCAD have been replaced with HHSC and CCSE. Text has been updated to person-centered and plain language.

The proposed amendment to §271.153 makes grammatical changes for improved wording. References to CCAD have been replaced with HHSC and CCSE. Text has been updated to person-centered and plain language.

The proposed amendment to §271.155 makes grammatical changes for improved wording. References to Department of Human Services (DHS) and CCAD have been replaced with HHSC and CCSE. Text has been updated to person-centered and plain language. The proposed amendment also amends a figure and renames it with the correct citation.

The proposed amendment to §271.159 makes grammatical changes for improved wording. References to Department of Human Services (DHS) has been replaced with HHSC. Text has been updated to person-centered and plain language. Clarifies which investigatory agency should receive complaints about ANE.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

(1) the proposed rules will not create or eliminate a government program;

(2) implementation of the proposed rules will not affect the number of HHSC employee positions;

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

(4) the proposed rules will not affect fees paid to HHSC;

(5) the proposed rules will not create a new regulation;

(6) the proposed rules will not expand, limit, or repeal existing regulation(s);

(7) the proposed rules will not change the number of individuals subject to the rules; and

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

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the amendments are merely codifying current procedures and there are no requirements to alter business processes.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Haley Turner, Deputy Executive Commissioner, Community Services, has determined that for each year of the first five years the rules are in effect, the public benefit will be reduced confusion about the existence and authority of former agencies and programs (the Department of Human Services (DHS), the Department of Disability and Aging Services (DADS), Community Care of the Aged and Disabled (CCAD)) and clarity of the current administering agency, HHSC.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the proposed rules are merely codifying current procedures.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4601 West Guadalupe Street, Austin, Texas 78751; or emailed to HHSRulesCoordinationOffice@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R094" in the subject line.

## SUBCHAPTER A. DEFINITIONS

### 26 TAC §271.1

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §524.0151, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and Texas Human Resources Code §117.080(e) which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement that section, including requirements applicable to Centers for Independent Living (CIL) providing independent living services under the program.

The amendment implements Texas Government Code §524.0151 and Texas Human Resources Code §117.080.

*§271.1. Definitions of Program Terms.*

The following words and terms have the following meanings when used in these sections, unless the context clearly indicates otherwise. [:]

(1) Abuse--Means: [~~The willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical harm, pain, or mental anguish; or the willful deprivation by a caretaker or one's self of goods or services which are necessary to avoid physical harm, mental anguish, or mental illness. (Chapter 48, Human Resources Code)~~]

(A) the negligent or willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to an older adult or person with a disability by the person's caretaker, family member, or other individual who has an ongoing relationship with the person; or

(B) any involuntary or nonconsensual sexual conduct that would constitute an offense under Texas Penal Code §21.08 (indecent exposure) or Texas Penal Code Chapter 22 (assaultive offenses), committed by the person's caretaker, family member, or other individual who has an ongoing relationship with the person.

(2) Activities of daily living (ADL)--Fundamental tasks required for a person to care for themselves independently. Activities that are essential to daily self-care, [;] including bathing, dressing, grooming, toileting, housekeeping, shopping, meal preparation, and others.

(3) Adult--A person at least 18 years of age, [~~18 or older,~~] or an emancipated minor.

(4) Adult Foster Care (AFC)--A Title XX of the Social Security Act program that provides a 24-hour living arrangement with supervision in an Adult Foster Care home for a person who is unable to continue living independently in the person's own home because of physical, mental, or emotional limitations.

[~~(4) Aged or elderly person--A person 65 or older.~~]

(5) Applicant--A person initially requesting services.

(6) Attendant--A person who is employed by a provider agency to give personal care or housekeeping services or both to a person [~~an~~] eligible for Community Attendant Services, Family Care, or Primary Home Care [~~family care or primary home care client~~], according to a service plan.

(7) Caregiver--A relative, guardian, representative payee, or person who has contact with the applicant or client that is frequent enough or regularly scheduled enough that a personal relationship exists or the applicant or client perceives that person as having a role in helping the applicant or client [~~the client~~] to meet basic needs.

(8) Caregiver support--Relief or rest [~~An interval of rest or relief~~] from caregiving duties given to or arranged for the caregiver of an HHSC [~~a DHS~~] client.

(9) Caseworker--An HHSC employee responsible for determining eligibility and case management activities.

(10) [~~(9)~~] Client--A person determined eligible for Community Care Services Eligibility (CCSE) [~~Community Care for the Aged and Disabled (CCAD)~~] services or programs.

(11) Community Attendant Services (CAS)--A non-technical, medically related Title XIX of the Social Security Act community care program available to an eligible person whose health problems limit the person from performing ADLs in accordance with a practitioner's statement of medical need.

(12) [~~(10)~~] Community care service or program--Services or programs provided within the client's own home, neighborhood, or community, as alternatives to institutional care. [~~Community care is sometimes called alternate care.~~]

(13) Community Care Services Eligibility (CCSE) services or programs--A group of HHSC programs or services that provide a variety of Title XIX of the Social Security Act and Title XX of the Social Security Act community-based services:

(A) Adult Foster Care (AFC);

(B) Community Attendant Services (CAS);

(C) Consumer Managed Personal Attendant Services (CMPAS);

(D) Day Activity Health Services (DAHS);

(E) Emergency Response Services (ERS);

(F) Family Care (FC);

(G) Home Delivered Meals (HDM);

(H) Primary Home Care (PHC);

(I) Residential Care (RC); and

(J) Special Services to Persons with Disabilities (SSPD).

(14) Community services interest list--A list containing the names of people interested in receiving a Title XX of the Social Security Act community care service or program when Title XX of the Social Security Act funds are available.

(15) Consumer Managed Personal Attendant Services (CMPAS)--A Title XX of the Social Security Act HHSC program that provides personal assistance services to people who have physical disabilities who are mentally and emotionally competent and willing to supervise their attendant or have someone who can supervise the attendant for them. The individual interviews, selects, trains, supervises, and releases their personal assistants.

[~~(11) Controlling interest--An owner who is a sole proprietor, a partner owning 5.0% or more of the partnership, or a corporate stockholder owning 5.0% or more of the outstanding stock of the contracted provider, or a member of the board of directors.~~]

(16) Day Activity Health Services (DAHS)--Provides Title XX of the Social Security Act or Title XIX of the Social Security Act services designed to meet an adult's needs in a DAHS facility licensed by HHSC.

[~~(12) Disabled/incapacitated person--A person who, because of physical, mental, or developmental impairment, is limited temporarily or permanently in his capacity to adequately perform one or more essential activities of daily living, which include, but are not limited to, personal and health care, moving around, communicating, and housekeeping.~~]

(17) [~~(13)~~] Earned income--Cash or liquid resources that a person [~~a client~~] receives for services performed [~~he performs~~] as an employee or because [~~as a result~~] of self-employment. All other income is unearned income.

(18) [~~(14)~~] Emancipated minor--A person under 18 who has the power and capacity of an adult. This includes a minor who has had the disabilities of minority removed by a court of law or a minor who, with or without parental consent, has been married. Marriage includes common-law marriage.

(19) Emergency Care (EC)--A program authorized under Title XX of the Social Security Act that provides a 24-hour living arrangement in an HHSC licensed facility for as many as 30 days while the case worker seeks permanent care arrangements. EC may be provided in Adult Foster Care (AFC) homes and in Residential Care (RC) facilities.

(20) Emergency Response Services (ERS)--Title XX of the Social Security Act services that are provided through an electronic monitoring system that is used by adults living with functional impairment who live alone or who are socially isolated in the community.

(21) [~~(15)~~] Emotional or verbal abuse--Any use of verbal communication or other behavior to humiliate, intimidate, vilify, degrade, or threaten with harm.

(22) [~~(16)~~] Expedited response--A face-to-face or phone contact with an applicant by the caseworker within five calendar days of the date of the applicant's request for services.

(23) [~~(17)~~] Exploitation--The illegal or improper act or process of a caregiver, family member, or other person who has an ongoing relationship with an older adult or person with a disability that involves [~~others~~] using, or attempting to use, the [~~an adult's income and~~] resources of the older adult or person with a disability, including the person's social security number or other identifying information, for monetary or personal benefit, profit, or gain without the informed consent of the person.

(24) [~~(18)~~] Facility--A legal entity that contracts with HHSC [~~the department~~] to deliver [~~to clients~~] day services or 24-hour residential services to a client.

(25) Family Care (FC)--A program authorized under Title XX of the Social Security Act that provides personal attendant services to an eligible person.

(26) Former military member--A person who served in the United States Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard:

(A) who declared and maintained Texas as the person's state of legal residence in the manner provided by the applicable military branch while on active duty; and

(B) who was killed in action or died while in service, or whose active duty otherwise ended.

(27) [~~(19)~~] Fraud--A deliberate misrepresentation or intentional concealment of information [~~in order~~] to receive or [~~to~~] be reimbursed for the delivery of services to which the person [~~individual~~] is not entitled.

(28) [~~(20)~~] Functional need--A person's [~~An individual's~~] requirement for assistance with activities of daily living, caused by a physical or mental limitation or disability.

(29) HHSC--Texas Health and Human Services Commission, or its designee.

(30) HHSC region--One of eleven regions of Texas that provide access to and support for HHSC services.

(31) Home Delivered Meals (HDM)--A program authorized under Title XX of the Social Security Act that provides meal delivery to an eligible person in the person's home.

(32) [~~(21)~~] Immediate response--A face-to-face or phone contact with an applicant by the caseworker within 24 hours of the applicant's request for services.

(33) [~~(22)~~] Income eligible[~~(I.E.)~~]--An adult who is not categorically eligible but[~~, although neither a Medicaid recipient nor a food stamp head of household or spouse, nevertheless~~] has income and resources equal to or less than the eligibility level established by HHSC [~~the department~~].

(34) [~~(23)~~] Institution--A nursing home, an intermediate care facility for people with intellectual and developmental disabilities [~~the mentally retarded (ICF-MR)~~], a state supported living center [~~school~~], or a state hospital.

(35) [~~(24)~~] Liquid resource--Cash or financial instruments that could be converted to cash within 20 workdays.

(36) [~~(25)~~] Medicaid-eligible [~~Medicaid eligible~~]--A person [~~An individual~~] eligible for federal medical assistance [~~as an SSI or TANF client~~], or eligible for medical assistance only (MAO) in a nursing home or while living in the community or through a federally approved waiver.

(37) [~~(26)~~] Medicare [~~eligible~~]--Federal health insurance for anyone at least 65 years of age and some people with certain disabilities or conditions [~~An aged or disabled person who is a recipient of Social Security or railroad retirement benefit payments and meets eligibility criteria to have certain medical expenses paid by the federal Medicare program~~].

(38) Military family member--A person who is the spouse or child, regardless of age, of:

(A) a military member; or

(B) a former military member.

(39) Military member--A member of the United States military serving in the Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard on active duty who has declared and kept Texas as the military member's state of legal residence in the manner offered by the applicable military branch.

(40) [~~(27)~~] Neglect--The failure to provide for oneself [~~one's self~~] the goods or services, including medical services, which are necessary to avoid physical or emotional harm or pain [~~harm, mental anguish, or mental illness;~~] or the failure of a caretaker to provide the goods or services. [~~(Chapter 48, Human Resources Code)~~]

(41) Older adult--A person at least 65 years of age.

(42) Person--An individual. The term person is used when addressing information relevant to both an applicant and a client.

(43) Person with a disability--A person who, because of physical, mental, or developmental impairments, is limited temporarily or permanently in the person's capacity to adequately perform one or more essential activities of daily living. This includes personal and health care, moving around, communicating, and housekeeping.

(44) [~~(28)~~] Personal leave--Any leave from a residential care facility except for hospitalization or institutionalization. A day of personal leave is any period of 24 consecutive hours.

(45) Primary Home Care (PHC)--A Title XIX of the Social Security Act non-technical, medically related personal attendant service to a person eligible for Medicaid whose health problems limit the person's ability to perform activities of daily living, in accordance with a practitioner's statement of medical need.

[~~(29) Prior approval--A regional nurse's authorization that payment may be made to a provider agency, because a client meets the medical criteria for the requested Medicaid service.~~]

(46) [~~(30)~~] Provider agency--An agency that has contracted with HHSC [~~DHS~~] to provide programs or services that HHSC [~~the CCAD services that DHS~~] has authorized for people [~~eligible clients~~].

[~~(31) Provisional contract--A time-limited contract.~~]

(47) Regional nurse--A registered nurse employed by HHSC who authorizes CAS, PHC, and DAHS.

(48) Residential Care (RC)--A Title XX of the Social Security Act Assisted Living and Emergency Care program that provides a 24-hour living arrangement in an HHSC licensed facility.

(49) [~~(32)~~] Resource--Any cash or other liquid assets or any real or personal property owned by a person [~~an individual~~] and spouse that could be converted to cash to use for support and maintenance.

(50) [~~(33)~~] Responder--A person who responds to an Emergency Response Services [~~emergency response services~~] (ERS) call activated by a client. Responders may include relatives, neighbors, volunteers, or staff of a sheriff's department, police department, emergency medical service, or fire department.

(51) Responsible person--A person who is:

(A) an applicant or client's parent or legal guardian; or

(B) anyone an adult applicant or client designates as the applicant's or client's representative.

[~~(34) Sexual abuse--Sexual contact or conduct which is without the voluntary, informed consent of the elderly or disabled adult.~~]

(52) Special Services to Persons with Disabilities (SSPD)--A Title XX of the Social Security Act program that provides services in various settings to help people develop the skills needed to live independently in the community.

(53) [~~(35)~~] Supplemental Security Income [~~security income~~] (SSI)--Monthly payments made by the Social Security Administration (SSA) to an older person or person with disabilities [~~an aged or disabled individual~~] who meets the requirements for public aid. SSA determines eligibility for SSI.

[~~(36) Support system--The network of family members, close friends, and neighbors who are usually available and willing to provide regular or occasional assistance to a person.~~]

(54) [~~(37)~~] Unearned income--Income received by a person [~~client~~] from sources other than self-employment or employee work activities.

(55) [~~(38)~~] Unmet need--A requirement for assistance with activities of daily living that cannot be met adequately on an ongoing basis by friends, relatives, volunteers, or service agencies other than HHSC [~~DHS~~].

(56) [~~(39)~~] Verbal referral--A referral made by the caseworker to the provider agency in person or by phone [~~telephone~~], no later than the first workday after the caseworker's determination that the applicant meets the criteria for an expedited response or an immediate response to a request for service[~~,~~] and needs immediate service initiation.

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

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Chief Counsel
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# CHAPTER 271. COMMUNITY CARE FOR AGED AND DISABLED
## SUBCHAPTER B. INTEREST LISTS

**26 TAC §271.3**

STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §524.0151, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and Texas Human Resources Code §117.080(e) which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement that section, including requirements applicable to Centers for Independent Living (CIL) providing independent living services under the program.

The repeal implements Texas Government Code §524.0151 and Texas Human Resources Code §117.080.

*§271.3. Definitions.*

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

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# CHAPTER 271. COMMUNITY CARE SERVICES ELIGIBILITY [~~FOR AGED AND DISABLED~~]
## SUBCHAPTER B. INTEREST LISTS

**26 TAC §271.5, §271.7**

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §524.0151, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and Texas Human Resources Code §117.080(e) which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement that section, including requirements applicable to Centers for Independent Living (CIL) providing independent living services under the program.

The amendments implement Texas Government Code §524.0151 and Texas Human Resources Code §117.080.

*§271.5. Community Services [~~Care~~] Interest Lists.*

(a) HHSC [~~DADS~~] maintains, for each HHSC [~~DADS~~] region, a community services [~~care~~] interest list for each community care services eligibility service or program authorized under Title XX of the Social Security Act.

(b) A person or responsible person may request in person, by phone [~~telephone~~], or in writing that HHSC [~~DADS~~] add a person's [~~an applicant's~~] name to a Title XX of the Social Security Act community services [~~care~~] interest list. The person making the request must provide a Texas address for the person [~~applicant~~].

(c) HHSC [~~DADS~~] adds a person's [~~an applicant's~~] name to a community services [~~care~~] interest list if:

(1) a request is made in accordance with subsection (b) of this section; or

(2) an applicant's name is on the interest list for an HHSC [~~a DADS~~] region and the applicant or a responsible person [~~party~~] notifies HHSC [~~DADS~~] that the applicant has moved to another HHSC [~~DADS~~] region and requests that the applicant's name be added to the interest list for the HHSC [~~DADS~~] region to which the applicant has moved.

(d) HHSC [~~DADS~~] adds an applicant's name to a community services [~~care~~] interest list with an interest list request date as follows:

(1) for a request to add an applicant's name to the interest list made in accordance with subsection (b) of this section, the date of the request; or

(2) for a request to add an applicant's name to the interest list made in accordance with subsection (c)(2) of this section, the date of the original request made in accordance with subsection (b) of this section.

(e) HHSC [~~DADS~~] removes an applicant's name from a community services [~~care~~] interest list if:

(1) the applicant or responsible person [~~party~~] requests that the applicant's name be removed from the interest list;

(2) the applicant moves out of Texas, unless the applicant is a military family member living outside of Texas:

(A) while the military member is on active duty; or

(B) for less than one year after the former military member's active duty ends;

(3) the applicant is a military family member living outside of Texas for more than one year after the former military member's active duty ends;

(4) the applicant or responsible person [~~party~~] declines an offer of a community care service or program when contacted by HHSC [~~DADS~~], as described in §271.7 [~~§48.1303~~] of this subchapter (relating to Interest Lists [~~Enrollment) or §48.2702 of this chapter (relating to Eligibility Determination Process),~~] unless the applicant is a military family member living outside of Texas:

(A) while the military member is on active duty; or

(B) for less than one year after the former military member's active duty ends;

(5) the applicant is deceased; or

(6) HHSC [~~DADS~~] denies an applicant's eligibility for the community care service or program and the applicant has had an opportunity to exercise the [~~the applicant's~~] right to appeal the decision

in accordance with Title 1 Texas Administrative Code (TAC), Part 15, §357.3 (relating to Authority and Right to Appeal) [§48.2710 of this chapter (relating to Right to Appeal)] or §271.155 [§48.3903] of this chapter (relating to Denial, Reduction, and Termination of Benefits) and did not appeal the decision, or appealed and did not prevail.

(f) If HHSC [DADS] removes an applicant's name from a community services [care] interest list in accordance with subsection (e)(1) - (4) of this section and, within 90 calendar days after the name was removed, HHSC [DADS] receives an oral or written request [from a person] to reinstate the applicant's name on the interest list, HHSC [DADS]:

(1) reinstates the applicant's name to the interest list with an interest list request date described in subsection (d)(1) or (2) of this section; and

(2) notifies the applicant in writing that the applicant's name has been reinstated to the interest list in accordance with paragraph (1) of this subsection.

(g) If HHSC [DADS] removes an applicant's name from a community services [care] interest list in accordance with subsection (e)(1) - (4) of this section and, more than 90 calendar days after the name was removed, HHSC [DADS] receives an oral or written request [from a person] to reinstate the applicant's name on the community services interest list, HHSC [DADS]:

(1) adds the applicant's name to the community services interest list with a [an interest list] request date of:

(A) the date HHSC [DADS] receives the oral or written request to reinstate; or

(B) because of extenuating circumstances as determined by HHSC [DADS], the original request date described in subsection (d)(1) or (2) of this section; and

(2) notifies the applicant in writing that the applicant's name has been added to the community services interest list in accordance with paragraph (1) of this subsection.

(h) If HHSC [DADS] removes an applicant's name from a community services [care] interest list in accordance with subsection (e)(6) of this section and HHSC [DADS] subsequently receives an oral or written request [from a person] to reinstate the applicant's name on the community services interest list, HHSC [DADS]:

(1) adds the applicant's name to the community services interest list with a [an interest list] request date of the date HHSC [DADS] receives the oral or written request to reinstate; and

(2) notifies the applicant in writing that the applicant's name has been added to the community services interest list in accordance with paragraph (1) of this subsection.

*§271.7. Enrollment.*

[(a) This section does not apply to the IH/FSP. Enrollment in the IH/FSP is governed by §48.2702 of this chapter (relating to Eligibility Determination Process).]

[(b)] When a community care service or program authorized under Title XX of the Social Security Act becomes available in a HHSC [DADS] region, HHSC [DADS] contacts the applicant whose community services interest list request date, assigned in accordance with §271.5 (d) [§48.1302(d)] of this subchapter (relating to [Community Care] Interest Lists), is earliest on the community services [care] interest list for the community care service or program that is available, and offers the community care service or program to the applicant.

(1) If the applicant or responsible person [party] declines the offer of the community care service or program, HHSC [DADS] removes the applicant's name from the community services interest list for the community care service or program, as described in §271.5(e)(4) [§48.1302(e)(4)] of this subchapter.

(2) If the applicant or responsible person [party] accepts the offer of the community care service or program, a caseworker [case manager] contacts the applicant to conduct an eligibility determination for the community care service or program.

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

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## SUBCHAPTER C. ELIGIBILITY

### 26 TAC §§271.51, 271.53, 271.55, 271.57, 271.59, 271.61, 271.63, 271.65, 271.69, 271.71, 271.73, 271.75, 271.77, 271.79, 271.81, 271.83, 271.85, 271.87, 271.89, 271.91, 271.93, 271.95, 271.97

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §524.0151, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and Texas Human Resources Code §117.080(e) which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement that section, including requirements applicable to Centers for Independent Living (CIL) providing independent living services under the program.

The amendments implement Texas Government Code §524.0151 and Texas Human Resources Code §117.080.

*§271.51. Eligibility for Services.*

(a) To receive Community Care Services Eligibility (CCSE) [community care for aged and disabled (CCAD)] services or programs, a person must meet income, resource, age, and need criteria.

(b) A person who lives in a nursing facility is not eligible to receive CCSE [CCAD] services or programs.

(c) A mandatory participant in the Medicaid Home and Community Based Services (HCBS) program [Integrated Care Management (ICM) Program] must receive Primary Home Care [primary home care] (PHC) and Title XIX of the Social Security Act Day Activity [day activity] and Health Services [health services] (DAHS) through the HCBS [ICM] Program.

*§271.53. Income and Income Eligibles.*

To receive Community Care Services Eligibility [be eligible for community care for aged and disabled] services or programs, a person [the applicant/client] must:

(1) be categorically eligible by receiving Supplemental Security Income (SSI) [supplemental security income], Temporary

Assistance to Needy Families (TANF) [~~aid to families with dependent children~~], Supplemental Nutrition Assistance Program (SNAP) [~~food stamps~~], Medicaid, Specified Low-income [~~specified low-income~~] Medicare Beneficiary [~~beneficiary~~] (SLMB), or Qualified [~~qualified~~] Medicare Beneficiary [~~beneficiary~~] (QMB) benefits; or

(2) be income eligible. The person's [~~applicant/client's~~] and spouse's countable income must be equal to or less than the income limit set by HHSC [~~the department~~]. For an individual person, this amount is the same as the special income limit set for institutional care (medical assistance only) by the Texas Legislature. For a couple, the income limit is twice the special income limit.

*§271.55. Determination of Countable Income.*

Countable income is determined by totaling [~~totalling~~] gross income from all the following sources, less all applicable exclusions and exemptions. Applicable exclusions and exemptions [exclusions/exemptions] are specified in §271.57 and §271.59 [~~§48.2904 and §48.2905~~] of this subchapter [~~title~~] (relating to Eligibility [~~Income from Excludable Sources and Income from Exempt Sources~~]).

(1) Total gross earnings including [~~. This includes~~] money, wages, commissions, tips, piece-rate payments, cash bonuses, or salary received for work performed as an employee is considered income. This also encompasses pay for members of the armed forces, including [~~(including~~] allotments from any armed forces pay received by a member of the family group from a person not living in the home [~~household)~~].

(2) Self-employment income, [~~(~~]including farm income, is[~~). For earned income to be~~] considered self-employment income when[,] either the applicant, client, [~~client~~] or spouse is [~~must be~~] actively involved or materially participating in producing the income.

(3) Social security and railroad retirement benefits are considered income.

(4) Dividends [~~. This consists of dividends~~] from stocks or membership in associations, and periodic receipts from estates of trust funds are considered income. These payments are averaged over a 12-month period.

(5) Rental [~~income. This includes~~] payments to the person [~~individual~~] from the rent of housing, store, or other property, as well as from boarders or lodgers, is considered income.

(6) Net income derived from oil, gas, or mineral rights is considered income and [~~. This~~] can include both lease and royalty payments. These payments are averaged over a 12-month period.

(7) Payments received [~~Income~~] from mortgages or contracts is considered income.

(8) Public assistance [~~or welfare~~] payments are considered income and include[~~.~~] Temporary Assistance to Needy Families, Supplemental Security Income, and general assistance. Cash [~~(cash~~] payments from a county or city[~~)~~] are also included.

(9) Veterans' pensions and compensation checks are considered income and [~~. This~~] may include money paid periodically by the Veterans Administration to disabled members of the armed forces or to survivors of deceased veterans, subsistence allowances paid to veterans for education and on-the-job training, and refunds paid to ex-servicemen as GI insurance premiums.

(10) Educational loans, grants, fellowships, and scholarships are considered income.

(11) Unemployment compensation [~~. Unemployment compensation may be~~] received from government employment insurance agencies or private companies during periods of unemployment is considered income. Strike [~~, and includes any strike~~] benefits received from union funds are also included.

(12) Workers compensation and disability payments are considered income and include [~~. This includes~~] compensation received periodically from private or public insurance companies for injuries incurred at work.

(13) Alimony is considered income.

(14) Regular monthly cash support payments from friends or relatives is considered income.

(15) Pensions, annuities, and irrevocable trust fund payments [~~funds. Payments may be~~] paid to a retired person or the retired person's [~~his~~] survivors by a former employer or by a union, either directly or through an insurance company is considered income. Periodic payments from annuities, insurance, irrevocable trust fund payments, and civil service pensions are included.

(16) Payments received [~~Income~~] from the applicant's or client's share of a life estate are considered income.

*§271.57. Income from Excludable Sources.*

Income may be fully or partially countable[,] or may be excluded from the current eligibility budget. Excludable income will continue to be monitored by the caseworker at each financial review to determine how eligibility is affected. Excludable sources of income include:

(1) deductions from earned income, including social security payments, Medicare premium payments, bonds, pensions, and union dues;

(2) the first $65 of an applicant's, [~~a~~] client's, or couple's [~~(or couple's)~~] net earned income, plus 1/2 of the remainder;

(3) loans, grants, scholarships, and fellowship funds obtained and used under conditions that preclude the [~~their~~] use for current living costs; any [~~. Any~~] portion used to pay any other expense [~~(room, board, books, etc.)~~] cannot be excluded;

(4) Veterans Administration aid-and-attendance benefits, homebound elderly benefits, and payments to certain eligible veterans for purchase of medications;

(5) infrequent or irregular income [~~(income~~] received less frequently than once a month[~~)~~] that averages $20 per month or less;

(6) 1/3 of the total amount of child support payments for an eligible child; and

(7) allowable exclusions from self-employment income, as indicated on the following chart.

Figure: 26 TAC §271.57(7)

[~~Figure: 26 TAC §271.57(7)~~]

*§271.59. Income from Exempt Sources.*

Exempt income is not included in the income eligibility calculation. Once identified and documented, caseworkers will not be required to monitor exempt income at subsequent financial redeterminations. Sources of exempt income include:

(1) interest income; [~~.~~]

(2) cash received from the sale of a resource [~~. This cash~~] is a resource, not income; [~~.~~]

(3) income of minor children who are supported by or dependent upon the client; [~~.~~]

(4) refunds from the Internal Revenue Service for earned income tax credit; [~~.~~]

(5) reimbursement from an insurance company for health insurance claims; [.]

(6) any cash from a non-governmental medical or social services organization if the cash is:

(A) for medical or social services already received by the applicant or client [individual] and approved by the organization, and which does not exceed the value of those services; or

(B) a payment restricted to the future purchase of a medical or social service; [.]

(7) proceeds of either a commercial loan or an informal loan, for which repayment is required with or without interest: [.]

(A) the [The proceeds (] amount borrowed is [) are] not counted as income in the month in which it is [they are] received, but is [are] considered to be a resource in the following months; and [month(s).]

(B) to [To] claim exemption of the proceeds of a loan, an applicant or [a] client must prove that they acknowledge [he acknowledges] an obligation to repay and that a [some] plan for repayment exists; if [. If] these conditions can be verified, no written contract is required; [.]

(8) the amount of the cost-of-living increase in any pension or benefit, received on or after January 1, 1985, that would cause the client to be ineligible for continued community care services or programs. This exclusion applies only to [community care] clients who are already receiving community care services or programs, or case management, and would become ineligible because of the increase; it [. It] does not apply to applicants; [.]

(9) in-kind income, such as food, clothing, shelter, rent subsidies; [.]

(10) one-time or lump-sum payments from any source; [.]

[(11) funds from the In-Home Family Support Program or the Transition to Life in the Community Program.]

(11) [(12)] payments from the Agent Orange Settlement Fund or any other fund established in settlement of the Agent Orange product liability litigation, as [.] Public Law 101-239 exempts the payments from countable income and resources; the [. The] law is retroactive as of January 1, 1989; [.]

(12) [(13)] any payment received under the Radiation Exposure Compensation Act (Public Law 101-246); [.]

(13) [(14)] any payment received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; [.]

(14) [(15)] payments to volunteers under the Domestic Volunteer Services Act, this [. This] exclusion applies to:

(A) any payments to volunteers in the Retired Senior Volunteer Program, [and] Foster Grandparent Program, and the Senior Companion Program; and

(B) [. Also included are] payments under Title III of the same act, which includes the Service Corps of Retired Executives (SCORE), the Active Corps of Executives (ACE), and the Action Cooperative Volunteer Program (ACV); [.]

(15) [(16)] interest or other earnings on any designated account established for Supplemental Security Income (SSI) clients under [age] 18 years of age for retroactive benefits, as required by Public Law 104-193, effective August 22, 1996; [.]

(16) [(17)] payments by the Federal Disaster Assistance Administration authorized by the Disaster Relief Act, as amended; [.]

(17) [(18)] value of any housing assistance paid on a house under the United States Housing Act of 1937, the National Housing Act, the Housing and Urban Development Act of 1965, §101, or Title V of the Housing Act of 1949, as authorized by Public Law 94-375; [.]

(18) [(19)] home energy assistance, except food or clothing, under Public Laws 97-377 and 97-424 [. Home energy assistance] is assistance in cash or in-kind that is provided by a private, nonprofit organization or a utility company, and [. Some] examples include [of home energy assistance are] heating, cooling, weatherization, storm windows, and blankets; [.]

(19) [(20)] reparation payments received by Holocaust survivors from the Federal Republic of Germany[. The payments may be] made periodically or as a lump sum, and HHSC [.The Texas Department of Human Services] accepts the applicant's or client's signed statement of amounts involved and dates of payment; [.] Public Law 101-508 established this exemption effective January 1, 1991; [.]

(20) [(21)] payments from a state-administered fund to aid victims of crime; [.] Public Law 101-508 established this exemption effective May 1, 1991; [.]

(21) [(22)] payments a state or local government may make as relocation assistance; [.] Public Law 101-508 established this exemption effective October 15, 1990; [.]

(22) [(23)] hazardous duty pay of a spouse or parent absent from the home because of active military service; [.]

(23) [(24)] restitution payments made by the United States government under Public Law 100-383 to Japanese-Americans [Japanese-American (]or, [if deceased,] to the Japanese-Americans' [their] survivors[)], who were interned or relocated during World War II; [.]

(24) [(25)] reparation payments received under §§500-506 of the Austrian General Social Insurance Act; [.]

(25) [(26)] payments under the Netherlands' Act on Benefits for Victims of Persecution Wet Uitkering Vervolgingsslachtoffers (WUV) 1940-1945; or [(Dutch acronym, WUV).]

(26) [(27)] payment from any source made to an applicant or a client [individuals] because of the applicant's or client's [their] status as victims of Nazi persecution; [.] Public Law 103-286 established this exemption effective August 1, 1994.

*§271.61. Age.*

(a) A person must be at least 18 years of age [or older], or an emancipated minor, to receive Community Care Services Eligibility (CCSE) [Community Care for the Aged and Disabled (CCAD)] services or programs, except:

(1) a person of any age may receive CCSE [CCAD] Medicaid-funded day activity and health services;

(2) a person of any age who is not eligible for the Texas STAR Kids [Health Steps] program may receive CCSE [CCAD] Medicaid-funded Community Attendant Services [community attendant services]; and

(3) a person must be at least 21 years of age [or older] to receive CCSE Primary Home Care [CCAD primary home care] services, except a current CCSE Primary Home Care [CCAD primary home care] services client [consumer] who is eligible for Texas STAR Kids [Health Steps] and who becomes 21 years of age on or before February 29, 2008.

(b) A person under 21 years of age who is eligible for the Texas STAR Kids [~~Health Steps~~] program may be eligible for community [~~personal~~] care services or programs provided through the Texas STAR Kids program [~~Health and Human Services Commission~~].

*§271.63. Need.*

(a) HHSC [~~DADS~~] uses the HHSC [~~DADS~~] Needs Assessment Questionnaire and Task/Hour Guide form to determine a person's [~~an applicant's or individual's~~] functional need and unmet need for:

(1) Community Attendant Services (CAS) [~~community attendant services~~];

(2) Family Care (FC) [~~family care services~~];

(3) Primary Home Care (PHC) [~~Program~~];

(4) Home Delivered Meals (HDM) [~~Program~~];

(5) Adult Foster Care (AFC) [~~adult foster care~~];

(6) Residential Care (RC) [~~Program~~];

(7) Consumer Managed Personal Attendant Services (CMPAS);

(8) [~~(7)~~] Emergency Response Services (ERS) [~~emergency response services~~]; and

(9) [~~(8)~~] Special Services to Persons with Disabilities Program (SSPD).

(b) To receive [~~be eligible for~~] a service or program described in subsection (a) of this section, a person [~~an applicant or individual~~] must have a functional need and an unmet need for the program or service.

*§271.65. Indian-related Exemptions.*

(a) Type of payment. The following statutes provide that some [~~certain types of~~] payments made to members of Indian tribes are exempt from income and resources as specified in paragraphs (1)-(4) of this subsection, or only from income as specified in paragraph (5) of this subsection.

(1) Indian Judgment Funds Distribution Act--Public Law 93-134. Effective October 19, 1973, per capita distribution payments to members of Indian tribes who are due judgment funds, according to a plan of the Secretary of the Interior [~~(~~]or, legislation[~~,~~] when a plan cannot be prepared or is not approved by [~~the~~] Congress[~~)~~], are exempted from income and resources. This does not include payments of funds distributed or held in trust [~~(i.e., in the possession or care of a trustee)~~] according to public laws enacted before October 19, 1973.

(2) Distribution of Indian Judgment Funds--Public Law 97-458. Effective January 12, 1983, Indian judgment funds held in trust [~~(i.e., in the possession or care of a trustee)~~] or distributed per capita, pursuant to an approved plan, or the fund's [~~their~~] availability, are exempted from income and resources. Indian judgment funds include interest and investment income accrued while the funds are held in trust. Initial purchases made with distributed judgment funds are exempted from resources.

(3) Per Capita Act--Public Law 98-64.

(A) Effective August 2, 1983, per capita distributions of all funds held in trust by the Secretary of the Interior to members of an Indian tribe are exempted from income and resources.

(B) Any local tribal funds that a tribe distributes to individuals on a per capita basis, but which have not been held in trust by the Secretary of the Interior [~~(e.g., tribally managed gaming revenues)~~] are not exempted from income and resources under this provision. Example: Tribally-managed gaming revenues.

(4) Alaska Native Claims Settlement Act (ANCSA)--Public Law 100-241.

(A) Effective February 3, 1988, the following items received from a native corporation are exempted from income and resources:

*(i)* cash received from a native corporation, [~~(~~]including cash dividends on stock received from a native corporation,[~~)~~] to the extent it does not exceed $2,000, per individual per year;

*(ii)* stock, [~~(~~]including stock issued or distributed by a native corporation as a dividend or distribution on stock[~~)~~];

*(iii)* a partnership interest;

*(iv)* land or an interest in land, [~~(~~]including land or an interest in land received from a native corporation as a dividend or distribution on stock[~~)~~]; and

*(v)* an interest in a settlement trust.

(B) The ANCSA also provides that up to $2,000 in retained distributions from a native corporation may be exempted from resources for each year beginning with 1988.

(5) Payments from Individual Interests in Trust or Restricted Lands--Public Law 103-66.

(A) Effective January 1, 1994, up to $2,000 per year received by Indians that is derived from individual interests in trust or restricted lands is exempted from income.

(B) Interests of individual Indians in trust or restricted lands are exempted from resources.

(b) Payments to specific Indian tribes and groups. The following statutes provide that certain payments made to members of specified Indian tribes and groups are exempt from income and resources.

(1) Distribution of Per Capita Funds--Public Law 85-794. Effective August 28, 1958, per capita payments to members of the Red Lake Band of Chippewa Indians from the proceeds of the sale of timber and lumber on the Red Lake Reservation are exempted from income and resources.

(2) Distribution of Judgment Funds--Public Law 92-254. Effective March 18, 1972, per capita distribution payments by the Blackfeet and Gros Ventre tribal governments to members, which resulted from judgment funds to the tribes, are exempted from income and resources.

(3) Distribution of Claims Settlement Funds--Public Law 93-531 and Public Law 96-305. Effective December 22, 1974, settlement fund payments to members of the Hopi and Navajo Tribes, and the availability of such funds, are exempted from income and resources.

(4) Receipts from Lands Held in Trust for Indian Tribes--Public Law 94-114.

(A) Effective October 17, 1975, receipts derived from the following trust lands and distributed to members of designated Indian tribes are exempted from income and resources.

(B) The first four Indian groups had lands conveyed with mineral rights before [~~prior to~~] Public Law 94-114; that law conveyed the rest of the lands [~~land~~] to the remaining Indian groups.
Figure: 26 TAC §271.65(b)(4)(B)
[~~Figure: 26 TAC §271.65(b)(4)(B)~~]

(5) Distribution of Judgment Funds--Public Law 94-189. Effective December 31, 1975, judgment funds distributed per capita to,

or held in trust for, members of the Sac and Fox Indian Nation, and the availability of such funds, are exempted from income and resources.

(6) Distribution of Judgment Funds--Public Law 94-540. Effective October 18, 1976, judgment funds distributed per capita to, or held in trust for, members of the Grand River Band of Ottawa Indians, and the availability of such funds, are exempted from income and resources.

(7) Distribution of Judgment Funds--Public Law 95-433. Effective October 10, 1978, any judgment funds distributed per capita to members of the Confederated Tribes and Bands of the Yakima Indian Nation or the Apache Tribe of the Mescalero Reservation are exempted from income and resources.

(8) Receipts from Lands Held in Trust--Public Law 95-498. Effective October 21, 1978, receipts derived from trust lands awarded to the Pueblo of Santa Ana and distributed to members of that tribe are exempted from income and resources.

(9) Receipts from Lands Held in Trust--Public Law 95-499. Effective October 21, 1978, receipts derived from trust lands awarded to the Pueblo of Zia and distributed to members of that tribe are exempted from income and resources.

(10) Distribution of Judgment Funds--Public Law 96-318. Effective August 1, 1980, any judgment funds distributed per capita or made available for programs for members of the Delaware Tribe of Indians and the absentee Delaware Tribe of Western Oklahoma are exempted from income and resources.

(11) Maine Indian Claims Settlement Act--Public Law 96-420. Effective October 10, 1980, all funds and distributions to members of the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians under the Maine Indian Claims Settlement Act, and the availability of such funds, are exempted from income and resources.

(12) Distribution of Judgment Funds--Public Law 97-95. Effective December 17, 1981, any distributions of judgment funds to members of the San Carlos Tribe of Arizona are exempted from income and resources.

(13) Distribution of Judgment Funds--Public Law 97-371. Effective December 20, 1982, any distributions of judgment funds to members of the Wyandot Tribe of Indians of Oklahoma are exempted from income and resources.

(14) Distribution of Judgment Funds--Public Law 97-372. Effective December 20, 1982, distributions of judgment funds to members of the Shawnee Tribe of Indians (Absentee Shawnee Tribe of Oklahoma, the Eastern Shawnee Tribe of Oklahoma, and the Cherokee Band of Shawnee descendants) are exempted from income and resources.

(15) Distribution of Judgment Funds--Public Law 97-376. Effective December 21, 1982, judgment funds distributed per capita or made available for programs for members of the Miami Tribe of Oklahoma and the Miami Indians of Indiana are exempted from income and resources.

(16) Distribution of Judgment Funds--Public Law 97-402. Effective December 31, 1982, distributions of judgment funds to members of the Clallam Tribe of Indians of the State of Washington (Port Gamble Indian Community, Lower Elwha Tribal Community, and the Jamestown Band of Clallam Indians) are exempted from income and resources.

(17) Distribution of Judgment of Funds--Public Law 97-403. Effective December 31, 1982, judgment funds distributed per capita or made available for programs for members of the Pembina Chippewa Indians (Turtle Mountain Band, Chippewa Cree Tribe, Minnesota Chippewa Tribe, and Little Shell Band of Chippewa Indians of Montana) are exempted from income and resources.

(18) Distribution of Judgment Funds--Public Law 97-408. Effective January 3, 1983, per capita distributions of judgment funds to members of the Gros Ventre and Assiniboine Tribes of Fort Belknap Indian Community, and the Papago Tribe of Arizona, are exempted from income and resources.

(19) Distribution of Judgment Funds--Public Law 97-436. Effective January 8, 1983, up to $2,000 of per capita distributions of judgment funds to members of the Confederated Tribes of the Warm Springs Reservation are exempted from income and resources.

(20) Distribution of Judgment Funds--Public Law 98-123. Effective October 13, 1983, judgment funds distributed to the Red Lake Band of Chippewa Indians are exempted from income and resources.

(21) Distribution of Judgment Funds--Public Law 98-124. Effective October 13, 1983, funds distributed per capita or family interest payments for members of the Assiniboine Tribe of the Fort Belknap Indian Community of Montana and the Assiniboine Tribe of the Fort Peck Indian Reservation of Montana are exempted from income and resources.

(22) Distribution of Claims Settlement Funds--Public Law 98-432. Effective September 28, 1984, judgment funds and income therefrom distributed to members of the Shoalwater Bay Indian Tribe are exempted from income and resources.

(23) Distribution of Claims Settlement Funds--Public Law 98-500. Effective October 19, 1984, all distributions to heirs of certain deceased Indians under the Old Age Assistance Claims Settlement Act are exempted from income and resources.

(24) Distribution of Judgment Funds--Public Law 98-602. Effective October 30, 1984, judgment funds distributed per capita or made available for any tribal program, for members of the Wyandotte Tribe of Oklahoma and the Absentee Wyandottes, are exempted from income and resources.

(25) Distribution of Judgment Funds--Public Law 99-130. Effective October 28, 1985, per capita and dividend payment distributions of judgment funds to members of the Santee Sioux Tribe of Nebraska, the Flandreau Santee Sioux Tribe, and the Prairie Island Sioux, Lower Sioux, and Shakopee Mdewakanton Sioux Communities of Minnesota are exempted from income and resources.

(26) Distribution of Judgment funds--Public Law 99-146. Effective November 11, 1985, funds distributed per capita or held in trust for members of the Chippewas of Lake Superior and the Chippewas of the Mississippi are exempted from income and resources.

(27) Distribution of Claims Settlement Funds--Public Law 99-264. Effective March 24, 1986, distributions of claims settlement funds to members of the White Earth Band of Chippewa Indians as allottees, or the member's [~~their~~] heirs, are exempted from income and resources.

(28) Distribution of Judgment Funds--Public Law 99-346. Effective June 30, 1986, payments or distributions of judgment funds, and the availability of any amount for such payments or distributions, to members of the Saginaw Chippewa Indian Tribe of Michigan are exempted from income and resources.

(29) Distribution of Judgment Funds--Public Law 99-377. Effective August 8, 1986, judgment funds distributed per capita or held in trust for members of the Chippewas of Lake Superior and the Chippewas of the Mississippi are exempted from income and resources.

(30) Distribution of Judgment Funds--Public Law 100-139. Effective October 26, 1987, judgment funds distributed to members of the Cow Creek Band of Umpqua Tribe of Indians are exempted from income and resources.

(31) Aleutian and Pribil of Islands Restitution Act--Public Law 100-383. Effective August 10, 1988, per capita restitution payments made to eligible Aleuts who were relocated or interned during World War II are exempted from income and resources.

(32) Distribution of Claims Settlement Funds--Public Law 100-411. Effective August 22, 1988, per capita payments of claims settlement funds to members of the Coushatta Tribe of Louisiana are exempted from income and resources.

(33) Hoopa-Yurok Settlement Act--Public Law 100-580. Effective October 31, 1988, funds distributed per capita for members of the Hoopa Valley Indian Tribe and the Yurok Indian Tribe are exempted from income and resources.

(34) Distribution of Judgment Funds--Public Law 100-581. Effective November 1, 1988, judgment funds held in trust by the United States, including interest and investment income accruing on such funds, and judgment funds made available for programs or distributed to members of the Wisconsin Band of Potawatomi (Hannahville Indian [~~Indians~~] Community and Forest County Potawatomi) are exempted from income and resources.

(35) Distribution of Money and Land--Public Law 101-41. Effective June 21, 1989, all funds, assets, and income from the trust fund transferred to the members of the Puyallup Tribe under the Puyallup Tribe of Indians Settlement Act of 1989 are exempted from income and resources.

(36) Distribution of Judgment Funds--Public Law 101-277. Effective April 30, 1990, judgment funds distributed per capita, or held in trust, or made available for programs, for members of the Seminole Nation of Oklahoma, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, and the independent Seminole Indians of Florida (plus any interest and investment income accruing on the funds held in trust), and the availability of those funds, are exempted from income and resources.

(37) Distribution of Settlement Funds--Public Law 101-503. Effective November 3, 1990, payments, funds, distributions, or income derived from them under the Seneca Nation Settlement Act of 1990 are exempted from income and resources.

(38) Distribution of Settlement Fund--Public Law 101-618. Effective November 16, 1990, per capita distributions of settlement funds under the Fallon Paiute Shoshone Indian Tribes Water Rights Settlement Act of 1990 are exempted from income and resources.

(39) Distribution of Settlement Funds--Public Law 103-116. Settlement funds, assets, income, payments or distributions from trust funds to members of the Catawba Indian Tribe under the Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993 are exempted from income and resources.

(40) Distribution of Settlement Funds--Public Law 103-436. Effective November 2, 1994, settlement funds held in trust, including interest and investment income accruing on such funds, and payments made to members of the Confederated Tribes of the Colville Reservation under the Confederated Tribes of the Colville Reservation Grand Coulee Dam Settlement Act are exempted from income and resources.

(41) Distribution of Settlement Funds--P.L. 103-444. Payments made or benefits granted by the Crow Boundary Settlement Act of 1994 are excluded from income and resources.

(42) Western Shoshone Claims Distribution Act--P.L. 108-270. Effective July 7, 2004, per capita distribution judgment funds to members of the Western Shoshone Indians are excluded from income and resources.

*§271.69. Family Care.*

(a) To receive Family Care (FC) services, a person [~~be eligible for family care, the applicant/client~~] must meet the minimum functional need criteria as set by HHSC. HHSC uses a standardized assessment instrument to measure the person's ability to perform activities of daily living. This yields a score, which is a measure of the person's level of functional need. HHSC sets the minimum required score for a person to receive FC, which HHSC may periodically adjust commensurate with available funding. HHSC will seek stakeholder input before making any change in the minimum required score for functional eligibility.[~~:~~]

(1) A person must meet the income and resource guidelines established by HHSC [~~the department~~] in §§271.53, 271.55, 271.89, and 271.91 [~~§§48.2902, 48.2903, 48.2922, and 48.2923~~] of this subchapter [~~title~~] (relating to Eligibility [~~Income and Income Eligibles; Determination of Countable Income; Resource Limits; and Countable Resources~~]); and

[~~(2) meet the minimum functional need criteria as set by the department. The department uses a standardized assessment instrument to measure the client's ability to perform activities of daily living. This yields a score, which is a measure of the client's level of functional need. The department sets the minimum required score for a client to be eligible, which the department may periodically adjust commensurate with available funding. The department will seek stakeholder input before making any change in the minimum required score for functional eligibility; and~~]

(2) [~~(3)~~] be ineligible to receive attendant care services funded through Medicaid.

(b) If eligible, a person [~~an applicant/client~~] may receive one or more of the following services:

(1) personal care;

(2) household tasks;

(3) meal preparation; and

(4) escort.

(c) Family Care [~~care~~] services are provided in a client's residence. A person [~~client~~] is not eligible to receive Family Care [~~family care~~] services while living in:

(1) a hospital;

(2) a skilled nursing facility;

(3) an intermediate care facility;

(4) an assisted living facility;

(5) a foster care setting;

(6) a jail or prison;

(7) a state supported living center [~~school~~];

(8) a state hospital; or

(9) any other setting where sources outside the family care program are available to provide care.

(d) The person [applicant/client] must require at least six hours of Family Care services [family care] per week to be eligible, unless the person [applicant/client]:

(1) requires Family Care [family care] to provide caregiver support [respite] to the caregiver;

(2) lives in the same home [household] as another client [individual] receiving Family Care (FC) services [family care], Home and Community-based Services (HBCS) [community based alternatives] personal assistance services, Community Attendant Services (CAS) [community attendant services], or Primary Home Care (PHC) services [primary home care];

(3) receives one or more of the following services [(]through HHSC [the department] or other resources[)]:

(A) Congregate [congregate] or Home Delivered Meals [home-delivered meals];

(B) assistance with activities of daily living from a home health aide;

(C) Day Activity [day activity] and Health Services [health services]; or

(D) Special Services [special services] to Persons [persons] with Disabilities [disabilities] in day activity and health services [adult day care];

(4) receives aid-and-attendance benefits from the Veterans Administration; or

[(5) receives services through the department's In-home and Family Support Program; or]

(5) [(6)] is determined, based upon the functional assessment, to be at high risk of institutionalization without Family Care [family care].

(e) The caseworker [community care case manager] establishes a priority status for each person [client] based on the functional assessment. A person [An individual] is considered to have priority status if the following criteria are met. [:]

(1) The person [individual] is completely unable to perform one or more of the following activities without hands-on assistance from another person:

(A) transferring [himself] into or out of bed or a chair, or on or off a toilet;

(B) feeding [himself];

(C) getting to or using the toilet;

(D) preparing a meal; or

(E) taking self-administered prescribed medications.

(2) During a normally scheduled service shift, no one is readily available who is capable and who is willing to provide the needed assistance other than the family care attendant.

(3) The caseworker [community care case manager] determines that there is a high likelihood the person's [individual's] health, safety, or well-being would be jeopardized if family care services were not provided on a single given shift.

(f) A client with priority status may receive no more than 42 hours of service per week.

(g) A client without priority status may receive no more than 50 hours of service per week.

*§271.71. Home Delivered [Home-Delivered] Meals.*

To receive Home Delivered Meals (HDM) [be eligible for home-delivered meals], a person [applicants and clients] must meet the functional need criteria as set by HHSC [the department]. HHSC [The department] uses a standardized assessment instrument to measure a person's [the client's] ability to perform activities of daily living. This yields a score, which is a measure of the person's [client's] level of functional need. HHSC [The department] sets the minimum required score for a person [client] to receive HDM [be eligible], which HHSC [the department] may periodically adjust commensurate with available funding. HHSC [The department] will seek stakeholder input before making any change in the minimum required score for functional eligibility.

*§271.73. Adult Foster Care.*

To receive Adult Foster Care (AFC) [be eligible for adult foster care], a person [applicants and clients] must have the approval of the Community Care Services Eligibility [Community Care for Aged and Disabled] unit supervisor and meet the functional need criteria as set by HHSC [the department]. HHSC [The department] uses a standardized assessment instrument to measure the person's [client's] ability to perform activities of daily living. This yields a score, which is a measure of the person's [client's] level of functional need. HHSC [The department] sets the minimum required score for a person [client] to be eligible, which HHSC [the department] may periodically adjust commensurate with available funding. HHSC [The department] will seek stakeholder input before making any change in the minimum required score for functional eligibility.

*§271.75. Special Services to Persons with Disabilities.*

To receive Special Services [be eligible for special services] to Persons [persons] with Disabilities (SSPD) [disabilities], a person [clients] must meet the functional need criteria as set by HHSC [the department]. HHSC [The department] uses a standardized assessment instrument to measure a person's [the client's] ability to perform activities of daily living. This yields a score, which is a measure of a person's [the client's] level of functional need. HHSC [The department] sets the minimum required score for a person [client] to receive SSPD [be eligible], which HHSC [the department] may periodically adjust commensurate with available funding. HHSC [The department] will seek stakeholder input before making any change in the minimum required score for functional eligibility. An applicant [Applicants] may be admitted to the SSPD [attendant services] program only if the applicant's [their] needs do not exceed the program's available services.

*§271.77. Day Activity and Health Services.*

To be eligible for Day Activity [day activity] and Health Services [health services] (DAHS), a person [an applicant or client] must:

(1) be Medicaid-eligible [Medicaid eligible] or meet the income and resource guidelines established in §§271.53, 271.55, 271.89, and 271.91 [§§48.2902, 48.2903, 48.2922, and 48.2923] of this subchapter [chapter] (relating to Eligibility [Income and Income Eligibles; Determination of Countable Income; Resource Limits; and Countable Resources]);

(2) have an unmet need for DAHS as determined by HHSC [DADS];

(3) while receiving DAHS, not receive a service that is identified as being mutually exclusive to DAHS in the Mutually Exclusive Services table in Appendix XX of the [Case Manager] Community Care Services Eligibility [for Aged and Disabled] Handbook available at www.hhs.texas.gov [www.dads.state.tx.us];

(4) have a chronic medical diagnosis and physician's orders for DAHS on the HHSC [DADS] Day Activity and Health Services (DAHS) Physician's Orders form; and

(5) have one or more functional limitations and the potential for receiving therapeutic benefit from DAHS as determined by HHSC [~~DADS~~] review of the Day Activity and Health Services (DAHS) Health Assessment/Individual Service Plan form completed in accordance with §211.203 [~~§98.203~~] of this title (relating to Written Referrals for Services) or §211.204 [~~§98.204~~] of this title (relating to DAHS Facility-Initiated Referrals).

*§271.79. Case Management Services.*

A person [~~Clients~~] must meet the eligibility criteria for Community Care Services Eligibility (CCSE) [~~CCAD~~] services or programs, but the person does [~~they do~~] not have to receive the services to receive case management. Ineligible applicants receiving only information and referral services are not eligible for case management.

*§271.81. Primary Home Care or Community Attendant Services.*

(a) To be eligible for Primary Home Care (PHC) [~~primary home care~~] or Community Attendant Services (CAS) a person [~~community attendant (CA) services, the applicant/client~~] must meet the minimum functional need criteria as set by HHSC. HHSC uses a standardized assessment instrument to measure the person's ability to perform activities of daily living. This yields a score, which is a measure of the person's level of functional need. HHSC sets the minimum required score for a person to receive PHC, which HHSC may periodically adjust commensurate with available funding. HHSC will seek stakeholder input before making any change in the minimum required score for functional eligibility. A person must also:

(1) be Medicaid-eligible [~~eligible for Medicaid~~] in a community setting or be eligible under the provisions of the Social Security Act, §1929(b)(2)(B);

[~~(2) meet the minimum functional need criteria as set by the department. The department uses a standardized assessment instrument to measure the client's ability to perform activities of daily living. This yields a score, which is a measure of the client's level of functional need. The department sets the minimum required score for a client to be eligible, which the department may periodically adjust commensurate with available funding. The department will seek stakeholder input before making any change in the minimum required score for functional eligibility;~~]

(2) [~~(3)~~] have a medical need for assistance with personal care: [~~.~~]

(A) the person's [~~The client's~~] medical condition must be the cause of the person's [~~client's~~] functional impairment in performing personal care tasks; and [~~.~~]

(B) a person [~~Persons~~] diagnosed with mental illness, intellectual and developmental disabilities [~~mental retardation~~], or both, are not considered to have established medical need based solely on such diagnosis, however, the [~~. The~~] diagnoses do not disqualify a person [~~client~~] for eligibility as long as the person's [~~client's~~] functional impairment is related to a coexisting medical condition;

(3) [~~(4)~~] have a signed and dated practitioner's statement that includes a statement that the person [~~client~~] has a current medical need for assistance with personal care tasks and other activities of daily living[~~;~~] and:

(A) [~~(5)~~] requires [~~require~~] at least six hours of service per week; or [~~.~~]

(B) requires [~~An applicant/client requiring~~] fewer than six hours of service per week and may be eligible if the person [~~applicant/client~~]:

*(i)* [~~(A)~~] requires primary home care or community attendant services to provide caregiver support [~~respite care~~] to the caregiver;

*(ii)* [~~(B)~~] lives in the same home [~~household~~] as another person [~~individual~~] receiving Primary Home Care, Community Attendant Services, Family Care, or Texas Home and Community-Based Services (HCBS) [~~primary home care, community attendant services, family care, or community based alternatives~~] personal assistance services;

*(iii)* [~~(C)~~] receives one or more of the following services [~~(~~]through HHSC [~~the department~~] or other resources[~~)~~]:

*(I)* [~~(i)~~] Congregate ~~congregate~~] or Home Delivered Meals [~~home-delivered meals~~];

*(II)* [~~(ii)~~] assistance with activities of daily living from a home health aide;

*(III)* [~~(iii)~~] Day Activity [~~day activity~~] and Health Services [~~health services~~]; or

*(IV)* [~~(iv)~~] Special Services [~~special services~~] to Persons [~~persons~~] with Disabilities [~~disabilities~~] in day activity and health services [~~adult day care~~];

*(iv)* [~~(D)~~] receives aid-and-attendance benefits from the Veterans Administration;

[~~(E)~~] [~~receives services through the department's In-home and Family Support Program;~~]

*(v)* [~~(F)~~] receives services through the Medically Dependent Children Program (MDCP); or

*(vi)* [~~(G)~~] is determined, based upon the functional assessment, to be at high risk of institutionalization without Primary Home Care [~~primary home care~~] or Community Attendant Services [~~community attendant care services~~].

(b) To receive services, a person [~~the applicant/client~~] must reside in a place other than:

(1) a hospital;

(2) a skilled nursing facility;

(3) an intermediate care facility;

(4) an assisted living facility;

(5) a foster care setting;

(6) a jail or prison;

(7) a state supported living center [~~school~~];

(8) a state hospital; or

(9) any other setting where sources outside the primary home care or community attendant program are available to provide personal care.

(c) A client with priority status may receive no more than 42 hours of service per week. A client without priority status may receive no more than 50 hours of service per week.

(d) The caseworker [~~community care case manager~~] establishes a priority status for each client based on the functional assessment. A client [~~An individual~~] is considered to have priority status if the following criteria are met. [~~:~~]

(1) The client [~~individual~~] is completely unable to perform one or more of the following activities without hands-on assistance from another person:

(A) transferring [himself] into or out of bed or a chair, or on or off a toilet;

(B) feeding [himself];

(C) getting to or using the toilet;

(D) preparing a meal; or

(E) taking self-administered prescribed medications.

(2) During a normally scheduled service shift, no one is readily available who is capable and who is willing to provide the needed assistance other than the attendant.

(3) The caseworker [community care case manager] determines that there is a high likelihood the client's [individual's] health, safety, or well-being would be jeopardized if services are [were] not provided on a single given shift.

*§271.83. Time Allocation for Escort Services.*

(a) Allocation of time for escort services on the client needs assessment is allowed only if it can be documented that one of the following occurs at least once a month:

(1) accompanying the client to a clinic, doctor's office, or other trips made for the purpose of obtaining medical diagnosis or treatment; or

(2) waiting in the doctor's office or clinic with a client when necessary due to the client's condition or [and/or] distance from home.

(b) Additional time may not be allocated for escort services for purposes other than those described in subsection (a) of this section. However, the client may elect to substitute escort services for time allotted to any other task.

*§271.85. Residential Care.*

(a) Eligibility for Residential Care (RC) [residential care] is based on the following criteria. [:]

(1) The person [the applicant] must be income eligible or Medicaid-eligible, [Medicaid eligible (] not in an institution. [);]

(2) The person [the applicant] must meet the functional need criteria as set by HHSC [the department]. HHSC [The department] uses a standardized assessment instrument to measure the person's [client's] ability to perform activities of daily living. This yields a score, which is a measure of the person's [client's] level of functional need. HHSC [The department] sets the minimum required score for a person [client] to receive RC [be eligible], which HHSC [the department] may periodically adjust commensurate with available funding. HHSC [The department] will seek stakeholder input before making any change in the minimum required score for functional eligibility. [;]

(3) The person's [the applicant's] needs may not exceed the facility's capability under its licensed authority. [; and]

(4) The person [the applicant] must have financial resources at or below the level established by HHSC [the department].

(b) The client must contribute to the total cost of the care that the client [he] receives, including payment for room and board. The room and board amount is calculated from the client's gross income. The client is responsible for paying this amount directly to the provider agency. The client may be required to pay a copayment based on the amount of income remaining after all allowances are deducted.

(1) The client keeps a monthly allowance for the client's [his] personal and medical expenses. The Medicaid client keeps $123; a qualified Medicare beneficiary, non-Medicaid, [(non-Medicaid)] keeps $182; and the non-Medicaid, non-QMB client keeps $211 and the part B Medicare premium fee.

(2) In addition to the monthly allowance, a client with earned income keeps all of the earned income up to a maximum of $65 per month.

(3) The client's [In no case may the client's] contribution must not, when added to HHSC's [the department's] payment, exceed the rate established for residential care.

(c) The client is eligible for 14 days of personal leave from the residential care facility each calendar year. If the client does not pay the bedhold charge for days of personal leave that exceed the limits, the client [he] may lose their [his] space in the facility.

(d) To reserve the client's [his] space in the facility during hospital, nursing home, or institutional stays, the client must pay the [his] copayment or the facility's bedhold charge, whichever is lower. If the copayment amount is less than the bedhold charge, HHSC [the department] pays the difference. Nursing home and institutional stays are limited to 30 days. There is no limit to the length of hospital stays.

*§271.87. Emergency Care.*

(a) Eligibility for Emergency Care (EC) [emergency care] is based on the following criteria: [.]

(1) the [The] applicant:

(A) has lost their [his] home or caregiver; or

(B) has been discharged from a hospital or institution; or

(C) is in a similar emergency situation; and

(2) the [The] applicant:

(A) is income-eligible or Medicaid-eligible, [medicaid-eligible (] not in an institution [)]; and

(B) meets the functional need criteria as set by HHSC [the department]. HHSC [The department] uses a standardized assessment instrument to measure the applicant's [client's] ability to perform activities of daily living. This yields a score, which is a measure of the applicant's [client's] level of functional need. HHSC [The department] sets the minimum required score for a person [client] to receive EC [be eligible], which HHSC [the department] may periodically adjust commensurate with available funding. HHSC [The department] will seek stakeholder input before making any change in the minimum required score for functional eligibility.

(3) The applicant's needs may not exceed the facility's capability under its licensed authority.

(b) A client receiving Emergency Care is [care clients are] eligible for services for up to and including 30 days while HHSC [the department] seeks a permanent care arrangement. If the client is not placed within the initial 30-day period, the client is [he is] eligible to receive services for up to one 30-day extension, for a total of 60 days.

(c) Emergency Care [care] is terminated by HHSC [the department] when the approved service period is over or when suitable care arrangements have been made. HHSC [The department] redetermines Emergency Care [client] eligibility each time a request for services is made.

*§271.89. Resource Limits.*

A person [An individual applicant or client] is not eligible for Community Care Services Eligibility (CCSE) [community care for aged and disabled (CCAD)] services or programs if the value of nonexempt resources owned by the person [him] exceeds $5,000.

A couple is not eligible for CCSE [~~CCAD~~] services if the value of nonexempt resources the couple owns [~~they own~~] exceeds $6,000.

*§271.91. Countable Resources.*

In determining eligibility for Community Care Services Eligibility (CCSE) [~~CCAD~~] services or programs, HHSC [~~the department~~] considers the following to be resources.

(1) Liquid resources, including cash on hand, certificates of deposit, checking or savings accounts, money market funds, revocable trust funds, savings certificates, stocks, or bonds. Liquid resources also include the person's [~~individual's~~] or couple's portion of money in a checking or savings account or a money market fund held jointly with [~~a~~] another person.

(A) Jointly held liquid resources are the resources of the person [~~applicant/client~~] if the person [~~he~~] has unrestricted access to the funds regardless of the source. The person [~~applicant/client~~] may move the [~~his~~] portion of jointly held funds in a joint account to a new account. The new account may be jointly owned, but all funds in the new account are the person's [~~his~~].

(B) Money received as a nonrecurring lump sum payment is not considered a resource until 30 days after [~~from~~] the date of receipt. Lump sum payments include, but are not limited to, income tax refunds; earned income tax credits or rebates; one-time bonuses from mineral rights; retroactive lump sum social security, SSI, or railroad retirement benefits; lump sum insurance settlements; one-time gifts, awards, or prizes; and refunds from rental or utility deposits. The person [~~applicant/client~~] is responsible for reporting the receipt of a lump sum payment.

(2) Nonliquid resources, including nonexempt licensed or unlicensed vehicles; buildings and land not designated as homestead that are not producing income[,] or are producing income less than 6% [~~6.0%~~] of the equity value; and any other property not specifically excluded.

*§271.93. Resource Exclusions.*

In determining eligibility for Community Care Services Eligibility (CCSE) [~~CCAD~~] services or programs, HHSC [~~the department~~] does not consider the following to be resources and [~~. They~~] are considered to be excluded for eligibility purposes. Any item not listed as an exclusion is considered a resource.[:]

(1) Homestead is any [~~homestead. Any~~] structure used by the person [~~client~~] as a home [~~residence~~], including other buildings and all contiguous land. Mobile homes, houseboats, and motor homes are considered structures. Vacant property is not a homestead. Contiguous land means all land adjacent to the home, including any land separated only by roads, rivers, and streams. Land is contiguous as long as it is not separated by property owned by another person. The homestead is excluded as a resource regardless of its location, even if the person [~~client~~] no longer lives there, [(]unless the person [~~he~~] has purchased another residence[)]. If the person [~~he~~] owns two houses, the person's [~~his~~] homestead is the property the person uses [~~he uses~~] as a home [~~residence~~]. Only one homestead may be excluded for each person [~~client~~] or couple.[;]

(2) Personal [~~personal~~] property includes household [~~. Household~~] goods and personal effects. [;]

(3) Property [~~property~~] essential to employment includes tools [~~. Tools~~] and equipment required for employment or self-employment. [;]

(4) Prepaid [~~prepaid~~] burials include [~~. Prepaid~~] burial arrangements, burial insurance, and burial plots. [;]

(5) Life [~~life~~] insurance is the [~~. The~~] cash surrender value of all life insurance.[;]

(6) Vehicles include: [~~vehicles.~~]

(A) one [~~One~~] passenger car or other vehicle, such as a van or truck, used for transportation,[;] or one unlicensed vehicle; [~~.~~]

(B) [~~(A)~~] a [~~A~~] second vehicle may be excluded if it is:

*(i)* specially equipped to enable a person with a disability to drive; or

*(ii)* essential to the employment or self-employment of the family; and [~~.~~]

(C) [~~(B)~~] any [~~Any~~] additional vehicles, licensed or unlicensed, are considered resources.[;]

(7) Income-producing [~~income-producing~~] property [~~. Property~~] that annually produces net income equal to or greater than 6% [~~6.0%~~] of the property's equity value. The equity value is the current market value of the property less any recorded encumbrances. [;]

(8) Installment [~~installment~~] contracts from mortgages, notes, or loans are the [~~. The~~] value of installment contracts for the sale of land, other property, or repayment of loans, if the contract or agreement is producing income according to the fair market value at the time of the agreement. An installment is a mortgage or similar contract in which the buyer promises to pay a fixed amount over a period of time until the principal of the note is paid. Even though the seller retains legal title, the property is not considered a countable resource as long as the buyer is [~~if~~] fulfilling the contractual obligation. The payment is considered income. [;]

(9) Disaster [~~disaster~~] assistance includes government [~~. Government~~] payments granted for the rebuilding of homes destroyed or damaged in a disaster. [;]

(10) Energy [~~energy~~] assistance includes payments [~~. Payments~~] or allowances for energy assistance made under any federal, state, or local law. [;]

(11) Supplemental Nutrition Assistance Program (SNAP) benefits are the [~~food stamp allotments. The~~] value of SNAP benefits [~~food stamp allotments~~] and USDA-donated foods. [;]

(12) Inaccessible [~~inaccessible~~] resources are the [~~. The~~] cash value of resources inaccessible to the person [~~client~~], including [~~, but not limited to,~~] irrevocable trust funds, property in probate, and pension funds. Real property that the person [~~client~~] or family is making a good faith effort to sell is exempt. The person [~~client~~] or family must ask a fair price for the property, according to its current market value. Property is also exempt if it is jointly owned and the other co-owners refuse to sell. [;]

(13) Mineral [~~mineral~~] rights are the [~~. The~~] value of mineral rights. [;]

(14) [~~life estates and remainder interests. ~~] A life estate is the right a person [~~an individual~~] has to property during a person's [~~the individual's~~] lifetime. A remainder interest is the right of ownership to the property when the life estate holder dies. [;]

(15) Replacement [~~replacement~~] value of excluded resources [~~. Replacement value of an excluded resource~~] if [~~it is~~] lost, damaged, or stolen is the [~~. The~~] cash received from an insurance company for replacing the resource and is not considered for three months if it is real property. Any cash not spent within the specified time period is considered a resource. [;]

(16) Monthly [~~monthly~~] gross income is all[~~. All~~] income received monthly and [~~. Monthly gross income~~] is counted as income in the month received and excluded as a resource in that month. [~~;~~]

(17) Sale [~~sale~~] of a homestead are proceeds [~~. Proceeds~~] from the sale of a homestead up to six months after the proceeds [~~they~~] become available to the seller. The six months gives the person [~~client~~] time to acquire another homestead. If the person [~~he~~] does so, any balance from the original sale must be considered as an available resource. If, before the end of the six-month period, the person [~~client~~] declares the person [~~he~~] has no intention of acquiring another homestead, the proceeds from the sale must be counted as an available resource. [~~;~~]

(18) Agent Orange settlement payments received [~~. Payments~~] from the Agent Orange settlement fund or any other fund established in settlement of the Agent Orange product liability litigation. [~~;~~]

(19) Radiation [~~radiation~~] exposure compensation payments [~~. Payments~~] received under the Radiation Exposure Compensation Act (Public Law 101-246). [~~;~~]

[~~(20) funds from the In-home and Family Support Program or the Transition to Life in the Community Program;~~]

(20) [~~(21)~~] livestock are not counted as a resource;

(21) [~~(22)~~] earned income tax credit (EITC) refunds from the Internal Revenue Service are not counted as a resource.

*§271.95. Emergency Response Services.*

(a) To receive Emergency Response Services (ERS) [~~be eligible for emergency response services~~], a person [~~client~~] must[~~:~~]

[~~(1)~~] meet the functional need criteria as set by HHSC [~~the department~~]. HHSC [~~The department~~] uses a standardized assessment instrument to measure the person's [~~client's~~] ability to perform activities of daily living. This yields a score, which is a measure of the person's [~~client's~~] level of functional need. HHSC [~~The department~~] sets the minimum required score for a person [~~client~~] to receive ERS [~~be eligible~~], which HHSC [~~the department~~] may periodically adjust commensurate with available funding. HHSC [~~The department~~] will seek stakeholder input before making any change in the minimum required score for functional eligibility. [~~; and~~]

(b) [~~(2)~~] The person must also meet the following requirements:

(1) [~~(A)~~] live alone, be alone routinely for eight or more hours each day, or live with a person [~~an incapacitated individual~~] who could not call for help or otherwise assist the applicant or client in an emergency;

(2) [~~(B)~~] be mentally alert enough to operate the equipment properly, in the judgment of the HHSC [~~DHS~~] caseworker;

(3) [~~(C)~~] have a phone [~~telephone~~] with a private line, if the system requires a private line to function properly;

(4) [~~(D)~~] be willing to sign a release statement that allows the responder to make a forced entry into the applicant's or client's home if the responder [~~he~~] is asked to respond to an activated alarm call and has no other means of entering the home to respond; and

(5) [~~(E)~~] live in a place other than a skilled institution, assisted living facility, foster care setting, or any other setting where 24-hour supervision is available.

*§271.97. Residential Care Services.*

A Residential Care [~~residential care~~] client cannot receive Residential Care services [~~supervised living~~] and Community Attendant Services, Family Care, or Primary Home Care services [~~primary home care~~] at the same time.

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

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Karen Ray
Chief Counsel
Health and Human Services Commission
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For further information, please call: (817) 458-1902

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## SUBCHAPTER D. CASE MANAGEMENT

### 26 TAC §§271.151, 271.153, 271.155, 271.159

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §524.0151, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and Texas Human Resources Code §117.080(e) which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement that section, including requirements applicable to Centers for Independent Living (CIL) providing independent living services under the program.

The amendments implement Texas Government Code §524.0151 and Texas Human Resources Code §117.080.

*§271.151. Application for Services.*

(a) Information collected to determine eligibility for services, whether collected by HHSC [~~DHS~~] staff or provider agencies, is confidential.

(b) The applicant is entitled to an [~~a face-to-face~~] interview during HHSC's [~~the department's~~] determination of an applicant's [~~his~~] eligibility for Community Care Services Eligibility (CCSE) [~~CCAD~~] services. A person who is already receiving services from HHSC [~~the Texas Department of Human Services (DHS)~~] or for whom the Social Security Administration has already verified that income and resources [~~income/resources~~] are below the CCSE [~~CCAD~~] income or resource [~~income/resource~~] limit is not required to submit an application.

(c) An applicant [~~Applicants~~] or the applicant's responsible person [~~their representatives~~] applying for services provided with regard to income must sign an application for assistance form. A non-Medicaid applicant [~~Non-Medicaid applicants~~] or the applicant's responsible person [~~their representatives~~] applying for retroactive reimbursement for Medicaid-covered attendant services must also sign an application for assistance form. The date of application is the date HHSC [~~the department~~] receives the signed application. Applicants must provide accurate information about income and resources.

(d) Eligibility for CCSE [~~CCAD~~] services for an income-eligible applicant [~~applicants~~] is determined within 30 calendar days after a signed application is received. For categorically-eligible applicants, eligibility must be determined within 30 calendar days after either the applicant's [~~client's~~] assessment or face-to-face contact with the caseworker [~~worker~~], whichever comes first. No further action is needed if the person withdraws the request for services before the assessment is started or completed, an application form is received, or a

face-to-face contact is made [~~If the applicant withdraws from the program before an assessment is completed or a face-to-face interview is conducted, no further action is necessary~~].

(e) Non-Medicaid applicants or the applicant's responsible person [~~their representatives~~] applying for Medicaid-covered attendant services may be reimbursed for services provided up to three months before [~~prior to~~] the month of receipt of a completed, signed, and dated application.

(f) The client must report promptly any changes in income, resources, or family size; loss of assistance grant or Medicaid benefits; or other changes in functional ability or circumstances that affect eligibility. The client is subject to fraud prosecution if the client [~~he~~] willfully fails to report changes and continues to receive services for which the client [~~he~~] is not eligible.

(g) A Medicaid-certified applicant for CCSE-purchased [~~CCAD-purchased~~] services who requires a verbal referral is eligible to receive CCSE-purchased [~~CCAD-purchased~~] services when the applicant's [~~his~~] eligibility for Medicaid is verified. A non-Medicaid certified applicant who meets the requirements for a verbal referral is eligible to receive CCSE-purchased [~~CCAD-purchased~~] services while income and resources are verified.

(1) To be eligible, this applicant must:

(A) be a new applicant for CCSE [~~CCAD~~] services or programs;

(B) appear to be eligible based on the declaration of income and resources on the applicant's [~~his~~] application for services or have possession of a current Medicaid [~~medical care identification~~] card; and

(C) meet the age and need criteria for the CCSE [~~CCAD~~] service the applicant [~~he~~] requires.

(2) The eligibility period for non-Medicaid applicants begins on the date of application.

(3) To continue receiving services, a non-Medicaid client [~~applicant~~] must provide within 30 days of the application date the information needed to verify the client's [~~the applicant's~~] income and resource amounts.

*§271.153. Recertification.*

(a) To continue receiving services, the client must meet the Community Care Services Eligibility (CCSE) [~~CCAD eligibility~~] requirements at the time of recertification of financial eligibility and reassessment of needs.

(b) An applicant whose services were terminated in the past due to the applicant [~~his~~] or someone in the applicant's [~~his~~] home being a threat to the health or safety of the client, HHSC [~~department~~] staff, or provider agency staff may authorize [~~be authorized~~] services if the applicant signs a form authorizing release of information, and:

(1) the applicant or person [~~The applicant/person~~] in the home who posed the threat has been treated or is receiving treatment by a licensed or certified physician, psychiatrist, or psychologist and can furnish a letter saying that the applicant or person [~~he~~] is no longer a threat to self [~~himself~~] or others; or

(2) the applicant or person [~~The applicant/person~~] in the home allows a collateral contact with the applicant's or person in the home's [~~his~~] physician, psychiatrist, or psychologist, and the contact indicates that the applicant or person in the home is no longer a threat to self [~~himself~~] or others; or

(3) the [~~The~~] person in the home who posed the threat no longer poses the threat.

*§271.155. Denial, Reduction, and Termination of Benefits.*

(a) A person [~~An applicant or client~~] may request an appeal of any decision that denies, reduces, or ends the person's [~~terminates his~~] benefits. The effective date of the action depends on the situation, as shown in the following table.

Figure: 26 TAC §271.155(a)

[~~Figure: 26 TAC §271.155(a)~~]

(b) A client is entitled to be notified 10 calendar days before any reduction or termination of [~~his~~] services, or to have the notification mailed 12 calendar days before the date of reduction or termination. If a client threatened the client's [~~his~~] own health or safety or that of others, purchased services may be terminated without advance notice.

(c) A client is not eligible for Community Care Services Eligibility (CCSE) [~~CCAD~~] services or programs when the client:

(1) [~~he~~] dies;

(2) [~~he~~] is admitted to an institution;

(3) has a [~~his~~] physician who requests service termination, [~~(~~]Medicaid services only[~~)~~]; [~~or~~]

(4) [~~he~~] requests service termination or repeatedly refuses to accept help, except in an involuntary protective services case;[~~,~~] or

(5) [~~he~~] refuses to comply with the [~~his~~] service plan.

(d) The client is not eligible for Emergency Response Services [~~emergency response services~~] if the client:

(1) [~~he~~] abuses the service by activating:

(A) four false alarms which result in a response by fire department, police, sheriff [~~police/sheriff~~], or ambulance personnel within a six-month period; or

(B) 20 false alarms of any kind within a six-month period;

(2) [~~he~~] is admitted to a skilled institution, personal care home, foster care setting, or any other setting where 24-hour supervision is available;

(3) in the caseworker's judgment, [~~he~~] is no longer mentally alert enough to operate the equipment properly, situations [~~. Situations~~] include [~~, but are not limited to~~]:

(A) damage to [~~he damages~~] the equipment;

(B) [~~he disconnects~~] the equipment is disconnected and the client [~~has~~] received two warnings that are documented in the case record;

(C) refusal [~~he refuses~~] to participate in the monthly system checks; or

(4) [~~he~~] is away from the home or is unable to participate in the service delivery for three consecutive months or more.

(e) The client is not eligible for Residential Care [~~residential care~~] if the client [~~he~~] is required to contribute to the cost of the client's [~~his~~] care[~~,~~] but refuses to do so.

(f) If the client repeatedly and directly or knowingly and passively condones the behavior of someone in the client's [~~his~~] home and thus, refuses, [~~(~~]more than three times,[~~)~~] to comply with service delivery provisions, the caseworker may terminate services. Refusal to comply with service delivery provisions includes actions by the client or someone in the client's home that prevent determining eligibility,

carrying out the service plan, and monitoring the services. Before services are terminated, the client is entitled to receive written notification that [~~his~~] services will end [~~be terminated~~] if the client [~~he~~] does not comply with service delivery provisions or if the client [~~he~~] continues to condone someone's behavior that results in non-compliance with service delivery provisions. Also, before services are terminated, the caseworker must make a referral to Texas Department of Family and Protective Services [~~APS is made~~] if the caseworker suspects or knows that the client is being abused, neglected, or exploited by the person who prevents delivery provisions. Services continue pending the outcome of the APS investigation. If an applicant's services were terminated in the past due to the applicant's [~~his~~] failure to comply with a [~~his~~] service plan, the applicant must agree to cooperate with HHSC [~~DHS~~] staff to facilitate service delivery.

*§271.159. Adult Foster Care Client Rights and Responsibilities.*

(a) The Adult Foster Care [~~adult foster care~~] client must:

(1) provide accurate information about the client's [~~his~~] ability to function in the community and in a foster home setting;

(2) pay the amount of room and board specified in the client and provider agreement;

(3) report changes or occurrences that would affect the client or [~~and/or~~] provider; and

(4) participate in selecting an adult foster care home in which to live.

(b) The client and the client's [~~his~~] responsible person are entitled to:

(1) receive in writing, before authorization of adult foster care, a list of the client's rights and responsibilities;

(2) be informed of all available services in the home and of the charges for services not paid for by the HHSC [~~Texas Department of Human Services (DHS)~~];

(3) be informed that the client keeps a personal needs allowance;

(4) file complaints about abuse, neglect, exploitation, or inadequate care, as those terms are defined by the statute or rule that governs the investigation of ANE, without discrimination or reprisal for voicing grievances;

(A) with HHSC, Complaint and Incident Intake, when the AFC facility is licensed as an assisted living facility (ALF); or [~~DHS~~]

(B) with the Texas Department of Family and Protective Services, Adult Protective Services (APS) when the AFC serves three or fewer residents unrelated to the owner [~~staff about abuse, neglect, exploitation, or inadequate care without discrimination or reprisal for voicing grievances~~];

(5) privacy and confidentiality;

(6) have the client's [~~his~~] physical person and property treated with dignity and respect; and

(7) be free from physical or mental abuse, corporal punishment, and any physical or chemical restraints imposed for purposes of discipline or convenience.

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

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Karen Ray
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Health and Human Services Commission
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# CHAPTER 331. LIDDA SERVICE COORDINATION

## 26 TAC §§331.1, 331.3, 331.5, 331.7, 331.9, 331.11, 331.13, 331.15, 331.17, 331.19, 331.21, 331.23

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §331.1, concerning Purpose; §331.3, concerning Application; §331.5, concerning Definitions; §331.7, concerning Eligibility; §331.9, concerning Funding Service Coordination; §331.11, concerning LIDDA's Responsibilities; §331.13, concerning Caseloads; §331.15, concerning Termination of Service Coordination; §331.17, concerning Minimum Qualifications; §331.19, concerning Staff Person Training; §331.21, concerning Documentation of Service Coordination; and §331.23, concerning Review Process.

BACKGROUND AND PURPOSE

The purpose of the proposed amendments is to implement House Bill (H.B.) 4, 87th Legislature, Regular Session, 2021, which requires HHSC to ensure Medicaid recipients, child health care plan program enrollees, and other individuals receiving benefits under a public benefits program administered by HHSC or another health and human services agency have the option to receive services as telemedicine medical services, telehealth services, or other telecommunications or information technology to the extent it is cost effective and clinically effective. The proposed amendments include defining terms pertaining to the implementation of H.B. 4 and updating documentation requirements.

The proposed amendments clarify the minimum qualifications and training requirements for service coordinators and requirements regarding minimum contact. The proposed amendments update agency names and citations.

The proposed amendments also update citations to the Texas Government Code related to H.B. 4611, 88th Legislature, Regular Session, 2023, effective April 1, 2025, which made certain non-substantive revisions to Subtitle I, Title 4, Texas Government Code, which governs HHSC, Medicaid, and other social services as part of the legislature's ongoing statutory revision program.

SECTION-BY-SECTION SUMMARY

The proposed amendments to §331.1, Purpose, and §331.3, Application, update text to person-centered language and makes other non-substantive wording changes.

The proposed amendment to §331.5, Definitions, adds terms related to the implementation of H.B. 4: "audio-only," "audio-visual," and "in-person (or in person)." Throughout the rules, HHSC replaced the term "face-to-face" with the term "in person" or "in-person." The proposed amendment adds definitions for "comprehensive encounter," "follow-up encounter," "HHSC," and "TAC." The proposed amendment revises the definitions of

"actively involved person," "CFC services," "Designated LIDDA," "ICF/IID level-of-care", "Frequency," "General revenue," "HCS Program," "ICF/IID level-of-care," "ICF/IID Program," "Institution," "Institution for mental diseases," "Intellectual disability," "LAR," "LIDDA," "LIDDA priority population," "local service area," "MCO," "Plan of services and supports," "Related condition," "Service coordination," "State hospital," "State supported living center," "Subaverage general intellectual functioning," and "TxHmL Program." The proposed amendment removes the following definitions no longer being used in the rules "CARE," "DADS," "Department," "Designated MRA," "ICF/MR Program," "Mental retardation," "Mental retardation priority population," "MRA," "Parent Case Management Program," and "Partners in Policy Making." The proposed amendment changes the term "Person-directed planning" to "Person-centered planning." The proposed amendment renumbers the rule to account for the new definitions, removed definitions, and revisions made to existing definitions.

The proposed amendment to §331.7, Eligibility, clarifies that the HHSC Service Coordination Assessment form is used to document that an individual meets the eligibility criteria for service coordination described in subsection (a)(1)(A). The proposed amendment also adds "a facility with an HHSC-contracted psychiatric bed" to subsection (a)(1)(F) to include service coordination responsibilities set forth in 26 Texas Administrative Code (TAC) §306.201 relating to Discharge Planning. The proposed amendment removes subsection (c) because the rule has been relocated and updated in the proposed amendment in §331.11(e). The proposed amendment uses the updated term "state hospital" to replace "MH facility" and makes other non-substantive wording changes.

The proposed amendment to §331.9, Funding Service Coordination, updates the citations from the previous locations in 40 TAC §2.554. The proposed amendment also makes other non-substantive wording changes.

The proposed amendment to §331.11, LIDDA's Responsibilities, changes the title to "Designated LIDDA's Responsibilities." The proposed amendment removes the subsection titles in current subsections (a) - (f). The proposed amendment to subsection (a) changes the reference to the DADS *Person Directed Planning Guidelines* to the HHSC *Person-Centered Planning Guidelines* and updates citations from the previous locations in 40 TAC §9.153 and §9.553. The proposed amendment to subsection (b) renumbers the rules on service coordination in new paragraphs (1) and (2) under subsection (b); renumbers subsection (b)(2) to organize the rule on crisis prevention and management in a new subsection (c); and removes paragraph (3) under subsection (b) to move the content of the rule to proposed new subsection (k). The proposed amendment to subsection (b) also replaces "staff person" with the term "employee." The proposed amendment to §331.11 adds new subsections, and therefore, renumbers some of the current subsections. New subsection (d) details LIDDA responsibilities related to when the HHSC Service Coordination Assessment form must be completed. New subsection (e) describes who must complete the HHSC Service Coordination Assessment and requires the HHSC Service Coordination Assessment form to identify the frequency of in-person service coordination contacts. Subsection (c), renumbered as subsection (f), is amended to replace "person-directed" with "person-centered," update agency names, better organize the requirements for a service coordinator to revise an individual's plan of services and supports, and makes other non-substantive wording changes. New subsection (g) contains the requirement from current subsection (d)(2), and clarifies that one of the four elements of service coordination is required for both comprehensive and follow-up encounters. The proposed amendment to subsection (d), renumbered as subsection (h), revises the minimum contact requirement to add that an in-person meeting may need to occur more frequently than once every 90 days in accordance with the HHSC Service Coordination Assessment form. New subsections (i) and (j) provide requirements for audio-visual or audio-only comprehensive encounters. New subsection (k) contains the requirement that was moved from subsection (b)(3), and clarifies that concerns identified during any service coordination activity, not just during monitoring, should be communicated to the entity providing services and supports. The proposed amendment to subsection (e), renumbered as subsection (l), and to subsection (f), renumbered as subsection (m), updates citations from the previous locations in 40 TAC Chapter 9, Subchapters D and N, and 40 TAC Chapter 41.

The proposed amendment to §331.13, Caseloads, updates text to person-centered language, changes "staff person" to "employee, and updates that the frequency of contacts to consider is the "frequency of in-person contacts."

The proposed amendment to §331.15, Termination of Service Coordination, updates text to person-centered language and updates a citation from the previous location in 40 TAC Chapter 2, §2.554.

The proposed amendment to §331.17, Minimum Qualifications, revises the grandfathering language in subsection (d), removes subsections (e) and (f) related to minimum qualifications for service coordinators, and updates the reference in subsection (b) to subsection (d) of this section. The proposed amendment also makes other non-substantive wording changes.

The proposed amendment to §331.19, Staff Person Training, retitles the rules as "Employee Training" and updates the term "staff person" to "employee" as needed throughout the rule. The proposed amendment also updates outdated rule language. The proposed amendment in subsection (b)(1) adds "additional trainings designated by HHSC" to allow for any new or temporary training requirements. The proposed amendment in subsection (b)(2) requires completion of person-centered training for service coordinators within the first six months of the hire date unless an extension is granted by HHSC, instead of within 2 years, to align with the training requirement in 26 TAC Chapter 263 for the Home and Community-based Services (HCS) Program. The amendment also clarifies that the person-centered training must be comprehensive and non-introductory.

The proposed amendment to §331.21, Documentation of Service Coordination, adds requirements for a service coordinator's documentation to include whether the contact with an individual was in person, via audio-visual communication, or via audio-only communication, and the location of the contact. The proposed amendment renumbers paragraphs (1) - (5) as paragraphs (3) - (7) because of adding the new documentation requirements. The proposed amendment in renumbered paragraph (4) references the definition of "service coordination" in proposed §331.5 to clarify that the service coordinator must document which element listed in the definition was provided. The proposed amendment updates text to person-centered language and makes other non-substantive wording changes.

The proposed amendment to §331.23, Review Process, removes the subsection titles in subsection (a) and (b), updates

text to person-centered language, and updates a citation from the previous location in 40 TAC Chapter 2, §2.46.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules do not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

(1) the proposed rules will not create or eliminate a government program;

(2) implementation of the proposed rules will not affect the number of HHSC employee positions;

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

(4) the proposed rules will not affect fees paid to HHSC;

(5) the proposed rules will create new regulations;

(6) the proposed rules will expand existing regulations;

(7) the proposed rules will not change the number of individuals subject to the rules; and

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

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The amendments do not require small businesses, micro-businesses, or rural communities to change current business practices.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas, do not impose a cost on regulated persons, and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Haley Turner, Deputy Executive Commissioner for Community Services, has determined that for each year of the first five years the rules are in effect, the public will benefit from a more person- and family-centered approach to LIDDA service delivery. Individuals receiving services, LARs, and LIDDAs will benefit from the availability of alternative methods of service delivery via the use of audio-only or audio-visual communications when appropriate.

Incorporating the H.B. 4 revisions into the rule affords service coordination recipients the option to receive services through telecommunications to the extent it is cost effective and clinically appropriate.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules. The proposal does not impose new costs or fees on those required to comply.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to HHSRulesCoordinationOffice@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R076" in the subject line.

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §524.0151, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; Texas Government Code §532.0051, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Government Code §531.02161, which requires that HHSC ensure that Medicaid recipients and individuals receiving benefits under a public benefits program have the option to receive services as telemedicine medical services, telehealth services, or other telecommunications or information technology; Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program; and Texas Health & Safety Code §533A.0355(a), which provides that the Executive Commissioner of HHSC shall adopt rules establishing the roles and responsibilities of LIDDAs.

The amendments implement Texas Government Code §§524.0151, 532.0051, and 531.02161, Texas Human Resources Code §32.021, and Texas Health & Safety Code §533A.0355(a).

*§331.1. Purpose.*

This chapter [~~subchapter~~] describes requirements for service coordination delivered by the LIDDA [~~mental retardation authority (MRA)~~] to an individual in the LIDDA [~~mental retardation~~] priority population [~~(MR priority population)~~] who desires services.

*§331.3. Application.*

This chapter [~~subchapter~~] applies to all LIDDAs [~~mental retardation authorities (MRAs)~~].

*§331.5. Definitions.*

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

(1) Actively involved person--For an individual who lacks the ability to provide legally adequate consent and who does not have an LAR [~~a legally authorized representative (LAR)~~], a person whose significant and ongoing involvement with the individual is determined by the individual's designated LIDDA [~~MRA~~] to be supportive of the individual based on the person's:

(A) observed interactions with the individual;

(B) knowledge of and sensitivity to the individual's preferences, values, and beliefs;

(C) availability to the individual for assistance or support; and

(D) advocacy for the individual's preferences, values, and beliefs.

(2) Audio-only--A synchronous interactive, two-way audio communication that uses only sound and meets the privacy requirements of the Health Insurance Portability and Accountability Act (HIPAA). Audio-only includes the use of telephonic communication. Audio-only does not include audio-visual or in-person communication.

(3) Audio-visual--A synchronous interactive, two-way audio and video communication that conforms to privacy requirements under HIPAA. Audio-visual does not include audio-only or in-person communication.

~~[(2) CARE--DADS Client Assignment and Registration System.]~~

(4) [~~(3)~~] CFC services--Community First Choice services. State plan services described in 1 TAC [~~Texas Administrative Code (TAC)~~] Chapter 354, Subchapter A, Division 27 (relating to Community First Choice).

(5) Comprehensive encounter (Encounter Type A)--Contact with an individual receiving services as defined in 1 TAC §355.746 (relating to Reimbursement Methodology for Mental Retardation Service Coordination) and including comprehensive encounters funded by general revenue.

~~[(4) DADS--The Department of Aging and Disability Services.]~~

~~[(5) Department--The Department of Aging and Disability Services.]~~

(6) Designated LIDDA--As identified in the HHSC [~~DADS~~] data system, the LIDDA responsible for assisting an individual and LAR or actively involved person to access services and supports.

~~[(7) Designated MRA--Designated LIDDA.]~~

(7) [~~(8)~~] Duration--The specified period of time during which service coordination is provided to an individual.

(8) [~~(9)~~] Frequency--The minimum number of times during a specified period that an individual is to be contacted by a service coordinator in person based on the individual's need for contacts as determined by person-centered [~~person-directed~~] planning.

(9) Follow-up encounter (Encounter Type B)--Contact with the individual receiving services as defined in 1 TAC §355.746 (relating to Reimbursement Methodology for Mental Retardation Service Coordination) and including follow-up encounters funded by general revenue.

(10) General revenue--Funds appropriated by the Texas Legislature for use by HHSC [~~DADS~~].

(11) HCS Program--The Home and Community-based Services Program. A program operated by HHSC [~~DADS~~] as authorized by the Centers for Medicare & [~~and~~] Medicaid Services in accordance with §1915(c) of the Social Security Act.

(12) HHSC--The Texas Health and Human Services Commission.

(13) [~~(12)~~] ICF/IID--Intermediate care facility for individuals with an intellectual disability or related conditions. An ICF/IID is a facility in which ICF/IID Program services are provided.

(14) [~~(13)~~] ICF/IID level-of-care--A level-of-care described in §261.238 [~~§9.238~~] of this title (relating to ICF/MR Level of Care I Criteria) or §261.239 [~~§9.239~~] of this title (relating to ICF/MR Level of Care VIII Criteria).

(15) [~~(14)~~] ICF/IID Program--[~~The Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions Program.~~] A program operated by HHSC [~~DADS~~] that provides Medicaid-funded residential services to individuals with an intellectual disability or related conditions, as described in §1905(d) of the Social Security Act.

(16) [~~(15)~~] ICF/MR--ICF/IID.

~~[(16) ICF/MR Program--ICF/IID Program.]~~

(17) In-person (or in person)--Within the physical presence of another person. In-person or in person does not include audio-visual or audio-only communication.

(18) [~~(17)~~] Individual--A person who is or is believed to be a member of the LIDDA priority population.

(19) [~~(18)~~] Institution--One of the following:

(A) an ICF/IID;

(B) a nursing facility licensed or subject to being licensed in accordance with THSC Chapter 242;

(C) an assisted living facility licensed or subject to being licensed in accordance with THSC[~~,~~] Chapter 247;

(D) a [~~residential~~] child-care operation [~~licensed or~~] subject to regulation [~~being licensed~~] by HHSC as a general residential operation under Texas Human Resources Code Chapter 42 [~~the Department of Family and Protective Services unless it is a foster family home or a foster group home~~];

(E) a hospital [~~facility licensed or subject to being licensed by the Department of State Health Services~~];

(F) an inpatient chemical dependency treatment facility;

(G) a mental health facility;

(H) [~~(F)~~] a facility operated by the Texas Workforce Commission [~~Department of Assistive and Rehabilitative Services~~]; or

(I) [~~(G)~~] a prison.

(20) [~~(19)~~] Institution for mental diseases [~~(IMD)~~]--As defined in 25 TAC §419.373, a hospital of more than 16 beds that is primarily engaged in providing psychiatric diagnosis, treatment, and care of individuals with mental diseases, including medical care, nursing care, and related services.

(21) [~~(20)~~] Intellectual disability--Consistent with THSC [~~Texas Health and Safety Code (THSC),~~] §591.003, significantly

subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(22) [~~(21)~~] LAR--Legally authorized representative. [~~(legally authorized representative)--~~] A person authorized by law to act on behalf of an individual with regard to a matter described in this chapter [~~subchapter~~], and who may be a parent, guardian, or managing conservator of a child;[~~,~~] or the guardian of an adult.

(23) [~~(22)~~] LIDDA--Local intellectual and developmental disability authority. An entity designated by the executive commissioner of HHSC [~~the Texas Health and Human Services Commission~~] in accordance with THSC[~~,~~] §533A.035.

(24) [~~(23)~~] LIDDA priority population--A population as defined in §304.102 [~~§5.153~~] of this title (relating to Definitions).

(25) [~~(24)~~] Local service area--A geographic area composed of one or more Texas counties defining the population that may receive services from a LIDDA.

(26) [~~(25)~~] MCO--Managed care organization. This term has the meaning set forth in Texas Government Code §543A.0001[~~, §536.001~~].

[~~(26) Mental retardation--Intellectual disability.~~]

[~~(27) Mental retardation priority population or MR priority population--LIDDA priority population.~~]

[~~(28) MRA (mental retardation authority)--LIDDA.~~]

[~~(29) Parent Case Management Program--A program that utilizes experienced, trained parents of individuals with disabilities to provide case management for other families.~~]

[~~(30) Partners in Policy Making--A leadership training program administered by the Texas Planning Council for Developmental Disabilities for self-advocates and parents.~~]

(27) [~~(31)~~] Permanency planning--A philosophy and planning process that focuses on the outcome of family support for an individual under 22 years of age by facilitating a permanent living arrangement in which the primary feature is an enduring and nurturing parental relationship.

(28) [~~(32)~~] Person-centered [~~Person-directed~~] planning--A philosophy and planning process that empowers an individual and, on the individual's behalf, an LAR or actively involved person, to direct the development of a plan of services and supports.

(29) [~~(33)~~] Plan of services and supports--A written plan that:

(A) describes the desired outcomes identified by an [~~the~~] individual, or an LAR or actively involved person on behalf of the individual;

(B) describes the services and supports to be provided to the individual, including service coordination; [~~and~~]

(C) identifies the frequency of in-person contacts to be provided to the individual, in accordance with §331.11(h) [~~§2.556(d)(1)~~] of this chapter [~~subchapter~~] (relating to Designated LIDDA's Responsibilities);[~~,~~] and

(D) identifies the duration of service coordination to be provided to the individual.

(30) [~~(34)~~] Related condition--Consistent with 42 CFR [~~Code of Federal Regulations Title 42,~~] §435.1010, a severe and chronic disability that:

(A) is attributable to:

*(i)* cerebral palsy or epilepsy; or

*(ii)* any other condition, other than mental illness, found to be closely related to an intellectual disability because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of people [~~persons~~] with [~~an~~] intellectual disabilities [~~disability~~], and requires treatment or services similar to those required for people [~~those persons~~] with [~~an~~] intellectual disabilities [~~disability~~];

(B) is manifested before the person reaches 22 years of age;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitation in three or more of the following areas of major life activity:

*(i)* self-care;

*(ii)* understanding and use of language;

*(iii)* learning;

*(iv)* mobility;

*(v)* self-direction; and

*(vi)* capacity for independent living.

(31) [~~(35)~~] Relative--A person related to the individual within the fourth degree of consanguinity or within the second degree of affinity.

(32) [~~(36)~~] Service coordination--Through both comprehensive and follow-up encounters, service coordination consists of assistance [~~Assistance~~] in accessing medical, social, educational, and other appropriate services and supports that will help an individual achieve a quality of life and community participation acceptable to the individual (and LAR on the individual's behalf) as follows:

(A) crisis prevention and management--linking and assisting the individual and LAR or actively involved person to secure services and supports that will enable them to prevent or manage a crisis;

(B) monitoring--ensuring that the individual receives needed services, evaluating the effectiveness and adequacy of services, and determining if identified outcomes are meeting the individual's needs and desires as indicated by the individual and LAR or actively involved person;

(C) assessment--identifying the individual's needs and the services and supports that address those needs as they relate to the nature of the individual's presenting problem and disability; and

(D) service planning and coordination--identifying, arranging, advocating, collaborating with other agencies, and linking for the delivery of outcome-focused services and supports that address the individual's needs and desires as indicated by the individual and LAR or actively involved person.

(33) [~~(37)~~] State hospital [~~MH facility (state mental health facility)~~]--Consistent with THSC §552.0011, a hospital operated by HHSC primarily to provide inpatient care and treatment for individuals with mental illness. [~~A state hospital or state center with an inpatient psychiatric component operated by the Department of State Health Services.~~]

(34) [~~(38)~~] State supported living center--A state-supported and structured residential facility that is an ICF/IID operated by HHSC [~~DADS~~] to provide persons with an intellectual disability a

variety of services, including medical treatment, specialized therapy, and training in the acquisition of personal, social, and vocational skills, but does not include a community-based facility owned by HHSC [~~DADS~~].

(35) [~~(39)~~] Subaverage general intellectual functioning--Consistent with THSC[~~,~~] §591.003, measured intelligence on standardized general intelligence tests of two or more standard deviations (not including standard error of measurement adjustments) below the age-group mean for the tests used.

(36) TAC--Texas Administrative Code. A compilation of state agency rules published by the Texas Secretary of State in accordance with Texas Government Code Chapter 2002, Subchapter C.

(37) [~~(40)~~] THSC--Texas Health and Safety Code.

(38) [~~(41)~~] TxHmL Program--The Texas Home Living Program. A program operated by HHSC [~~DADS~~] as authorized by the Centers for Medicare & [~~and~~] Medicaid Services in accordance with §1915(c) of the Social Security Act.

*§331.7. Eligibility.*

(a) To be eligible for service coordination, an individual must:

(1) be a member of the LIDDA priority population and [~~must~~] meet at least one of the following criteria:

(A) have two or more [~~documented~~] needs that require services and supports other than service coordination as documented [~~evidenced~~] by the HHSC Service Coordination Assessment form completed [~~an assessment conducted~~] by the designated LIDDA and not reside in an institution;

(B) be:

*(i)* in the process of enrolling in the ICF/IID Program; [~~or~~]

*(ii)* in the process of enrolling in the HCS or TxHmL Program or be currently enrolled in the HCS or TxHmL Program; or

*(iii)* in the process of enrolling in CFC services provided through an MCO;

(C) be 21 years of age or older with an ICF/IID level-of-care and receiving CFC services through an MCO;

(D) be seeking admission to a state supported living center;

(E) be transitioning from an ICF/IID or from a nursing facility to community-based services; or

(F) be transitioning from a state hospital or a facility with an HHSC-contracted psychiatric bed [~~MH facility~~] to community-based services; or

(2) be a nursing facility resident who is eligible for specialized services for an intellectual disability or a related condition pursuant to §1919(e)(7) of the Social Security Act (U.S.C. [~~United States Code~~], Title 42, §1396r(e)(7)).

(b) Community-based services as referenced in subsection (a)(1)(E) and (F) of this section does not include services provided in an ICF/IID or nursing facility or services provided in another institutional setting.

[~~(c) The assessment required by subsection (a)(1)(A) of this section must be conducted using DADS form "Service Coordination Assessment--Intellectual Disability Services" which is available at www.dads.state.tx.us.~~]

*§331.9. Funding Service Coordination.*

(a) Service coordination may be funded by:

(1) personal funds or third-party insurance other than Medicaid;

(2) Medicaid targeted case management; or

(3) general revenue.

(b) Service coordination funded by Medicaid targeted case management:

(1) may be provided only to an individual who is a Medicaid recipient and only if:

(A) the individual meets at least one of the criteria described in §331.7(a)(1)(A) - (D) [~~§2.554(a)(1)(A) - (D)~~] of this chapter [~~subchapter~~] (relating to Eligibility); or

(B) the individual meets the criteria described in §331.7(a)(1)(E) [~~§2.554(a)(1)(E)~~] or (a)(2) of this chapter [~~subchapter~~] and the service coordination is provided during the last 180 days before the individual transitions to community-based services from an [~~the~~] ICF/IID or a nursing facility; and

(2) may not be provided to an individual:

(A) who resides in an institution for mental diseases; or

(B) who is enrolled in a Medicaid waiver program other than the HCS or TxHmL Program.

*§331.11. Designated LIDDA's Responsibilities.*

(a) [~~Developing a plan of services and supports.~~] If a [~~the designated~~] LIDDA determines an individual is eligible for and desires service coordination, the LIDDA must develop a plan of services and supports for the individual using person- centered [~~directed~~] planning that is consistent with the HHSC *Person-Centered* [~~DADS *Person Directed*~~] *Planning Guidelines.*

(1) For the [~~HCS and~~] TxHmL and HCS Programs, the person-directed plan (PDP), as defined in §262.3 [~~§9.153~~] and §263.3 [~~§9.553~~] of this title (relating to Definitions), respectively, qualifies as a plan of services and supports.

(2) For an individual receiving CFC services through an MCO, a completed HHSC Community First Choice Assessment form [~~"Community First Choice Assessment"~~] qualifies as a plan of services and supports.

(b) [~~Provision of service coordination.~~]

[~~(1)~~] A LIDDA must ensure that service coordination:

(1) [~~(A)~~] is provided to an [~~the~~] individual in accordance with the individual's plan of services and supports; and

(2) [~~(B)~~] is not provided by an employee [~~a staff person~~] who is a relative of the individual or who has the same residence as the individual.

(c) [~~(2)~~] A LIDDA may provide crisis prevention and management to an [~~the~~] individual without having first identified the need for such services in the individual's plan of services and supports.

[~~(3) If, as a result of monitoring, the service coordinator identifies a concern with implementation of the plan of services and supports, a LIDDA must ensure the concern is communicated to the entity providing the services and supports and attempts are made to resolve the concern.~~]

(d) A LIDDA must complete the HHSC Service Coordination Assessment form:

(1) at intake to determine an individual's eligibility;

(2) when the individual's needs change and the frequency of in-person contact in the individual's plan of services and supports needs to be revised; and

(3) at least annually.

(e) The HHSC Service Coordination Assessment must:

(1) be conducted using the HHSC Service Coordination Assessment form;

(2) be completed by the service coordinator with the individual or LAR when applicable; and

(3) identify the frequency of in-person service coordination contact.

(f) [~~(e)~~] [~~Revising the plan of services and supports.~~]

[~~(1)~~] A LIDDA must ensure that a service coordinator revises an individual's plan of services and supports:

(1) if:

(A) the individual's needs change; or

(B) the individual, LAR or actively involved person, service provider, or other person provides relevant information indicating the appropriateness of revising [~~revision of~~] the plan; and [~~is appropriate.~~]

(2) [~~A LIDDA must ensure that a service coordinator revises the plan~~] using person-centered [~~person-directed~~] planning that is consistent with the HHSC *Person-Centered* [~~DADS *Person Directed*~~] *Planning Guidelines.*

(g) Service coordination, during both comprehensive and follow-up encounters, must involve at least one of the four elements listed in the definition of "service coordination" in §331.5 of this chapter (relating to Definitions).

(h) [~~(d)~~] [~~Minimum contact.~~]

[~~(1)~~] A LIDDA must ensure that a service coordinator meets [~~face-to-face~~] with an individual in person in accordance with one of the following, whichever is the most frequent:

(1) [~~(A)~~] at least once every 90 days or more frequently in accordance with the HHSC Service Coordination Assessment form; or

(2) [~~(B)~~] for the minimum number of in-person [~~face-to-face~~] contacts required by:

(A) [~~(i)~~] rules or other requirements of the program or services in which the individual is enrolled; or

(B) [~~(ii)~~] a contract between HHSC [~~DADS~~] and the LIDDA.

~~[(2) The face-to-face contact must involve at least one of the four components listed in the definition of "service coordination" in §2.553 of this subchapter (relating to Definitions).]~~

(i) A service coordinator may meet with an individual via audio-only or audio-visual communication for a comprehensive encounter:

(1) in a month when minimum in-person contact in accordance with subsection (h) of this section is not required; and

(2) if, before the service coordinator conducts the meeting using audio-only or audio-visual communication, the service coordinator obtains:

(A) the written consent of the individual or LAR, which may only be effective for up to a year; or

(B) the individual's or LAR's verbal consent and documents the verbal consent in the individual's record.

(j) If a service coordinator does not obtain an individual's or LAR's written or verbal consent required by subsection (i)(2)(A) or (B) of this section respectively, the service coordinator must:

(1) document the individual's or LAR's refusal to receive a comprehensive encounter via audio-only or audio-visual communication in the individual's record; and

(2) conduct the comprehensive encounter in person.

(k) If a service coordinator identifies a concern with implementation of the plan of services and supports, the LIDDA must ensure the concern is communicated to the entity providing the services and supports and attempts are made to resolve the concern.

(l) [~~(e)~~] [~~Individuals enrolled in the TxHmL Program.~~] In addition to the requirements in this chapter [~~subchapter~~], a LIDDA must ensure service coordination is provided to individuals enrolled in the TxHmL Program in accordance with:

(1) Chapter 262 [~~9, Subchapter N~~] of this title (relating to Texas Home Living (TxHmL) Program and Community First Choice (CFC)); and

(2) Chapter 264 [~~41~~] of this title (relating to Consumer Directed Services Option)).

(m) [~~(f)~~] [~~Individuals enrolled in the HCS Program.~~] In addition to the requirements in this chapter [~~subchapter~~], a LIDDA must ensure service coordination is provided to individuals enrolled in the HCS Program in accordance with:

(1) Chapter 263 [~~9, Subchapter D,~~] of this title (relating to Home and Community-based Services (HCS) Program and Community First Choice (CFC)); and

(2) Chapter 264 [~~41~~] of this title.

*§331.13. Caseloads.*

A LIDDA [~~The MRA~~] is responsible for determining the number of cases per employee [~~staff person~~] who provides service coordination based on factors such as individuals' needs, the frequency of in-person contacts, the [~~and~~] duration of contacts, and travel time.

*§331.15. Termination of Service Coordination.*

A LIDDA [~~The MRA~~] must terminate service coordination for an individual if:

(1) the individual no longer meets the eligibility criteria for service coordination as set forth in §331.7 [~~§2.554~~] of this chapter [~~title~~] (relating to Eligibility); or

(2) the individual or the LAR no longer desires service coordination.

*§331.17. Minimum Qualifications.*

(a) Service coordination may be provided only by an employee of a [~~the~~] LIDDA.

(b) Except as provided by subsection (d) [~~subsections (d), (e), and (f)~~] of this section, an employee [~~a staff person~~] providing service coordination must have:

(1) a bachelor's or advanced degree from an accredited college or university;

(2) an associate degree in a social, behavioral, human service, or health-related field including, psychology, social work, medicine, nursing, rehabilitation, counseling, sociology, human development, gerontology, educational psychology, education, or [and] criminal justice; or

(3) a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma, and two years of paid or unpaid experience with individuals with intellectual or developmental disabilities.

(c) A [The] LIDDA, at its discretion, may require additional education and experience for employees [staff] who provide service coordination.

(d) At the discretion of a [the] LIDDA, an employee [a staff person] who was authorized [by a LIDDA] to provide service coordination prior to October 16, 2022 [April 1, 1999], pursuant to the rules in effect at the time the employee was hired, may provide service coordination without meeting the minimum qualifications described in subsection (b) of this section.

[(e) Until December 31, 2011, a LIDDA may hire a person to provide service coordination who was employed as a case manager for an HCS Program provider for any period of time prior to June 1, 2010, even if the person does not meet the minimum qualifications described in subsection (b) of this section.]

[(f) Beginning January 1, 2012, a LIDDA may hire a person to provide service coordination who was hired by another LIDDA in accordance with subsection (e) of this section.]

*§331.19. Employee [Staff Person] Training.*

(a) A LIDDA must ensure that the following employees [staff persons] complete the training as described in subsection (b) of this section:

(1) an employee [a staff person] who provides service coordination; and

(2) an employee [a staff person] who supervises or oversees the provision of service coordination.

(b) A LIDDA employee [staff person] described in subsection (a) of this section must:

(1) within the first 90 days of the service coordinator's date of hire [performing service coordination duties], complete training that addresses:

(A) appropriate LIDDA policies, procedures, and standards;

(B) the LIDDA's performance contract requirements regarding service coordination;

(C) plan of services and supports development and implementation;

(D) person-centered [person-directed] planning consistent with the HHSC *Person-Centered* [DADS *Person Directed*] *Planning Guidelines;*

(E) permanency planning;

(F) crisis prevention and management, monitoring, assessment, and service planning and coordination;

(G) community support services, including Medicaid state plan services such as CFC services; [and]

(H) advocacy for individuals; and

(I) additional trainings designated by HHSC; and

(2) within the first six months of the service coordinator's date of hire, complete a comprehensive non-introductory person-centered service planning training approved by HHSC, unless HHSC grants an extension of the six-month timeframe.[:]

[(A) by June 1, 2017, if the staff person is hired on or before June 1, 2015; or]

[(B) within two years after hire, if the staff person is hired after June 1, 2015.]

(c) A LIDDA must document the training completed [provided] in accordance with this section in the personnel record of each employee [staff person] providing, supervising, or overseeing service coordination.

*§331.21. Documentation of Service Coordination.*

(a) A LIDDA [The MRA] must document the required contacts described in the individual's plan of services and supports, including:

(1) whether the contact was in person, via audio-visual communication, or via audio-only communication;

(2) the location of the contact;

(3) [(1)] the date of the contact;

(4) [(2)] a [the] description of which of the four elements [element(s)] of service coordination listed in the definition of "service coordination" in §331.5 of this chapter (relating to Definitions) were provided;

(5) [(3)] the progress or lack of progress in achieving goals or outcomes;

(6) [(4)] the person with whom the contact occurred; and

(7) [(5)] the name of the LIDDA employee [staff] who provided the contact and the employee's [his or her] professional discipline, if applicable.

(b) A LIDDA [The MRA] must ensure that service coordination activities are documented in the individual's record.

(c) A LIDDA [The MRA] must identify the appropriate service code in the HHSC data system [CARE] for all individuals receiving service coordination.

(d) A LIDDA [The MRA] must retain documentation in compliance with applicable federal and state laws, rules, and regulations.

*§331.23. Review Process.*

(a) [Medicaid-eligible individuals.] Any Medicaid-eligible individual whose request for eligibility for service coordination is denied or is not acted upon with reasonable promptness, or whose service coordination has been terminated, suspended, or reduced by HHSC [the department] is entitled to a fair hearing in accordance with 1 TAC Chapter 357, Subchapter A (relating to Uniform Fair Hearing Rules).

(b) [Non-Medicaid-eligible individuals.] If a LIDDA [an MRA] decides to deny, involuntarily reduce, or terminate service coordination for a non-Medicaid-eligible individual, the LIDDA [MRA] must notify the individual or LAR in writing of the decision and provide an explanation of the procedure for the individual or LAR to request a review by the LIDDA [MRA] as required by Chapter 301, Subchapter D of this title [§2.46 of this chapter] (relating to LIDDA, LMHA, and LBHA Notification and Appeal [Appeals] Process).

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

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Karen Ray
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# TITLE 30. ENVIRONMENTAL QUALITY

## PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

### CHAPTER 101. GENERAL AIR QUALITY RULES

### SUBCHAPTER K. FAILURE TO ATTAIN FEE FOR THE 2008 EIGHT-HOUR OZONE STANDARD

**30 TAC §§101.700 - 101.718**

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes new §§101.700 - 101.718.

The proposed new sections will be submitted to the U.S. Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP).

Background and Summary of the Factual Basis for the Proposed Rules

Federal Clean Air Act (FCAA), §182(d)(3) and (e) and §185 (Section 185, generally) require the SIP to include a rule that implements a penalty fee (Section 185 fee, Failure to Attain Fee, fee) for major stationary sources (major sources) of volatile organic compounds (VOC) located in an ozone nonattainment area classified as severe or extreme if that area fails to attain the ozone National Ambient Air Quality Standard (NAAQS or standard) by the applicable attainment date. FCAA, §182(f) states that requirements "for major stationary sources of volatile organic compounds shall also apply to major stationary sources (as defined in §7602 of this title and subsections (c), (d), and (e) of this section) of oxides of nitrogen ($NO_x$)." This FCAA requirement extends the Section 185 fee assessment to major stationary sources of $NO_x$ emissions. The SIP must also include procedures for the assessment and collection of the penalty fee. If the state does not impose and collect the fee, then FCAA, §185(d) requires that EPA impose and collect the fee with interest, and the revenue is not returned to the state.

For the 2008 eight-hour ozone standard of 0.75 parts per million, on October 7, 2022, EPA published a final notice that reclassified the Dallas-Fort Worth (DFW) and Houston-Galveston-Brazoria (HGB) 2008 eight-hour ozone nonattainment areas from serious to severe effective November 7, 2022 (87 *Federal Register* (FR) 60926). The DFW severe nonattainment area consists of 10 counties: Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise. The HGB severe nonattainment area consists of eight counties: Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller. The DFW and HGB severe nonattainment areas are required to attain the 2008 eight-hour ozone standard by July 20, 2027. If a severe or extreme ozone nonattainment area does not attain by the attainment date, the area will be subject to the penalty fee requirements upon EPA issuing a finding of failure to attain for the area. For fee assessment purposes, the 2027 calendar year from January 1, 2027, through December 31, 2027, is anticipated to be the baseline year for these severe nonattainment areas since it is the year that contains the attainment date. The penalty fee is required to be paid until EPA redesignates the area as attainment for the 2008 eight-hour ozone standard or EPA takes action that results in termination of the fee.

As stated in FCAA, §182(d)(3) and (e) and §185, the required penalty is $5,000 per ton, as adjusted for inflation by the consumer price index (CPI), of VOC and/or $NO_x$ emissions emitted in excess of 80% of a major stationary source's baseline amount. A baseline amount would be determined for each pollutant, VOC and/or $NO_x$, for which the source meets the major source applicability requirements. A source that is major for VOC emissions would be subject to the fee on VOC emissions; a source that is major for $NO_x$ emissions would be subject to the fee on $NO_x$ emissions; and a source that is major for both VOC and $NO_x$ emissions would be subject to the fee on both VOC and $NO_x$ emissions.

The major stationary source's fixed baseline amount is proposed to be calculated as the lower of the baseline emissions or total annual authorized emissions during the baseline year; the baseline amount must be adjusted downward to account for unauthorized emissions and/or emissions limitations in effect as of December 31 of the baseline year or timeframe used to determine the baseline amount. The major stationary source's baseline emissions are defined as the annual routine emissions reported to the TCEQ point source emissions inventory (emissions inventory) according to 30 TAC §101.10, excluding emissions not authorized by permit or rule, such as emissions from emissions events and scheduled or unscheduled maintenance, startup, and shutdown (MSS) activities. The major stationary source's authorized emissions include emissions allowed under any EPA or TCEQ-enforceable measure or document, such as rules, regulations, permits, orders of the commission, and/or court orders.

The proposed rule allows for a baseline amount determination with flexibilities such as aggregating pollutants (VOC and $NO_x$ emissions) and aggregating sites under common ownership and control into a single baseline. The proposed rule also allows for baseline amount determinations when a period other than the baseline year may be required, such as new major stationary sources that began operating after the baseline year or major stationary sources with emissions that are irregular, cyclic, or vary significantly from year to year. Under specific circumstances, as proposed, major stationary sources may request adjustments to the fixed baseline amount. The estimated maximum Section 185 fee without baseline amount flexibilities and alternative revenue for both the HGB and DFW severe ozone nonattainment areas would be over $200 million per year.

TCEQ proposes a program under FCAA, §172(e) with flexibility aspects not directly described in FCAA, §185, including but not limited to alternative revenue and baseline aggregation. Although EPA has not issued guidance to assist states with developing Section 185 fee programs under the 2008 eight-hour ozone standard, in its 2010 guidance (available at: *http://www.epa.gov/glo/pdfs/20100105185guidance.pdf*), multiple approvals of similar equivalent alternative programs in California and New York, and in a final rule published in

the February 14, 2020, *Federal Register* (85 FR 8411) for the Section 185 Fee Program in the HGB nonattainment area under the one-hour ozone standard (HGB Failure to Attain Fee), EPA approved the use of equivalent programs to fulfill the FCAA, §185 fee requirement. Although the 2010 guidance was vacated by the D.C. Circuit Court of Appeals on procedural grounds, EPA continued to utilize the principles outlined in the guidance as support for its approvals of equivalent alternative programs, *NRDC v. EPA*, 643 F.3d 311 (D.C. Cir. July 2011). Notably, the court did not prohibit alternative programs, instead stating that "neither the statute nor our case law obviously precludes that alternative." In the absence of formal EPA guidance for Section 185 fee programs under the 2008 eight-hour ozone standard, this proposed rulemaking relied on the 2010 guidance to develop Texas' fee program. In the HGB Failure to Attain Fee final approval, EPA approved fee programs funded to reduce VOC and $NO_x$ emissions that are qualified programs, surplus to the one-hour ozone SIP, and designed to result in direct reductions or facilitate future reductions of VOC or $NO_x$ emissions, which is consistent with the principles of the anti-backsliding principle of the FCAA §172(e). EPA's 2010 guidance requires an equivalent alternative program to achieve the same emissions reductions, raise the same amount of revenue and establish a process by which penalty funds would be used to pay for emission reductions that would further improve ozone air quality, or a combination of emissions reductions or revenue collection.

EPA states in its 2010 guidance that it may allow alternative programs for which "the proceeds are spent to pay for emissions reductions of ozone-forming pollutants ($NO_x$ and/or VOC) in the same geographic area subject to the §185 program." EPA further states, "Under this concept, states could develop programs that shift the fee burden from the specific set of major stationary sources that are otherwise required to pay fees according to §185, to other non-major sources of emissions, including owners/operators of mobile sources." From these statements and EPA's final approval of the HGB Failure to Attain Fee, located in 30 Texas Administrative Code (TAC) 101 Subchapter B, EPA supports equivalent alternative options to a fee-based program provided the option is "no-less stringent" than a strict fee-based program and generally meets the stated criteria for the (now revoked) one-hour ozone standard. EPA approved other equivalent alternative programs pursuant to the 2010 guidance for the one-hour ozone standard including San Joaquin Valley (77 FR 50021), South Coast Air Quality Management District, (77 FR 74372), and the New York portion of the New York-Northern New Jersey-Long Island nonattainment area (84 FR 12511). EPA's approvals of these Section 185 fee programs under the one-hour ozone standard included alternative fee revenue by assessing a fee on mobile sources. The revenue was used to offset the fee due from major stationary sources in the nonattainment areas. EPA's prior approvals were based on its current interpretation that FCAA, §172(e) allows equivalent alternative fee programs for revoked ozone standards. However, nothing in FCAA, §172(e) prohibits equivalent alternative fee programs for active ozone standards and therefore the commission proposes an equivalent alternative fee program in this rule.

The HGB Failure to Attain Fee Rule allowed revenue collected from the HGB one-hour ozone standard nonattainment area for qualified programs that directly reduced VOC or $NO_x$ emissions to offset the FCAA, §185 fee. No actual revenue or funding was transferred to the program; the funds were calculated, recorded, and assessed to ensure a sufficient amount was collected to offset the required Section 185 fee amount. The same approach is used for this proposed rulemaking.

Although EPA has not issued guidance to assist states with developing Section 185 fee programs under the 2008 eight-hour ozone standard, EPA originally described certain basic principles concerning the applicability of the FCAA, §182(d)(3) and (e) and §185 fee for severe or extreme ozone nonattainment areas under the one-hour ozone standard. In a final rule published November 16, 2005, in the *Federal Register* (70 FR 69440) regarding the Maryland portion of the Washington, D.C. severe one-hour ozone nonattainment area, EPA noted in response to a comment that "Section 185 of the Act simply requires that the SIP contain a provision that major stationary sources within a severe or extreme nonattainment area pay a fee to the state as a penalty for failure of that area to attain the ozone NAAQS by the area's attainment date. This penalty fee is based on the tons of volatile organic compound or nitrogen oxide emitted above a source-specific trigger level during the 'attainment year.' It [the fee] first comes due for emissions during the calendar year beginning after the attainment date and must be paid annually until the area is redesignated to attainment of the ozone NAAQS. Thus, if a severe area, with an attainment date of November 15, 2005, fails to attain by that date, the first penalty assessment will be assessed in calendar year 2006 for emissions that exceed 80% of the source's 2005 baseline emissions" (70 FR 69440, 69441). The same rationale was used to establish the anticipated baseline year of 2027 for the DFW and HGB severe nonattainment areas under the 2008 eight-hour ozone standard.

EPA further states that a "penalty fee that is based on emissions could have some incidental effect on emissions if sources decrease their emissions to reduce the amount of the per ton monetary penalty. However, the penalty fee does not ensure that any actual emissions reduction will ever occur since every source can pay a penalty rather than achieve actual emissions reductions. The provision's plain language evinces an intent to penalize emissions in excess of a threshold by way of a fee; it does not have as a stated purpose the goal of emissions reductions" (70 FR 69440, 69441 - 69442). Major stationary sources may elect to reduce their emissions to reduce the fee owed, or they may elect to pay the fee without reducing their emissions.

EPA also previously issued guidance *(Guidance on Establishing Baselines under Section 185 of the Clean Air Act (CAA) for Severe and Extreme Ozone Nonattainment Areas that Fail to Attain the 1-hour Ozone NAAQS by their Attainment)* on March 21, 2008 (available at *www.epa.gov/ttn/caaa/t1/memoranda/20080321_harnett_emissions_basline.pdf*), regarding establishing emission baseline amounts. The March 21, 2008, guidance memo discussed alternative methods for calculating the baseline amount, as permitted by FCAA, §185. EPA noted that in some cases, baseline amounts may not be representative of normal operating conditions because a source's emissions may be irregular, cyclic, or otherwise vary significantly from year to year. This concept would be applicable regardless of the fee program implemented or the ozone standard requiring the fee program.

EPA indicated in its guidance that relying on its regulations for Prevention of Significant Deterioration (PSD) of Air Quality, which are found in 40 Code of Federal Regulations (CFR) §52.21(b)(48), would be an acceptable alternative method for calculating the baseline amount. Under the PSD rules, sources may use emissions data from any period of 24 consecutive months within the previous ten years (a two-in-ten look back pe-

riod) to calculate an average annual actual emissions rate. EPA determined the two-in-ten look back period to be reasonable because it allows sources to consider an average emissions rate for a full business cycle.

The PSD rules modify this concept for electrical utility steam generating units to 24 consecutive months within the previous five years (a two-in-five look back period) due to a shorter business cycle for those units. The commission agrees that use of the two-in-ten and two-in-five look-back periods is reasonable for sources for which emissions are irregular, cyclical, or otherwise vary significantly from year to year, and the commission proposes to provide this option in the same manner as provided for in the Texas New Source Review Program. Since the PSD guidance is specific to sources for which emissions are irregular, cyclical, or otherwise vary significantly from year to year, the averaging option would not be available for sources with steady-state operations.

A variability analysis on sites reporting to the TCEQ point source emissions inventory was performed to determine if VOC and $NO_x$ emissions were variable over the twelve-year period between 2011 (the base year for the 2008 ozone standard) through 2022 (the most recent complete point source emissions inventory at the time this analysis was performed) for the DFW and HGB severe nonattainment areas. Data for the DFW and HGB variability analysis were analyzed separately for VOC and $NO_x$ emissions. Sites that reported mean 2011 through 2022 emissions greater than 20 tons per year in the TCEQ emissions inventory were included in this analysis.

A site's emissions were determined to be variable if the following formula was true, where x = VOC or $NO_x$ emissions and σ = one standard deviation of the data set:

Figure: 30 TAC Chapter 101 - Preamble

Variability of reported $NO_x$ and VOC emissions ranged from 3% to 128% in the HGB area and from 0.1% to 265% in the DFW area over the twelve years examined. Fifty-nine percent or 162 of the 274 $NO_x$ and/or VOC emissions sources in the HGB area were variable as defined by the above formula. Forty-eight percent or 115 of the 238 $NO_x$ and/or VOC emissions sources in the DFW area were variable as defined by the above formula.

The variability analysis shows that a high level of source-level emissions variability occurred between 2011 and 2022 in the DFW and HGB severe nonattainment areas; therefore, it is appropriate to use a 24-month period during the previous ten years (or five years if the source is an electric utility steam generating unit) to establish a baseline for the FCAA, §185 fee program.

Based on the analysis above, the commission proposes to use EPA's baseline guidance and EPA's long-standing PSD regulations for sources with emissions that are irregular, cyclic, or otherwise vary significantly to offer an option for these source types to establish a baseline amount. Since FCAA, §185 states that the baseline amounts may be adjusted for these types of sources if the EPA Administrator issues guidance, the commission has proposed these provisions based on these EPA guidance documents.

Like the HGB Failure to Attain Fee Rule, the commission proposes to use the Texas Emissions Reduction Plan (TERP) revenue from each area collected after the 2008 eight-hour ozone attainment (baseline) year to offset the area's FCAA, §185 fee obligation.

The objectives of TERP are specifically described in statute and are consistent with EPA's objective for an equivalent FCAA, §185 fee program. TERP program objectives, listed in Texas Health and Safety Code (THSC), §386.052, address "achieving maximum reduction in oxides of nitrogen to demonstrate compliance with the state implementation plans" and "advancing new technologies that reduce oxides of nitrogen from facilities and other stationary sources." TERP, as described in THSC, §386.053, is restricted to having "safeguards that ensure that funded projects generate emissions reductions not otherwise required by state or federal law."

TCEQ implements TERP to reduce $NO_x$ emissions, a precursor to ozone pollution. TERP grant programs provide financial incentives to individuals, state and local governments, corporations, and other legal entities to upgrade or replace their older, higher emitting vehicles and equipment with newer, cleaner vehicles and equipment. The TERP programs also encourage the use of alternative fuels for transportation in Texas, and the implementation of new technologies that reduce emissions from stationary sources and oil and gas operations.

In the DFW severe nonattainment area, mobile source $NO_x$ emissions are the single-largest category of the 2023 emissions inventory at 65%. In the HGB severe nonattainment area, mobile source $NO_x$ emissions are the single-largest category of the 2023 emissions inventory at 55%. The emissions reduction grant programs that TERP funds decrease ozone precursor emissions more directly than a penalty fee assessed on major stationary sources. The commission proposes rules to credit the TERP revenue collected as an equivalent approach because TERP meets one of the three types of alternative programs that satisfy the requirements addressed in EPA's 2010 guidance memo. The grant programs funded through TERP are the same or similar programs that EPA previously approved as meeting the requirements for FCAA, §185 fee program equivalency under the HGB Failure to Attain Fee Rule.

Fees and surcharges related to the sale and use of vehicles and heavy-duty equipment in Texas fund the TERP programs. TCEQ would credit all revenue allocated for TERP programs and administration. TCEQ would identify and track TERP revenue generated from the DFW severe nonattainment area and the HGB severe nonattainment area in two separate Fee Equivalency Accounts to demonstrate equivalency of the area-specific TERP revenue to the penalty fee owed by major stationary sources located in that area.

Under the proposed rules, the commission would be required to annually estimate the expected Area §185 Obligation and compare this estimation with the expected TERP revenue. The commission proposes that TERP revenue collected after the attainment year (baseline year) and statutorily available for TERP programs would be credited towards meeting the FCAA, §185 fee obligation. For the DFW and HGB 2008 eight-hour ozone nonattainment areas, 2027 is the attainment year (baseline year) contained in the July 20, 2027, attainment date. Barring any extension to the attainment date, any TERP revenue generated from the nonattainment area starting with 2028 that is statutorily available for TERP programs could be credited to meet the Area §185 Obligation for DFW and HGB 2008 eight-hour ozone nonattainment areas.

To obtain the estimated total FCAA, §185 fee due from all major stationary sources, a baseline amount would be established for each major stationary source (or group of sources under a Section 185 Account, if aggregated as proposed and discussed later

in this preamble) within the DFW 2008 eight-hour ozone nonattainment area or located within the HGB 2008 eight-hour ozone nonattainment area. The two nonattainment areas are assessed separately, resulting in two Area §185 Obligations, one for DFW and one for HGB. Each major stationary source's or Section 185 Account's reported baseline amount(s) and actual emissions would be used to calculate a Failure to Attain Fee. The resulting amount due from each major stationary source or Section 185 Account for aggregated sources would be summed by location to determine the overall DFW and HGB 2008 eight-hour ozone nonattainment area's Area §185 Obligations.

If revenue generated from TERP is insufficient to fully offset the Area §185 Obligation for the DFW 2008 eight-hour ozone nonattainment area or HGB area 2008 eight-hour ozone nonattainment, then the remaining difference would be assessed as a Failure to Attain Fee on a major stationary source or Section 185 Account for the area on a prorated basis. The amount collected from each major stationary source or Section 185 Account would be discounted based on the amount of revenue credited to the Fee Equivalency Account. In this manner, these proposed rules would "backstop" any TERP revenue with fees directly assessed on major stationary sources as necessary to meet each year's fee. The Area §185 Obligation would be fully met either through the demonstration from the Fee Equivalency Account or, if necessary, supplemented with directly assessed fees on major stationary sources or Section 185 Accounts. This method of fee equivalency is no "less stringent" than a direct fee program required by FCAA, §185.

To determine a major stationary source's baseline amount and the Failure to Attain Fee that would apply to each major stationary source, the commission proposes to provide major stationary sources a choice to individually determine baselines for VOC and $NO_x$ emissions, aggregate VOC and $NO_x$ emissions into one baseline if the source is major for both pollutants, or aggregate those emissions across multiple major stationary sources under common control. In Attachment C of EPA's 2010 guidance memo, EPA states it would ". . . allow for aggregation of sources. We anticipate that we would be able to approve a FCAA, §185 fee program SIP that relies on a definition of 'major stationary source' that is consistent with the FCAA as interpreted in our existing regulations and policies." EPA's 2010 memo further states that EPA would allow aggregation of VOC with $NO_x$ emissions, ". . . provided that the aggregation is not used to avoid a 'major source' applicability finding, and aggregation is consistent with the attainment demonstration . . . we believe states have a discretion to allow a major source to aggregate VOC and $NO_x$ emissions." The proposed rulemaking would require a major stationary source to first determine its major source applicability for both VOC and $NO_x$ emissions. In this approach, a major stationary source cannot use aggregation to avoid applicability of the FCAA, §185 fee rule. If the major stationary source chooses to aggregate baselines by pollutant or site or both, it would be required to provide to TCEQ the individual, unaggregated pollutant and site baselines for each pollutant(s) that determines major source status. This will ensure that staff can accurately enter aggregated baseline amounts into the TCEQ's Section 185 fee database.

In making determinations of whether common control exists, the commission would consider EPA guidance regarding common control. For example, in a final rule on the *Requirements for Preparation, Adoption, and Submittal of Implementation Plans; Emissions Offset Interpretive Ruling* (45 FR 59878, September 11, 1980), EPA stated it would determine control guided by the general definition of control used by the Securities and Exchange Commission (SEC). In SEC considerations of control, control "means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person whether through the ownership of voting shares, contract, or otherwise" (17 CFR §210.1 and §210.2(g)). EPA generally continues to assess common control based on the general principles outlined above and has periodically issued additional guidance for specific topics such as how to assess contiguous or adjacent properties, industrial grouping, etc. The commission would also use other criteria to determine common control consistent with participation in local area banking programs, such as the Mass Emissions Cap and Trade or the Highly-Reactive Volatile Organic Compound Cap and Trade programs. A group of major stationary sources choosing to aggregate under common control as a single customer would be identified with a single common customer identifier used by the commission, the customer number (CN). A group of major stationary sources under common control would be assigned a single Section 185 Account number by TCEQ.

Since VOC and $NO_x$ emissions reductions are both effective at lowering ozone concentrations in both the DFW and HGB 2008 eight-hour ozone nonattainment areas, major sources should be allowed to aggregate both $NO_x$ and VOC emissions into one baseline amount. The commission adopted a strategy of targeting those pollutants in a way that would allow ozone nonattainment areas to attain the standard as expeditiously as practicable in the applicable attainment demonstration SIPs. States are required by the FCAA to assess and develop strategies for nonattainment areas, as part of the SIP revision process, to achieve attainment and maintenance of the standard, and this approach is a result of the knowledge gained from research and detailed photochemical modeling of each nonattainment area. The commission's proposed flexibility option to allow aggregation of VOC and $NO_x$ as well as major stationary source aggregation for both pollutants continues to support the strategies outlined in the attainment demonstration SIPs. This proposed aggregation method compliments the multi-pollutant control strategies incorporated into the SIP for the DFW and HGB ozone nonattainment areas.

As addressed previously, FCAA, §185 requires the SIP to include a requirement for the imposition of a penalty fee on major stationary sources of emissions of VOC in a severe or extreme ozone area that failed to attain the standard by its applicable due date. FCAA, §182(f) states that requirements "for major stationary sources of volatile organic compounds shall also apply to major stationary sources (as defined in §7602 of this title and subsections (c), (d), and (e) of this section) of oxides of nitrogen." Thus, the requirement to assess a fee on major stationary sources of $NO_x$ emissions is also required. This language in FCAA, §182(f) does not explicitly state that requirements for $NO_x$ sources are to be held separate from those for VOC but are "also required" for sources of $NO_x$ emissions. Both VOC and $NO_x$ control strategies have a common goal: to reduce ozone-forming emissions. The stated objective of FCAA, §182(f) and §185 is to assess a fee for VOC and $NO_x$ emissions on major stationary sources emitting above a certain baseline amount of emissions. The Section 185 per ton fee rate required for the pollutants remains the same regardless of whether the pollutant is VOC or $NO_x$ and thus, there is no reason to require that a fee be assessed separately for each pollutant. The commission proposes to allow a major stationary source to combine these emissions for baseline amount determinations and fee assessments providing that specified criteria are met to ensure consistency.

Additionally, the commission notes that EPA guidance allows for $NO_x$ substitution in its reasonable further progress (RFP) SIP revisions as further support for allowing VOC and $NO_x$ emissions to be aggregated for both baseline amount determinations and fee assessments. In its December 1993 $NO_x$ Substitution Guidance (available at *http://www.epa.gov/ttncaaa1/t1/memoranda/noxsubst.pdf),* EPA states the "condition for demonstrating equivalency is that the State-proposed emission control strategies must be consistent with emission reductions required to demonstrate attainment of the ozone NAAQS for the designated year of attainment."

To ensure equitable treatment among all major stationary sources, maintain consistency within the fee program, and facilitate transparency for the public, the proposed rules require that baseline amounts and aggregation methods, once established, would remain fixed as long as the proposed rule remains applicable except as consistent with the proposed sections that allow adjustments under specific circumstances. Additionally, the proposed rules would require that calculation of the Failure to Attain Fee remain consistent with the baseline amount determination approach. Once a particular method for a baseline amount calculation is chosen, the Failure to Attain Fee calculation must remain consistent with that method. Therefore, if a major stationary source elected to aggregate pollutants under one of the options of this proposed rulemaking as the most appropriate choice for determining a baseline amount, all subsequent assessments, and payments of the Failure to Attain Fee must remain consistent with that selection.

The commission also proposes compliance schedules for determining baseline amounts for each applicable baseline amount scenario. Since the proposed Failure to Attain Fee cannot be implemented until EPA finalizes a failure to attain notice that determines that a severe or extreme nonattainment area under the 2008 eight-hour ozone standard did not attain by the applicable due date, the due dates for major stationary sources operating during the baseline year are structured to account for issuance of this notice. New major stationary sources that begin operating during or after the baseline year would have a fixed amount of time to self-report the baseline amounts to TCEQ. The compliance schedules would ensure timely assessment of the fee.

The commission proposes to invoice and require fee payment in accordance with current state statute and regulations. Once the program is implemented, fee payments would be due each year until the Section 185 fee is terminated.

If this proposed rule is adopted, any Section 185 fee revenue collected by TCEQ would be deposited into the Clear Air Account according to THSC §382.0622. Since spending potential Section 185 fee revenue depends on this proposed rule's adoption, Texas' collection of the Section 185 fee, and future Legislative actions, this proposed rulemaking does not include options for how any potential collected Section 185 revenue would be spent.

The proposed rules would ensure stability of the Clean Air Account and any potential future programs that could be developed using the Failure to Attain Fee revenue by preventing adjustments to previously invoiced baseline amounts for instances in which baselines are adjusted as proposed in §101.708, §101.709, §101.710, and §101.711. No matter the scenario used to adjust the baseline amount it would apply starting with the next fee assessment year.

Section by Section Discussion

*§101.700, Definitions*

This proposed new section contains definitions necessary for applying the rules. The terms defined include actual emissions, Area §185 Obligation, attainment date, baseline amount, baseline emissions, baseline year, electric utility steam generating unit, emissions unit, equivalency credits, extension year, Failure to Attain Fee, fee assessment year, fee collection year, major stationary source, and Section 185 Account.

As proposed, the term *actual emissions* would use the definition currently used in 30 TAC §101.10; this would ensure that the VOC and/or $NO_x$ emissions assessed for the *Failure to Attain Fee* include all emissions emitted from the major stationary source for the calendar year being assessed, whether authorized or unauthorized emissions.

The *Area §185 Obligation* is proposed to be defined as the total amount of the *Failure to Attain Fee* due for an entire 2008 eight-hour ozone nonattainment area based on summing the *Failure to Attain Fee* due from each major stationary source for a fee assessment year. For the 2008 eight-hour ozone standard, the 10-county DFW and eight-county HGB nonattainment areas would have separate *Area §185 Obligations*. EPA's 2010 guidance states that an equivalent program could be acceptable under FCAA, §172(e) if an alternative fee or program is equivalent to the fee that would be assessed on an area failing to meet the ozone standard. The *Area §185 Obligation* is the basis for making an equivalency demonstration for the commission's proposed program. The *equivalency credits* are proposed to be defined as revenue collected in a calendar year from TERP to offset the *Area §185 Obligation* on a dollar-to-dollar basis. If there are insufficient funds to offset the entire *Area §185 Obligation,* then *Failure to Attain Fee* would be prorated and the prorated fee amount assessed directly on major stationary sources or Section 185 Accounts to meet the entire *Area §185 Obligation.*

*Attainment date* is proposed to be defined as the EPA-specified date an area is required to attain the 2008 eight-hour ozone standard under the FCAA.

The attainment year is the entire calendar year that contains the *attainment date.* For purposes of this proposed rulemaking, the *baseline year* is proposed to be defined as January 1 through December 31 of the attainment year. At the time of the proposed rulemaking, there were two areas classified as severe nonattainment under the 2008 eight-hour ozone standard, the 10-county DFW nonattainment area (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties) and the eight-county HGB nonattainment area (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties). The severe classification attainment date for these areas is July 20, 2027; therefore, the 2027 calendar year from January 1, 2027, through December 31, 2027, would determine both the attainment year and *baseline year* of 2027, unless EPA approved an attainment date extension under FCAA, §181(a)(5).

Consistent with FCAA, §185, *baseline amount* is proposed to be the lower of baseline emissions (actual emissions as described in §101.705) or total annual authorized or pending authorization emissions at a major stationary source as of December 31 of the baseline year if the major stationary source operated the entire baseline year. For major stationary sources that began operating during or after the baseline year, the first full year (12 consecutive months) operating as a major source would be used to determine the baseline emissions. If the major stationary source's emissions are irregular, cyclical, or otherwise vary significantly from year to year, the *baseline emissions* are proposed to be averaged from any single consecutive 24-month period within a

historical period, as outlined in the proposed definition of *baseline emissions*.

For purposes of this proposed rulemaking, the term *baseline emissions* represents the "actual emissions" referenced in FCAA, §185(b)(2) and excludes unauthorized emissions. The baseline emissions are reported in the annual point source emissions inventory according to the Emissions Inventory Requirements of 30 TAC §101.10. The baseline emissions are proposed to include reported annual emissions that are authorized by permit or rule from routine operations, which includes authorized MSS activities during the baseline year or another time period as allowed by this proposed rule, but excludes unauthorized emissions. Emissions from emissions events and MSS activities not authorized by permit or rule must be excluded from the baseline emissions calculations because they are not authorized or representative of routine operations. The exclusion of unauthorized emissions from the baseline emissions calculation is consistent with the PSD definition of baseline actual emissions in §116.112 and 40 CFR §52.21(b)(48) that does not include unauthorized emissions in a baseline amount determination.

This proposed definition of *baseline emissions* differs from the definition of *actual emissions* in 30 TAC §101.10, which includes all emissions emitted, whether authorized or unauthorized, reported in the emissions inventory. The proposed definition of *baseline emissions* represents only the emissions from authorized routine operations reported in the emissions inventory.

If the major stationary source's emissions reported in the emissions inventory are irregular, cyclical, or otherwise vary significantly from year to year, the *baseline emissions* are proposed to be averaged from any single consecutive 24-month period within a historical period. The historical period allowed depends on the type of emissions units, following PSD guidance. *Electrical utility steam generating units* are included in this proposed rule because they may use a five-year historic look-back period. The definition of *electric utility steam generating units* is consistent with the definition used in 30 TAC §116.12. Other *emissions units*, as defined in §101.1, may use a ten-year historic look-back period.

*Extension year* is proposed to be defined as a year that meets the requirements of FCAA, §181(a)(5). It is unknown whether the 10-county DFW or the eight-county HGB severe nonattainment areas under the 2008 eight-hour ozone standard may qualify for an extension, and an extension year may be applicable to future areas designated as severe or extreme nonattainment under the 2008 eight-hour ozone standard.

The *Failure to Attain Fee* is proposed to be defined as the fee assessed and due from each major stationary source or Section 185 Account based on actual emissions, whether authorized or unauthorized, of VOC, $NO_x$, or both exceeding 80% of the *baseline amount*.

The *fee assessment year* is proposed to be defined as the calendar year the actual emissions were emitted and reported to the emissions inventory and used to calculate the assessed fee amount. The actual emissions include all authorized and unauthorized emissions, such as routine, MSS, and emissions events (EE) reported in the emissions inventory, as discussed in §101.713. For the 10-county DFW and eight-county HGB severe classification nonattainment areas under 2008 eight-hour ozone standard, the fee could be assessed as early as calendar year 2028 should the areas not attain by July 20, 2027. The *fee collection year* is proposed to be defined as the calendar year the fee is invoiced by TCEQ.

The definition for *major stationary source* is consistent with the definition in §116.12 for determining a major source of VOC or $NO_x$ emissions. Because major stationary sources under common control may opt to aggregate pollutants and/or sites for purposes of *baseline amount* determination and *Failure to Attain Fee* payment, a *Section 185 Account* represents either a major stationary source (if not choosing to aggregate) or a group of two or more major stationary sources (if aggregating). A single identifying Section 185 Account number would be assigned by TCEQ to track the option chosen for *baseline amounts* and *Failure to Attain Fee* assessments in the TCEQ Section 185 database. Because major stationary sources can be aggregated on a pollutant basis, a major stationary source may be in one *Section 185 Account* for VOC aggregation and in a second *Section 185 Account* for $NO_x$ aggregation. A single major stationary source could belong to two separate Section 185 Accounts, or a Section 185 Account may only have one major stationary source. All major stationary sources of VOC and/or $NO_x$ emissions located in a severe or extreme 2008 eight-hour ozone nonattainment area that did not attain by the attainment date are subject to this proposed rule. Even if a major stationary source did not comply and, as a result, did not receive a Section 185 Account from TCEQ, that source would still be subject to this proposed rule and would still owe a Section 185 fee.

*§101.701, Applicability*

This new section proposes the applicability requirements for the FCAA, §185 fee (Failure to Attain Fee). FCAA, §185 requires areas classified as severe or extreme for ozone to include a requirement for fees on VOC emissions in excess of 80% of a baseline amount for major stationary sources located in an area failing to attain the standard by the attainment date applicable to that area. FCAA, §182(f) further requires that all SIP requirements applying to VOC emissions sources also apply for $NO_x$ emissions sources. Proposed §101.701 identifies the provisions that apply to any 2008 eight-hour ozone nonattainment area classified as severe or extreme that fails to demonstrate attainment of the 2008 eight-hour ozone standard by its attainment date.

The proposed rule is applicable to all major stationary sources in the 2008 eight-hour ozone nonattainment area each year that the penalty fee is applicable as required by FCAA, §185.

At the time of the proposed rulemaking, there were two areas classified as severe nonattainment under the 2008 eight-hour ozone standard, the 10-county DFW (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties) and the eight-county HGB (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties). In the future, should EPA designate other areas of Texas as severe or extreme nonattainment under the 2008 eight-hour ozone standard, then this proposed rulemaking would be applicable to those severe or extreme nonattainment areas.

The executive director would implement this proposed rule upon EPA determining that the area failed to attain the severe or extreme 2008 eight-hour ozone standard. This determination would be the effective date of EPA's finding of failure to attain notice for severe or extreme areas under the 2008 eight-hour ozone standard published in the *Federal Register*. There are no obligations for major stationary sources until the rule is

implemented. As part of its outreach efforts, TCEQ would electronically distribute courtesy notifications to regulated entities that the Section 185 fee has been implemented. Electronic notification, as allowed under 30 TAC §19.30, would include posting on the *Stakeholder Group: Federal Clean Air Act Section 185 Fee* webpage (available at *https://www.tceq.texas.gov/airquality/point-source-ei/185-fee*), subscribers of the *Penalty Fee for Major Stationary Sources Under the Federal Clean Air Act Section 185* email and text list (available at (*https://public.govdelivery.com/accounts/TXTCEQ/subscriber/new*), and/or other allowed electronic means of communication.

The *Failure to Attain Fee* would start being assessed for the calendar year following the missed attainment date. The proposed rule defines the attainment year as the entire calendar year that contains the attainment date. For purposes of this proposed rulemaking, the term baseline year is defined as January 1 through December 31 of the attainment year. For the 10-county DFW and eight-county HGB severe nonattainment areas under the 2008 eight-hour ozone standard, which have a July 20, 2027, attainment date, the attainment year and baseline year are anticipated to be 2027. The fee would start being assessed for calendar year 2028 (first fee assessment year), unless EPA approved an attainment date extension under FCAA, §181(a)(5).

*§101.702, Exemption*

This new section proposes that no Failure to Attain fee payment is due for a year determined by EPA to be an extension year under FCAA, §181(a)(5) for the 2008 eight-hour ozone standard. EPA may grant an extension year for a nonattainment area if all SIP obligations have been met and if one or fewer measured ozone exceedances occurred at any valid monitoring site in the nonattainment area in a year. It is unknown whether the 10-county DFW area or the eight-county HGB severe nonattainment area under the 2008 eight-hour ozone standard may qualify for an extension. Additionally, an extension year may be applicable if EPA designates future areas as severe or extreme nonattainment under the 2008 eight-hour ozone standard and grants those areas an extension year. For any area granted an extension, the fee would be applicable if the severe or extreme nonattainment area did not attain by the extension attainment date specified by EPA.

*§101.703, Fee Equivalency Account*

This new section proposes that the executive director establish a Fee Equivalency Account. This account would be a listing of revenues from designated programs that reduce VOC or $NO_x$ emissions in 2008 eight-hour ozone nonattainment areas. Only the revenue collected within each 2008 eight-hour ozone nonattainment area would be credited and available to offset the Area §185 Obligation in the Fee Equivalency Account. Revenue collected in the 10-county DFW 2008 eight-hour ozone nonattainment area would be credited only within that nonattainment area. Revenue collected in the eight-county HGB 2008 eight-hour ozone nonattainment area would be credited only within that nonattainment area. Specifically, TCEQ proposes that revenue collected for the TERP program would be used to offset each 2008 eight-hour ozone nonattainment area's Area §185 Obligation for the area when funds are also expended within each area. This would result in a benefit directly to the nonattainment area from revenue collected. TERP's stated goals and statutory restrictions provide funding for programs or activities that result in reductions in VOC, $NO_x$, and other pollutant emissions into the atmosphere.

No transfer of revenue would occur between TERP and the Fee Equivalency Account. The Fee Equivalency Account is a documentation mechanism to verify the amount of TERP revenue collected in the 2008 eight-hour ozone nonattainment area to offset the fee on major stationary sources located in that area. If other emissions reduction grant programs become available those would be considered for inclusion to offset the Failure to Attain Fee.

*§101.704, Fee Equivalency Accounting*

This new section proposes that the Area §185 Obligation would be the total FCAA, §185 fee determined annually for each 2008 eight-hour ozone nonattainment area. The FCAA, §185 fee (Failure to Attain Fee) is proposed to be calculated for each major stationary source or Section 185 Account by TCEQ staff using the approved baseline amounts and emissions inventory data for the fee assessment year. These resultant individual Failure to Attain Fees would be summed to determine the overall Area §185 Obligation within the same 2008 eight-hour ozone nonattainment area.

Revenue, calculated on a dollar basis, associated with the Fee Equivalency Account would be credited starting with the first fee assessment year and continuing annually. The funding associated with the Fee Equivalency Account for a given fee assessment year would be compared with the Area §185 Obligation for a given fee assessment year.

If the Fee Equivalency Account does not have enough funds to fully meet the Area §185 Obligation, a backstop provision would be invoked under which major stationary sources or Section 185 Accounts would be assessed a prorated Failure to Attain Fee to generate sufficient funds to meet the Area §185 Obligation. The prorated Failure to Attain Fee would be calculated based on the amount in the Fee Equivalency Account and the overall Area §185 Obligation. The Failure to Attain Fee amount that the major stationary source or Section 185 Account would be required to pay is proposed to be reduced to the prorated Failure to Attain Fee amount based on the calculations in this proposed rulemaking. This process would be documented and made publicly available each year.

For example, a hypothetical Area §185 Obligation for HGB for the 2028 fee assessment year is calculated by TCEQ staff as $154 million. The HGB area Fee Equivalency Account for calendar year 2028 has $45 million available from TERP revenue. The HGB area balance for the 2028 fee assessment year is $109 million ($154 million less $45 million) and that amount must be paid by major stationary sources located in HGB that are subject to the Failure to Attain Fee. For the 2028 fee assessment year, the Fee Equivalency Account covers 29.22% ($45 million divided by $154 million, with the quotient multiplied by 100) of the Area §185 Obligation for HGB and each major stationary source's or Section 185 Account's fee will be reduced by 29.22%. TCEQ staff calculates that the Failure to Attain Fee for a hypothetical Section 185 Account located in HGB is $50,000 for the 2028 fee assessment year. The prorated Failure to Attain Fee for the hypothetical Section 185 Account would be calculated by reducing the $50,000 fee by 29.22%, resulting in the hypothetical Section 185 Account owing $35,389.61.

The timing of the demonstration would likely occur in December and then annually afterward, except for the first year the program is implemented. The date that TCEQ performs this evaluation for the first year of program implementation depends on the dates of future federal or state actions that are not currently scheduled

(e.g., effective date in the *Federal Register* of EPA's finding of failure to attain).

*§101.705, Baseline Amount*

This new section proposes the requirements for determining a baseline amount. FCAA, §185 requires a fee on emissions exceeding 80% of a fee baseline amount determined for the attainment year (referenced as baseline year in this proposed rulemaking) until the Section 185 fee (referred to as Failure to Attain Fee in this proposed rulemaking) no longer applies to the area. Unless the major stationary source or Section 185 Account qualifies for an adjustment to the baseline amount, as outlined in the various adjustment sections of this proposed rulemaking, the method for a fixed, one-time calculation of the baseline amount is provided in this proposed section.

A baseline amount would be required for each ozone precursor pollutant, VOC and/or $NO_x$, for which the source is major. If a stationary source is major for both VOC and $NO_x$ emissions, a baseline amount would be required for both VOC and $NO_x$ emissions. If the major stationary source is major for only VOC or $NO_x$ emissions, the baseline amount would be required for just that pollutant, VOC or $NO_x$.

The baseline amount is proposed to be defined as the lower of either: the *baseline emissions* defined as the total annual routine emissions, including reported MSS emissions that are authorized by permit or rule, reported in the emissions inventory, as described in 30 TAC §101.10 for the baseline year, or timeframe otherwise specified in this proposed rule; or the total annual emissions allowed by the applicable authorizations or pending authorizations in effect for the major stationary source during the baseline year or timeframe otherwise specified in this proposed rule. MSS emissions reported in the emissions inventory that are authorized by permit or rule are considered routine and must be included in baseline emissions. The major stationary source's authorized or pending authorization emissions include emissions allowed under any TCEQ-enforceable measure or document, such as rules, regulations, permits, orders of the commission, and/or court orders.

Emissions from pending authorizations with administratively complete applications as of December 31 of the baseline year or timeframe otherwise specified may be included in the total annual emissions allowed under authorizations. Some owners or operators of major stationary sources may submit administratively complete applications for authorizing previously unauthorized emissions prior to December 31 of the baseline year or other approved timeframe. To not penalize sources in the process of obtaining an authorization, the commission proposes to allow the emission limits established by permits that were administratively complete to adjust the baseline amount by adding these amounts to the total annual authorized emissions. The proposed approach aligns with the FCAA intent of comparing authorized emissions with reported actual emissions to determine a baseline amount.

A timeframe chosen other than the baseline year to determine a baseline amount depends on whether the major stationary source began operating during or after the baseline year or if the major stationary source's emissions qualify to be averaged over a 24-month consecutive period. Applicable timeframes for baseline amounts are outlined in this proposed rulemaking.

Unauthorized emissions, such as from EE and MSS activities not authorized by permit or rule, are not included in the baseline amount. Exclusion of unauthorized emissions from a baseline amount is consistent with these emissions not being representative of normal, routine operations and with the PSD definition of baseline actual emissions in §116.112 and 40 CFR §52.21(b)(48). For example, an oil and gas major stationary source for both VOC and $NO_x$ emissions experienced VOC emissions from tank flashing that exceeded an authorized permit limit. Tank flashing is a routine operation so the unauthorized VOC emissions resulting from the tank flashing that exceeded the permit limit are required to be reported in the emissions inventory as annual routine emissions. The unauthorized but routine VOC emissions from the tank flashing would be excluded from the baseline emissions calculations used to determine baseline amount.

If the major stationary source has reported emissions in the emissions inventory that are irregular, cyclical, or otherwise vary significantly from year to year, an alternate method to determine baseline emissions would be allowed. Whether a source qualifies as irregular, cyclical, or otherwise varying significantly is determined on a case-by-case basis. For these major stationary sources, any single consecutive 24-month period within a specified historical period could be averaged for the baseline emissions. Major stationary sources that qualify to establish an equivalent alternate fee baseline amount in this manner would calculate the baseline emissions using historical annual routine emissions, as recorded in the emissions inventory, which includes authorized emissions from MSS activities.

The FCAA, §185 does not address how to define a historical period; however, EPA issued a March 21, 2008, guidance memo, referenced elsewhere in this preamble, stating that an acceptable alternate method would be to determine an baseline amount using a period similar to estimating "baseline actual emissions" found in EPA's PSD rules, 40 CFR §52.21(b)(48). In its March 21, 2008, guidance, EPA used these provisions to craft its guidance on a ten-year look-back period for calculating baseline actual emissions. The PSD rules require adequate data for the selected 24-month period. The data must adequately describe the operation and emission levels for each emissions unit. The guidance continues by stating: "Once calculated, the average annual emission rate must be adjusted downward to reflect 1) any noncompliant emissions (40 CFR §52.21(b)(48)(i)(b) and (ii)(b)); and 2) for each non-utility emissions unit, the most current legally enforceable emissions limitations that restrict the source's ability to emit a particular pollutant or to operate at levels that existed during the 24-month period that was selected (40 CFR §52.21(b)(48)(ii)(c))." The result of this restriction is that the plant capacity may be used during the historical 24-month period selected, but emissions that do not comply with legally enforceable limits would have to be excluded. Legally enforceable emissions limits would include any state or federal requirements, including Best Achievable Control Technology or Lowest Achievable Emissions Rate.

According to PSD guidance, the timeframe for the historical look-back period for emissions units other than electric steam generating units is any single consecutive 24-month period within the ten-year period immediately preceding the date a complete permit application was submitted. For electric steam generating units the timeframe for the historical look-back period is any single consecutive 24-month period within the five-year period immediately preceding the date a complete permit application was submitted. The historical look-back period for the proposed equivalent alternate fee baseline amount determination would start the calendar year immediately preceding the baseline year. All emissions units at a major stationary source or Section 185

Account would be required to use the same 24-month period when calculating baseline amounts for aggregated pollutants or sites under common control or ownership. The commission interprets the FCAA, §185 language requiring the use of the lower of baseline emissions (actual emissions from the emissions inventory as defined in §101.701) or emissions allowed under authorizations (e.g. permitted emissions) to include emissions from this alternate method.

At the time of this proposed rulemaking, the baseline year is anticipated to be 2027 for the 10-county DFW and eight-county HGB 2008 eight-hour ozone standard severe nonattainment areas. The window used for the possible historical look-back period would be five years (2022 - 2026) for electric generating units (EGU) or 10 years (2007 - 2026) for non-EGU immediately preceding January 1, 2027. The average emissions during the single consecutive 24-month period would be the basis for determining the baseline emissions, in tons.

If rules or regulations take effect during the baseline year and/or 24-month consecutive period used for baseline amount determination, then the baseline emissions and total annual authorized emissions must be adjusted downward to reflect emissions that would have exceeded a legally enforceable emissions limitation requirement from a permit, rule, regulation, commission order, or court order during the applicable timeframe. The major stationary source would not be allowed to take credit for emissions reductions that would have resulted from state or federal rules or regulations implemented during the baseline year and/or 24-month consecutive period used to calculate the baseline amount.

For example, a major stationary source of VOC emissions started operating prior to the 2027 baseline year, and the baseline amount was established from the baseline emissions during the 2027 baseline year. On March 1, 2027, a hypothetical federal rule takes effect that limits emissions from coatings emissions units located at the major source. The baseline emissions for the coatings emissions units impacted by the 2027 federal rule's emissions limits would be adjusted downward from January 1, 2027, through February 28, 2027, to account for the new limit. In another example, a major source of VOC emissions establishes a baseline amount using the 24-month consecutive period from July 12, 2022, through July 12, 2024. During calendar year 2027, a hypothetical federal rule takes effect that limits emissions from coatings emissions units located at the major source during the 24-month consecutive period chosen for the baseline amount. The baseline emissions for coatings emissions units impacted by the 2027 federal rules' emissions limits would be adjusted downward during the July 12, 2022, through July 12, 2024, period chosen for the baseline amount.

Fugitive emissions would be required to be included for the purposes of the baseline emissions calculations and fee assessments. This is similar to the Title V Emissions Fees described in 30 TAC §101.27, which requires all fugitive emissions to be included in fee calculations after applicability of the fee has been established. Per 40 CFR §70.2, fugitive emissions of VOC or $NO_x$ belonging to one of the categories listed in paragraph 2 of the definition of major sources may be excluded from counting toward major source applicability. Once the source meets the major stationary source applicability requirements of 30 TAC §116.12, fugitive emissions are required to be reported in the emissions inventory, and the fugitive emissions must be used for both baseline emissions calculations and fee assessments.

As allowed under the Emissions Inventory Requirements described in 30 TAC §101.10, a regulated entity that meets the applicability requirements to submit an emissions inventory, which includes major stationary sources, may submit a certifying letter instead of reporting updated emissions in the emissions inventory. The certifying letter option is allowed for any regulated entity (identified by the nine-digit regulated entity reference number (RN) and a seven-character alphanumeric TCEQ account number) that experienced an insignificant change in operating conditions compared to the most recently submitted emissions inventory. An insignificant change in emissions is defined as including start-ups, permanent shut-downs of individual units, or process changes that result in at least a 5.0% or 5 tpy, whichever is greater, increase or reduction in total annual emissions of VOC, $NO_x$, carbon monoxide, sulfur dioxide, lead, particulate matter (PM) less than or equal to 10 microns in diameter, or PM less than or equal to 2.5 microns in diameter. If a regulated entity submits a certifying insignificant change notification letter instead of updating the emissions, then the emissions reported in the most recently submitted emissions inventory are copied over to the current emissions inventory reporting year. For example, if a regulated entity submits an insignificant change notification letter for the 2027 emissions inventory reporting year and TCEQ staff verified that the requirements of the insignificant change notification letter were met, then the 2026 emissions are copied over to also represent the 2027 emissions. Major sources are cautioned to consider the impacts of choosing to submit an insignificant change letter instead of updating emissions in the emissions inventory because of the implications for baseline amount determinations and fee assessments.

Emissions inventory data are collected annually by the commission and, after quality assurance review, are loaded into the state's air emissions inventory database, the State of Texas Air Reporting System (STARS). Since Texas' emissions inventory program submits data to EPA's National Emissions Inventory (NEI), the quality assurance of emissions inventory data is subject to a federally mandated Quality Management Plan (QMP) that annually documents and describes the emissions inventory organization arrangements, processes, procedures, and requirements. As part of the QMP, the emissions inventory program annually submits a Quality Assurance Project Plan (QAPP) documenting the emissions inventory quality assurance process for EPA's review and approval. The QAPP includes information on how TCEQ staff perform annual detailed technical reviews of point source emissions inventories, correct issues, and document the outcome of the review. Actual emissions reported in the emissions inventory that are subject to the detailed quality assurance process include: all emissions resulting from routine operations, including emissions from authorized MSS activities; all unscheduled MSS activities (reportable and non-reportable); and all emissions events (reportable and non-reportable). Owners or operators of major stationary sources are provided an opportunity to review and, if necessary, revise emissions submitted for the current reporting year and for the reporting year immediately prior. Revisions to historical inventory data outside of this timeframe are done on a case-by-case basis usually as a result of a TCEQ-directed emissions inventory improvement initiative or TCEQ's compliance and enforcement processes. The commission uses emissions inventory data for air quality planning, as detailed in SIP revisions. Although emissions determination methods improve over time, emissions inventory data represent emissions for a reporting year as accurately as possible. Since the commission relies upon emissions inventory data in SIP revisions for air quality planning purposes, revising historical emis-

sions inventory emissions rates solely for purposes of adjusting the baseline amounts and related calculations is not supported. Similar to emissions inventories, air permits are reviewed to ensure accuracy of emissions.

A baseline amount would account for all emissions units located at the major stationary source as of December 31 of the baseline year. Any ownership transfer of emissions units that occurred by December 31 of the baseline year would also need to be included in the baseline amount calculation. If a 24-month consecutive period is chosen for a major source that operated the entire baseline year, then all emissions units located at the major stationary source as of December 31 of the baseline year must be included, regardless of whether they were located at the major stationary source during the period chosen. An owner or operator of a major stationary source or Section 185 Account may not exclude new emissions units added by the baseline year from the 24-month consecutive historical period. For example, a qualified major stationary source chooses March 19, 2022, through March 19, 2024, as the 24-month consecutive period for the baseline emissions. An emissions unit was purchased, and ownership transferred to the source on September 1, 2026; therefore, those emissions must be averaged and added to the 24-month period chosen. The major stationary source that sold the emissions units may not include the sold emissions units in their baseline amount to avoid double-counting of the same emissions units in different baseline amounts.

The proposed rule would require that the baseline amount calculation and supporting documentation be submitted to TCEQ in a format specified by the executive director. Documentation would include either a list of all emission units by their corresponding path-level emissions reported in the point source emissions inventory or all applicable air permits by Emissions Point Identification Number (EPN) (depending on which one is required for the baseline amount determination). If a major source uses path-level emissions to determine baseline amounts, VOC and/or $NO_x$ emissions must be reported by a combination of Facility Identification Number (FIN) and corresponding EPN that match the most recent point source emissions inventory. If a major stationary source uses permitted allowable emissions to determine baseline amounts, VOC and/or $NO_x$ emissions must be reported at the EPN level. Sample calculations would be required for each path-level (emissions inventory) or EPN level (air permits) used for baseline amount determination.

A major stationary source may choose to establish a baseline amount from baseline emissions for sources with emissions that are irregular, cyclic, or otherwise vary significantly from year to year. Sufficient supporting documentation would be required to verify that the major stationary source's emissions qualify as irregular, cyclical, or otherwise vary significantly from year to year. Additionally, details on why and how the 24-month consecutive period chosen accurately represents the major source's emissions would be required.

There is no list of sites that meet the definition of a major stationary source as defined in 30 TAC §116.12. TCEQ would use established programs to assist with notifying major sources of $NO_x$ and/or VOC emissions subject to the fee to provide baseline amounts by the due dates in this proposed rulemaking. Although TCEQ would attempt to notify all applicable major stationary sources by using the Title V permitting and air emissions inventory programs as surrogate data for major sources, compliance with this proposed rulemaking is required even if TCEQ does not specifically notify the major stationary source. Compliance with the Section 185 fee program is a requirement of FCAA, §185, and a major stationary source that does not provide a baseline amount by the specified due date would be subject to the executive director establishing the baseline amounts as described in this proposed rulemaking so that TCEQ can assess the required fee.

For major stationary sources operating prior to January 1 of the baseline year or that operated the entire baseline year, the regulated entity will complete the baseline amount form and supporting documentation. A specific due date for initial baseline amount cannot be provided since the implementation of the Failure to Atain Fee depends on the timing of three future actions: TCEQ adoption of this proposed rule; the severe nonattainment areas failing to attain by July 20, 2027, based on 2024, 2025, and 2026 ambient air monitoring data (or by the date established by any extension year granted by EPA); and the effective date in the *Federal Register* of EPA's finding of failure to attain. As proposed, regulated entities would submit baseline forms either on the emissions inventory due date specified under the Emissions Inventory Requirements in 30 TAC §101.10 for the fee assessment year or 120 days from the effective date of EPA's failure to attain notice. Providing no less than 120 days for regulated entities to prepare baseline amounts allows flexibility for the executive director to initially implement the final Failure to Attain Fee rule and initiate related business processes. For the 10-county DFW and eight-county HGB severe 2008 eight-hour ozone nonattainment areas at the time of this proposed rulemaking, the baseline amount based on a 2027 baseline year may be due March 31, 2028 (depending on final Air Emissions Inventory Reporting Rule updates currently in progress by EPA as of the date of this proposed rulemaking), or 120 days from the effective date of EPA's failure to attain notice.

Electronic notification, as allowed under 30 TAC §19.30, would include posting on the *Stakeholder Group: Federal Clean Air Act Section 185 Fee* webpage (available at *https://www.tceq.texas.gov/airquality/point-source-ei/185-fee*), subscribers to the listserv for *Penalty Fee for Major Stationary Sources Under the Federal Clean Air Act Section 185* would receive email and/or text notifications (sign-up available at (*https://public.govdelivery.com/accounts/TXTCEQ/subscriber/new*), and/or other allowed electronic means of communication.

Once finalized, the baseline amount would be fixed and would not be changed except as consistent with the proposed adjustments in §§101.708-711.

*§101.706, Baseline Amount for New Major Stationary Sources*

States are required to assess the Section 185 fee on all major sources of VOC and/or $NO_x$ emissions located in a severe or extreme ozone nonattainment area that fails to attain by its attainment date. This would include major stationary sources that began operating as a major source or transitioned to a major source status during the baseline year or after the baseline year. Since FCAA, §185 does not provide baseline amount determinations for these scenarios, the commission proposes this new section to determine a baseline amount for these new major stationary sources.

The commission proposes that these new major stationary sources use their first year (12 consecutive months) operating as a major stationary source to determine the baseline amount or aggregated baseline amount. The baseline amount must be the lower of the baseline emissions during the first year

of operation as a major source or the total annual authorized emissions during the first year of operation as a major source.

EPA, in its December 14, 2012, notice of final approval of the South Coast Air Quality Management District (SCAQMD) SIP revision (77 FR 74372), allowed a major stationary source subject to FCAA, §185 rules after the attainment date in the SCAQMD to use actual emissions or authorizations (or holdings in its banking program) from its initial calendar year of operation to set a baseline amount. EPA, in its February 14, 2020, notice of final approval of the HGB Failure to Attain Fee (85 FR 8411), allowed major stationary sources to determine the baseline amounts on the lower of actual or allowable data available in their first year of operation as a major stationary source.

If rules or regulations take effect during the first full year operating as a major source, then the baseline emissions and total annual authorized emissions must be adjusted downward to reflect those emissions limitations in effect during that timeframe. For example, a major stationary source of VOC emissions started operating January 10, 2027, and the baseline amount was established from the baseline emissions during the first full year of operation, from January 10, 2027, to January 10, 2028. On March 1, 2027, a hypothetical federal rule takes effect that limit emissions from coatings emissions units located at the major source. The baseline emissions for the coatings emissions units impacted by the 2027 federal rule's emissions limits would be adjusted downward for the entire baseline period (January 10, 2027, through January 10, 2028) to account for the new limit. The major source would not be allowed to take credit for emissions reductions that would have resulted from state or federal rules or regulations implemented or in effect during the calendar year used to calculate baseline emissions.

A baseline amount at a new major stationary source would account for all emissions units located at the major stationary source as of the last calendar day of the first full year operating as a major source. For example, a major stationary source of VOC emissions begins operating on February 4, 2028, and the baseline amounts are determined using the February 4, 2028, through February 4, 2029, timeframe. In this example, the major stationary source would include all emissions units, including any ownership transferred emissions units as of February 4, 2029, in the baseline amount.

For major stationary sources that begin operating between January 1 and December 31 of the baseline year or after December 31 of the baseline year, regulated entities would have 90 days from the last calendar day of the first full year operating as a major source to submit the baseline amount form. Since initial Section 185 fee program implementation has already occurred, a 90-day timeframe is an appropriate length of time for form submission and is consistent with emissions inventory reporting timeframes. For example, a major source of VOC emissions begins operating on February 4, 2028, and the baseline amounts are determined using February 4, 2028, through February 4, 2029. In this example, the regulated entity would have 90 days from February 4, 2029, to submit the baseline amounts and supporting documentation.

*§101.707, Aggregated Baseline Amount*

This proposed new section would provide for the aggregation of either VOC or $NO_x$ emissions (or both) at multiple major stationary sources to align fee obligations with attainment demonstration emissions reduction approaches. The proposed rule would allow owners or operators of major stationary sources under common control to aggregate baseline amounts of VOC emissions from multiple major stationary sources, to aggregate $NO_x$ emissions from multiple major stationary sources, or both. Owners or operators may also choose to aggregate VOC with $NO_x$ emissions at a single major stationary source or VOC with $NO_x$ emissions across multiple major stationary sources under common control, provided that the stationary sources are major for both pollutants. Once an owner or operator chooses aggregation, then the baseline amount would remain aggregated, and the fees would be assessed in the same manner as the aggregation until the Failure to Attain Fee no longer applies to the area.

Baseline amounts would first be calculated separately for each individual major stationary source for VOC or $NO_x$ emissions, or for both, using the method described in proposed new §101.705 or §101.706. The separate initial baseline amounts for each pollutant at an individual major stationary source must also be submitted in a format specified by the executive director with supporting documentation. Providing the separate initial calculations of baseline amounts is intended to provide transparency and consistency and to assist with quality assurance of baseline amount determinations with any subsequent aggregation. After establishing separate baseline amounts, then the baseline amount could be aggregated by multiple pollutants, multiple stationary sources under common control, or both.

The proposed rule would allow owners or operators of major stationary sources to aggregate VOC and $NO_x$ baseline amounts at a major stationary source. Sources under common ownership and/or control could also opt to aggregate baseline amounts across multiple major stationary sources. Only major stationary sources under common control may be included in the aggregate group. The aggregation methodology must remain consistent throughout the baseline amount calculation and assessment of the Failure to Attain Fee. A group of major stationary sources opting to aggregate baseline amounts must also aggregate emissions for Failure to Attain Fee assessment. The baseline year, same 24-month consecutive period, or other timeframe used to establish baseline amounts would be required as a basis for the baseline amount calculation for all aggregated major stationary sources for each fee calculation.

Like the baseline amount compliance schedule, major stationary sources that choose to aggregate would submit the required forms and supporting documentation either on the emissions inventory due date of the fee assessment year, as specified under Emissions Inventory Requirements in 30 TAC §101.10, or 120 days from the effective date of EPA's failure to attain notice, whichever is later. Providing no less than 120 days for regulated entities to prepare aggregated baseline amounts allows flexibility for the executive director to implement the final Failure to Attain Fee rule and initiate related business processes. For aggregation, a list of all sites under common control by RN aggregated under an baseline amount must be provided in addition to the supporting documentation provided for individual baseline amounts described under Baseline Amounts. If sites under common control chose to aggregate, then those sites must share the same Customer Reference Number (CN) in TCEQ's Central Registry database. Sites under common control are determined by TCEQ. Sites not under common control according to TCEQ may not attempt to be combined in Central Registry with the intention of circumventing the Failure to Attain Fee, as addressed under circumvention requirements of 30 TAC §101.3.

*§101.708, Adjustment of Baseline Amount for Major Sources with Less than 24 Months of Operation*

Major stationary sources with less than 24 months of consecutive operation as of December 31 of the baseline year or that began operation after the baseline year would not have sufficient data to initially determine if emissions are irregular, cyclical, or otherwise vary significantly from year to year to establish baseline emissions. The provisions of this proposed new section are intended to allow a major source with less than 24 months of consecutive operation an opportunity to adjust the established baseline amount after establishing the emissions history. After completing 24 months of consecutive operations, the major stationary source may request that the baseline amount be adjusted using the average rate during the first 24 months of consecutive operation for the baseline emissions. If the total annual authorizations determined the initial baseline amount and were still lower than the adjusted baseline emissions, then an adjustment may not be requested. If these emissions varied significantly during the 24 months of consecutive operation, the emissions may be considered as irregular, cyclical, or otherwise varying significantly. Under the proposed rules, a major stationary source would be allowed to request an adjustment to its established baseline amount within 90 calendar days of completing 24 months of consecutive operation. EPA published approval for a similar approach for new major stationary sources for the HGB Failure to Attain Fee in February 2020.

All adjusted baseline amounts would be reviewed by the executive director's staff to ensure consistency with emissions information submitted to the TCEQ Air Permits Division and/or the Air Quality Division. Once finalized, the adjusted baseline amounts would apply starting with the next fee assessment year. Credits or refunds for previous fee assessment years would not be processed based on the final adjustments. This ensures accounting stability for the Failure to Attain Fee.

*§101.709, Adjustment of Baseline Amount for New Construction*

This proposed new section would allow an existing major stationary source to adjust its baseline amount to account for new construction authorized in a nonattainment permit issued under Chapter 116, Subchapter B, Division 5. These emissions units are required to provide emissions offsets prior to construction and comply with emissions limits that achieve the lowest achievable emissions rate. The newly constructed emissions units would not have been included in the previously established baseline amount. Under the proposed rules, a major stationary source would be allowed to request an adjustment to its established baseline amount within 90 calendar days of completed construction of the new emissions units.

All adjusted baseline amounts would be reviewed by the executive director's staff to ensure consistency with emissions information submitted to the TCEQ Air Permits Division and/or the Air Quality Division. . Once finalized, the adjusted baseline amounts would apply starting with the next fee assessment year. Credits or refunds for previous fee assessment years would not be processed based on the final adjustments. This ensures accounting stability for the Failure to Attain Fee.

*§101.710, Adjustment of Baseline Amount for Ownership Transfers*

This proposed new section outlines when an established baseline amount may be adjusted because of ownership transfers. Emissions units may not always be under the same common ownership or control. Owners or operators of major stationary sources, as part of normal business, may transfer ownership of some or all emissions units at a major stationary source or Section 185 Account to another major stationary source or Section 185 Account. The commission recognizes that a change in ownership or control of emissions units could change the Failure to Attain Fee owed for both major stationary sources or Section 185 Accounts. The change in control of emissions units does not change the historical operation, reported emissions of the emissions units, or previously invoiced amounts before the ownership transfer occurred. The ownership transfer must first be approved by and/or reported to the TCEQ Air Permits Division before adjustments of the baseline amounts could be requested.

A change in control or ownership, such as with an emissions unit transfer, would not affect the already established time period or baseline amounts on the remaining emissions units at either major stationary source or Section 185 Account. The already established baseline amounts would be transferred from one major stationary source or Section 185 Account to the other major stationary source or Section 185 Account.

In a manner similar to transferring other obligations such as emissions authorizations, the commission would allow the affected major stationary sources or Section 185 Accounts to transfer the baseline amounts and Failure to Attain Fee associated with each emissions unit having a change in control. The commission would not change the calculated baseline amounts for the transferred emissions units or remaining emissions units.

Major stationary sources that transfer ownership of equipment from one major source or Section 185 Account to a minor source(s) would not have their baseline amounts adjusted to prevent circumvention of the Failure to Attain Fee, as addressed under 30 TAC §101.3.

To qualify for an ownership transfer baseline amount adjustment, the ownership transfer must occur between major stationary sources or Section 185 Accounts of the same pollutant, or aggregated pollutants, located within the same nonattainment area. For example, if an ownership transfer occurred between a major source located in the 10-county DFW nonattainment area under the 2008 eight-hour ozone standard and the eight-hour HGB nonattainment area under the 2008 eight-hour ozone standard, then the baseline amounts could not be adjusted.

All adjusted baseline amounts would be reviewed by the executive director's staff to ensure consistency with emissions information submitted to the TCEQ Air Permits Division and/or the Air Quality Division. Once finalized, the adjusted baseline amounts would apply starting with the next fee assessment year. Credits or refunds for previous fee assessment years would not be processed based on the final adjustments. This ensures accounting stability for the Failure to Attain Fee.

Once finalized, the major stationary source or Section 185 Account that received the ownership-transferred emissions units would add the unaltered baseline amounts from those units to their existing major stationary source or Section 185 Account baseline amounts. There is no baseline amount adjustment for emissions units that were not ownership transferred at the originating or recipient major source. The major stationary source or Section 185 Account that transferred the emissions units would subtract the transferred emissions units' baseline amounts from their major stationary source or Section 185 Account baseline amount. While baseline amounts may increase or decrease at a major stationary source or Section 185 Account resulting from ownership transfers, the overall Area §185 Obligation for the nonattainment area would not change.

To transfer the baseline and the Failure to Attain Fee, the new owner or operator of each major stationary source or Section 185 Account affected by the change in common control would be required to submit a request to the executive director within 90 days of the ownership change for the executive director's approval.

*§101.711, Adjustment of Baseline Amount for Final Emissions Inventory Data*

This proposed new section addresses the situation when baseline emissions may need to be adjusted upon the availability of final quality assured and TCEQ-approved emissions inventory data. The Failure to Attain Fee would be implemented upon the effective date of EPA's finding of failure to attain notice published in the *Federal Register* for a severe or extreme ozone nonattainment area under the 2008 eight-hour ozone standard that fails to attain by the attainment date. It is unknown when EPA would issue the finding of failure to attain; therefore, the specific dates to establish an initial baseline amount are unknown. Because of implementation timing, final quality assured and TCEQ-approved emissions inventory data could occur after the baseline amount is established. If a major stationary source had used emissions inventory data to establish the baseline amount, then TCEQ may request adjustments based on the final quality assured emissions inventory data.

Additionally, major stationary sources may initiate emissions inventory revisions that require baseline amount adjustments. Due to limited staff resources, approval of regulated entity-initiated requests would be based on the revisions guidance in the Emissions Inventory Guidelines published annually and posted on the Point Source Emissions Inventory webpage located at (*https://www.tceq.texas.gov/airquality/point-source-ei/psei.html*). Emissions inventory data are used extensively for air quality planning purposes, such as SIP revisions and rule development, submitting to required federal programs, such as the NEI, and assessment of other applicable fees such as the Title V fees. For these reasons, emissions inventory revisions are allowed for specific circumstances. Emissions inventory revisions submitted solely for the purpose of adjusting a baseline amount would not be accepted.

Regulated entities, including major sources, are provided an opportunity to review and if necessary, revise emissions data submitted for the current emissions inventory reporting year and for one year immediately prior. Major stationary sources would have 90 days or by March 31 of the calendar year immediately following the emissions inventory reporting year, whichever comes first, to submit adjusted baseline amount requests due to final, quality-assured emissions data. Revisions to historical emissions inventory data outside of this timeframe are evaluated on a case-by-case basis, usually as the result of a TCEQ-directed emissions inventory improvement project or TCEQ's compliance and enforcement process.

All adjusted baseline amounts would be reviewed by the executive director's staff to ensure consistency with final emissions information submitted to the TCEQ Air Permits Division and/or the Air Quality Division. Once finalized, the adjusted baseline amounts would apply starting with the next fee assessment year. Credits or refunds for previous fee assessment years would not be processed based on the final adjustments. This ensures accounting stability for the Failure to Attain Fee.

*§101.712, Failure to Establish a Fee Baseline Amount*

This proposed new section outlines the procedures for the executive director to establish a baseline amount. Timely and accurate baseline amounts are required from each applicable major stationary source to implement the FCAA-required Section 185 fee program. If a major stationary source does not submit an approvable baseline amount by the due date specified by the executive director, then the executive director would determine baseline amount(s) for that major stationary source. In accordance with the requirements of FCAA, §185, the lower of actual emissions (reported in the emissions inventory as described in §101.705) or allowable emissions (permits or authorizations) from the attainment year (referenced as baseline year in this proposed rulemaking), would be used, if both were available, to determine separate baseline amounts for each pollutant that determined major source applicability. Since the executive director would not have sufficient information, aggregation by pollutant or sites under common control and any adjustments allowed under this proposed rulemaking would not be used.

If available, emissions inventory data reported under 30 TAC §101.10 would be used for determining the baseline emissions. However, if only permit allowable data are available, a baseline amount would be established as 12.5 tons for VOC and/or 12.5 tons for $NO_x$ (depending on the pollutant(s) that determined major source applicability) until the major stationary source submitted an approvable baseline amount. Allowable (permits or authorizations) emissions are typically higher than the actual emissions reported in the emissions inventory. FCAA, §185 requires the lower of actual or allowable emissions, so the executive director would establish the baseline emissions from the unavailable emissions inventory as 12.5 tons, which represents one-half of the major stationary source threshold of 25 tons. If the executive director used the allowable emissions from the permit to establish the baseline amount, then the non-compliant major stationary source would gain the advantage of a higher baseline amount by not reporting their actual emissions.

If the executive director establishes the baseline amounts, then those baseline amounts would be applicable until the major stationary source submits a verifiable and complete emissions inventory according to the Emissions Inventory Requirements of 30 TAC §101.10 and baseline amount. After the major stationary source submits a baseline amount and the executive director reviews the baseline amount to ensure consistency with emissions information submitted to the TCEQ Air Permits Division and/or the Air Quality Division, the final baseline amount would apply starting with the next fee assessment year. Adjustments to previous fee invoices based on baseline amounts established by the executive director would not be allowed.

*§101.713, Failure to Attain Fee Assessment*

The proposed new section outlines the method used to assess the Failure to Attain Fee (total fee) for VOC or $NO_x$ emissions, or both. If the major stationary source is major for just one pollutant, the total fee would be assessed for just the one pollutant, VOC or $NO_x$. If the major stationary source is major for both VOC and $NO_x$ emissions, the total fee would be assessed for both pollutants.

This proposed new section also provides for the total fee calculation for owners or operators of major stationary sources or Section 185 Accounts. Fee assessments must follow the same method chosen for the baseline amount determination. The total fee from VOC and/or $NO_x$ emissions from a major stationary source that is major for one pollutant and does not have multiple sites under common control, does not choose to aggregate

baseline amounts, or does not comply with the provisions of proposed §101.707 would remain separate and due from each major stationary source or Section 185 Account. The total fee for owners or operators of major stationary sources that choose to aggregate VOC and/or $NO_x$ emissions would also be due according to the provisions of this proposed section. The aggregation of VOC with $NO_x$ emissions may occur at one major stationary source or across multiple major stationary sources under common control. Because both pollutants were used to aggregate a baseline amount, the total fee would be due on actual emissions of both VOC and $NO_x$ emissions. Consistency between the baseline amount determination and the total fee calculation would be maintained with this approach. An owner or operator of multiple sources under common control who chooses to combine a single pollutant from multiple major stationary sources in a baseline amount must aggregate actual emissions of that single pollutant in the total fee payment. If an owner or operator opted to combine VOC with $NO_x$ emissions at a major stationary source, both VOC and $NO_x$ emissions must be aggregated for the total fee payment. Similarly, owners or operators who choose to combine VOC and $NO_x$ emissions in a baseline amount and to aggregate those pollutants across more than one major stationary source must combine actual VOC and $NO_x$ emissions from all aggregated major stationary sources to determine the total fee. For example, if five major stationary sources of both VOC and $NO_x$ emissions elected to aggregate into one Section 185 fee account to determine the $NO_x$ baseline amount, then the total $NO_x$ portion of the fee payment would be based on all actual reported $NO_x$ emissions from those five major stationary sources. Since the five major stationary sources did not elect to aggregate VOC emissions into one baseline amount, then the total fee payment for VOC emissions would be assessed separately for the five different Section 185 fee accounts using actual reported VOC emissions for these major stationary sources. Similarly, if owners or operators choose to combine multiple major stationary sources into one baseline amount for VOC and $NO_x$ emissions, then the total fee payment would be due from the combined major stationary sources for both pollutants together.

The total fee would be applicable to and calculated for each pollutant (VOC or $NO_x$) for which the major source meets the applicability requirements of this proposed rulemaking from the actual emissions reported in the emissions inventory for the fee assessment year. The fee amount assessed, calculated, and invoiced would be based on the actual emissions from the fee assessment year's emissions inventory that exceeded 80% of the baseline amount, rounded up to the nearest whole number. If the actual emissions reported in the emissions inventory are less than 80% of the baseline amount, then the fee would be assessed at $0.00 dollars and no fee payment would be due from that major stationary source or Section 185 Account for that fee assessment year for that pollutant. For future fee assessment years, the fee would be due if the actual emissions reported in the emissions inventory exceeded 80% of the baseline amount.

Rounding up to the nearest whole number is standard practice for fee assessment since assessing fees on fractional amounts creates fee amounts with several decimal places that can cause errors in the fee invoice data systems, which accept only two decimal places. An example of rounding up to the nearest whole number would be the fee assessment amount calculated as 10.0319 tons, rounding up to the nearest whole number, the fee would be assessed and invoiced on 11 tons.

The total fee for a pollutant aggregated under multiple major stationary sources for a baseline amount would be calculated based on the aggregated actual emissions from all the affected major stationary sources minus 80% of the aggregated baseline amounts for all major stationary sources, rounded up to the nearest whole number.

While baseline amounts exclude unauthorized emissions, fee assessments would be based on actual emissions, as defined in 30 TAC §101.10, which includes emissions from annual routine operations, MSS operations, and other events not otherwise authorized (emissions from emissions events or MSS activities). Inclusion of unauthorized emissions in fee assessment is appropriate because the emissions contribute to the formation of ozone in the nonattainment area during the year that the fee is owed. Inclusion of unauthorized emissions in fee assessment is also required in TCEQ's emissions fee rule in 30 TAC §101.27, which requires all MSS and emissions event emissions to be included in fee calculations.

FCAA, §185 requires the annual fee to be adjusted by the consumer price index (CPI) and cross references the methodology in FCAA, §502(b)(3)(B)(3)(v). The method described in FCAA, §502 requires the fee to be adjusted annually per the CPI for all-urban consumers published by the United States Department of Labor, as of the close of the 12-month period ending on August 31 of each calendar year. FCAA, §185 requires these fees to be assessed on a calendar-year basis, and the inflation factor based on the CPI is applied in September for the fiscal year (based on the previous September through August data). Therefore, the calendar year Failure to Attain Fee is determined as a weighted monthly average (two thirds of the fee associated with January through August and one third of the fee associated with September through December). For example, a 2028 calendar-year fee would span the 2028 fiscal year and the 2029 fiscal year. Thus, a calendar-year 2028 fee requires two thirds of the annual CPI ending in August 2028 and one third of the annual CPI ending in August 2029. The commission proposes this methodology to calculate the fee from EPA's guidance memo (Page 10, available at (*https://www.epa.gov/sites/default/files/2015-09/documents/1hour_ozone_nonattainment_guidance.pdf*). The proposed fee calculation uses the 40 CFR Part 70 Presumptive Minimum fee basis from EPA's guidance memo. The Part 70 fee rate is published annually by EPA and is available at (). The Part 70 fee is the rate used to calculate emissions-based fees for Part 70 permit programs. Rather than calculating the rate directly from the CPI, the proposed method uses the Part 70 fee rate published by EPA. The Part 70 fee already has the required CPI adjustment incorporated into it.

The timing of the fee assessment depends on the effective date of EPA's finding of failure to attain. For the 10-county DFW and eight-county HGB 2008 eight-hour ozone nonattainment areas, 2028 is the first year after the attainment date of July 20, 2027. Since the 2027 emissions inventories would be due in 2028, TCEQ staff would have until the end of 2028 to complete the quality assurance reviews of the 2027 annual emissions inventories that would be used to determine the baseline amount. Major sources would require time to establish the baseline amounts based on final emissions reported in the 2027 emissions inventory. TCEQ staff would require time to quality assure the baseline amounts submitted by each major source. To establish and quality assure the baseline amounts, the fee collection year would generally be proposed as two calendar years following the fee assessment year. A potential scenario could include regulated entities submitting the 2027 emissions inventories by the March 31, 2028, due date, and TCEQ staff completing the quality assur-

ance reviews of the 2027 emissions inventories by the end of calendar year 2028. If the area(s) fail to attain the 2008 eight-hour ozone standard, and EPA finalizes a failure to attain notice in October 2027, then, following EPA's effective date of the failure to attain notice, TCEQ could provide a courtesy electronic notification to regulated entities that major sources must submit their baseline amount to TCEQ by March 31, 2028. TCEQ staff would quality assure the 2027 baseline amounts during calendar year 2028. The 2028 emissions inventories are due by April 2, 2029 (since March 31, 2029, falls on a Saturday), and TCEQ staff would complete the quality assurance process for the 2028 emissions inventories by the end of calendar year 2029. TCEQ would implement the calendar-year 2028 Section 185 fee rate once EPA publishes it, typically by the end of October each year. Assuming EPA publishes the 2028 Section 185 fee rate in October 2028, TCEQ would then assess the calendar-year 2028 fees in late 2029 and prepare and send invoices in early calendar-year 2030. As a result, calendar year 2030 becomes the first fee collection year for the first fee assessment year of 2028, based on the actual emissions reported in the 2028 emissions inventory.

A major stationary source subject to the requirements of this proposed rulemaking would also be required to submit an annual emissions inventory according to §101.10. The annual fee assessment requires the submission of the emissions inventory by the due date to invoice the source on actual emissions of VOC, $NO_x$, or both for that fee assessment year. Regulated entities subject to the Section 185 fee that do not submit an emissions inventory by the due date would be subject to enforcement.

*§101.714, Failure to Attain Fee Payment*

This proposed section stipulates that payment of the Failure to Attain Fee must be made by check, certified check, electronic funds transfer, or money order made payable to TCEQ. Payment must be sent to the TCEQ address provided on the billing statement by the date specified on the invoice. Generally, sites will have a minimum of 30 days to pay the invoice.

This proposed rule would impose interest and penalties in accordance with 30 TAC Chapter 12 to owners or operators of major sources subject to the applicability provisions of this proposed subchapter who fail to make full payment of the Failure to Attain Fees by the due date.

*§101.715, Eligibility for Other Failure to Attain Fee Fulfillment Options*

This proposed new section would allow major stationary sources or Section 185 Accounts required to pay a Failure to Attain Fee (total fee) to partially or completely fulfill the total fee owed by relinquishing emissions credits or using Supplemental Environmental Projects (SEPs) instead of issuing full payment. These other fulfillment options could be considered individual fee offsets for major stationary sources or Section 185 Accounts. The amount of emissions tonnage upon which the total fee is owed or the total fee amount owed would be reduced for the major stationary source or Section 185 Account while the nonattainment area receives emissions reductions benefits. If relinquishing emissions credits or using SEPs does not completely fulfill the entire fee owed by a major stationary source or Section 185 Account, the remaining portion of the total fee remains due according to the Failure to Attain Fee Payment section of this proposed rulemaking.

As explained previously in this preamble, the implementation of the Section 185 fee program depends on several future factors including the effective date of EPA's finding of failure to attain action. According to proposed §101.714, the invoice due date would be provided by the executive director after the program is implemented. The commission must be timely informed if other options would be requested to fulfill the total fee. The commission proposes that the emissions inventory due date specified under the Emissions Inventory Requirements of 30 TAC §101.10 for the fee assessment year would be the proposed date that major stationary sources or Section 185 Account must inform the executive director that these other fulfillment options would be used. Further, the commission proposes that the emissions inventory due date specified under the Emissions Inventory Requirements of 30 TAC §101.10 for the fee assessment year would be the proposed date allowances traded under §101.716 must be approved and completed, and SEPs, under §101.717, must be approved and funded. If other fulfillment options under §101.716 are not approved and funded, exercised, or otherwise completed by the emissions inventory due date, these other fulfillment options would not be eligible to be applied to the total fee. Because a SEP may be a capital project requiring more than 30 days to complete, SEPs must be approved and funded by the emissions inventory due date. All requests to use a SEP as the other option to fulfill the total fee would be subject to the executive director's approval to ensure applicability to the nonattainment area.

*§101.716, Relinquishing Credits to Fulfill a Failure to Attain Fee*

This proposed new section allows major stationary sources or Section 185 Accounts to request to fulfill all or a portion of their Failure to Attain Fee (total fee) by relinquishing an equivalent portion of emission reduction credits, discrete emission reduction credits, current or banked Highly-Reactive Volatile Organic Compound (HRVOC) Emissions Cap and Trade (HECT) program allowances, or current or banked Mass Emissions Cap and Trade (MECT) program allowances.

Emission credits submitted for total fee reduction purposes, on a ton-for-ton basis, would only be allowed for use as a fulfillment option for the pollutant (VOC or $NO_x$) specified on the credit. VOC credits or HECT allowances must only be used as a fulfillment option for VOC tons in excess of the baseline; $NO_x$ credits must only be used as a fulfillment option for $NO_x$ tons. The use of allowances would be similarly restricted such that MECT allowances would only be used as an equivalent for $NO_x$ tons. HECT allowances would only be allowed for use as an equivalent for VOC tons in excess of the baseline amount for major stationary sources or Section 185 Accounts located in the 2008 eight-hour ozone nonattainment area. Significant digit rounding of the emissions reduction must be limited to one-tenth of a ton. Removing these emissions, represented as allowances, on a ton-per-ton basis furthers the goals of reducing ozone-causing emissions in the atmosphere and meets the objective of improving air quality by reducing emissions more directly than imposing a fee.

*§101.717, Using a Supplemental Environmental Project to Fulfill a Failure to Attain Fee*

This proposed new section allows major stationary sources or Section 185 Accounts to request to fulfill all or part of their Failure to Attain Fee (total fee) by contributing to a SEP within the 2008 eight-hour ozone nonattainment area where the major stationary source or Section 185 Account is located. SEPs are projects that prevent or reduce pollution beyond existing regulatory requirements. Supporting a SEP guaranteeing emissions reductions in the nonattainment area would provide cost-effective opportu-

nities that more directly benefit air quality in the affected area than the imposition of a fee. Under this proposed rule, contributing to a SEP would reduce a major stationary source's or Section 185 Account's Failure to Attain Fee on a dollar-per-dollar or ton-by-ton basis. As proposed, the rule would also allow a major stationary source or Section 185 Account to use surplus SEP funds from year to year. The funding would not be discounted or depreciated over time.

The proposed rule language would only allow funding for air-related projects that are implemented within the same 2008 eight-hour ozone nonattainment area. For example, in the 10-county DFW nonattainment area under the 2008 eight-hour ozone standard, SEPs are restricted to fulfillment options for major stationary sources or Section 185 Accounts located in the DFW nonattainment area. This rule would restrict SEPs to projects that offset the Failure to Attain Fee on a dollar-per-dollar or ton-by-ton basis. The established SEP program requires participants to submit quarterly and annual project reports with expenditure and project completion information, providing validation of actual emissions reductions or expenditures.

Because a SEP can be used to offset an administrative penalty, it is inappropriate for those funds to also be used for credit or offset for the Failure to Attain Fee. For many SEPs, only half the dollar amount of the SEP may be used to offset an administrative penalty. The use of Failure to Attain Fee credit from the SEP would be restricted to be the portion of funds not used to offset an administrative penalty. The SEP must also be enforceable through an Agreed Order or other enforceable document to ensure compliance with the SEP objectives.

*§101.718, Cessation of Program*

This proposed new section outlines the circumstances that would end the Failure to Attain Fee for an applicable nonattainment area. FCAA, §185 requires the penalty fee to be collected until redesignation of the nonattainment area to attainment by EPA, any final action or final rulemaking by EPA to end the Failure to Attain fee, or a finding of attainment by EPA. After EPA redesignates an area to attainment and publishes the final approval of the attainment redesignation in the *Federal Register*, the Failure to Attain Fee would no longer be applicable to that ozone nonattainment area as of the effective date specified in the *Federal Register*.

Additionally, to provide for timely cessation of the Failure to Attain Fee program, the commission proposes that the Failure to Attain Fee would be assessed, but the fee collection would be placed in abeyance by the executive director if three years of quality-assured data resulting in a design value that did not exceed the 2008 eight-hour ozone standard are submitted to EPA. The commission also proposes as part of this design value determination, the ability to exclude days that exceeded the 2008 eight-hour ozone standard because of exceptional events or emissions emanating outside the United States.

Fiscal Note: Costs to State and Local Government

Kyle Girten, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rules are in effect, fiscal implications may result for TCEQ and other units of government during implementation of the proposed rule.

If DFW and/or HGB areas do not attain the 2008 eight-hour NAAQS by July 20, 2027 or EPA does not abolish the program, these areas would be subject to the Section 185 fee in the proposed rulemaking (30 TAC Subchapter K. If this is the case, TCEQ currently estimates it would require the addition of three full-time-equivalents (FTEs) beginning in FY 2028 and for the update and maintenance of a database for tracking information as applicable to TCEQ's 185 fee program. It is anticipated that the three FTEs would include a Natural Resources Specialist (NRS) V (B24) and two NRS IVs (B22) in years 3 and 4 (FY 2028 and FY 2029), and two FTEs (one NRS V and one NRS IV) in year 5 (FY 2030) as necessary to implement the program. These staff would develop and implement business processes for (1) establishing and maintaining a fee equivalency account (§§101.703-704), (2) establishing baseline determinations using data submitted by regulated entities (§§101.705-712), (3) annually assessing and collecting fees based on data from annual emissions inventories (§§101.713-714), (4) reviewing and assessing fee payments (§§101.715-717), and (5) updating and maintaining the database for the program. The total cost for FTEs, including salaries and other costs, but excluding fringe and payroll costs is estimated at $277,818 in FY 2028, $252,318 in FY 2029, and $171,920 in FY 2030. It is estimated that $250,000 will be needed annually for the update of the Section 185 database in FY 2028 and FY 2029, and $50,000 would be needed in FY 2030. In summary, it is anticipated there will be no costs to TCEQ during the first two years the rules are in effect, and the total cost to TCEQ is estimated at $527,818 in FY 2028, $502,318 in FY 2029, and $221,920 in FY 2030.

TCEQ may receive revenue from fees that may be required of entities that include major stationary sources of VOC and/or $NO_x$ emissions in these areas. Whether fees will ultimately be assessed as a result of this rulemaking is dependent on how baselines are determined for the HGB and DFW sources (§§101.705-712), actual emissions for each year when fees are assessed (§§101.713-714), the amount of TERP revenue in these areas that is eligible to offset fee obligations (§§101.703-704), whether and to what extent equivalent alternatives are used in lieu of fee payments (§§101.715-717), and the unit cost per ton of VOC and/or $NO_x$ emissions billed as required by FCAA, §182(d)(3) and (e) and §185.

It is noted that when the Section 185 fee program was implemented for the HGB one-hour ozone severe nonattainment area for major sources of VOC and/or $NO_x$ emissions, TERP revenue was sufficient to offset all fee obligations every year fees were required to be assessed (calendar years 2012-2019), and TCEQ did not invoice fees during this timeframe. For this rulemaking, TCEQ estimates that between $0 - $129,000,000 in revenue will be received annually during the third, fourth, and fifth years after the proposed rules are in effect.

This estimate was derived using the 2023 fee rate from EPA ($11,922 per ton VOC and/or $NO_x$) adjusted to increase by an assumed inflation rate of 2.5% between 2023 and 2028. For DFW, revenue received by TCEQ is estimated to be between $0 - $5,000,000 each year starting in 2028, assuming TCEQ receives the lowest amount of eligible TERP revenue for this area in the past ten years ($42,000,000). For HGB, revenue received is estimated to be between $0 - $124,000,000, assuming TCEQ receives the lowest amount of eligible TERP revenue for this area in the past ten years ($47,000,000).

Fiscal implications for other governmental entities would be dependent on whether fees need to be assessed for major stationary sources in the DFW and/or HGB areas. Affected entities include major stationary sources of VOC and/or $NO_x$ emissions in these areas. In the DFW area, it is estimated that eight landfills, one university, and one sewage facility are governmental entities

that would meet eligibility requirements. In HGB, it is estimated that six landfills, two universities, one research facility, and four sewage facilities would meet eligibility requirements Entities for DFW and/or HGB would be required to submit baseline information for VOC and/or $NO_x$, and prorated based on TERP offsets, they would be responsible for pay the annual Section 185 fee or apply equivalent alternatives based on their actual emissions over baseline amounts.

Public Benefits and Costs

Mr. Girten determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated will be compliance with federal law. If this rulemaking were not to occur, in accordance with FCAA, §185(d), EPA would have the ability to impose and collect the fee with interest, and this revenue would not be returned to the state. Additionally, although the Section 185 fee is a penalty and not a control strategy, the magnitude of the fee could potentially incentivize major stationary sources to reduce ozone precursor emissions in the DFW and/or HGB nonattainment areas.

This rulemaking may have fiscal impacts on 461 major stationary sources, including the 23 governmental sources noted above. These sources are from a range of industrial source categories, with the most common categories being industrial organic chemicals, crude petroleum and natural gas, electric services, petroleum bulk stations and terminals, special warehousing and storage, natural gas liquids, plastic materials and synthetic resins, refuse systems, refined petroleum pipelines, petroleum refining, industrial gases, and natural gas transmission. As noted above, the fee per sources is dependent on multiple factors, and the total impact for DFW and HGB areas could range from $0 - $129,000,000 annually during the third, fourth, and fifth years after the proposed rules are in effect.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking is not anticipated to adversely affect a local economy in a significant way for the first five years that the proposed rule is in effect. While the magnitude of fees assessed has the potential to be high in the DFW and HGB areas, the number of businesses and governmental entities affected is very small in proportion to the overall number of industries and business and governmental entities in these areas. It is unknown whether and to what extent this rulemaking would affect business decisions made by entities directly affected by this rule.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. This rulemaking applies to DFW and HGB areas, which are areas with large populations; therefore, rural communities are not significantly impacted.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rules are in effect. No small businesses have been identified that would be affected by this rulemaking.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and may require a request for an increase in future legislative appropriations to the agency. The proposed rulemaking is anticipated to require the creation of new employee positions, and it may increase fees paid to the agency. The proposed rulemaking establishes a new regulation, with major sources of VOC or $NO_x$ emissions in the DFW and/or HGB areas subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy, particularly if TERP revenue is sufficient to offset the Section 185 fee obligation.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking considering the regulatory impact analysis requirements of Texas Government Code, §2001.0225 and determined that the proposed 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 regulatory impact analysis. 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, the proposed 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.

The specific intent of the proposed rules is to comply with the requirements of 42 U.S.C. §7511a and §7511d (FCAA, §182 and §185) for the DFW and HGB 2008 ozone nonattainment areas, as discussed further elsewhere in this preamble. Penalty fee programs are a required component of SIPs for ozone nonattainment areas that are classified as severe or extreme. Fees are required to be collected for all major stationary sources in severe or extreme ozone nonattainment areas that do not attain the ozone standard by their attainment dates. If the fee is not imposed and collected by the state, then 42 U.S.C. §7511d(d) (FCAA, §185(d)) requires that the EPA shall impose and collect the fee (and may collect interest). The applicability of the fee may have a benefit in reducing emissions of ozone precursors in ozone nonattainment areas by incentivizing sources to reduce emissions further, but the proposed rules will not require emission reduction.

States are required to adopt State Implementation Plans (SIPs) with enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the FCAA. As discussed in the Fiscal Note portion of this preamble, the proposed rules are not anticipated to add any significant additional costs to affected individuals or businesses beyond what is necessary to comply with federal law 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. If a state does not comply with its obligations under 42 USC, §7410 (FCAA, §110) to submit SIPs, states are subject to discretionary sanctions under 42 USC, §7410(m) (FCAA, §110(m)) or mandatory sanctions under 42 USC, §7509 (FCAA, §179); as well as the imposition of a federal implementation plan (FIP) under 42 USC, §7410 (FCAA, §110(c)).

The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th legislative session. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis 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 to meet a federal requirement was a major environmental rule that exceeds federal law, then each of those rules would require the full regulatory impact analysis contemplated by SB 633. Requiring a full regulatory impact analysis for all federally required rules 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 that the intent of SB 633 was only to require the full regulatory impact analysis for rules that are extraordinary in nature. While the proposed 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 proposed rules do not impose burdens greater than required to comply with federal law, as discussed elsewhere in this preamble. For these reasons, the proposed 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 unamended. 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). Cf. Humble Oil & Refining Co. v. Calvert, 414 S.W.2d 172 (Tex. 1967); Dudney 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 regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA applying the standard of "substantial compliance" specified in Texas Government Code, §2001.035. The legislature specifically identified Texas Government Code, §2001.0225 as falling under this standard.

As presented in this analysis and elsewhere in this preamble, the evidence supports the conclusion that the commission has substantially complied with the requirements of Texas Government Code, §2001.0225. The proposed rules implement the requirements of the FCAA as discussed in this analysis and elsewhere in this preamble. The proposed rules were determined to be necessary to comply with federal law and will not exceed any standard set by state or federal law. These proposed rules are not an express requirement of state law. The proposed rules do not exceed a requirement of a delegation agreement or a contract between state and federal government, as the proposed rules, if adopted by the commission and approved by EPA, will become federal law as part of the approved SIP required by 42 U.S.C. §7410 (FCAA, §110). The proposed rules were not developed solely under the general powers of the agency but are authorized by specific sections of Texas Health and Safety Code (THSC), Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code, which are cited in the Statutory Authority section of this preamble, including THSC, §§382.011, 382.012, and 382.017. Therefore, this proposed rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invites public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), taking means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or §17 or §19, Article I, Texas Constitution; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmen-

tal action; and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. The commission completed a takings impact analysis for the proposed rulemaking action under the Texas Government Code, §2007.043.

The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to meet federal requirements for the inclusion of penalty fee programs for major stationary sources in State Implementation Plans (SIPs) as mandated by 42 United States Code (USC), §§7410, 7511a, and 7511d (Federal Clean Air Act (FCAA), §§110, 182 and 185). Penalty fee programs are a required component of SIPs for ozone nonattainment areas that are classified as severe or extreme. Fees are required to be collected for all major stationary sources in severe or extreme ozone nonattainment areas that do not attain the ozone standard by their attainment dates. If the fee is not imposed and collected by the state, then 42 U.S.C. §7511d(d) (FCAA, §185(d)) requires that the EPA shall impose and collect the fee (and may collect interest). The applicability of the fee may have a benefit in reducing emissions of ozone precursors in ozone nonattainment areas by incentivizing sources to reduce emissions further, but the proposed rules will not require emission reduction.

States are required to adopt SIPs with enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the FCAA. If a state does not comply with its obligations under 42 USC, §7410 (FCAA, §110) to submit SIPs, states are subject to discretionary sanctions under 42 USC, §7410(m) (FCAA, §110(m)) or mandatory sanctions under 42 USC, §7509 (FCAA, §179); as well as the imposition of a federal implementation plan (FIP) under 42 USC, §7410(c) (FCAA, §110(c)).

The proposed rules will not create any additional burden on private real property beyond what is required under federal law, as the proposed rules, if adopted by the commission and approved by EPA, will become federal law as part of the approved SIP required by 42 U.S.C. §7410 (FCAA, §110). The proposed rules will 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 proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the commission concludes that the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the amendments are consistent with CMP goals and policies because the rulemaking is a fee rule, which is a procedural mechanism for paying for commission programs; will not have direct or significant adverse effect on any coastal natural resource areas; will not have a substantive effect on commission actions subject to the CMP; and promulgation and enforcement of the amendments will not violate (exceed) any standards identified in the applicable CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Effect on Sites Subject to the Federal Operating Permits Program

Chapter 101, Subchapter K would not require revisions to existing Federal Operating Permits under 30 TAC §122, Federal Operating Permits Program.

Announcement of Hearing

The commission will hold a virtual public hearing on this proposal on June 12, 2025, at 2:00 p.m. via virtual platform such as Microsoft Teams. The hearing is structured for the receipt of oral comments by the public. Individuals may register to provide oral comments and may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by June 5, 2025, for the June 12, 2025, hearing. To register for the hearing, please email *Rules@tceq.texas.gov* and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent by June 6, 2025, for the June 12, 2025, hearing to those who register for the hearing.

Members of the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:

*https://events.teams.microsoft.com/event/589ff6dc-dcbe-4ce9-ae8c-45a18864e652@871a83a4-a1ce-4b7a-8156-3bcd93a08fba*

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov*. Electronic comments may be submitted at: *https://tceq.commentinput.com/comment/search*. File size restrictions may apply to comments being submitted via the TCEQ Public Comments system. All comments should reference Rule Project Number 2023-131-101-AI. The comment period opens on May 6, 2025, and closes on June 18, 2025. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html*. For further information, please contact Jill Dickey-Hull, Emissions Assessment Section, (512) 239-5912, and 185Rule@tceq.texs.gov.

Statutory Authority

The new sections are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the com-

mission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act.

The new sections are also proposed under TWC, §5.701, concerning Fees, that authorizes the commission to charge and collect fees prescribed by law; TWC, §5.702, concerning Payment of Fees Required When Due, that requires fees to be paid to the commission on the date the fee is due; TWC, §5.703, concerning Fee Adjustments, that specifies that the commission shall not consider adjusting the amount of a fee due if certain conditions are met; TWC, §5.705, concerning Notice of Violation, that authorizes the commission to issue a notice of violation to a person required to pay a fee for knowingly violating reporting requirements or calculating the fee in an amount less than the amount actually due; and TWC, §5.706, concerning Penalties and Interest on Delinquent Fees, that authorizes the commission to collect penalties for delinquent fees due to the commission. The new sections are also proposed under THSC, §382.002, concerning Policy and Purpose, that 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, that authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning the State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; and THSC, §382.0622, concerning Clean Air Act Fees, specifying that any fees collected as required by Federal Clean Air Act (FCAA), §185 are clean air act fees under the THSC. The new sections are also proposed to comply with FCAA, 42 United States Code (USC), §7511a(d)(3), (e), and (f) (FCAA, §182(d)(3), (e), and (f)) regarding Plan Submissions and Requirements for ozone nonattainment plan revisions; and 42 USC, §7511d (FCAA, §185) regarding Enforcement for Severe and Extreme ozone nonattainment areas for failure to attain.

The proposed new sections implement the requirements of THSC, §§382.002, 382.011, 382.012, 382.017 and 382.0622; TWC, §§5.102, 5.103, 5.105, 5.701 - 5.703 and 5.705- 5.706; as well as FCAA, 42 USC, §7511a(d)(3), (e), and (f) and §7511d (FCAA, §182(d)(3), (e), and (f), and §185).

*§101.700. Definitions.*

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

(1) Actual emissions--As defined in §101.10 of this title (relating to Emissions Inventory Requirements).

(2) Area §185 Obligation--The total annual amount of Failure to Attain Fees due from all applicable major stationary sources or Section 185 Accounts in a severe or extreme ozone nonattainment area that failed to attain the 2008 eight-hour ozone National Ambient Air Quality Standard by its applicable attainment date.

(3) Attainment date--The U.S. Environmental Protection Agency-specified date that a severe or extreme nonattainment area must attain the 2008 eight-hour ozone National Ambient Air Quality Standard.

(4) Baseline amount--Tons of volatile organic compounds and/or nitrogen oxides emissions calculated separately at a major stationary source, using data submitted to and reviewed the executive director. The baseline amount is the lower of baseline emissions (actual emissions) or total annual authorizations or pending authorizations emissions at a major stationary source during the baseline year or timeframe as otherwise specified under this subchapter.

(5) Baseline emissions--Emissions reported in tons in the annual emissions inventory submitted to and recorded by the agency each calendar year per the requirements of §101.10 of this title. The emissions must include all annual routine emissions associated with authorized normal operations, which includes reported emissions from authorized maintenance, startup, and shutdown activities and excludes all unauthorized emissions. The timeframe options are as follows:

(A) reported emissions from the baseline year; or

(B) reported emissions as an average of any single consecutive 24-month period as allowed under §101.705(b)(2) of this title (relating to Baseline Amount) for major stationary sources with emissions that are irregular, cyclic, or otherwise vary significantly from year to year.

(6) Baseline year--The baseline year is January 1 through December 31 of the calendar year that contains the attainment date unless otherwise specified in this subchapter.

(7) Electric utility steam generating unit--As defined in §116.12 of this title (relating to Nonattainment and Prevention of Significant Deterioration Review Definitions).

(8) Emissions unit--As defined in §101.1 of this title (relating to Definitions).

(9) Equivalency credits--An amount equivalent to the revenue collected in accordance with §101.703 of this title (relating to Fee Equivalency Account) for accumulation in the Fee Equivalency Account.

(10) Extension year--A year as defined in FCAA §181(a)(5).

(11) Failure to Attain Fee--The fee assessed and due from each major stationary source or Section 185 Account based on actual emissions whether authorized or unauthorized of volatile organic compounds, nitrogen oxides, or both pollutants that exceed 80% of the baseline amount.

(12) Fee assessment year--Calendar year used to calculate and assess the Failure to Attain Fee under the provisions of this subchapter.

(13) Fee collection year--Calendar year in which the Failure to Attain Fee is invoiced.

(14) Major stationary source--As defined under §116.12 of this title (relating to Nonattainment and Prevention of Significant Deterioration Review Definitions).

(15) Section 185 Account--The TCEQ-assigned account number for one major stationary source or a group of two or more major stationary sources under common control located within the same severe or extreme 2008 eight-hour ozone National Ambient Air Quality Standard nonattainment area.

*§101.701. Applicability.*

(a) The provisions of this subchapter will become applicable in an area classified as severe or extreme under the 2008 eight-hour ozone National Ambient Air Quality Standard (NAAQS or standard) when the U.S. Environmental Protection Agency (EPA) determines that the area has failed to attain the standard by its applicable severe or extreme attainment date. The determination will be the effective date of EPA's finding of failure to attain notice published in the *Federal Register*.

(b) Except as otherwise provided in §101.702 of this title (relating to Exemption), the provisions of this subchapter apply to all regulated entities that meet the definition of major stationary sources of volatile organic compounds or nitrogen oxides located in a nonattainment area classified as severe or extreme for the 2008 eight-hour ozone standard.

*§101.702. Exemption.*

No source subject to the Failure to Attain Fee under this subchapter is required to remit the fee during any calendar year for which the U.S. Environmental Protection Agency has finalized an extension of the attainment date for the nonattainment area applicable to the source under the 2008 eight-hour ozone National Ambient Air Quality Standard.

*§101.703. Fee Equivalency Account.*

(a) Fee Equivalency Account. The executive director will establish and maintain a Fee Equivalency Account to document revenue collected and available for use in demonstrating equivalency with the Area §185 Obligation. No actual money will be deposited into the Fee Equivalency Account. The Fee Equivalency Account will reflect equivalency credits based upon revenue collected and made available for programs of the Texas Emissions Reduction Plan (TERP) under authority of the Texas Health and Safety Code, Chapter 386.

(b) Revenue eligibility. The revenue eligible for credits to the Fee Equivalency Account must be from the severe or extreme 2008 eight-hour ozone National Ambient Air Quality Standard (NAAQS or standard) nonattainment area and cannot be transferred between nonattainment areas.

(c) Revenue credited. The revenue credited to the Fee Equivalency Account will be credited for the years TERP funding is expended in a severe or extreme 2008 eight-hour ozone standard nonattainment area beginning with the first fee assessment year until the Failure to Attain Fee no longer applies to the nonattainment area as described under §101.718 of this title (relating to Cessation of Program).

(d) Other revenue sources. The executive director may credit revenue from other emissions reductions grant programs as funds become available. The executive director will apply revenue from such grant programs to the Fee Equivalency Account according to the requirements of this section and §101.704 of this title (relating to Fee Equivalency Accounting).

*§101.704. Fee Equivalency Accounting.*

(a) Fee Equivalency Account credits. Equivalency Credits will be on a dollar-for-dollar basis and will not be discounted due to the passage of time. Equivalency Credits can be accumulated in the Fee Equivalency Account from year to year if a surplus exists in any given year and used to offset the Area §185 Obligation determination.

(b) Area §185 Obligation determination. Annually, the executive director will calculate the applicable Area §185 Obligation for all major stationary sources or Section 185 Accounts in a severe or extreme 2008 eight-hour ozone National Ambient Air Quality Standard (NAAQS or standard) nonattainment area by summing the Failure to Attain Fee for each major stationary source or Section 185 Account. The summed amount will represent the calendar year Area §185 Obligation for the severe or extreme 2008 eight-hour ozone standard nonattainment area. The annual Area §185 Obligation will be calculated using actual emissions reported under §101.10 of this title (relating to Emissions Inventory Requirements) for the fee assessment year.

(c) Annual demonstration of equivalency. The executive director will annually determine the amount of equivalency credits available in the Fee Equivalency Account to determine the Area §185 Obligation calculated under this subsection. This demonstration will continue annually until the 2008 eight-hour ozone standard nonattainment area is no longer subject to the fee according to the provisions of §101.718 of this title (relating to Cessation of the Program).

(1) The annual determination of equivalency will be calculated as follows.

Figure: 30 TAC §101.704(c)(1)

(2) If the Fee Equivalency Account balance is calculated to be less than or equal to zero in paragraph (1) of this subsection, sufficient equivalency credits were available to offset the Area §185 Obligation. The executive director will not assess a Failure to Attain Fee on major stationary sources or Section 185 Accounts for the fee assessment year.

(3) If the Fee Equivalency Account balance is calculated to be greater than zero in paragraph (1) of this subsection, insufficient equivalency credits were available to offset the fee obligation. The executive director will annually assess a sufficient Failure to Attain Fee to fulfill the Area §185 Obligation. The amount due from each major stationary source or Section 185 Account will be prorated to generate sufficient revenue to meet the Area §185 Obligation. The prorated fee will be calculated as follows.

Figure: 30 TAC §101.704(c)(3)

*§101.705. Baseline Amount.*

(a) Baseline amount. For the purposes of this subchapter, the baseline amount must be calculated as the lower of the following:

(1) total amount of baseline emissions; or

(2) total annual emissions allowed under authorizations, including authorized emissions from maintenance, shutdown, and startup activities, applicable to the source in the baseline year. Emissions from pending authorizations with administratively complete applications as of December 31 of the baseline year may be included in the total annual emissions allowed under authorizations.

(b) Baseline emissions. For the purposes of this subchapter, the baseline emissions must be calculated from:

(1) the baseline year; or

(2) a historical period, if the major stationary source's or Section 185 Account's emissions are irregular, cyclical, or otherwise vary significantly from year to year. Any single 24-month consecutive period within a historical period preceding January 1 of the baseline year may be used to calculate an average baseline emissions amount in tons per year for the major stationary source as the historical period. If used, the historical period must be:

(A) ten years for non-electric utility steam generating units; or

(B) five years for electrical utility steam generating units.

(c) Historical period. If a major stationary source or Section 185 Account uses a historical period as defined in subsection (b)(2) of this section, the baseline amount will:

(1) use adequate data for calculating the equivalent alterative fee baseline emissions;

(2) be adjusted downward to exclude any unauthorized emissions that occurred while the source was operating above an emissions limitation that was legally enforceable during the consecutive 24-month period; and

(3) be adjusted downward to exclude any emissions during the consecutive 24-month period that would have exceeded an emissions limitation for rules and regulations with which the source had to comply during the baseline year.

(d) Adjustments. The baseline amounts must be adjusted downward to exclude any emissions that exceeded an emissions limit for rules or regulations in effect by December 31 of the baseline year.

(e) Emissions units. Baseline amounts must include all emissions units located at the major stationary source as of December 31 of the baseline year. When control or ownership of emission units changes during the baseline year, the emissions from those emission units will be attributed to the major stationary source with control or ownership of the emissions unit on December 31 of the baseline year.

(f) Calculations. A baseline amount, reported in units of tons per year, must be calculated separately for each pollutant, volatile organic compounds and/or nitrogen oxides, for which the source meets the major source applicability requirements of §101.701 of this title (relating to Applicability).

(g) Compliance schedule. The owner or operator of each major stationary source meeting the requirements of §101.701 of this title must submit to the executive director a report establishing its baseline amount on a form published by the executive director. The baseline amounts forms must be submitted by the emissions inventory due date as specified under §101.10 of this title (relating to Emissions Inventory Requirements) for the fee assessment year, or 120 days after the effective date of a finding of failure to attain, whichever is later.

(h) Review. Where the baseline amount does not align with information recorded in either the emissions inventory database or the air permitting data systems, the executive director may direct that the baseline amount be based on the lower of reported emissions under §101.10 of this title or total annual authorized emissions. After review, the baseline amount will be fixed and not be changed except as allowed under this subchapter.

*§101.706. Baseline Amount for New Major Stationary Sources.*

(a) Baseline amounts. A baseline amount must be established for major stationary sources or Section 185 Accounts that begin operating during or after the baseline year. The baseline amount must use the first full year operation as major source and be the lower of:

(1) total amount of baseline emissions; or

(2) total annual emissions allowed under applicable authorizations, including emissions from maintenance, startup, and shutdown activities. Emissions from pending authorizations with administratively complete applications as of the last day of the full first calendar year of operation may be included in the total annual emissions allowed under authorizations.

(b) Adjustments. The baseline amount must be adjusted downward to exclude any emissions that exceeded an emissions limit for rules or regulations in effect by the last day of the one-year period used to determine the baseline amount.

(c) Emissions units. Baseline amounts must include all emissions units located at the major stationary source as of the last day of the one-year period used to determine the baseline amount. When control or ownership of emission units changes during the calendar year, the emissions from those emission units will be attributed to the major stationary source with control or ownership of the emission unit on the last day of the one-year period used to determine the baseline amount.

(d) Calculations. A baseline amount, reported in units of tons per year, must be calculated separately for each pollutant, volatile organic compounds and/or nitrogen oxides for which the source meets the major source applicability requirements of §101.701 of this title (relating to Applicability).

(e) Compliance schedule. Within 90 calendar days of completing the first full year operating as a major stationary source, the major stationary source or Section 185 Account must submit to the executive director a report establishing the baseline amount on a form published by the executive director.

(f) Review. Where the baseline amount does not align with information recorded in either the emissions inventory database or the air permitting data systems, the executive director may direct that the baseline amount be based on the lower of reported emissions under §101.10 of this title (relating to Emissions Inventory Requirements) or total annual authorized emissions. After review, the baseline amount will be fixed and not change except as allowed under this subchapter.

*§101.707. Aggregated Baseline Amount.*

(a) Aggregation. After determining separate baseline amounts for each pollutant at each major stationary source or Section 185 Account according to the requirements of §101.705 of this title (relating to Baseline Amount) or §101.706 of this title (relating to Baseline Amount for New Major Stationary Sources), an owner or operator of a major stationary source or Section 185 Account may choose to combine baseline amounts as follows:

(1) volatile organic compounds (VOC) emissions into a single aggregated pollutant baseline amount for multiple major stationary sources under common control;

(2) nitrogen oxides ($NO_x$) emissions into a single aggregated pollutant baseline amount for multiple major stationary sources under common control;

(3) emissions for both VOC and $NO_x$ into a single aggregated pollutant baseline amount for a single major stationary source; and/or

(4) emissions for both VOC and $NO_x$ into a single aggregated pollutant baseline amount for multiple major stationary sources under common control.

(b) Pollutant emissions aggregation. Pollutant emissions in an aggregated amount must have:

(1) the same time period for calculating the baseline amount; and

(2) the same basis of baseline emissions or total annual authorized emissions to calculate the baseline amount.

(c) Section 185 Account reporting. An owner and or operator opting to combine VOC with $NO_x$ emissions and/or combine major stationary sources into one baseline amount must identify all major stationary sources being aggregated under this section.

(d) Fee calculation requirement. The Failure to Attain Fee must be assessed and calculated in the same manner that an owner or operator elects to aggregate under this section.

(e) Compliance schedule. The owner or operator of each major stationary source or Section 185 Account must submit to the executive director a report establishing its aggregated baseline amount on a form published by the executive director.

(1) For major stationary sources or Section 185 Accounts that operated the entire baseline year, the aggregated equivalent alternative baseline amount forms must be submitted by the emissions inventory due date as specified under §101.10 of this title (relating to Emissions Inventory Requirements) for the fee assessment year, or 120

days after the finding of failure to attain effective date in the *Federal Register*, whichever is later.

(2) For major stationary sources or Section 185 Account that began operating during or after the baseline year, the aggregated baseline amount forms must be submitted within 90 calendar days of completing the first full year operating as a major stationary source.

(f) Review. Where the baseline amount does not align with information recorded in either the emissions inventory database or the air permit data systems, the executive director may direct that the baseline amount be based on the lower of reported emissions under §101.10 of this title or total annual authorized emissions . After review, the baseline amount will be fixed and not be changed except as allowed under this subchapter.

*§101.708. Adjustment of Baseline Amount for Major Stationary Sources with Less Than 24 Months of Operation.*

(a) Baseline amount. The owner or operator of a major stationary source or Section 185 Account may request adjustment of the baseline amount established under this subchapter if the major stationary source or emissions units at the major stationary source experienced less than 24 months of consecutive operation by December 31 of the baseline year. If the emissions were irregular, cyclical, or otherwise vary significantly from year to year, then the baseline amount may be adjusted as the lower of the following:

(1) total average amount of baseline emissions for the consecutive 24-month period; or

(2) total annual emissions allowed under authorizations applicable to the major stationary source during the first year operating as a major stationary source. Emissions from pending authorizations with administratively complete applications as of the last day of the one-year period used to determine the baseline amount may be included in the total annual emissions allowed under authorizations.

(b) Compliance schedule. Within 90 calendar days of completing 24 consecutive months of operation, the owner or operator of the major stationary source or Section 185 Account must submit to the executive director a request to adjust the baseline amount on a form published by the executive director.

(c) Review. Where the baseline amount does not align with information recorded in either the emissions inventory database or the air permitting data systems, the executive director may direct that the baseline amount be based on the lower of reported emissions under §101.10 of this title (relating to Emissions Inventory Requirements) or total annual authorized emissions. After review, the baseline amount will be fixed and not change except as allowed under this subchapter.

(d) Fee assessment. After review, the adjusted baseline amount will be applied starting with the fee assessment year after the review and will continue until the Failure to Attain Fee no longer applies to the area as specified under §101.718 of this title (relating to Cessation of Program). No refunds or credits will be applied to fees previously paid.

*§101.709. Adjustment of Baseline Amount for New Construction at a Major Stationary Source*

(a) Baseline amount. The owner or operator of a major stationary source or Section 185 Account may request adjustment of their baseline amount established under this subchapter to include emissions limits from new construction of authorized emissions units not included in baseline amounts previously established by the executive director. Adjustments to the baseline amount are limited as follows.

(1) The emissions units must have been authorized by a nonattainment new source review permit, issued under Chapter 116, Subchapter B, Division 5 of this title (relating to Nonattainment Review Permits).

(2) The emissions considered for the adjusted baseline amount for new emissions units are restricted to emissions units without a previously established baseline amount.

(b) Compliance schedule. Within 90 calendar days of completed construction of the new emissions units, the owner or operator of the major stationary source or Section 185 Account must submit to the executive director a request to adjust the baseline amount on a form published by the executive director.

(c) Review. Where the baseline amount does not align with information recorded in either the emissions inventory database or the air permitting data systems, the executive director may direct that the baseline amount be based on the lower of reported emissions under §101.10 of this title (relating to Emissions Inventory Requirements) or total annual authorized emissions. After review, the baseline amount will be fixed and will not change except as allowed under this subchapter.

(d) Fee assessment. After review, the adjusted baseline amount will be applied starting with the fee assessment year after the review and will continue until the Failure to Attain Fee no longer applies to the area as specified under §101.718 of this title (relating to Cessation of Program). No refunds or credits will be applied to fees previously paid.

*§101.710. Adjustment of Baseline Amount for Ownership Transfers.*

(a) Baseline amount. The owner or operator of a major stationary source or Section 185 Account may request adjustment of their baseline amount established under this subchapter if ownership and operation of emissions units are no longer under common ownership or control. Adjustments to the baseline amount are limited as follows:

(1) The baseline amount, as calculated and reported for all equipment no longer under common ownership or control, will be transferred from the original reporting major stationary source or Section 185 Account to the new major stationary source or Section 185 Account without modification to the reported amount; and

(2) The baseline amount for remaining equipment at the originating and recipient major stationary source or Section 185 Account will not be adjusted based on a change of ownership or control of emissions units to or from a major stationary source or Section 185 Account.

(b) Adjustment qualification. To qualify for this baseline amount adjustment, the ownership transfer of the emissions units must take place between major stationary sources of the same pollutant or aggregated pollutants, volatile organic compounds and/or nitrogen oxides located within the same nonattainment area.

(c) Compliance schedule. Within 90 calendar days of the effective date of a change of ownership or control of emissions units, the owner or operator of each major stationary source or Section 185 Account affected by the change in ownership or control of emissions units must submit to the executive director a request to adjust the baseline amount on a form published by the executive director.

(d) Review. Where the baseline amount does not align with information recorded in either the emissions inventory database or air permitting data systems, the executive director may direct that the baseline amount be based on the lower of reported emissions under §101.10 of this title (relating to Emissions Inventory Requirements) or total annual authorized emissions. After review, the baseline amount will be fixed and will not change except as allowed under this subchapter.

(e) Fee assessment. After review, the adjusted baseline amount will be applied starting with the fee assessment year after the review and will continue until the Failure to Attain Fee no longer applies to the area as specified under §101.718 of this title (relating to Cessation of Program). No refunds or credits will be applied to fees previously paid.

*§101.711. Adjustment of Baseline Amount for Final Emissions Inventory Data*

(a) Baseline amounts. Baseline amounts established under this subchapter may be adjusted based on final quality assured emissions inventory data.

(b) Compliance schedule. Within 90 calendar days of receipt of final quality assured emissions inventory data or by March 31 of the calendar year immediately following the emissions inventory reporting year, whichever comes first, the owner or operator of each major stationary source or Section 185 Account must submit to the executive director a request to adjust the baseline amount on a form published by the executive director.

(c) Review. Where the baseline amount does not align with information recorded in either the emissions inventory database or the air permitting data systems, the executive director may direct that the baseline amount be based on the lower of the reported emissions under §101.10 of this title (relating to Emissions Inventory Requirements) or total annual authorized emissions. After review, the baseline amount will be fixed and will not change except as allowed under this subchapter.

(d) Fee assessment. After review, the adjusted baseline amount will be applied starting with the fee assessment year after the review and will continue until the Failure to Attain Fee no longer applies to the area as specified under §101.718 of this title (relating to Cessation of Program). No refunds or credits will be applied to fees previously paid.

*§101.712. Failure to Establish a Baseline Amount.*

The executive director will determine baseline amounts for any major stationary source subject to §101.701 of this title (relating to Applicability) that fails to submit a baseline amount by the due date specified by the commission as follows:

(1) If information is available to determine a baseline amount for each pollutant for which the source meets major source applicability requirements, the executive director will determine the baseline amount to be the lower of:

(A) baseline emissions reported under §101.10 of this title (relating to Emissions Inventory Requirements); or

(B) total annual emissions allowed under authorizations, including authorized emissions from maintenance, startup, and shutdown activities.

(2) If no emissions inventory information required to determine baseline amount information is available, the executive director will establish the baseline amount as:

(A) 12.5 tons of volatile organic compounds (VOC) emissions for major stationary sources of VOC emissions;

(B) 12.5 tons of nitrogen oxides ($NO_x$) emissions for major stationary sources of $NO_x$ emissions; or

(C) 12.5 tons of VOC emissions and 12.5 tons of $NO_x$ emissions for major stationary sources of VOC and $NO_x$ emissions.

(3) The executive director will not aggregate baseline amounts under §101.707 of this title (relating to Aggregated Baseline Amount) or adjust baseline amounts as provided in this subchapter to determine a baseline amount under this section.

(4) A major stationary source will pay the Failure to Attain Fee according to §101.714 of this title (relating to Failure to Attain Fee Payment).

(5) If the major stationary source submits a complete and verifiable emissions inventory according to §101.10 of this title, the major stationary source may then submit a baseline amount to the executive director on a form published by the executive director.

(6) After the executive director finalizes the baseline amount based on demonstrated compliance with the criteria in this subchapter, the baseline amount will be applied starting with the fee assessment year after finalization and will continue until the Failure to Attain Fee no longer applies to the area as specified under §101.718 of this title (relating to Cessation of Program). No refunds or credits will be applied to fees previously paid.

*§101.713. Failure to Attain Fee Assessment.*

(a) Pollutant applicability. The executive director will annually assess the Failure to Attain Fee for each pollutant, volatile organic compounds (VOC), nitrogen oxides ($NO_x$), or both, for which the major stationary source or Section 185 Account meets the requirements of §101.701 of this title (relating to Applicability) at any time during a calendar year.

(b) Aggregation. The fee will be assessed and calculated using the same Failure to Attain Fee determination method used under this subchapter. Actual VOC or $NO_x$ emissions may be kept separate or aggregated together. A single pollutant may be aggregated across multiple major stationary sources, or VOC and $NO_x$ emissions may both be aggregated together across multiple major stationary sources. Aggregation as described under §101.707 of this title (relating to Aggregated Baseline Amount) is limited to emissions from:

(1) major stationary sources that aggregated VOC baseline amounts;

(2) major stationary sources that aggregated $NO_x$ baseline amounts; or

(3) major stationary sources that aggregated VOC with $NO_x$ baseline amounts.

(c) Assessment. The owner or operator of each major stationary source to which this rule applies must annually pay the Failure to Attain Fee to the commission calculated in accordance with either subsection (d) or (e) and subsection (f) of this section. The Failure to Attain Fee will be assessed on actual emissions of VOC and/or $NO_x$ as recorded in the emissions inventory under §101.10 of this title (relating to Emissions Inventory Requirements), that exceed 80% of the pollutant baseline amount, rounded up to the nearest whole number.

(d) Fee assessment for separate pollutants. The Failure to Attain Fee from major stationary sources that did not aggregate baseline amounts under §101.707 of this title will remain separate and due from each major stationary source or Section 185 Account for each pollutant for which the source meets the major source applicability requirements. The fee will be calculated separately by the formula in subsection (f) of this section.

(e) Fee assessment for aggregated pollutants. The Failure to Attain Fee will be calculated in accordance with subsection (f) of this section and the method used for an aggregated baseline amount determination as described under §101.707(a) of this title.

(1) If VOC emissions are aggregated, VOC emissions from all major stationary sources in the Section 185 Account must be used for aggregated actual emissions and the aggregated baseline emissions.

(2) If $NO_x$ emissions are aggregated, $NO_x$ emissions from all major stationary sources in the Section 185 Account must be used for the aggregated actual and aggregated baseline emissions.

(3) If VOC emissions are aggregated with $NO_x$ emissions at one major stationary source, VOC and $NO_x$ emissions must be used for the aggregated actual and aggregated baseline emissions. If VOC emissions are aggregated with $NO_x$ emissions across multiple major stationary sources, VOC and $NO_x$ emissions from each major stationary source in the Section 185 Account must be used for the aggregated actual and aggregated baseline emissions.

(f) Fee calculations. The fee will be calculated for VOC, $NO_x$, or both pollutants' emissions, as follows.
Figure: 30 TAC §101.713(f)

(g) Enforcement. Failure to submit an emissions inventory according to the provisions of §101.10 of this title (relating to Emissions Inventory Requirements) to circumvent assessment of the Failure to Attain Fee is also subject to enforcement account under Texas Water Code (TWC), Chapter 7.

*§101.714. Failure to Attain Fee Payment.*

(a) Fee timeframe. The Failure to Attain Fee is assessed, invoiced, and paid for each pollutant for which the source is major, volatile organic compounds and/or nitrogen oxides, starting the calendar year following the baseline year and continuing each year until the area is no longer subject to the Failure to Attain Fee as described under §101.718 of this title (relating to Cessation of Program).

(b) Payment. Payment of Failure to Attain Fees required by this subchapter must be paid by check, certified check, electronic funds transfer, or money order made payable to the Texas Commission on Environmental Quality (TCEQ) and sent to the TCEQ address printed on the billing statement.

(c) Fee payment due date. The Failure to Attain Fee payment is due by the due date specified on the invoice. The invoice due date will be a minimum of 30 days after the invoice mail date.

(d) Nonpayment of fees. Each emissions Failure to Attain Fee payment must be paid at the time and in the manner and amount provided by this subsection. Failure to pay the full Failure to Attain Fee by the due date will result in enforcement action under Texas Water Code (TWC), §7.178.

(e) Late payments. The agency will impose interest and penalties on owners or operators of a major stationary source or Section 185 Account who fail to make payment of emissions fees when due in accordance with Chapter 12 of this title (relating to Payment of Fees).

*§101.715. Eligibility for Other Failure to Attain Fee Fulfillment Options.*

(a) Alternative fulfillment options. Notwithstanding any requirement in this subchapter, the owner or operator of a major stationary source or Section 185 Account required to pay a Failure to Attain Fee may submit a request to the executive director to partially or completely fulfill the Failure to Attain Fee in compliance with §101.716 (relating to Relinquishing Credits to Fulfill a Failure to Attain Fee and §101.717 of this title (relating to Using a Supplemental Environmental Project to Fulfill a Failure to Attain Fee).

(b) Unfulfilled portions. If a Failure to Attain Fee cannot be completely fulfilled using alternate fulfillment options, then the unfulfilled portion of the Failure to Attain Fee is required to be calculated, assessed, and paid according to the provisions of this subchapter.

(c) Reporting. The owner or operator of a major stationary source or Section 185 Account must inform the executive director if they choose an alternative fulfillment option for all or a portion of the Failure to Attain Fee as described in §101.716 and §101.717 of this title. The request must be submitted on a form specified by the executive director and include a list of the emissions in tons of volatile organic compounds and/or nitrogen oxides requested from alternative fulfillment options, payment, or combination to cover the entire Failure to Attain Fee.

(d) Compliance schedule. No later than emissions inventory due date as specified under §101.10 of this title (relating to Emissions Inventory Requirements) for the first fee assessment year and continuing annually, the owner or operator of a major stationary source or Section 185 Account must submit the request specified in subsection (c) and ensure the following conditions are met:

(1) all emissions credits under §101.716 of this title must be approved, exercised, or otherwise completed; and

(2) all Supplemental Environmental Projects under §101.717 of this title must be approved and funded.

(e) If the executive director does not receive the notification request to use alternative fulfillment options for all or a portion of the Failure to Attain Fee or the alternate fulfillment options are not approved and funded, exercised, or otherwise completed as required by this subsection, the Failure to Attain Fee payment will be due in full as described under §101.714 of this title (relating to Failure to Attain Fee Payment).

*§101.716. Relinquishing Credits to Fulfill a Failure to Attain Fee.*

(a) The owner or operator of a major stationary source or Section 185 Account subject to this subchapter may submit a request to partially or completely fulfill the Failure to Attain Fee by substituting emissions reductions, on a volatile organic compounds-or nitrogen oxides-specific basis, in an amount equivalent to the tons on which the Failure to Attain Fee has been assessed by relinquishing an equivalent amount of any combination of:

(1) emissions reduction credits;

(2) discrete emissions reduction credits;

(3) current or banked Highly-Reactive Volatile Organic Compound Emissions Cap and Trade program allowances; and/or

(4) current or banked Mass Emissions Cap and Trade program allowances.

(b) The use of the provisions of this section to fulfill a Failure to Attain Fee is subject to review by the executive director.

*§101.717. Using a Supplemental Environmental Project to Fulfill a Failure to Attain Fee.*

(a) The owner or operator of a major stationary source or Section 185 Account subject to this subchapter may submit a request to partially or completely fulfill the Failure to Attain Fee by contributing to a Supplemental Environmental Project (SEP), on volatile organic compounds (VOC) or nitrogen oxides ($NO_x$)-specific basis by either:

(1) an amount equivalent to the tons on which the Failure to Attain Fee has been assessed; or

(2) an amount equivalent to the Failure to Attain Fee amount assessed.

(b) The SEP must directly reduce the amount of VOC and/or $NO_x$ emissions in the 2008 eight-hour ozone National Ambient Air Quality Standard nonattainment area.

(c) The SEP must be enforceable through an Agreed Order or other enforceable document.

(d) The use of SEP funds must be on a dollar-for-dollar basis and will not be discounted due to the passage of time. Credit from SEP funds may be accumulated from year to year, and if a surplus exists in any given year, the funds may be used to offset the calculated Failure to Attain Fee as needed.

(e) Funds in a SEP used to offset an administrative penalty cannot be used to offset a Failure to Attain Fee.

(f) The use of a SEP to fulfill a Failure to Attain Fee is subject to approval by the executive director.

*§101.718. Cessation of Program.*

(a) The Failure to Attain Fee will continue to apply until one of the following actions is final:

(1) the effective date of redesignation of the area classified as severe or extreme under the 2008 eight-hour ozone National Ambient Air Quality Standard (NAAQS or standard) to attainment by the U.S. Environmental Protection Agency (EPA);

(2) any final action or final rulemaking by EPA to end the Failure to Attain fee; or

(3) finding of attainment by EPA.

(b) Notwithstanding subsection (a) of this section, the Failure to Attain Fee will be calculated but not invoiced, and the fee collection may be placed in abeyance by the executive director if three consecutive years of quality-assured data resulting in a design value that did not exceed the 2008 eight-hour ozone National Ambient Air Quality Standard (NAAQS), or a demonstration indicating that the area would have attained by the attainment date but for emissions emanating from outside the United States, are submitted to EPA. The design value may exclude days submitted to EPA by the executive director that exceeded the standard because of exceptional events. Fee collection will remain in abeyance until EPA takes final action on its review of the certified monitoring data and any demonstration(s).

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

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Texas Commission on Environmental Quality
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# TITLE 34. PUBLIC FINANCE

## PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

### CHAPTER 16. COMPTROLLER GRANT PROGRAMS

### SUBCHAPTER C. TEXAS OPIOID ABATEMENT FUND PROGRAM

**34 TAC §§16.200, 16.208, 16.211**

The Comptroller of Public Accounts proposes amendments to §16.200, concerning definitions, §16.208, concerning grant application review, and §16.211, concerning allowable costs.

The comptroller proposes the amendments to make the Opioid Abatement Fund Council's evaluation and review of grant applications more efficient and to prevent excessive costs due to the external peer review of large numbers of grant applications. The legislation enacted within the last four years that provides the statutory authority for the amendments is Senate Bill 1827, 87th Legislature, R.S., 2021.

The amendments to §16.200 update definitions.

The amendments to §16.208(a) change the application review process to allow the office to evaluate grant applications to either be reviewed internally by program staff or through a peer review process based on the value of the grant.

The amendments to §16.211(b) change the grant disbursement process to allow the council to disburse funds on a reimbursement or on an as needed basis as determined by the council to effectuate the purposes of the grant.

Tetyana Melnyk, Director of Revenue Estimating Division, has determined that during the first five years that the proposed amended rules are in effect, the rules: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Ms. Melnyk also has determined that the proposed amended rules would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amended rules would benefit the public by improving the clarity and implementation of the sections. There would be no significant anticipated economic cost to the public. The proposed amended rules would have no significant fiscal impact on small businesses or rural communities.

You may submit comments on the proposal to Katy Fallon-Brown, Director, Opioid Abatement Fund Council, at OAFC.Public@cpa.texas.gov or at P.O. Box 13528 Austin, Texas 78711. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed under Government Code, §403.511, which authorizes the comptroller to adopt rules to implement Government Code, Chapter 403, Subchapter R, concerning the statewide opioid settlement agreement.

The amendments implement Government Code, Chapter 403, Subchapter R, concerning the statewide opioid settlement agreement.

*§16.200. Definitions.*

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

(1) Authorized official--The individual, including designated alternates, named by a grant applicant or grant recipient, who is authorized to act for the grant applicant or grant recipient in submitting the grant application and executing the grant agreement and associated documents or requests.

(2) Comptroller--The Texas Comptroller of Public Accounts.

(3) Council--The Texas Opioid Abatement Fund Council established by Government Code, §403.503, to manage the distribution of money allocated to the council from the Opioid Abatement Trust Fund, established by Government Code, §403.506 in accordance with a statewide opioid settlement agreement. A reference in this subchapter to the council includes the director and program staff members unless the provision indicates otherwise.

(4) Council member--An appointed [~~A~~] member of the council.

(5) Director--The program staff member designated by the comptroller to serve as the director for the council who performs duties as necessary to manage the day-to-day operations of the council. This term includes the director's designees.

(6) Grant agreement--A legal agreement executed by a grant recipient and the director, on behalf of the council, setting forth the terms and conditions for a grant award approved by the council.

(7) Grant applicant--A person or entity that has submitted through an authorized official an application for a grant award under this subchapter.

(8) Grant application--A written proposal submitted by a grant applicant to the director in the form required by the council that, if successful, will result in a grant award.

(9) Grant award--Funding awarded by the council pursuant to a grant agreement providing money to the grant recipient to carry out a grant project in accordance with statutes, rules, regulations, and guidance provided by the council.

(10) Grant recipient--A grant applicant that receives a grant award under this subchapter.

(11) NOFA--Notice of funding availability.

(12) Peer review--The review process performed by the peer review panel and used to provide guidance and recommendations to the council in making decisions for grant awards. The process involves the consistent application of standards and procedures to produce a fair, equitable, and objective evaluation of grant applications, based on the evidence-based opioid abatement strategies developed by the council under Government Code, §403.509, as well as other relevant requirements of the NOFA and the grant application.

(13) Peer review panel--A group of experts in the field of opioid abatement who are selected to conduct peer review of grant applications. A peer review panel may consist of one or more members as determined by the council.

(14) Peer review panel member--A member of the peer review panel.

(15) Program staff member--A member of the comptroller's staff assigned by the comptroller to provide assistance to the council. This term includes the director.

(16) Statewide opioid settlement agreement--A settlement agreement and related documents entered into by this state through the attorney general, political subdivisions that have brought a civil action for an opioid-related harm claim against an opioid manufacturer, distributor, or retailer, and opioid manufacturers, distributors, or retailers relating to illegal conduct in the marketing, promotion, sale, distribution, and dispensation of opioids that provide relief for this state and political subdivisions of this state.

*§16.208. Grant Application Review.*

(a) The grant application review process shall consist of the following [~~three steps~~]:

(1) initial screening;

(2) director review or, if required, peer review; and

(3) council review and approval.

(b) Initial screening.

(1) The director [~~Program staff members~~] shall review each grant application to determine whether the grant application complies with the requirements contained in this subchapter and the relevant NOFA published by the council. Grant applications that do not meet these requirements may [~~will~~] not be eligible for a grant award and will not be submitted for further review under this section. The council may participate in the initial screening of any grant application.

(2) Following the initial screening, the director [~~A program staff member~~] shall submit each grant application that meets the requirements described in subsection (b)(1) of this section for review under subsection (c) of this section [~~to the peer review panel for review~~].

(c) Director review or peer [~~Peer~~] review.

(1) Each [~~Peer review panel members shall review each~~] grant application that is submitted for review under [~~by program staff as described in~~] subsection (b)(2) of this section shall be reviewed by the director or a peer review panel.

(A) If the total amount of the grant is greater than $750,000, the grant application shall be reviewed by a peer review panel.

(B) If the total amount of the grant is $750,000 or less, the grant application may be reviewed by the director or a peer review panel.

(2) Applications [~~Peer review panel members~~] shall be scored [~~assign a score for the application~~] based on the application's merit and [~~accounting for~~] the criteria in the relevant NOFA published by the council. The reviewer[~~, and~~] shall submit this information to the director [~~a program staff member~~].

[~~(3) If a peer review panel member recommends changes to the grant funds amount requested by the grant applicant or to the goals and objectives or timeline for the proposed grant project, the recommended changes and explanation shall be submitted to a program staff member.~~]

(3) [~~(4)~~] Scores [~~The peer review panel's scores~~], rankings and other information submitted for the council's consideration are recommendations and are advisory only.

(4) For each NOFA, the council will determine the number of members that will serve on the peer review panels for any grant applications subject to peer review.

(d) Council review and approval.

(1) Upon completion of the evaluation [~~After receipt of the peer review scores and recommendations~~] described in subsection (c) of this section, the director [~~program staff members~~] shall compile a ranked order list of grant applications and submit it to the council for consideration. If an application is reviewed by more than one person, the [~~reviewed by the peer review panel ranked in order by the final overall evaluation score. The~~] final evaluation score is determined by averaging together all reviewers' [~~the~~] scores [~~assigned by the peer review panel members under subsection (c)(2) of this section~~].

(2) For each application, the director [~~a program staff member~~] shall submit to council members:

(A) the grant application's final overall [~~peer review~~] evaluation score;

(B) the grant application's [~~peer review~~] ranking;

(C) a summary of the grant application;

(D) other information submitted by the reviewers [~~peer review panel~~] for the council's consideration; and

(E) any other information required for the council's consideration of the grant application.

(3) In making grant award decisions, the council:

(A) shall ensure that grant funds are allocated fairly and spent to remediate the opioid crisis in this state by using efficient and cost-effective methods in accordance with the opioid strategies approved by the council under Government Code, §403.509(a)(1) and §16.201 of this subchapter, and the grant issuance plan adopted by the council under §16.202 of this subchapter; and

(B) may consider factors including:

*(i)* a grant applicant's experience;

*(ii)* a grant project's estimated timeline;

*(iii)* matching funds or sustainability plan, if any;

*(iv)* cost effectiveness, efficacy and overall impact of the grant project;

*(v)* geographic location of the grant project;

*(vi)* community partnerships; and

*(vii)* any additional factors listed in the relevant NOFA published by the council.

(4) The council shall vote on [~~each~~] grant applications [~~application~~] in accordance with Government Code, Chapter 403, Subchapter R [~~§403.509(c)~~]. The council may determine the voting procedures for grant applications and may vote on multiple grant applications at one time.

[~~(5) If the council approves a grant award, the council shall specify the total amount of money approved to fund the grant project.~~]

(5) [~~(6)~~] All grant funding decisions are final and are not subject to appeal.

(6) [~~(7)~~] The approval of a grant award shall not obligate the council to make any additional, supplemental, or other grant award.

*§16.211. Allowable Costs; Disbursement of Grant Funds.*

(a) Allowable costs are costs that are reasonable and necessary for the proper and efficient performance and administration of the grant project, and allocable to the grant project.

(b) The council disburses grant funds on a reimbursement or as needed basis unless otherwise determined by the council to be necessary for the purposes of the grant [~~by reimbursing the grant recipient for allowable costs already expended~~].

(c) The relevant NOFA published by the council may provide additional information on allowable costs by grant project and a schedule for disbursement of grant funds.

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 May 5, 2025.

TRD-202501519

Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: June 15, 2025
For further information, please call: (512) 475-2220

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# PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

## CHAPTER 25. MEMBERSHIP CREDIT
## SUBCHAPTER J. CREDITABLE TIME AND SCHOOL YEAR

**34 TAC §25.131**

The Teacher Retirement System of Texas (TRS) proposes to amend §25.131 (relating to Required Service) under Subchapter J (relating to Creditable Time and School Year) of Chapter 25 in Part 3 of Title 34 of the Texas Administrative Code.

BACKGROUND AND PURPOSE

Most TRS active members earn a year of service credit by working at least 90 days in a school year, but there are alternative methods to earn a year of service credit through active employment. For instance, an active member may, in their final year before retirement, earn a year of service credit by working the full fall semester in accordance with their employer's calendar if the employer works on a semester-by-semester basis. Members may only earn a year of service credit in this way in their final year before retirement, and they may do so regardless of whether they work for 90 days during that semester. This is called the "final fall semester" rule.

Separately, members who are regularly scheduled to work fewer than five days per week may earn a year of service credit if they work at least four and one-half months, and those four and one-half months include at least eight days during four separate months and five days during a fifth month. This is called the "nonstandard workweek" rule.

But it is not wholly clear under current TRS rules whether a member may simultaneously use the final fall semester rule and the nonstandard workweek rule to earn a year of service credit in their final year before retirement while being scheduled to work less than five days per week.

This issue has become more and more pressing as an increasing number of Texas schools are moving to four-day workweeks, and TRS' systems now more readily identify individuals who are working nonstandard workweeks at the time of retirement.

To resolve these issues, TRS proposes to amend §25.131 to provide that, for school years beginning with the 2025-26 school year, members who are regularly scheduled to work less than five days per week may earn a year of service credit in the final year prior to their retirement if the member is working in a membership-eligible position and the member works or receives paid leave for a full fall semester in accordance with the employer's calendar.

In addition, the amendments clarify that a member who meets the above requirements will be considered to have worked a full fall semester in accordance with their employer's calendar if the member works or receives paid leave for each day the member

is required to work during that semester even if the employer's calendar includes additional workdays on which the member is not required to work.

Lastly, the amendments provide that a member may only earn service credit under the non-standard workweek rule, in their final fall semester or otherwise, if the member is regularly scheduled to work fewer than five days per week for at least two weeks per month in accordance with the member's contract or work agreement with their employer.

Proposed amended §25.131 also makes nonsubstantive changes for clarity, style, and conforming purposes.

If adopted, TRS intends for proposed amended §25.131 to become effective on September 1, 2025.

FISCAL NOTE

Don Green, TRS Chief Financial Officer, has determined that for each year of the first five years the proposed amended rule will be in effect, there will be no foreseeable fiscal implications for state or local governments as a result of administering the proposed amended rule.

PUBLIC COST/BENEFIT

For each year of the first five years the proposed amended rule will be in effect, Mr. Green also has determined that the public benefit anticipated as a result of adopting the proposed amended rule will be clarification for TRS members regarding whether the nonstandard workweek rule and final fall semester rule may be used simultaneously.

Mr. Green has also determined that the public will incur no new costs as a result of complying with the proposed amended rule. The proposed amended rule implements TRS' current interpretation of existing §25.131 and will not prevent members who can earn membership service under the current rule from earning service credit under the proposed amended standards.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

TRS has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed amended rule. Therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under Government Code §2006.002.

LOCAL EMPLOYMENT IMPACT STATEMENT

TRS has determined that there will be no effect on local employment because of the proposed amended rule. Therefore, no local employment impact statement is required under Government Code §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT

TRS has determined that for the first five years the proposed amended rule is in effect, the proposed amended rule will not create or eliminate any TRS programs; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to TRS; will not eliminate any fees currently paid to TRS; will not create a new regulation; will not expand, limit or repeal an existing regulation; will not increase or decrease the number of individuals subject to the rule's applicability; and will not affect the state's economy.

TAKINGS IMPACT ASSESSMENT

TRS has determined that there are no private real property interests affected by the proposed amended rule, therefore, a takings impact assessment is not required under Government Code §2007.043.

COSTS TO REGULATED PERSONS

TRS has determined that Government Code §2001.0045 does not apply to the proposed amended rule because the proposed amended rule does not impose a cost on regulated persons.

COMMENTS

Comments may be submitted in writing to Brian Guthrie, TRS Executive Director, P.O. Box 149676, Austin, Texas 78714-0185. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

STATUTORY AUTHORITY

The proposed amended rule is proposed under the authority of Government Code §825.102, which authorizes the board of trustees to adopt rules for the transaction of the business of the board.

CROSS-REFERENCE TO STATUTE

The proposed amended rule implements the following statutes: Government Code §823.002, which provides that the board of trustees by rule shall determine how much service in any year is equivalent to one year of service credit.

*§25.131. Required Service.*

(a) Beginning on the first day of the 2011-2012 school year and thereafter:

(1) Except as provided in paragraph (3) of this subsection, a member must work in a TRS eligible position and be paid or receive paid leave from a TRS eligible position at least 90 days during the school year to receive a year of service credit.

(2) A substitute as defined in §25.4 of this title (relating to Substitutes) will be qualified for membership and granted a full year of service credit by working 90 or more days as a substitute in a school year, receiving pay for that work, and verifying the work as provided in §25.121 of this title (relating to Employer Verification) and §25.47 of this title (relating to Deadline for Verification) and paying the actuarial cost for the work as provided in §25.43 of this title (relating to Cost for Unreported Service or Compensation).

(3) In the last school year of service before retirement, a member serving in an eligible position, other than a position described by subsection (c) of this section, who worked and was paid for that work or received paid leave for less than 90 days in the school year but worked and was paid for that work or received paid leave for a full fall semester in accordance with the employer's calendar will receive a year of service credit. If the employer's calendar does not provide for semesters, a member must work and be paid for work in an eligible position or receive paid leave from an eligible position for at least 90 days in order to receive a year of service credit for the school year before retirement.

(4) Days that the employer is scheduled to be closed for business are not included in the 90 days of work required to receive a year of service credit unless the day(s) are paid holidays by the employer or the employee was charged with paid leave during the closing. Holidays that are not included in the required number of work days for an employee are not counted as paid holidays or days of paid leave.

(b) For school years prior to the 2011-2012 school year:

(1) Except as provided in paragraph (2), (3), or (4) of this subsection, a member must serve at least 4 1/2 months in an eligible position during the school year to receive credit for a year of service.

(2) A member who served less than four and one-half months in a school year but served a full semester of more than four calendar months will receive credit for a year of service.

(3) A substitute as defined in §25.4 of this title will be qualified for membership and granted a full year of service credit by rendering 90 or more days of service as a substitute in a school year and verifying the service as provided in §25.121 of this title and §25.47 of this title and paying deposits and fees for the service as provided in §25.43 of this title.

(4) An employee who enters into an employment contract or oral or written work agreement for a period which would qualify the employee for a year of service credit under the other provisions of this section but who actually renders only the amount of service specified in §25.4 of this title will receive credit for a year of service credit.

(c) Beginning on the first day of the 2025-2026 school year, a member who is serving in a membership eligible position and who, under the member's contract or work agreement, is regularly scheduled to work fewer than five days per week for at least two weeks per month may, in lieu of the requirements in subsection (a) of this section and except as provided by subsection (e) of this section, establish a year of service credit by working and receiving pay for that work or using paid leave for four and one-half months.

(d) Except as provided by subsection (e) of this section, the four and one-half month period described by subsection (c) of this section must include four full calendar months in which the member renders service and is paid or the member uses paid leave, for at least eight days and an additional five days of service rendered and for which the member is paid or paid leave used in another calendar month or months that do not include the four full calendar months.

(e) Beginning on the first day of the 2025-2026 school year, a member who is serving in a membership-eligible position described by subsection (c) of this section for an employer that provides for semesters in its calendar may, in the last school year before retirement, receive a year of service credit if the member worked and was paid for that work or received paid leave for a full fall semester in accordance with the employer's calendar.

(f) For the purposes of subsection (e) of this section, a member who is regularly scheduled to work fewer than five days per week for at least two weeks per month and otherwise meets the requirements of subsection (e) will be considered to have worked a full fall semester in accordance with the employer's calendar if the member works and is paid for that work or receives paid leave for each day the member was required to work during that semester even if the employer's calendar includes additional workdays on which the member was not required to work.

(g) [~~(c)~~] Beginning on the first day of the 2015-2016 school year and ending on the last day of the 2024-2025 school year [~~thereafter~~], in lieu of the requirements in subsection (a) of this section, a member who is serving in a membership-eligible [~~membership eligible~~] position and who is regularly scheduled to work fewer than five [~~5~~] days per week, may establish a year of service credit by working and receiving pay for that work or using paid leave, for four and one-half months. The four and one-half month period must include four full calendar months in which the member renders service and is paid or the member uses paid leave, for at least eight [~~8~~] days and an additional five days of service rendered and for which the member is paid or paid leave used in another calendar month or months but not to include the four full calendar months.

(h) [~~(d)~~] Except as otherwise provided in [~~subsection (a) of~~] this section regarding [~~, for~~] service credit granted in the school year in which the member retires, in no event may a member receive a year of service credit earlier than December 31.

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 May 5, 2025.

TRD-202501518
Don Green
Chief Financial Officer
Teacher Retirement System of Texas
Earliest possible date of adoption: June 15, 2025
For further information, please call: (512) 542-6506

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# TITLE 37. PUBLIC SAFETY AND CORRECTIONS

## PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

### CHAPTER 344. EMPLOYMENT, CERTIFICATION, AND TRAINING
### SUBCHAPTER G. CERTIFICATION

**37 TAC §344.804**

The Texas Juvenile Justice Department (TJJD) proposes amendments to 37 TAC §344.804, Dual Certification.

SUMMARY OF CHANGES

The amendments to §344.804 will provide that: (1) an individual with an active certification as a juvenile supervision officer or juvenile probation officer who is seeking a dual certification is not required to retake previously completed mandatory training topics before taking the exam for the newly sought certification; and (2) the individual may not get credit for the hours of the previously taken topics toward the requirements for the additional certification unless they were taken within the prior 18 months.

FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the amended section is in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the section.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Manager, Policy Division, has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of administering the section will be a clarification of the rules relating to instances when a previously certified juvenile officer seeks a second certification.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are re-

quired to comply with the section as proposed. No private real property rights are affected by adoption of this section.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the amended section is in effect, the section will have the following impacts.

(1) The proposed section does not create or eliminate a government program.

(2) The proposed section does not require the creation or elimination of employee positions at TJJD.

(3) The proposed section does not require an increase or decrease in future legislative appropriations to TJJD.

(4) The proposed section does not impact fees paid to TJJD.

(5) The proposed section does not create a new regulation.

(6) The proposed section does not expand, limit, or repeal an existing regulation.

(7) The proposed section does not increase or decrease the number of individuals subject to the section's applicability.

(8) The proposed section will not positively or adversely affect this state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Texas Juvenile Justice Department, Policy and Standards Section, P.O. Box 12757, Austin, Texas 78711, or via email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The amended section is proposed under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

No other statute, code, or article is affected by this proposal.

*§344.804. Dual Certification.*

(a) Individuals may hold more than one certification by TJJD if they meet all criteria required for each certification and their job duties are consistent with all certifications held, except as noted in subsection (b) of this section.

(b) An individual may not hold an active certification as a juvenile supervision officer and as a community activities officer unless the individual is concurrently employed by more than one department or facility.

(c) Training received may be used for credit toward more than one type of TJJD-issued certification if the topic is relevant to each certification sought or held.

(d) An individual who has an active certification as a juvenile supervision officer or juvenile probation officer who has previously completed a mandatory training topic listed in §344.620 of this chapter (relating to Mandatory Training Topics for Certification Exam for Juvenile Probation Officers) or §344.622 of this chapter (relating to Mandatory Training Topics for Certification Exam for Juvenile Supervision Officers), as applicable, is not required to complete training in that topic again in order to receive a dual certification as a juvenile supervision officer or juvenile probation officer. However, the person may not receive credit toward the training hours required for the second certification for training completed more than 18 months prior to the date the application for the second certification is submitted to TJJD.

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 May 1, 2025.

TRD-202501501
Jana Jones
General Counsel
Texas Juvenile Justice Department
Earliest possible date of adoption: June 15, 2025
For further information, please call: (512) 490-7278

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# CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES

## SUBCHAPTER E. BEHAVIOR MANAGEMENT AND YOUTH DISCIPLINE

## DIVISION 1. BEHAVIOR MANAGEMENT

### 37 TAC §380.9520

The Texas Juvenile Justice Department (TJJD) proposes to repeal 37 TAC §380.9520, Cooling-Off Period for Youth Out of Control.

SUMMARY OF REPEAL

The repeal of §380.9520 will allow the content to be revised, combined with the content from the simultaneously repealed §380.9739, Isolation, and republished together as new §380.9520, Regulation Break for Youth out of Control.

FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the repeal is in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the repeal.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Manager, Policy Division, has determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of administering the repeal will be to consolidate and clarify the rules pertaining to when a disruptive youth may be removed temporarily from planned activities.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed. No private real property rights are affected by the repeal.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the repeal is in effect, the repeals will have the following impacts.

(1) The proposed repeal does not create or eliminate a government program.

(2) The proposed repeal does not require the creation or elimination of employee positions at TJJD.

(3) The proposed repeal does not require an increase or decrease in future legislative appropriations to TJJD.

(4) The proposed repeal does not impact fees paid to TJJD.

(5) The proposed repeal does not create a new regulation.

(6) The proposed repeal does not expand, limit, or repeal an existing regulation.

(7) The proposed repeal does not increase or decrease the number of individuals subject to the section's applicability.

(8) The proposed repeal will not positively or adversely affect this state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Texas Juvenile Justice Department, Policy and Standards Section, P.O. Box 12757, Austin, Texas 78711, or via email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The repeal is proposed under §242.003, Human Resources Code, which requires the Board to adopt rules appropriate to properly accomplish TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

No other statute, code, or article is affected by this proposal.

*§380.9520. Cooling-Off Period for Youth Out of Control.*

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 May 1, 2025.

TRD-202501502
Jana Jones
General Counsel
Texas Juvenile Justice Department
Earliest possible date of adoption: June 15, 2025
For further information, please call: (512) 490-7278

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**37 TAC §380.9520**

The Texas Juvenile Justice Department (TJJD) proposes new 37 TAC §380.9520, Regulation Break for Youth out of Control.

SUMMARY

New §380.9520 will incorporate elements of two sections being simultaneously repealed: previous §380.9520 and §380.9739. To the elements from those two sections, new §380.9520 will add two new designations for the temporary removal of youth from planned activity, as follows: (1) regulation breaks, which are voluntary or staff-directed breaks in an unlocked room; and (2) directed regulation breaks, which are staff-directed breaks in a locked room.

FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the new section is in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the section.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Manager, Policy Division, has determined that for each year of the first five years the new section is in effect, the public benefit anticipated as a result of administering the section will be to consolidate and clarify the rules pertaining to when a disruptive youth may be removed temporarily from planned activities.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the new section as proposed. No private real property rights are affected by adoption of the section.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the new section is in effect, the section will have the following impacts.

(1) The proposed section does not create or eliminate a government program.

(2) The proposed section does not require the creation or elimination of employee positions at TJJD.

(3) The proposed section does not require an increase or decrease in future legislative appropriations to TJJD.

(4) The proposed section does not impact fees paid to TJJD.

(5) The proposed section does not create a new regulation.

(6) The proposed section does not expand, limit, or repeal an existing regulation.

(7) The proposed section does not increase or decrease the number of individuals subject to the section's applicability.

(8) The proposed section will not positively or adversely affect this state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Texas Juvenile Justice Department, Policy and Standards Section, P.O. Box 12757, Austin, Texas 78711, or via email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The new section is proposed under §242.003, Human Resources Code, which requires the Board to adopt rules appropriate to properly accomplish TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

No other statute, code, or article is affected by this proposal.

*§380.9520. Regulation Break for Youth out of Control.*

(a) Purpose. This rule provides for the temporary removal of a youth as a regulation break when the youth appears to have temporarily lost control of behavior, including short-term confinement in a locked room if the youth meets certain criteria. The regulation break is intended to allow the youth time to regain self-control, avoid maladaptive or dangerous behaviors, and demonstrate skillful behaviors and commitment to safety. Removal addressed in this rule is not a disciplinary consequence and is generally in a location near the activity in process.

(b) Definitions.

(1) Regulation Break--the temporary removal of a youth from an activity at the request of either staff or the youth and placement of the youth in an unlocked area.

(2) Directed Regulation Break--the confinement of a youth in a locked room when the youth is out of control and the youth's behavior poses a serious and immediate physical danger to others.

(c) Applicability.

(1) This rule applies to residential facilities operated by the Texas Juvenile Justice Department.

(2) This rule does not apply to a youth referred to the Security Program. See §380.9740 of this chapter (relating to Security Program).

(d) General Provisions.

(1) Regulation Break.

(A) The purpose of a regulation break is to allow a youth who appears to have temporarily lost control of the youth's behavior the ability to be removed from the current program and placed in an unlocked area to allow the youth time to regain self-control.

(B) Either the youth or staff may request that a youth be placed on a regulation break. A youth's group may not request the youth be placed on a regulation break.

(C) If staff request the regulation break, the reason for the request is explained to the youth, and the youth is given the opportunity to explain the maladaptive behavior and demonstrate skillful behavior and commitment to safety. The youth may assist in determining readiness to resume regular activity.

(D) The youth must be joined or visually checked by staff at least every 15 minutes. The youth may require more frequent checks under a different rule or policy.

(2) Directed Regulation Break

(A) A youth may be placed on a directed regulation break if the youth is out of control and the youth's behavior poses a serious and immediate physical danger to others.

(B) A directed regulation break occurs in a locked room.

(C) The directed regulation break must be in individual youth sleeping quarters or a room specifically designated for directed regulation breaks. The room must:

*(i)* be heated, cooled, and ventilated;

*(ii)* have a minimum ceiling height of 7.5 feet when measured from the floor to the lowest point of the ceiling; and

*(iii)* be equipped with a viewing window that allows staff to observe the youth.

(D) The reason for the directed regulation break is explained to the youth, and the youth is given the opportunity to explain the maladaptive behavior and demonstrate skillful behavior and commitment to safety.

(E) The youth must be joined or visually checked by staff at least every 15 minutes. The youth may require more frequent checks under a different rule or policy.

(F) The directed regulation break must be terminated as soon as the youth is sufficiently under control as to no longer pose a serious and immediate danger to others. The youth may assist in determining readiness to resume regular activity.

(G) Youth in a directed regulation break must receive room checks and appropriate psychological and medical services.

(H) A directed regulation break may not be used for a youth on suicide alert status.

(I) Youth may not be placed in a directed regulation break if the youth requested the regulation break unless the youth is out of control and the youth's behavior poses a serious and immediate physical danger to others.

(e) Institutions.

(1) The total time a youth may be on a regulation break and/or a directed regulation break is 180 minutes, regardless of whether one or both types of breaks are used.

(2) If a youth on a regulation break exhibits an escalation in behavior to the point that the youth is out of control and the behavior poses a serious and immediate physical danger to others and less restrictive interventions have failed, the youth may be placed in a directed regulation break for the remaining portion of the 180 minutes. If the youth is unable to regain control after 180 minutes, staff should take other measures, such as referring the youth to the regulation and safety unit.

(3) Combining regulation breaks to circumvent the intent of the time limit is prohibited.

(f) Halfway Houses.

(1) A regulation break is limited to 90 minutes. If the youth is unable to regain control after 90 minutes, staff should take other measures. Directed regulation breaks are not permissible in halfway houses.

(2) Youth may not be placed in a regulation break in their bedrooms.

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 May 1, 2025.

TRD-202501504
Jana Jones
General Counsel
Texas Juvenile Justice Department
Earliest possible date of adoption: June 15, 2025
For further information, please call: (512) 490-7278

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## SUBCHAPTER F. SECURITY AND CONTROL

### 37 TAC §380.9739

The Texas Juvenile Justice Department (TJJD) proposes the repeal of 37 TAC §380.9739, Isolation.

SUMMARY OF CHANGES

Section 380.9739 is proposed for repeal so that its content can be revised and included in a new version of 37 TAC §380.9520.

FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the repeal is in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the repeal.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Manager, Policy Division, has determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of administering the repeal will be to consolidate and clarify the rules pertaining

to when a disruptive youth may be removed temporarily from planned activities.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed. No private real property rights are affected by the repeal.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the repeal is in effect, the repeals will have the following impacts.

(1) The proposed repeal does not create or eliminate a government program.

(2) The proposed repeal does not require the creation or elimination of employee positions at TJJD.

(3) The proposed repeal does not require an increase or decrease in future legislative appropriations to TJJD.

(4) The proposed repeal does not impact fees paid to TJJD.

(5) The proposed repeal does not create a new regulation.

(6) The proposed repeal does not expand, limit, or repeal an existing regulation.

(7) The proposed repeal does not increase or decrease the number of individuals subject to the section's applicability.

(8) The proposed repeal will not positively or adversely affect this state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Texas Juvenile Justice Department, Policy and Standards Section, P.O. Box 12757, Austin, Texas 78711, or via email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The repeal is proposed under §242.003, Human Resources Code, which requires the Board to adopt rules appropriate to properly accomplish TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

No other statute, code, or article is affected by this proposal.

*§380.9739. Isolation.*

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 May 1, 2025.

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Jana Jones
General Counsel
Texas Juvenile Justice Department
Earliest possible date of adoption: June 15, 2025
For further information, please call: (512) 490-7278

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**37 TAC §380.9742**

The Texas Juvenile Justice Department (TJJD) proposes new 37 TAC §380.9742, Security Unit Admission Pending Program or Facility Transition.

SUMMARY

New §380.9742 will establish criteria and procedures for temporarily allowing youth to be admitted to the security unit while awaiting transportation to another high-restriction facility within 48 hours, transportation to the Correctional Institutions Division of the Texas Department of Criminal Justice, transportation to a court hearing, or reassignment to the intervention program within TJJD.

FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the new section is in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the section.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Manager, Policy Division, has determined that for each year of the first five years the new section is in effect, the public benefit anticipated as a result of administering the section will be the establishing of criteria and procedures for admitting youth temporarily to the security unit under certain circumstances.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the new section as proposed. No private real property rights are affected by adoption of this section.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the new section is in effect, the section will have the following impacts.

(1) The proposed section does not create or eliminate a government program.

(2) The proposed section does not require the creation or elimination of employee positions at TJJD.

(3) The proposed section does not require an increase or decrease in future legislative appropriations to TJJD.

(4) The proposed section does not impact fees paid to TJJD.

(5) The proposed section does not create a new regulation.

(6) The proposed section does not expand, limit, or repeal an existing regulation.

(7) The proposed section does not increase or decrease the number of individuals subject to the section's applicability.

(8) The proposed section will not positively or adversely affect this state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Texas Juvenile Justice Department, Policy and Standards Section, P.O. Box 12757, Austin, Texas 78711, or via email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The new section is proposed under §242.003, Human Resources Code, which requires the board to adopt rules appropriate to the proper accomplishment of TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

No other statute, code, or article is affected by this proposal.

*§380.9742. Security Unit Admission Pending Program or Facility Transition Definitions.*

(a) Purpose. The purpose of this rule is to establish criteria and procedures for temporarily admitting Texas Juvenile Justice Department (TJJD) youth to the security unit if certain criteria are met.

(b) Applicability. This rule applies to youth assigned to a high-restriction facility operated by or under contract with TJJD who are awaiting:

(1) transportation to another TJJD high-restriction facility that is scheduled to occur within the next 48 hours;

(2) transportation to the Texas Department of Criminal Justice- Correctional Institutions Division (TDCJ-CID);

(3) transportation to a court hearing; or

(4) reassignment to the intervention program, as described under §380.9510 of this chapter (relating to Intervention Program).

(c) General Provisions.

(1) All standard security unit services (e.g., recreation, education) required in §380.9740 of this chapter (relating to Security Program) shall be provided while the youth is in the security unit under this rule.

(2) The referring staff must make a written request for admission to the director overseeing secure facilities or designee. Such written request is required for admission.

(3) The referring staff is responsible for ensuring that the following items are present at the time of referral:

(A) written statement including the purpose of admission, with supporting documentation (e.g., any incident reports or arrest reports, court orders, routine facility transfer documentation);

(B) medical subfile or copies of pertinent medical records, if electronic records are unavailable;

(C) documentation of any medication the youth is taking;

(D) copy of the written request for a court hearing, if applicable;

(E) Level II hearing finding of true for intervention-program-eligible conduct, if applicable; and

(F) expected length of stay in the security unit.

(4) Security staff are responsible for admitting, processing, and releasing youth from the security unit. Designated staff in the security unit will conduct a review to determine whether admission criteria have been met. A mental health review for contraindications is conducted to determine if placement in the security unit is appropriate.

(5) Youth are released from the security unit upon departing from the sending facility or, if no transportation is involved, upon reassignment to the intervention program.

(6) Youth are released from the security unit if the grounds for holding them in the security unit cease to exist (e.g., court hearing is canceled, youth is not admitted to the intervention program).

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

Filed with the Office of the Secretary of State on May 1, 2025.

TRD-202501505

Jana Jones
General Counsel
Texas Juvenile Justice Department
Earliest possible date of adoption: June 15, 2025
For further information, please call: (512) 490-7278

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# TITLE 40. SOCIAL SERVICES AND ASSISTANCE

## PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

### CHAPTER 1. STATE AUTHORITY RESPONSIBILITIES

### SUBCHAPTER G. COMMUNITY CENTERS

**40 TAC §§1.301 - 1.303, 1.305, 1.307 - 1.312**

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of §1.301, concerning Purpose; §1.302, concerning Application; §1.303, concerning Definitions; §1.305, concerning Process to Establish a New Community Center; §1.307, concerning Modifying a Community Center's Current Plan; §1.308, concerning Dissolution and Merger of Community Centers; §1.309, concerning Appointment of Manager or Management Team; §1.310, concerning Standards of Administration for Boards of Trustees; §1.311, concerning Civil Rights; and §1.312, concerning Fiscal Controls.

BACKGROUND AND PURPOSE

The purpose of the proposal is to repeal the rules in 40 TAC Chapter 1, State Authority Responsibilities, Subchapter G, because the rules are duplicative of rules in 26 TAC Chapter 300, Subchapter A.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §§1.301 - 1.303, 1.305, and 1.307 - 1.312, in 40 TAC Chapter 1, Subchapter G, removes rules that are no longer necessary.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the repeals will be in effect, enforcing or administering the repeals does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the repeals will be in effect:

(1) the proposed repeals will not create or eliminate a government program;

(2) implementation of the proposed repeals will not affect the number of HHSC employee positions;

(3) implementation of the proposed repeals will result in no assumed change in future legislative appropriations;

(4) the proposed repeals will not affect fees paid to HHSC;

(5) the proposed repeals will not create new regulations;

(6) the proposed repeals will repeal existing regulations;

(7) the proposed repeals will not change the number of individuals subject to the rules; and

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

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the rules will be removed.

LOCAL EMPLOYMENT IMPACT

The proposed repeals will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these proposed repeals because the repeals do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Haley Turner, Deputy Executive Commissioner of Community Services, has determined that for each year of the first five years the repeals are in effect, the public benefit will be removal of unnecessary rules from the TAC.

Trey Wood has also determined that for the first five years the repeals are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed repeals because the rules will be removed.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to *HHSRulesCoordinationOffice@hhs.texas.gov*.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R076" in the subject line.

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §524.0151, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; Texas Government Code §532.0051, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program; and Texas Health & Safety Code §533A.0355(a), which provides that the Executive Commissioner of HHSC shall adopt rules establishing the roles and responsibilities of LIDDAs.

The repeals implement Texas Government Code §524.0151 and §532.0051, Texas Human Resources Code §32.021, and Texas Health & Safety Code §533A.0355(a).

*§1.301. Purpose.*
*§1.302. Application.*
*§1.303. Definitions.*
*§1.305. Process to Establish a New Community Center.*
*§1.307. Modifying a Community Center's Current Plan.*
*§1.308. Dissolution and Merger of Community Centers.*
*§1.309. Appointment of Manager or Management Team.*
*§1.310. Standards of Administration for Boards of Trustees.*
*§1.311. Civil Rights.*
*§1.312. Fiscal Controls.*

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 April 29, 2025.

TRD-202501414
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: June 15, 2025
For further information, please call: (512) 438-5609

## CHAPTER 2. LOCAL AUTHORITY RESPONSIBILITIES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of §2.51, concerning Purpose; §2.52, concerning Application; §2.53, concerning Definitions; §2.54, concerning Accountability; §2.55, concerning Procurement; §2.56, concerning Community Services Contracting Requirements; §2.57, concerning Provisions for Community Services Contracts; §2.58, concerning Competitive Procurement Methods for Community Services; §2.59, concerning Non-competitive Procurement of Community Services; §2.60, concerning Open Enrollment; §2.61, concerning Consumer Access to Participating Community Services Contracts in Provider Network; §2.62, concerning Monitoring and Enforcing Community Services Contracts; §2.63, concerning References; §2.64, concerning Distribution; §2.151, concerning Most Appropriate and Available Treatment Alternative; and §2.152, concerning Special Considerations.

BACKGROUND AND PURPOSE

The purpose of the proposal is to repeal the rules in 40 TAC Chapter 2, Local Authority Responsibilities, Subchapter B and Subchapter D, in Title 40, Part 1, Texas Administrative Code (TAC) because the rules are duplicative of rules in 26 TAC Chapter 301, Subchapter A, and 26 TAC Chapter 306, Subchapter D.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §§2.51 - 2.64, 2.151, and 2.152, in 40 TAC Chapter 2, Subchapter B and Subchapter D, removes rules that are no longer necessary.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the repeals will be in effect, enforcing or administering the repeals does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the repeals will be in effect:

(1) the proposed repeals will not create or eliminate a government program;

(2) implementation of the proposed repeals will not affect the number of HHSC employee positions;

(3) implementation of the proposed repeals will result in no assumed change in future legislative appropriations;

(4) the proposed repeals will not affect fees paid to HHSC;

(5) the proposed repeals will not create new regulations;

(6) the proposed repeals will repeal existing regulations;

(7) the proposed repeals will not change the number of individuals subject to the rules; and

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

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the rules will be removed.

LOCAL EMPLOYMENT IMPACT

The proposed repeals will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these repeals because the repeals do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Haley Turner, Deputy Executive Commissioner of Community Services, has determined that for each year of the first five years the repeals are in effect, the public benefit will be removal of duplicative rules from the Texas Administrative Code.

Trey Wood has determined that for the first five years the repeals are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed repeals because the rules will be removed.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to HHSRulesCoordinationOffice@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R076" in the subject line.

## SUBCHAPTER B. CONTRACTS MANAGEMENT FOR LOCAL AUTHORITIES

**40 TAC §§2.51 - 2.64**

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and Texas Health & Safety Code §533A.0355(a), which provides that the Executive Commissioner of HHSC shall adopt rules establishing the roles and responsibilities of LIDDAs.

The repeals implement Texas Government Code §531.0055 and Texas Health & Safety Code §533A.0355(a).

*§2.51. Purpose.*
*§2.52. Application.*
*§2.53. Definitions.*
*§2.54. Accountability.*
*§2.55. Procurement.*
*§2.56. Community Services Contracting Requirements.*
*§2.57. Provisions for Community Services Contracts.*
*§2.58. Competitive Procurement Methods for Community Services.*
*§2.59. Non-competitive Procurement of Community Services.*
*§2.60. Open Enrollment.*
*§2.61. Consumer Access to Participating Community Services Contractors in Provider Network.*
*§2.62. Monitoring and Enforcing Community Services Contracts.*
*§2.63. References.*
*§2.64. Distribution.*

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 April 29, 2025.

TRD-202501415
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: June 15, 2025
For further information, please call: (512) 438-5609

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## SUBCHAPTER D. MENTAL HEALTH SERVICES--ADMISSION, CONTINUITY, AND DISCHARGE

**40 TAC §2.151, §2.152**

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and Texas Health & Safety Code §533A.0355(a), which provides that the Executive Commissioner of HHSC shall adopt rules establishing the roles and responsibilities of LIDDAs.

The repeals implement Texas Government Code §531.0055 and Texas Health & Safety Code §533A.0355(a).

*§2.151. Most Appropriate and Available Treatment Alternative.*

*§2.152. Special Considerations.*

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 April 29, 2025.

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Karen Ray
Chief Counsel
Department of Aging and Disability Services
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