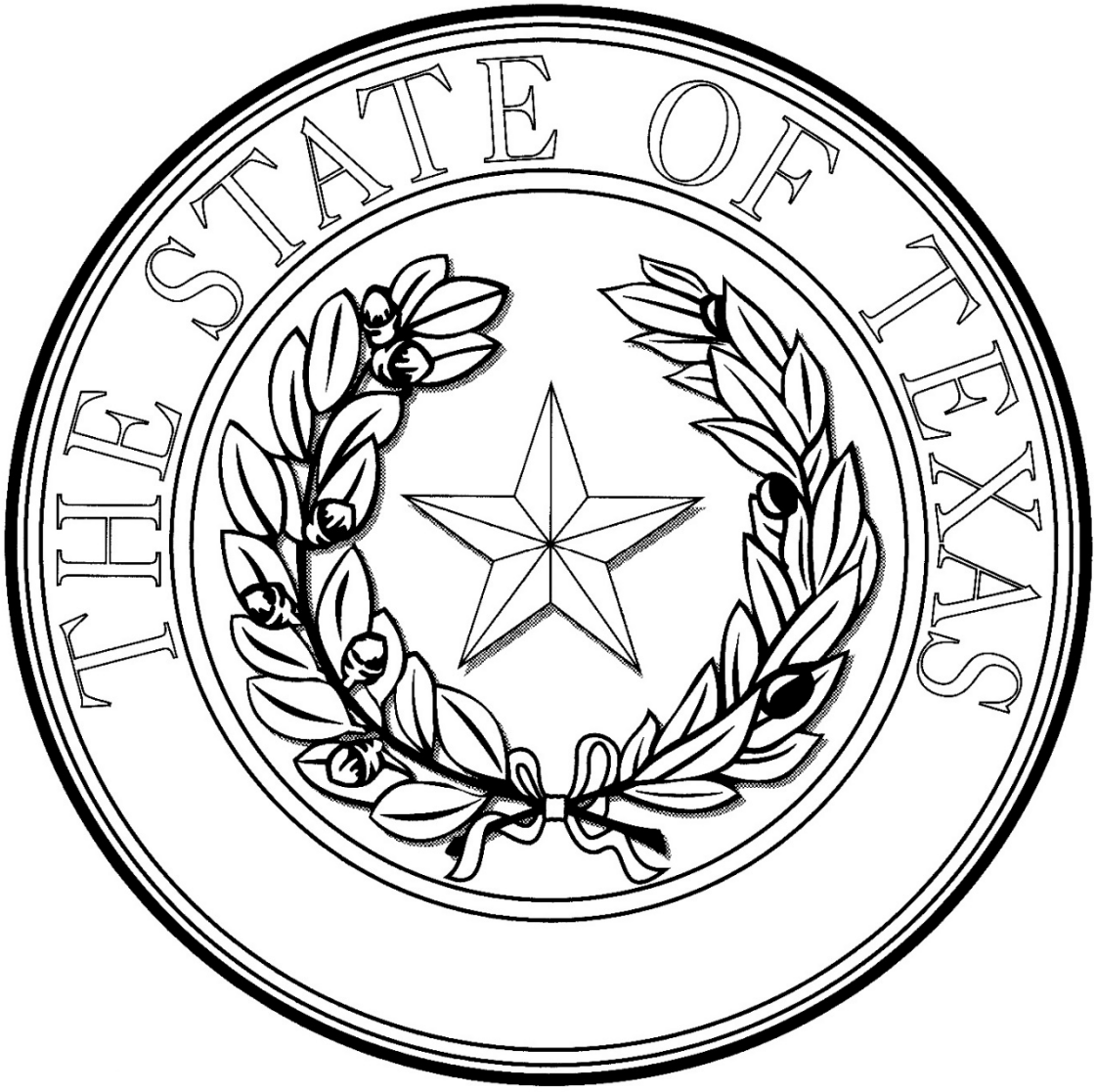
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Volume 50 Number 51 *December 19, 2025* *Pages 8123 – 8414*



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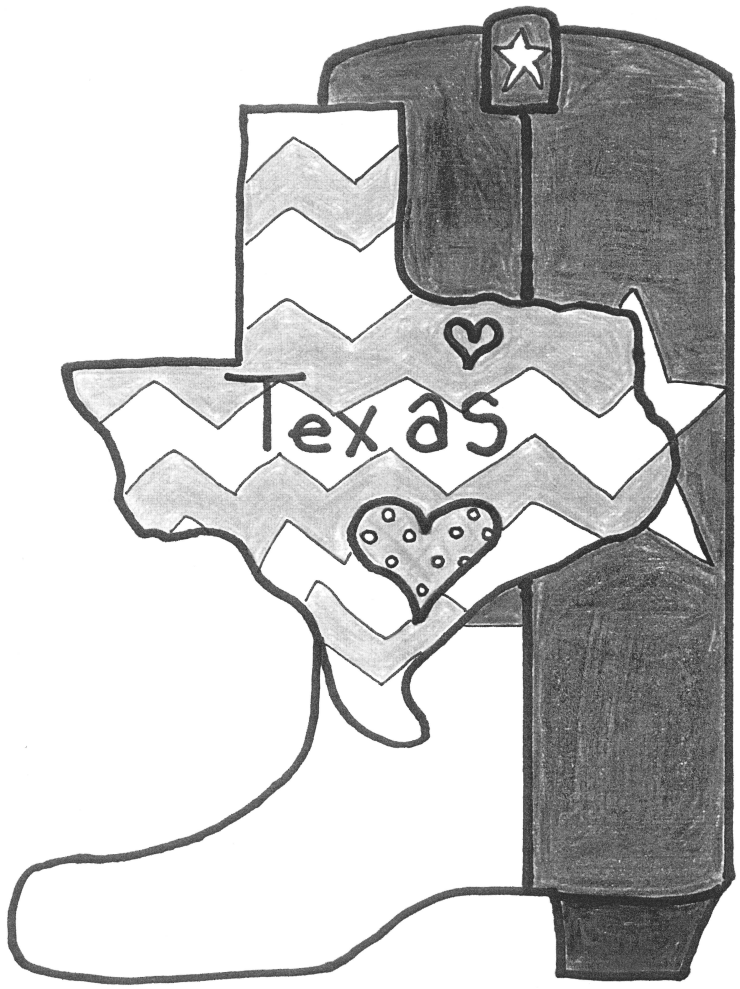
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THE GOVERNOR

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

Appointments

Appointments for December 4, 2025

Appointed to the Governing Board of the Texas School for the Deaf for a term to January 31, 2031, Heather M. Lightfoot of Austin, Texas (replacing Heather M. Lightfoot of Austin whose term expired).

Appointed to the Governing Board of the Texas School for the Deaf for a term to January 31, 2031, Gregorio Mata, Jr. of Edinburg, Texas (replacing Keith E. Sibley of Bedford whose term expired).

Appointed to the Governing Board of the Texas School for the Deaf for a term to January 31, 2031, Oscar L. Ocuto, Ed.D. of Manchaca, Texas (replacing David A. Saunders of Parker whose term expired).

Appointments for December 5, 2025

Appointed to the Texas Commission on the Arts for a term to August 31, 2031, Theresa W. Chang of Houston, Texas (The Honorable Theresa W. Chang of Houston is being reappointed).

Appointed to the Texas Commission on the Arts for a term to August 31, 2031, Karen E. Snead Partee of McKinney, Texas (Ms. Snead of McKinney is being reappointed).

Greg Abbott, Governor

TRD-202504507

♦ ♦ ♦

Proclamation 41-4246

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation related to fire weather conditions that began on August 10, 2025, as amended and renewed in subsequent proclamations, certifying that increased fire weather conditions pose an imminent threat of widespread or severe damage, injury, or loss of life or property in several counties; and

WHEREAS, the Texas Division of Emergency Management has confirmed that those same increased fire weather conditions persist in certain counties in Texas;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby amend and renew the aforementioned proclamation and declare a disaster in Andrews, Aransas, Archer, Armstrong, Atascosa, Austin, Bailey, Bandera, Bastrop, Baylor, Bee, Bexar, Blanco, Borden, Briscoe, Brooks, Brown, Burleson, Burnet, Caldwell, Calhoun, Callahan, Cameron, Carson, Castro, Childress, Clay, Cochran, Coke, Coleman, Collingsworth, Colorado, Comal, Comanche, Concho, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dawson, Deaf Smith, DeWitt, Dickens, Dimmit, Donley, Duval, Eastland, Ector, El Paso, Erath, Fayette, Fisher, Floyd, Foard, Frio, Gaines, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gray, Guadalupe, Hale, Hall, Hamilton, Hansford, Hardeman, Hartley, Haskell, Hays, Hemphill, Hidalgo, Hockley, Hood, Howard, Hudspeth, Hutchinson, Irion, Jack, Jackson, Jasper, Jeff Davis, Jim Hogg, Jim Wells, Jones, Karnes, Kendall, Kenedy, Kent, Kerr, Kimble, King, Kleberg, Knox, La Salle, Lamb, Lampasas, Lavaca, Lee, Lipscomb, Live Oak, Llano, Loving, Lubbock, Lynn, Martin, Mason, Matagorda, Maverick, McCulloch, McMullen, Medina, Menard, Midland, Milam, Mills, Mitchell, Moore, Motley, Nolan, Nueces, Ochiltree, Oldham, Palo Pinto, Parker, Parmer, Pecos, Potter, Randall, Reagan, Reeves, Refugio, Roberts, Runnels, San Patricio, San Saba, Schleicher, Scurry, Shackelford, Sherman, Somervell, Starr, Stephens, Sterling, Stonewall, Sutton, Swisher, Taylor, Terry, Throckmorton, Tom Green, Travis, Upton, Victoria, Waller, Ward, Washington, Webb, Wharton, Wheeler, Wichita, Wilbarger, Willacy, Williamson, Wilson, Winkler, Yoakum, Young, Zapata, and Zavala Counties.

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

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

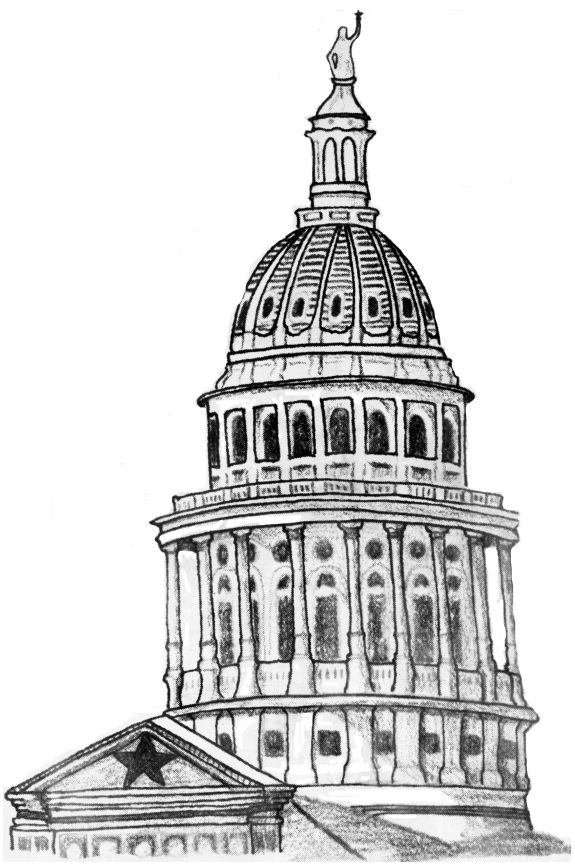
In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

FILED IN THE OFFICE OF THE IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 9th day of December, 2025.

Greg Abbott, Governor

TRD-202504501

♦ ♦ ♦



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 7. BANKING AND SECURITIES

PART 6. CREDIT UNION DEPARTMENT

CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

SUBCHAPTER D. POWERS OF CREDIT UNIONS

7 TAC §91.401

The Credit Union Commission proposes amendments to §91.401, Credit Union Ownership of Property.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The proposed amendments, identified as a part of the Credit Union Department's quadrennial rule review process, would simplify the definition of "premises," delete references to terms that were removed from the rule with the 2015 amendments, change the time for a credit union investing in property to put it into service for credit union business to six years and create a process for requesting an extension of time for consistency with the NCUA regulation, and make organizational and other non-substantive changes for improved readability.

COST TO REGULATED PERSONS. This rule proposal is not subject to Texas Government Code §2001.0045 concerning increasing costs to regulated persons because this agency is a self-directed semi-independent (SDSI) agency under Finance Code Chapter 16 and is therefore exempt under §2001.0045(c)(8).

GOVERNMENT GROWTH IMPACT STATEMENT. In compliance with Texas Government Code §2001.0221, the Department has prepared a government growth impact statement.

For each year of the first five years that the rule as amended will be in effect, the rule will not:

--create or eliminate a government program;

--require the creation of new employee positions or the elimination of existing employee positions;

--require an increase or decrease in future legislative appropriations to the Department;

--require an increase or decrease in fees paid to the Department;

--create new regulations;

--expand, limit, or repeal existing regulations;

--increase or decrease the number of individuals subject to the rule's applicability;

--positively or adversely affect this state's economy.

ENVIRONMENTAL RULE ANALYSIS. The proposed rule is not a "major environmental rule" as defined by Government Code, §2001.0225. The proposed rule is not specifically intended to protect the environment or to reduce risks to human health from environmental exposure. Therefore, a regulatory environmental analysis is not required.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS. Mike Riepen, Commissioner, has determined that for the first five-year period the proposed amendments are in effect, there are no reasonably foreseeable implications relating to cost or revenues of state or local governments under Government Code §2001.024(a)(4) as a result of enforcing or administering these amendments as proposed.

PUBLIC BENEFIT/COST NOTE. Mr. Riepen has determined, pursuant to Government Code §2001.024(a)(5), that for the first five-year period the amended rules are in effect, the public benefit is increased clarity and readability of the rule. He has further determined there will be no probable economic cost to the credit union system or to persons required to comply with the rule.

IMPACT ON LOCAL EMPLOYMENT OR ECONOMY. There is no reasonably anticipated effect on a local economy for the first five years that the proposed amendments are in effect. Therefore, no economic impact statement, local employment impact statement, or regulatory flexibility analysis is required under Texas Government Code §§2001.022 or 2001.024(a)(6).

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. Mr. Riepen has also determined that for each year of the first five years the proposed amendment is in effect, there will be no reasonably forecasted adverse economic effect on small businesses, micro-businesses, or rural communities as a result of implementing these amendments, and, therefore, no regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is required.

TAKINGS IMPACT ASSESSMENT. No private real property interests are affected by this proposal, and 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. Therefore, the rule does not constitute a taking under Texas Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. The Department is requesting public comments on the proposed amendments and information related to the cost, benefit, or effect of the proposed rules, including any applicable data, research, or analysis, from any person required to comply with the proposed rule or any other interested person. Please include an explanation

of how and why the submitted information is specific to the proposed rules. Please do not submit copyrighted, confidential, or proprietary information. Written comments on the proposed amendments may be submitted in writing to Devon Bijansky, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 or by email to CUDMail@cud.texas.gov. To be considered, a written comment must be received within 30 days after publication of the proposal in the *Texas Register*.

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Finance Code, Section 15.402, which authorizes the Commission to adopt reasonable rules for administering Texas Finance Code, Title 2, Chapter 15 and Title 3, Subtitle D. Authority to adopt these amendments is found also in Texas Finance Code Sections 124.351.

STATUTORY SECTIONS AFFECTED. The statutory provisions affected by the proposed amendments are contained in Texas Finance Code Chapter 15 and Title 3, Subtitle D specifically Finance Code Section 124.351.

§91.401. Credit Union Ownership of Property.

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

[~~(1) Equipment includes all movable furniture, fixtures, and equipment of the credit union, its branch offices, and consolidated credit union service organizations, including automobiles and other vehicles, and any lien on the above.~~]

(1) [~~(2)~~] Immediate family member--a spouse or other family member living in the same household.

(2) [~~(3)~~] Premises--any real property where the credit union transacts or will transact business. [~~include the cost less accumulated depreciation, of land and buildings actually owned and occupied (or to be occupied) by the credit union, its branch offices, and consolidated credit union service organizations. This includes vaults, fixed machinery, parking facilities, and real estate acquired and intended, in good faith, for future expansion. It also includes capitalized leases, leasehold improvements, and remodeling costs to existing premises.~~]

(3) [~~(4)~~] Senior management employee [~~Management Employee~~]--the chief executive officer, any assistant chief executive officers (e.g. vice presidents and above) and the chief financial officer.

(b) Restrictions on Ownership of Property. A credit union shall not acquire real property for any purpose other than majority use as premises.

(1) A credit union investing in real property, including a leasehold interest therein, with a good faith intention to use it in future expansion must put the majority of each property into service for credit union business within six years after making the investment.

(2) The Commissioner may extend the six-year period in paragraph (1) of this subsection. To seek an extension, a credit union must submit a written request and fully explain why it needs the extension. The Commissioner will approve or disapprove the request in writing based on safety and soundness considerations.

(c) [~~(b)~~] Investment Limitations on Premises. Without the prior written consent of the Department, a credit union may not directly or indirectly invest an amount in excess of its net worth in premises. In support of an application for approval of an additional investment in premises, a credit union shall submit such statements and reports as the Department requires.

(1) When analyzing an application for an additional investment in credit union premises, the Department will consider:

(A) consistency with safe and sound credit union practices;

(B) the reasonableness of the amount of credit union premises and the annual expenditures required to carry them relative to the credit union's net worth and the nature and volume of operations; and

(C) the effect of the investment on future earnings.

(2) The Department will consider denying a request for an additional investment in credit union premises when:

(A) the additional investment would have a material negative effect on the credit union's earnings, capital, or liquidity; or

(B) the credit union has not demonstrated a reasonable need for the additional investment.

(3) The Department may impose appropriate special conditions for an approval of an additional credit union premises investment if it determines that they are necessary or appropriate to protect the safety and soundness of the credit union or to further other supervisory or policy considerations.

[~~(c) Restrictions on Ownership of Property. A credit union shall not acquire premises for the principal purpose of engaging in real estate rentals or speculation.~~]

(d) Transactions with insiders.

(1) Without the prior approval of a disinterested majority of the board of directors recorded in the minutes or, if a disinterested majority cannot be obtained, the prior written approval of the commissioner, a credit union may not directly or indirectly:

(A) [~~(1)~~] sell or lease an asset of the credit union to a director, committee member, or senior management employee, or immediate family member [~~members~~] of such individual; or

(B) [~~(2)~~] purchase or lease an asset in which a director, committee member, senior management employee, or immediate family member [~~members~~] of such individual has an interest.

(2) All transactions with family members not defined as immediate family members in subsection (a)(1) of this section must be conducted at arm's length and in the interest of the credit union.

[~~(e) Use requirement for premises. If real property or leasehold interest is acquired and intended, in good faith, for use in future expansion, the credit union must partially satisfy the "primarily for its own use in conducting business" requirement within five years after the credit union makes the investment.~~]

[~~(f) Consent to Exceed Limitation. Generally, a credit union need not obtain the Department's approval to invest in premises. However, prior approval is required if the total aggregate investment in premises will exceed the credit union's net worth. A credit union shall submit such statements and reports as the Department may require in support of the higher investment limit.~~]

[~~(1) When analyzing an application for an additional investment in credit union premises, the Department will consider:~~]

[~~(A) Consistency with safe and sound credit union practices;~~]

[~~(B) The reasonableness of the amount of credit union premises and the annual expenditures required to carry them relative to~~

~~the credit union's net worth and the nature and volume of operations; and~~]

[~~(C) The effect of the investment on future earnings.~~]

[~~(2) The Department will consider denying a request for an additional investment in credit union premises when:~~]

[~~(A) The additional investment would have a material negative effect on the credit union's earnings, capital, or liquidity; or~~]

[~~(B) The credit union has not demonstrated a reasonable need for the additional investment.~~]

[~~(3) The Department may impose appropriate special conditions for an approval of an additional credit union premises investment, if it determines that they are necessary or appropriate to protect the safety and soundness of the credit union or to further other supervisory or policy 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 December 5, 2025.

TRD-202504437
Mike Riepen
Commissioner
Credit Union Department
Earliest possible date of adoption: January 18, 2026
For further information, please call: (512) 837-9236

♦ ♦ ♦

TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 84. DRIVER EDUCATION AND SAFETY

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 84, Subchapter A, §84.3; Subchapter M, §84.500 and §84.504; Subchapter N, §84.600; and the Program Guides, regarding the Driver Education and Safety (DES) program. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The proposed rules under 16 TAC, Chapter 84, implement Senate Bill (SB) 1366, 89th Legislature, Regular Session (2025), and Texas Education Code, Chapter 1001, Driver and Traffic Safety Education.

The proposed rules are necessary to address the Legislature's driver training instruction changes for the implementation of SB 1366 for the DES program, which mandates that driver training course curriculum includes information relating to the dangers and penalties associated with violating traffic laws in construction and maintenance work zones. The DES Program Guides were amended to May 2026 to reflect the changes mandated by SB 1366 as well. The Program Guides will be published separately in the "In Addition" section of the *Texas Register.*

ADVISORY BOARD RECOMMENDATIONS

The proposed rules were presented to and discussed by the Driver Training and Traffic Safety Advisory Board at its meeting on November 12, 2025. The Advisory Board did not make any changes to the proposed rules. The Advisory Board voted and recommended that the proposed rules be published in the *Texas Register* for public comment.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §84.3, Materials Adopted by Reference, to reflect the change in the new edition dates for the DES Program Guides to "May 2026 Edition".

The proposed rules amend §84.500, Courses of Instruction for Driver Education Providers, to include, consistent with SB 1366, that information related to penalties, fines, and inherent dangers such as bodily injury, death, and property damage associated with the violation of traffic laws in construction and maintenance work zones be included in driver education course curriculum.

The proposed rules amend §84.504, Driving Safety Courses of Instruction, to include, consistent with SB 1366, that information related to penalties, fines, and inherent dangers such as bodily injury, death, and property damage associated with the violation of traffic laws in construction and maintenance work zones be included in driving safety course curriculum.

The proposed rules amend §84.600, Program of Organized Instruction, to: (1) clarify that the educational objectives in §84.500 (Courses of Instruction for Driver Education Providers), and the Program Guides apply to exempt entities such as public schools, educational service centers, colleges and universities in their instruction; and (2) include, consistent with SB 1366, that information related to penalties, fines, and inherent dangers such as bodily injury, death, and property damage associated with violation of traffic laws in construction and maintenance work zones be included in their driver education course curriculum.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

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

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

LOCAL EMPLOYMENT IMPACT STATEMENT

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

PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be that drivers will be made more aware of the dangers associated with violating traffic laws in construction or maintenance work zones, and the penalties for certain offenses committed in a construction or maintenance work zone. The proposed rules also align the educational objectives for driver training and driving safety courses with SB 1366, and the DES Program Guides to include all required topics.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

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

All driver training school courses of instruction will have to be altered as to time and content to include information relating to construction or maintenance work zones. Changing the content of their courses could result in a small cost to some providers, but these costs are anticipated to be minimal, if any.

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

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

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

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

4. The proposed rules do not require an increase or decrease in fees paid to the agency.

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

6. The proposed rules expand, limit, or repeal an existing regulation.

The proposed rules expand an existing regulation by adding a new educational objective for driver education and driving safety courses by requiring the inclusion of information relating to construction or maintenance work zones.

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

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENTS AND INFORMATION RELATED TO THE COST, BENEFIT, OR EFFECT OF THE PROPOSED RULES

The Department is requesting public comments on the proposed rules and information related to the cost, benefit, or effect of the proposed rules, including any applicable data, research, or analysis. Any information that is submitted in response to this request must include an explanation of how and why the submitted information is specific to the proposed rules. Please do not submit copyrighted, confidential, or proprietary information.

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

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §84.3

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and Texas Education Code, Chapter 1001, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is Senate Bill 1366, 89th Legislature, Regular Session (2025).

§84.3. Materials Adopted by Reference.

(a) The minimum requirements for course content, classroom instruction, in-car, simulation, and range training required by this chapter for a minor and adult driver education course are the standards established in the Program of Organized Instruction in Driver Education and Traffic Safety (POI-DE), May 2026 [~~December~~ 2024] Edition, created and distributed by the department, which is adopted into these rules by reference.

(b) The minimum requirements for course content and instruction for a driver education course exclusively for adults are the standards established in the Program of Organized Instruction in Driver Education and Traffic Safety Exclusively for Adults Six-Hour Course (POI-Adult Six-Hour), May 2026 [~~December~~ 2024] Edition, created and distributed by the department, which is adopted into these rules by reference.

(c) The minimum requirements for course content and instruction for a driving safety course are the standards established in

the Course of Organized Instruction for Driving Safety, (COI-Driving Safety), May 2026 [~~December~~ ~~2024~~] Edition, created and distributed by the department, which is adopted into these rules by reference.

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

Filed with the Office of the Secretary of State on December 8, 2025.

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Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Earliest possible date of adoption: January 18, 2026
For further information, please call: (512) 463-7750

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SUBCHAPTER M. CURRICULUM AND ALTERNATIVE METHODS OF INSTRUCTION

16 TAC §84.500, §84.504

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and Texas Education Code, Chapter 1001, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is Senate Bill 1366, 89th Legislature, Regular Session (2025).

§84.500. Courses of Instruction for Driver Education Providers.

(a) The educational objectives of driver training courses must include promoting respect for and encouraging observance of traffic laws and traffic safety responsibilities of driver education and citizens; instruction on law enforcement procedures for traffic stops; human trafficking prevention; litter prevention; anatomical gifts; leaving children in vehicles unattended; distractions; motorcycle awareness; recreational water safety; information relating to the Texas Driving with Disabilities Program; safely operating a vehicle near oversize or overweight vehicles; the passing of certain vehicles as described in Transportation Code §545.157; the dangers and consequences of street racing; alcohol awareness and its effect on motor vehicle operation; reducing traffic violations, injuries, deaths, and economic losses; proper child passenger safety seat system use; information relating to penalties, fines, and inherent dangers such as bodily injury, death, and property damage in construction and maintenance work zones; and instilling safe driving habits through education, including Texas traffic laws, risk management, driver attitudes, courtesy skills, and evasive driving techniques.

~~[(a) The educational objectives of driver training courses must include, but not be limited to, promoting respect for and encouraging observance of traffic laws and traffic safety responsibilities of driver education and citizens; instruction on law enforcement procedures for traffic stops in accordance with provisions of the Community Safety Education Act; information relating to human trafficking prevention in accordance with the provisions of the Julia Wells Act (Senate Bill 1831, Section 3, 87th Regular Legislature (2021)); information relating to the Texas Driving with Disabilities Program (Senate Bill 2304, 88th Regular Legislature (2023)); litter prevention; anatomical gifts; safely operating a vehicle near oversize or overweight vehicles; the passing of certain vehicles as described in Transportation Code §545.157; the dangers and consequences of street racing; leaving children in vehicles unattended; distractions; motorcycle awareness; alcohol awareness and the effect of alcohol on the effective operation of a motor vehicle; recreational water safety; reducing traffic violations, injuries, deaths, and economic losses; the proper use of child passenger safety seat systems; and motivating development of traffic-related competencies through education, including, but not limited to, Texas traffic laws, risk management, driver attitudes, courtesy skills, and evasive driving techniques.]~~

(b) - (e) (No change.)

§84.504. Driving Safety Courses of Instruction.

This section contains requirements for traditional classroom driving safety courses. For each course, the following curriculum documents and materials are required to be submitted as part of the application for approval. Courses of instruction must not be approved that contain language that a reasonable and prudent individual would consider inappropriate. Any changes and updates to a course must be submitted by the driving safety provider and approved prior to being offered.

(1) Driving safety courses.

(A) Educational objectives. The educational objectives of driving safety courses must include promoting respect for and encouraging observance of traffic laws and traffic safety responsibilities of drivers and citizens; instruction on law enforcement procedures for traffic stops; human trafficking prevention; litter prevention; anatomical gifts; leaving children in vehicles unattended; distractions; motorcycle awareness; information relating to the Texas Driving with Disabilities Program; safely operating a vehicle near oversize or overweight vehicles; the passing of certain vehicles as described in Transportation Code §545.157; the dangers and consequences of street racing; alcohol awareness and its effect on motor vehicle operation; reducing traffic violations, injuries, deaths, and economic losses; proper child passenger safety seat system use; information relating to penalties, fines, and inherent dangers such as bodily injury, death, and property damage in construction and maintenance work zones; and instilling safe driving habits through education, including Texas traffic laws, risk management, driver attitudes, courtesy skills, and evasive driving techniques.

~~[(A) Educational objectives. The educational objectives of driving safety courses must include, but not be limited to, promoting respect for and encouraging observance of traffic laws and traffic safety responsibilities of drivers and citizens; information relating to human trafficking prevention in accordance with the provisions of the Julia Wells Act (Senate Bill 1831, Section 3, 87th Regular Legislature (2021)); information relating to the Texas Driving with Disabilities Program (Senate Bill 2304, 88th Regular Legislature (2023)); implementation of law enforcement procedures for traffic stops in accordance with the provisions of the Community Safety Education Act; the proper use of child passenger safety seat systems; safely operating a vehicle near oversize or overweight vehicles; the passing of certain vehicles as described in Transportation Code §545.157; the dangers and consequences of street racing; reducing traffic violations; reducing traffic-related injuries, deaths, and economic losses; and motivating continuing development of traffic-related competencies.]~~

(B) - (H) (No change.)

(2) (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.

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Doug Jennings
General Counsel
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SUBCHAPTER N. PROGRAM INSTRUCTION FOR PUBLIC SCHOOLS, EDUCATION SERVICE CENTERS, AND COLLEGES OR UNIVERSITIES COURSE REQUIREMENTS

16 TAC §84.600

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and Texas Education Code, Chapter 1001, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is Senate Bill 1366, 89th Legislature, Regular Session (2025).

§84.600. Program of Organized Instruction.

(a) - (b) (No change.)

(c) Course content, minimum instruction requirements, and administrative guidelines for each phase of driver education classroom instruction, in-car training (behind-the-wheel and observation), simulation, and multicar range must include the instructional objectives established by the department, as specified in §84.500 (relating to Courses of Instruction for Driver Education Providers), this subsection and the POI-DE, and meet the requirements of this subchapter. Sample instructional modules may be obtained from the department. Schools may use sample instructional modules developed by the department or develop their own instructional modules based on the approved instructional objectives. The instructional objectives are organized into the modules outlined in this subsection and include objectives for classroom and in-car training (behind-the-wheel and observation), simulation lessons, parental involvement activities, and evaluation techniques. [~~In addition, the instructional objectives that must be provided to every student enrolled in a minor and adult driver education course include information relating to litter prevention; anatomical gifts; safely operating a vehicle near oversize or overweight vehicles; distractions, including the use of a wireless communication device that includes texting; motorcycle awareness; alcohol awareness and the effect of alcohol on the effective operation of a motor vehicle; and recreational water safety.~~] A student may apply to the Texas Department of Public Safety (DPS) for a learner's license after completing six hours of instruction as specified in Module One of the POI-DE.

(d) - (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.

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 67. STATE REVIEW AND APPROVAL OF INSTRUCTIONAL MATERIALS SUBCHAPTER B. STATE REVIEW AND APPROVAL

19 TAC §67.27

The State Board of Education (SBOE) proposes an amendment to §67.27, concerning eligibility and appointment of instructional materials review and approval (IMRA) reviewers. The proposed amendment would update the requirements for suitability reviewers and the process for the appointment and selection of suitability reviewers.

BACKGROUND INFORMATION AND JUSTIFICATION: Texas Education Code (TEC), Chapter 31, addresses instructional materials in public education and permits the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of instructional materials. House Bill 1605, 88th Texas Legislature, Regular Session, 2023, significantly revised TEC, Chapter 31, including several provisions under SBOE authority.

The IMRA process requires the use of both quality and suitability reviewers. Dedicated suitability reviewers were introduced for the first time as part of IMRA Cycle 2025. The proposed amendment would incorporate feedback gathered during the first year of implementation. Certain language requirements for nominees would be added, and the process for reviewer selection would be clarified, specifically related to timelines.

The SBOE approved the proposed amendment for first reading and filing authorization at its November 21, 2025 meeting.

FISCAL IMPACT: Todd Davis, associate commissioner for instructional strategy, has determined that for the first five years 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: 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 expand an existing regulation by clarifying the requirements, timeline, and process for the appointment and selection of suitability reviewers.

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

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Davis 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 clarify the process for nomination and selection of suitability reviewers. 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 SBOE requests public comments on the proposal, including, per Texas Government Code, §2001.024(a)(8), information related to the cost, benefit, or effect of the proposed rule and any applicable data, research, or analysis, from any person required to comply with the proposed rule or any other interested person. The public comment period on the proposal begins December 19, 2025, and ends at 5:00 p.m. on January 20, 2026. The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in January 2026 in accordance with the SBOE board operating policies and procedures. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on December 19, 2025.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §31.003(a), which permits the State Board of Education (SBOE) to adopt rules for the adoption, requisition, distribution, care, use, and disposal of instructional materials; TEC, §31.022, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023, which requires the SBOE to review instructional materials that have been provided to the board by the Texas Education Agency (TEA) under TEC, §31.023; and TEC, §31.023, as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023, which requires the commissioner of education to establish, in consultation with and with the approval of the SBOE, a process for the annual review of instructional materials by TEA. In conducting a review under this section, TEA must use a rubric developed by TEA in consultation with and approved by the SBOE.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §31.003(a); and §31.022 and §31.023, as amended by House Bill 1605, 88th Texas Legislature, Regular Session, 2023.

§67.27. IMRA Reviewers: Eligibility and Appointment.

(a) All instructional materials review and approval (IMRA) reviewers must complete an application. The application will include a resume and supervisor, if applicable, or another reference contact information and must request any professional associations, affiliations, and groups in a format approved by the State Board of Education (SBOE) chair. SBOE members shall have access to all completed applications in their respective districts.

(b) The IMRA reviewer application shall be posted to the SBOE website.

(c) An IMRA reviewer may serve as a quality reviewer or as a suitability reviewer.

(d) Quality reviewers.

(1) IMRA quality reviewers must meet one of the following minimum qualification requirements:

(A) educators with three or more years of experience;

(B) district or campus personnel who have taught and/or directly supported the grade level(s) and subject area(s) or course(s) for at least three years;

(C) professors at an accredited institution of higher education in Texas with at least three years or more experience in the subject area(s) or courses; or

(D) persons with evidence of strong content knowledge and experience in the grade level(s) and subject area(s) or course(s).

(2) The Texas Education Agency (TEA) may reject a quality reviewer applicant if the candidate does not meet minimum eligibility as outlined in this section with approval of the SBOE member for which the applicant is a district resident. The member has one week to respond to TEA's decision. If the SBOE member approves applicants who were previously rejected by TEA, those applications shall be reinstated to the applicant pool to be rated.

(3) All eligible quality reviewer applicants shall be evaluated by TEA staff using the applicants' experience and qualifications rated on a scale of 1-3. The best qualified individuals are ranked 1.

(4) Once rated, all eligible quality reviewer applicants are shared with the SBOE member for which the applicant is a district resident.

(5) TEA staff provides all quality reviewer applicants and their applications to the SBOE member for which the applicant is a district resident, and the SBOE member may adjust rankings, veto applicants, and/or identify top candidates.

(6) The SBOE member has two weeks to return applicants and their rankings to TEA staff. If the SBOE member does not submit a response, TEA staff's ranking shall remain unchanged.

(7) IMRA quality reviewers must be approved by the SBOE member for which they are a district resident.

(8) If an individual invited to serve on a quality review panel declines the invitation, the relevant SBOE member will select an alternate from the list of candidates within one week. To the extent an SBOE member fails to select an alternate within one week, the top-ranked applicant is deemed selected.

(9) In the event TEA does not receive enough applications to fill available roles, TEA may:

(A) reduce the size of the review team to no fewer than three reviewers;

(B) postpone the review of materials using the SBOE-approved strategy for prioritizing selection of instructional materials for review; or

(C) modify the review schedule to allow for additional recruitment efforts.

(10) TEA staff shall build quality review panels using top candidates identified from each SBOE district. As final selections are made, TEA may consider the following characteristics to ensure that each individual review panel is balanced and has the necessary qualifications. The guidelines are established to ensure that the work groups are highly qualified, reflect the make-up of the state's educators, and include representation from the following.

(A) Experience: highly qualified educators and others with evidence of strong content knowledge and experience in the subject and/or grade level or bands and/or course(s).

(B) Position: a variety of positions reflected such as parents, classroom teachers, campus- and district-level administrators/specialists, education service center subject area personnel, representatives from higher education, and community members, including employers.

(C) School district size: large, midsize, and small school districts.

(D) Demographics: multiple and different racial and ethnic groups and males and females.

(E) School district/charter school: a variety of local education agencies are represented, including open-enrollment charter schools.

(F) Expertise: if a work group is assigned a grade band, at least one reviewer with experience teaching for each grade level will be prioritized.

(11) TEA staff shall maintain a database of individuals who have served on an IMRA review panel during the review process.

(12) Only if the SBOE member responds affirmatively to a request from TEA will an applicant be exempt from subsection (a) of this section, and only if the applicant has previously served as an IMRA quality reviewer in at least one of the prior two IMRA cycles and received an acceptable performance rating.

[~~(12) Applicants are exempt from subsection (a) of this section if they have previously served as an IMRA quality reviewer and received an acceptable performance rating; however, an SBOE member may waive this provision and require all applicants to resubmit their applications in accordance with subsection (a) of this section.~~]

(e) Suitability reviewers.

(1) Texas residency is a minimum requirement for any IMRA suitability reviewer.

(2) Each SBOE member shall annually nominate a minimum of 40 [~~20~~] applicants to serve as suitability reviewers and rank them from most preferred to least preferred.

(3) At least 20% of nominees must be fluent in the Spanish language and ranked separately from most preferred to least preferred.

(4) For the review of instructional materials for languages other than English, members must each nominate and rank at least five reviewers fluent in the languages to be reviewed.

(5) [~~(3)~~] A panel for suitability review consists of three reviewers and shall reflect the political affiliation of the membership of the SBOE. No more than one suitability reviewer per panel may be nominated by [~~from~~] any one SBOE member [~~district~~].

(6) [~~(4)~~] TEA staff shall build suitability review panels using top candidates identified from each SBOE district. As final selections are made, TEA may consider the following characteristics to ensure that each individual review panel is balanced and has the necessary qualifications.

(A) Experience: successful participation as a quality or suitability reviewer in a past review.

(B) Demographics: multiple and different racial and ethnic groups and males and females.

(7) [~~(5)~~] If an individual invited to serve on a review panel declines the invitation, TEA will then invite the next eligible reviewer from the SBOE member's list. [~~the relevant SBOE member will select an alternate from the list of candidates within one week. To the extent a member fails to select an alternate within one week, the top-ranked applicant is deemed selected.~~]

(8) [~~(6)~~] If there are not enough suitability reviewers available for a review cycle, TEA shall request more nominations from each SBOE member. To the extent a member fails to nominate additional candidates within one week of being notified by TEA, candidates from other SBOE member districts may be considered.

(9) If TEA still requires additional suitability candidates to complete the review after notifying SBOE members of the need for more nominations and fewer than 14 calendar days remain before the review begins, final reviewer selections shall be made in consultation with the SBOE chair to preserve SBOE authority.

(10) [~~(7)~~] If an SBOE member who nominated reviewers no longer holds the office before the start of the annual review, the new SBOE member may nominate different suitability reviewers or adjust their rankings. If the office is vacant, the SBOE chair may nominate different suitability reviewers or adjust their rankings.

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

Filed with the Office of the Secretary of State on December 8, 2025.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: January 18, 2026
For further information, please call: (512) 475-1497

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

The State Board of Education (SBOE) proposes new §§127.16, 127.752, 127.753, 127.756, and 127.757, concerning Texas Essential Knowledge and Skills (TEKS) for career development and career and technical education (CTE). The proposed new rules would add new TEKS developed by subject matter experts convened by the Texas State Technical College (TSTC) and Collin College that are needed for completion of career and technical education programs of study.

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.

During the November 2022 meeting, the SBOE approved a timeline for the review of CTE courses for 2022-2025. Also at the meeting, the SBOE approved a specific process to be used in the review and revision of the CTE TEKS. The CTE-specific process largely follows the process for TEKS review for other subject areas but was adjusted to account for differences specific to CTE.

In 2023, CTE advisory committees convened to make recommendations for the review and refresh of programs of study as required by the Texas Perkins State Plan. Finalized programs of study were published in the fall of 2023 with an implementation date beginning in the 2024-2025 school year. CTE courses to be developed or revised to complete or update programs of study were determined.

At the April 2023 SBOE meeting, the board discussed and approved changes to the TEKS review process, including approving a process for selecting work group members. The changes were implemented beginning with the engineering TEKS review process in 2023. The SBOE completed the review of existing CTE TEKS, the development of new CTE TEKS, and the review of innovative courses to be approved as TEKS-based courses for new engineering programs of study with the adoption of new engineering CTE TEKS in April 2025.

At the April 2024 meeting, Texas Education Agency (TEA) staff shared an overview of additional, upcoming interrelated needs for TEKS review and revision and instructional materials review and approval (IMRA). Staff explained upcoming needs related to development and amendment of CTE courses, made recommendations for completing the work in batches, and recommended including CTE in the next three cycles of IMRA.

At the June 2024 meeting, the board considered next steps related to the adoption of CTE courses that are needed to complete programs of study and a schedule for future CTE TEKS reviews. The SBOE approved recommendations that TEA present a set of innovative courses with minor edits for consideration for adoption as TEKS-based courses. Additionally, the SBOE authorized TEA to enter into interagency contracts with Collin College, TSTC, and Education Service Center (ESC) Region 4 to develop initial drafts of TEKS for additional CTE courses.

At the June 2025 meeting, the board approved for first reading and filing authorization proposed new TEKS for seven CTE courses developed through interagency contracts with TSTC and ESC Region 4 to complete programs of study in the Business, Marketing, and Finance; Health Science; and Manufacturing Career Clusters.

A discussion item regarding proposed new TEKS for additional CTE courses developed by subject matter experts from TSTC and Collin College through interagency contracts was presented to the SBOE Committee of the Full Board at the September 2025 SBOE meeting, and the subject matter experts were consulted to complete final recommendations for the proposed new courses.

The proposed new sections, which would be implemented in the 2026-2027 school year, would ensure the standards for these career clusters support relevant and meaningful programs of study.

The SBOE approved the proposed new sections for first reading and filing authorization at its November 21, 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 (2026-2030), there are no fiscal implications to the state. However, in fiscal year 2025 there was a cost to the state of approximately $285,000 to secure contracts for the development of the proposed new CTE TEKS. In addition, there will be implications for TEA if the state develops professional development to help teachers and administrators understand the revised TEKS. Any professional development that is created would be based on whether TEA received an appropriation for professional development in the next biennium.

There may be fiscal implications for school districts and charter schools to implement the proposed new TEKS, 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: 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 by proposing new CTE TEKS required to be taught by school districts and charter schools offering the 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 add additional course options for students to support relevant and meaningful programs of study. 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 SBOE requests public comments on the proposal, including, per Texas Government Code, §2001.024(a)(8), information related to the cost, benefit, or effect of the proposed rule and any applicable data, research, or analysis, from any person required to comply with the proposed rule or any other interested person. The public comment period on the proposal begins December 19, 2025, and ends at 5:00 p.m. on January 20, 2026. The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in January 2026 in accordance with the SBOE board operating policies and procedures. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on December 19, 2025.

SUBCHAPTER B. HIGH SCHOOL

19 TAC §127.16

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; TEC, §28.002(n), which allows the SBOE to develop by rule and implement a plan designed to incorporate foundation curriculum requirements into the career and technical education (CTE) curriculum required in TEC, §28.002; TEC, §28.002(o), which requires the SBOE to determine that at least 50% of the approved CTE courses are cost effective for a school district to implement; TEC, §28.025(a), which requires the SBOE to determine by rule the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under TEC, §28.002; and TEC, §28.025(b-17), which requires the SBOE to ensure by rule that a student may comply with curriculum requirements under TEC, §28.025(b-1)(6), by successfully completing an advanced CTE course, including a course that may lead to an industry-recognized credential or certificate or an associate degree.

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

§127.16. Occupational Safety and Compliance Lab (One Credit), Adopted 2025.

(a) Implementation. The provisions of this section may be implemented by school districts beginning with the 2026-2027 school year.

(b) General requirements. This course is recommended for students in Grades 10-12 as a corequisite course for students participating in a coherent sequence of career and technical education courses. This course must be taken concurrently with a corequisite course and may not be taken as a stand-alone course. Districts are encouraged to offer this lab in a consecutive block with the corequisite course to allow students sufficient time to master the content of both courses. Students shall be awarded one credit for successful completion of this course.

(c) Introduction.

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

(2) The goal of the Occupational Safety and Compliance Lab is to provide an opportunity for students to develop safety awareness in conjunction with occupation-specific coursework. Students build a strong foundation in the occupational safety and compliance concepts that are critical to protecting individuals in the workplace, increasing safety and health, and reducing the occurrence of job-related injuries and fatalities.

(3) In Occupational Safety and Compliance Lab, students build foundational knowledge related to the fields of occupational safety, health, and compliance. Students learn about the Occupational Safety and Health Administration (OSHA), which is charged with the tasks of ensuring that employers provide a safe workplace that is free from recognized hazards, promote health and safety in the workplace, and reduce the occurrence of on-the-job injuries, illnesses, and fatalities. Students use safety resources and discover procedures for collaborating with business and industry regarding ways to increase employee safety and health.

(4) Successful completion of the standards may lead to a student earning a 10-hour or 30-hour general industry OSHA card. To earn the OSHA card, the content must be taught by an authorized OSHA outreach training program trainer.

(5) Students are encouraged to participate in extended learning experiences such as career and technical student organizations that foster leadership and career development in the profession.

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

(d) Knowledge and skills.

(1) The student understands career options and educational requirements in occupational safety and compliance. The student is expected to:

(A) describe the impact of internships, career development, and entrepreneurship opportunities in occupational safety and compliance;

(B) identify and analyze career advancement opportunities in occupational safety and compliance at various levels in an organization such as employee, supervisor, and manager; and

(C) identify and explain requirements to obtain professional credentials such as a Certified Safety Professional (CSP), Associate Safety Professional (ASP), Construction Health and Safety Technician (CHST), Occupational Hygiene and Safety Technician (OHST), Certified Hazardous Materials Manager (CHMM), Certified Environmental Manager (CEM), and Board of Certified Safety Professionals (BCSP) in the fields of occupational safety and health compliance.

(2) The student understands the legal responsibilities of work safety in a hazardous workplace. The student is expected to:

(A) explain and discuss responsibilities of workers and employers to promote safety and health in the workplace;

(B) explain the OSHA general duty clause and the rights of workers to a safe and healthy workplace;

(C) explain and discuss the importance of OSHA standards and requirements for organizations;

(D) explain the role of industrial hygiene in occupational health and safety and describe various types of industrial hygiene hazards, including physical, chemical, airborne, excessive noise, physiological, biological, and ergonomic hazards;

(E) identify types and explain appropriate use of personal protective equipment (PPE) used in industry;

(F) explain the importance of safe walking and working surfaces in the workplace and identify best practices for preventing or reducing slips, trips, and falls in the workplace;

(G) describe types of electrical hazards in the workplace and risks associated with these hazards;

(H) describe control methods to prevent electrical hazards in the workplace;

(I) analyze hazards of handling, storing, using, and transporting hazardous materials;

(J) identify and discuss ways to reduce exposure to hazardous materials in the workplace;

(K) identify workplace health and safety resources, including emergency plans and Safety Data Sheets (SDS);

(L) discuss how emergency plans and SDS are used to make decisions in the workplace;

(M) describe elements of a safety and health program, including management leadership, worker participation, and training;

(N) explain the purpose and importance of written emergency action and fire protection plans;

(O) describe key components of written emergency action and fire protection plans such as evacuation plans and emergency exit routes, list of fire hazards, and identification of emergency personnel;

(P) explain components of a hazard communication program; and

(Q) explain and give examples of safety and health training requirements specified by standard setting organizations such as American Conference of Governmental Industrial Hygienists (ACGIH), American National Standard Institute (ANSI), National Institute for Occupational Safety and Health (NIOSH), and Board of Certified Safety Professionals (BCSP).

(3) The student analyzes the federal and state agencies that create and enforce environmental laws. The student is expected to:

(A) identify the objectives of the U.S. Environmental Protection Agency (EPA);

(B) identify the objectives of the Texas Commission on Environmental Quality (TCEQ);

(C) describe how the EPA and the TCEQ monitor compliance and enforce regulations; and

(D) identify and describe federal environmental acts, including Endangered Species Act (ESA); Safe Drinking Water Act (SDWA); Resource Conservation and Recovery Act (RCRA); Toxic Substances Control Act (TSCA); Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund); and Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

(4) The student investigates common safety measures and processes. The student is expected to:

(A) explain the significance of periodic and effective inspections for hazard control;

(B) describe the processes for reporting a hazard or accident to an immediate supervisor;

(C) explain the value of training programs that promote awareness of safety policies and procedures in the workplace;

(D) select appropriate PPE such as safety glasses, face shields, aprons, and gloves based on workplace requirements;

(E) summarize the purpose of protecting the body from industrial hazards, including eyes, face, head, feet, arms, hands, ears, and torso;

(F) identify and describe specific causes of an incident;

(G) explain the necessity of a comprehensive safety program;

(H) outline principles of housekeeping, including order and cleanliness; and

(I) describe how a disorganized workplace, litter, and debris can create unsafe conditions that lead to accidents and illness in the workplace.

(5) The student demonstrates knowledge of workplace security and violence prevention concepts. The student is expected to:

(A) identify and describe potential types of workplace security events;

(B) identify and describe strategies to enhance workplace security; and

(C) identify and describe strategies to prevent workplace violence.

(6) The student investigates the science of ergonomics in the workplace. The student is expected to:

(A) define ergonomics;

(B) explain how the science of ergonomics is used in various industries such as manufacturing, construction, medical, and energy;

(C) evaluate workplace tasks to identify potential ergonomic problems related to body positions, including posture and awkward positions, and body movements, including repetitive movement, applying extreme force, reaching, pushing, pulling, bending, and weightlifting;

(D) describe primary body systems impacted by ergonomics; and

(E) evaluate workplace conditions that can produce physical fatigue.

(7) The student recognizes and mitigates industrial hygiene and occupational health hazards that lead to injury and illness related to exposure in the workplace. The student is expected to:

(A) explain the role of industrial hygiene in occupational safety;

(B) describe the process to identify hazards using various methods, including reviewing chemical inventories and evaluating potential hazards associated with chemicals found in the workplace;

(C) identify and describe various categories of industrial hygiene hazards;

(D) compare various types of workplace hazards, including biological, chemical, ergonomic, and physical;

(E) identify categories of hazardous substances and describe short- and long-term health effects resulting from exposure to each hazardous substance;

(F) explain industrial hygiene and occupational exposures concepts, including acute and chronic exposures; and

(G) describe essential responsibilities of supervisors, managers, and safety personnel in the prevention of occupational hazards.

(8) The student demonstrates an understanding of hazardous materials safety and handling competencies. The student is expected to:

(A) describe the Occupational Safety Health Administration (OSHA) Hazard Communication Standard, including standards for hazard classification;

(B) interpret and analyze SDS and container labeling requirements;

(C) explain the purpose and importance of proper chemical storage;

(D) describe physical properties of hazardous materials;

(E) identify and describe ways in which hazardous materials enter the body;

(F) explain various strategies to protect from inhalation of harmful airborne substances; and

(G) discuss the significance of safety precautions when handling and using compressed gas in the workplace.

(9) The student evaluates hazard control functions in various occupational settings. The student is expected to:

(A) identify and describe steps to reduce noise exposure;

(B) explain the noise reduction rating (NRR) developed by the EPA;

(C) explain the purpose and importance of eye washes and emergency showers in the workplace;

(D) identify and describe possible hazards related to heating, ventilation, and air conditioning systems;

(E) identify and describe possible hazards related to indoor air quality, including ventilation and adequate air flow;

(F) identify steps to reduce hazards related to general machine guarding, power hand tools, and tool safety;

(G) identify and describe motor vehicle safety and security management techniques such as accident prevention strategies, driver training programs, and vehicle inspection protocols;

(H) describe steps to reduce hazards related to powered industrial trucks; and

(I) identify and describe possible hazards related to ladders and scaffolds.

(10) The student investigates fire safety and emergency management in occupational safety. The student is expected to:

(A) identify and describe proper storage techniques for flammable or combustible materials;

(B) identify and describe the importance of fire systems inspections, fire confinement, emergency exits, and emergency lighting;

(C) describe the importance and maintenance of portable fire extinguishers;

(D) differentiate between fire and combustion; and

(E) describe classes of fire related to the extinguishing agents.

(11) The student examines special hazard fire suppression systems. The student is expected to:

(A) describe characteristics of fixed wet and dry chemical extinguishing systems;

(B) describe physical characteristics of carbon dioxide, halogenated hydrocarbons, halocarbons, and inert gases in fire suppression systems;

(C) describe design goals for smoke and fire controls and the corresponding management systems; and

(D) explain fire extinguisher operation, inspection, testing, and maintenance procedures and proper use.

(12) The student examines how accidents impact the workplace. The student is expected to:

(A) evaluate the financial impact on an organization resulting from an accident;

(B) explain workplace accident legal compliance, including OSHA accident reporting, OSHA recordkeeping regulations, and worker's compensation claims; and

(C) identify and compare accident categories, including near miss, minor injury, major injury, and catastrophic injury.

(13) The student demonstrates an understanding of accident prevention and the principles of an effective corrective action plan. The student is expected to:

(A) describe the purpose of corrective actions;

(B) develop an effective corrective action plan for an organization; and

(C) write a report documenting an accident.

(14) The student analyzes accidents and accident reports. The student is expected to:

(A) explain common unsafe actions such as working at unsafe speeds or using unsafe tools;

(B) describe human, job, and workplace factors that lead to accidents;

(C) explain the importance of timely reporting workplace accidents;

(D) complete a standard accident report form;

(E) write an effective accident report, including a summary of an incident, findings, and recommendations, using factual communication;

(F) identify and report causal factors of an accident; and

(G) analyze accident reports of small damage and near misses and describe future prevention of major accidents.

(15) The student understands the process of accident investigations. The student is expected to:

(A) identify and discuss the purpose and benefits of accident investigations in the workplace;

(B) identify and discuss the role that workers, supervisors, managers, and safety personnel have in the accident investigation process; and

(C) identify and describe the phases of an accident investigation.

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

Filed with the Office of the Secretary of State on December 8, 2025.

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Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497

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SUBCHAPTER N. LAW AND PUBLIC SERVICE

19 TAC §§127.752, 127.753, 127.756, 127.757

STATUTORY AUTHORITY. The new sections are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to 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; TEC, §28.002(n), which allows the SBOE to develop by rule and implement a plan designed to incorporate foundation curriculum requirements into the career and technical education (CTE) curriculum required in TEC, §28.002; TEC, §28.002(o), which requires the SBOE to determine that at least 50% of the approved CTE courses are cost effective for a school district to implement; TEC, §28.025(a), which requires the SBOE to determine by rule the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under TEC, §28.002; and TEC, §28.025(b-17), which requires the SBOE to ensure by rule that a student may comply with curriculum requirements under TEC, §28.025(b-1)(6), by successfully completing an advanced CTE course, including a course that may lead to an industry-recognized credential or certificate or an associate degree.

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

§127.752. Foundations of Fire Protection (One Credit), Adopted 2026.

(a) Implementation.

(1) The provisions of this section may be implemented by school districts beginning with the 2026-2027 school year.

(2) School districts shall implement the employability skills student expectations listed in §127.15(d)(1) of this chapter (relating to Career and Technical Education Employability Skills) as an integral part of this course.

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

(c) Introduction.

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

(2) The Law and Public Service Career Cluster focuses on planning, managing, and providing legal services, public safety, protective services, and homeland security, including professional and technical support services.

(3) Foundations of Fire Protection provides students with an overview of opportunities and foundational knowledge and skills needed for careers in fire service. Students explore the history of fire science and structure of fire departments and are introduced to basic chemistry, physics, and classifications of fires; extinguishing methods; and firefighting equipment. Additionally, the course reviews employment requirements and certification processes for careers in fire science.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations that foster leadership and career development in the profession.

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

(d) Knowledge and skills.

(1) The student examines the importance of developing specific, measurable, achievable, realistic, time-bound (SMART) goals and action plans that are aligned with physical ability, age, education, and certification requirements for fire service employment and career advancement. The student is expected to:

(A) identify and explain the process for developing a SMART goal, including identifying a specific goal, establishing measurable benchmarks for the goal, ensuring the goal is achievable and relevant to desired outcomes, and creating a realistic timeline to achieve the goal;

(B) explain benefits of identifying SMART goals, including process, outcome, and performance goals, for fire science professionals and how SMART goals can contribute to career advancement, performance improvement, and operational effectiveness; and

(C) describe tasks for creating an action plan to achieve a SMART goal, including clarifying the goal, brainstorming action steps, prioritizing tasks, setting timelines, anticipating obstacles, and monitoring progress.

(2) The student examines employment requirements for various fire service careers. The student is expected to:

(A) identify employment requirements and job roles and responsibilities for private sector fire service careers, including insurance investigators, fire alarm technicians, fire sprinkler contractors, wildland firefighters, fire protection engineers, refinery firefighters, and industrial firefighters;

(B) identify employment requirements and job roles and responsibilities for various municipal fire service careers, including firefighter, fire inspector, fire marshal, dispatcher, paramedic, emergency medical technician, and public education specialist;

(C) identify employment requirements and job roles and responsibilities for various State of Texas fire service careers, including state fire marshal, fire inspector, arson investigator, wildland firefighter, and education specialist;

(D) identify employment requirements and job roles and responsibilities for various federal fire service careers, including military firefighter, wildland firefighter, heavy equipment operator, fire and explosion investigator, and education specialist; and

(E) describe common employment processes used in selecting public sector firefighters, including applications, written tests, physical agility tests, psychological evaluations, background investigations, interview boards, and medical examinations.

(3) The student understands the role of the Texas Commission on Fire Protection (TCFP). The student is expected to:

(A) describe the firefighter certification process in Texas as required by the TCFP;

(B) differentiate between education, training, and certification requirements established by the TCFP; and

(C) explain the role of the TCFP in the firefighter certification process, including developing training standards, developing certification tests, administering tests, issuing certifications, auditing firefighter continuing education to maintain certification, auditing fire departments, certifying fire training facilities, and maintaining firefighter certification records.

(4) The student recognizes the different types of communication used within the fire service. The student is expected to explain the five modes of communication used in the fire service, including face-to-face, written, radio, telephone, and electronic communication.

(5) The student understands the use of communication techniques to effectively engage with stakeholders. The student is expected to:

(A) explain and demonstrate key elements of adaptive communication, including active listening, interpersonal intelligence, communication style, and observational skills;

(B) analyze the importance of adaptive communication in the fire service to enhance communication with stakeholders;

(C) describe effective interpersonal skills that support effective teamwork in fire service, including active listening, time management, self-discipline, resilience, and interpersonal intelligence; and

(D) describe conflict resolution strategies, including avoiding, competing, accommodating, compromising, and collaborating, and how they may be applied in fire service team dynamics and operational settings.

(6) The student examines legal obligations and ethical behaviors associated with fire service careers. The student is expected to:

(A) discuss the impact of social media, peer influence, drug use, and criminal history on employability in fire science careers;

(B) identify and analyze the role of each of the four Texas State Fire Service agencies: Texas Commission on Fire Protection (TCFP); Texas State Fire Marshal's Office (SFMO); Texas A & M Forest Service (TFS); and Texas A & M Engineering Extension Service (TEEX);

(C) identify and compare professional codes of ethics relevant to fire service, including the Firefighter Code of Ethics developed by the National Society of Executive Fire Officers (NSEFO) and the Congressional Fire Services Institute (CFSI) and the International Association of Fire Chiefs (IAFC) Fire Service Code of Ethics;

(D) discuss how the legal concept of "Duty to Act" is applied in Texas and impacts fire service professionals; and

(E) describe the Texas Good Samaritan Act as defined in Texas Civil Practice and Remedies Code, §74.151, and explain its relevance to fire service professionals and civil liability protection.

(7) The student examines the evolution of the fire service and explains the impact of fire on the development of fire laws, codes, and standards. The student is expected to:

(A) summarize key milestones and technological advancements and how roles have evolved over time in fire science;

(B) differentiate between local, state, and federal fire laws; model codes; and National Fire Protection Association (NFPA) standards, and explain their roles in regulating fire service operations; and

(C) explain how fire losses have influenced the development of national building and fire codes and NFPA standards.

(8) The student examines firefighting apparatus, personal protective equipment (PPE), appliances, tools, and hoses used by various fire departments. The student is expected to:

(A) identify and describe different types of structural firefighting apparatus used by municipal fire departments, including fire engines, aerial ladder trucks, quint trucks, tiller trucks, and heavy rescue vehicles;

(B) identify and describe different types of wildland firefighting apparatus, including wildland engines, brush trucks, and water tenders;

(C) identify and describe different types of aircraft rescue firefighting apparatus, including rotary blade aircraft and fixed-wing aircraft;

(D) identify and describe structural, wildland, and aircraft firefighting PPE;

(E) identify and explain the purpose of common appliances used by structural firefighters, including wyes, water-thieves, Siamese valves, smooth-bore nozzles, different types of fog nozzles, and hydrant valves;

(F) identify and explain the purpose of common tools used by structural firefighters, including Halligan bars, axes, pike poles, ladders, hydrant wrenches, spanner wrenches, saws, and rescue tools;

(G) identify and explain the purpose of common tools used by wildland firefighters, including the McLeod tool, flapper, Pulaski tool, fire rake, and saws; and

(H) differentiate among various hoses used by structural and wildland firefighters.

(9) The student researches the Community Risk Reduction (CRR) process. The student is expected to:

(A) define CRR;

(B) describe how a Community Risk Assessment (CRA) impacts the development of a CRR plan;

(C) identify and explain the role of key CRR stakeholders, including the lead agency, CRR coordinator, planning group, risk manager, fire chief, and community leaders;

(D) describe the United States Fire Administration's 5 E's strategies for CRR, including education, engineering, enforcement, economic incentives, and emergency response; and

(E) explain how community, state, and federal governments use CRAs.

(10) The student researches the National Incident Management System (NIMS) and Incident Command System (ICS). The student is expected to:

(A) describe the purpose of NIMS, including common terminology, management by objectives, span of control, resource management, command structure, modular organization, incident action planning, integrated communications, and accountability; and

(B) identify and explain components of the ICS structure, including the Incident Commander (IC), finance, logistics, operations, planning, command posts, public information, liaison officers, safety officers, and emergency operations centers.

(11) The student examines common hierarchical structure of a fire department. The student is expected to:

(A) explain the concept of authority having jurisdiction (AHJ);

(B) describe the common hierarchical structure of a fire department; and

(C) describe the roles and responsibilities of the fire chief.

(12) The student examines various support functions within a fire department. The student is expected to:

(A) identify and describe support functions provided by the fire prevention division, including code enforcement, public education, cause and origin investigation, arson and explosion investigation, background investigation, internal affairs investigation, and public information;

(B) identify and describe support functions provided by fire service special operations teams, including hazardous materials response, high-angle rescue, swift water rescue, confined-space rescue, and urban search and rescue;

(C) identify and describe support functions provided by the fire training division, including recruiting, hiring, and training recruits for initial TCFP certification and providing continuing education training;

(D) identify and describe support functions provided by the equipment maintenance division, including vehicle repairs, service, and testing;

(E) describe the core responsibilities of 911 communication centers, including receiving emergency and non-emergency calls, dispatching response units, maintaining contact with dispatched units, and coordinating with other agencies; and

(F) describe the core responsibilities of the Office of Emergency Management.

(13) The student examines basic principles of fire science, including the chemistry and physics of combustion, methods of heat transfer, and stages of fire development. The student is expected to:

(A) define fire;

(B) identify and list the components of the fire triangle and fire tetrahedron;

(C) describe the physical characteristics of the three states of matter: solid, liquid, and gas;

(D) differentiate between an oxidizing agent and a fuel;

(E) explain the process of pyrolysis and its role in fire development;

(F) define the terms "fuel rich" and "fuel lean" in relation to the flammable range of a gas;

(G) analyze the difference between temperature and heat;

(H) differentiate between ignition temperature and flash point;

(I) define specific gravity and explain its relevance to fire suppression and hazardous materials;

(J) define vapor density and describe its significance in fire and hazardous materials incidents;

(K) describe the stages of fire development, including incipient, growth, free-burning, and decay;

(L) differentiate between flashover and backdraft; and

(M) explain the three primary methods of heat transfer (conduction, convection, and radiation), and describe the role of direct flame contact in fire spread.

(14) The student examines classifications of fire and extinguishing methods. The student is expected to:

(A) identify the five classifications of fire: Class A, B, C, D, and K; and

(B) describe various extinguishing methods for each classification of fire.

(15) The student researches basic components of a municipal water supply system. The student is expected to:

(A) identify the basic components of a municipal water supply system, including water sources, treatment facilities, elevated and in-ground storage tanks, pumps, distribution networks, and fire hydrants;

(B) identify various types of fire hydrants, including dry barrel hydrants and wet barrel hydrants; and

(C) explain the purpose of fire hydrant color coding.

§127.753. Crisis Care (One Credit), Adopted 2026.

(a) Implementation.

(1) The provisions of this section may be implemented by school districts beginning with the 2026-2027 school year.

(2) School districts shall implement the employability skills student expectations listed in §127.15(d)(2) of this chapter (relating to Career and Technical Education Employability Skills) as an integral part of this course.

(b) General requirements. This course is recommended for students in Grades 11 and 12. Prerequisite: at least one credit in a course from the Law and Public Service Career Cluster. Students shall be awarded one credit for successful completion of this course.

(c) Introduction.

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

(2) The Law and Public Service Career Cluster focuses on planning, managing, and providing legal services, public safety, protective services, and homeland security, including professional and technical support services.

(3) Crisis Care is designed for future first responders to build awareness, psychological preparedness, and resilience for times of personal or community crisis. Students explore various types of acute crises and examine appropriate crisis intervention techniques to assist in de-escalation and recovery. Additionally, students examine specialized crisis care teams and support agencies during emergencies and disasters.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations that foster leadership and career development in the profession.

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

(d) Knowledge and skills.

(1) The student examines what constitutes a personal crisis and identifies warning signs of a personal crisis. The student is expected to:

(A) differentiate between a personal crisis, a problem, and an emergency;

(B) describe basic elements of a personal crisis, including a stressful situation, an individual's difficulty coping, and the timing of the intervention;

(C) examine factors that may lead to a personal crisis, including trauma, family conflict, financial instability, community issues, significant life events, and natural disasters;

(D) analyze impacts of various types of personal crises, including mental health, emotional, and trauma-related crises and physical emergencies;

(E) identify and describe warning signs of a personal crisis requiring immediate attention, including threats of physical harm, delusions, hallucinations, extreme withdrawal, not sleeping or eating for several days, verbal abuse, and physical abuse; and

(F) identify and describe indicators of a personal crisis that may require intervention, including expression of intense hopelessness or anger, eating or sleeping difficulties, neglect of personal hygiene, social isolation, and signs of depression, apathy, or anxiety.

(2) The student examines various interventions used to de-escalate a personal crisis. The student is expected to:

(A) explain the key principles of Psychological First Aid (PFA) and how these principles are used to reduce stress and aid in crisis recovery;

(B) describe grounding techniques used in crisis de-escalation, including breathing exercises, sensory awareness and touch, the 5-4-3-2-1 technique, and nature-based calming strategies;

(C) describe communication techniques used in crisis de-escalation, including focusing attention, displaying empathy, asking open-ended questions, reflecting feelings, and summarizing; and

(D) describe how body language, including having an open posture, open hands, or a Duchenne smile and adjusting proximity, influences crisis de-escalation.

(3) The student examines professional resources available to aid in crisis intervention. The student is expected to:

(A) identify the roles and services of local crisis intervention resources such as mental health providers, law enforcement, and community-based organizations;

(B) identify and describe crisis resources provided by the Texas Department of State Health Services (DSHS), including the Health and Human Services Commission (HHSC) Crisis Services Guide and Texans Recovering Together Crisis Counseling and Disaster Behavioral Health Services; and

(C) describe the role of national crisis intervention resources, including the 988 Suicide and Crisis Lifeline, Crisis Text Line, Disaster Distress Helpline (DDH), Substance Abuse and Mental Health Services Administration (SAMHSA) National Helpline, and National Alliance on Mental Illness (NAMI).

(4) The student evaluates the effects of acute and chronic exposure to traumatic events on the health and performance of first responders. The student is expected to:

(A) identify and describe potential warning signs of a mental health crisis in first responders, including emotional distress, behavioral changes, relationship strain, cognitive difficulty, and suicidal ideation;

(B) discuss and analyze potential psychological impacts to first responders, including post-traumatic stress disorder (PTSD), chronic stress, anxiety, depression, emotional numbing, and survivor guilt, after exposure to trauma;

(C) describe potential physical impacts to first responders, including burnout, sleep disturbances, fatigue, and a weakened immune system, after exposure to trauma;

(D) explain how trauma-related stress impacts interpersonal relationships and social functioning such as irritability, anger, mood swings, and emotional distancing;

(E) analyze how traumatic events can affect job performance, including impaired decision-making, compassion fatigue, absenteeism, and turnover; and

(F) discuss and analyze potential psychological impacts of a line of duty death (LODD) on first responders, including grief reactions, survivor guilt, intrusive memories, substance abuse, and other maladaptive coping behaviors.

(5) The student examines how public safety agencies use Critical Incident Stress Management (CISM) teams in supporting crisis interventions. The student is expected to:

(A) explain the use of Critical Incident Stress Debriefing (CISD) and critical incident stress defusing techniques in mitigating the impact of stress on first responders after traumatic events;

(B) describe the roles of CISM team members, including peer support personnel, clergy, and mental health professionals;

(C) evaluate the benefits of CISM teams within public safety professions, including psychological support, PTSD mitigation, provision of coping mechanisms, increased resilience, increased job satisfaction, reduced stigma, enhanced teamwork, enhanced communication, and increased confidence;

(D) describe common CISM interventions recognized by the National Fallen Firefighter Foundation (NFFF), including defusing, debriefing, peer counseling, individual crisis intervention, pre-incident briefing, and crisis management briefings; and

(E) explain the importance of supporting the needs of first responder families by demonstrating availability, providing timely support, offering assistance, and maintaining trust.

(6) The student examines the structure and function of a Local Assistance State Team (LAST) provided by NFFF in supporting crisis response. The student is expected to:

(A) describe the composition of a LAST, including mental health professionals, crisis responders, clergy, and survivors of suicide loss; and

(B) discuss and analyze the functions of a LAST, including supporting survivors, administering emotional first aid, providing resource information and referrals, and assisting in funeral planning.

(7) The student examines the role of chaplains within public safety agencies. The student is expected to:

(A) describe qualifications of a public safety agency chaplain, including training in crisis response, endorsement by a recognized religious organization, completion of chaplaincy certification programs, and experience in providing emotional and spiritual support in high-stress environments;

(B) identify and explain support services provided by first responder organizations such as the International Association of Fire Chiefs (IAFC), the Federation of Fire Chaplains (FFC), the International Association of Chiefs of Police (IACP), and the International Conference of Police Chaplains (ICPC);

(C) describe the different roles and responsibilities of public safety agency chaplains, including providing spiritual care to agency members, making hospital visits, and conducting weddings, funerals, and LODD ceremonies; and

(D) explain the role of chaplains during critical incidents or emergencies, including support for public safety agency members, members' families, victims' families, and the community.

(8) The student identifies and examines strategies used by first responders to build resilience and overcome challenges. The student is expected to:

(A) explain the concept of resilience and its role in coping with stress, trauma, and challenges in public safety professions;

(B) describe common characteristics of resilient individuals and evaluate the benefits of resilience for professional performance;

(C) identify internal factors, including mindset and self-awareness, that contribute to resilience;

(D) identify strategies to overcome challenges, including creating a support system, focusing on setting goals, and adapting to change;

(E) discuss how experiencing a crisis can present opportunities to problem-solve, including decision making, critical thinking, creativity, ethical reasoning, adaptability, and build resiliency;

(F) describe the stop, think, observe, and proceed (STOP) method of problem solving; and

(G) describe the identify, develop, evaluate, and assess (IDEA) method of problem-solving, including identifying the problem, developing possible solutions, evaluating options, and assessing the result.

§127.756. Disaster Response (One Credit), Adopted 2026.

(a) Implementation.

(1) The provisions of this section may be implemented by school districts beginning with the 2026-2027 school year.

(2) School districts shall implement the employability skills student expectations listed in §127.15(d)(1) of this chapter (relating to Career and Technical Education Employability Skills) as an integral part of this course.

(b) General requirements. This course is recommended for students in Grades 10-12. Recommended prerequisite: Principles of Law, Public Safety, Corrections, and Security. Students shall be awarded one credit for successful completion of this course.

(c) Introduction.

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

(2) The Law and Public Service Career Cluster focuses on planning, managing, and providing legal services, public safety, protective services, and homeland security, including professional and technical support services.

(3) Disaster Response includes basic training in disaster survival and rescue skills that improve the ability of citizens to survive until responders or other assistance arrives. Students receive education and training to make communities safer, stronger, and better prepared to respond to public health issues and threats of various disasters, terrorism, and crime.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations that foster leadership and career development in the profession.

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

(d) Knowledge and skills.

(1) The student examines the functions of the community emergency response team (CERT) and the CERT's role during disasters. The student is expected to:

(A) analyze and compare roles and functions of CERT members before, during, and after a disaster;

(B) analyze how CERT members respond to various types of hazards commonly present in disasters, including their roles in mitigation, response, and recovery; and

(C) analyze state and local laws that protect first responders, including CERT members, during emergency operations.

(2) The student examines various disaster situations. The student is expected to:

(A) classify types of disasters, including man-made and natural; and

(B) identify common causes of disasters, including accidental causes, weather, and acts of human conflict, including domestic terrorism.

(3) The student researches disasters and associated hazard mitigation. The student is expected to:

(A) identify potential hazards associated with different types of disaster events;

(B) describe strategies used to manage hazards and reduce the impact of disasters; and

(C) summarize measures taken prior to a disaster, during the time of the disaster, and after the disaster occurs to mitigate hazards.

(4) The student develops a disaster and emergency preparedness (DEP) response plan. The student is expected to:

(A) develop a response plan and evacuation route in the case of a fire that includes a meeting location; and

(B) develop a response plan that includes a safe shelter location in the event of severe weather emergencies.

(5) The student examines disaster preparedness recommendations provided by various federal, state, and local agencies. The student is expected to:

(A) identify components of a first aid kit for home and vehicle use as recommended by organizations such as the American Red Cross or American Heart Association;

(B) identify essential tools and supplies for disaster supply kits as recommended by different agencies, including the Federal Emergency Management Agency (FEMA);

(C) identify appropriate food, water, kitchen items, clothing, bedding, documents, and contact numbers for inclusion in disaster kits, as recommended by FEMA and other agencies;

(D) simulate assisting first responders in fire safety, search and rescue, and disaster medical operations in accordance with standard operating procedures outlined in sponsoring agencies' Emergency Operations Plans (EOPs); and

(E) identify fire safety components of disaster preparedness in the Volunteer Protection Act of 1997.

(6) The student demonstrates knowledge and skills related to fire safety to assist in disaster situations. The student is expected to:

(A) explain the role of CERT members in fire safety and conduct an assessment in response to a simulated fire emergency;

(B) explain safety precautions used in a disaster event, including a buddy system, backup teams, safety equipment, and utility controls;

(C) identify and predict locations of hazardous materials in residential and community settings; and

(D) define and explain the limit, isolate, eliminate, separate (LIES) method for reducing exposure to hazardous materials and potential harm.

(7) The student investigates fire chemistry and the application of fire chemistry in disasters. The student is expected to:

(A) explain how fires start and identify factors that perpetuate fires;

(B) identify the elements that are required for a fire;

(C) identify the fire hazards associated with ordinary combustibles, flammable and combustible liquids, energized electrical equipment, and combustible metals; and

(D) describe and differentiate between the classes of fires.

(8) The student recognizes common firefighting resources and fire suppression techniques. The student is expected to:

(A) identify fire containment techniques and methods used to restrict the spread of smoke and heat;

(B) compare types of fire accelerants and fuels;

(C) select appropriate firefighting resources to fight a fire based on fuel type or other contributing factors;

(D) explain the information commonly provided on fire extinguisher labels;

(E) identify types of fire extinguishers and the components of a portable fire extinguisher;

(F) simulate the use of a portable fire extinguisher using the pull, aim, squeeze, sweep (PASS) technique; and

(G) compare best practices for fire suppression based on local standard operating procedures and precautions.

(9) The student demonstrates knowledge of hazardous materials and related safety standards. The student is expected to:

(A) identify and evaluate the associated risks of characteristics of hazardous materials based on the type of material, including solids, pressurized substances, liquids, and gases;

(B) define and classify types of hazardous materials according to the National Fire Protection Association (NFPA) 704 standards;

(C) explain the NFPA 704 diamond placard used for hazardous material identification;

(D) explain the meaning of different hazardous material placard colors and how each color contributes to hazmat assessment during disaster response; and

(E) explain common acronyms and symbols used by the NFPA.

(10) The student explores first aid assessment and basic treatment techniques used in disaster response and emergency situations. The student is expected to:

(A) simulate the head tilt chin lift method to open an airway of a patient;

(B) identify the primary types of bleeding and main methods for controlling bleeding, including tourniquet application and wound packing;

(C) research and explain the physiological effects of shock on the human body;

(D) explain signs of shock, including clammy skin, rapid pulse, and nausea;

(E) simulate procedures for treating victims of shock;

(F) explain techniques for controlling symptoms of shock such as elevating the feet and covering the patient with a blanket;

(G) explain and demonstrate correct procedures for administering cardiopulmonary resuscitation (CPR); and

(H) explain and demonstrate correct procedures for using an automated external defibrillator (AED) during CPR.

(11) The student investigates how to maintain personal hygiene and sanitation in a disaster situation. The student is expected to:

(A) define and analyze steps to maintain proper hygiene during a disaster, including getting enough sleep, practicing dental care, bathing regularly, and washing hands frequently;

(B) explain how to dispose of bacterial sources and waste products during a disaster; and

(C) test or simulate the use of a water purification system.

(12) The student organizes and establishes disaster medical triage areas. The student is expected to:

(A) define and explain the concept of simple triage and rapid treatment (START) used to prioritize casualties in a disaster;

(B) explain major sub-functions of disaster medical operations, including triage, sanitation, and treatment areas;

(C) select and evaluate a designated triage area based on proximity to an incident;

(D) evaluate a designated triage area for accessibility by transportation vehicles and potential expansion;

(E) assign triage areas for immediate care, delayed care, and morgue operations; and

(F) develop a documentation protocol for triage victims that includes available identifying information, physical description, clothing, injuries, treatment provided, and transfer location.

(13) The student simulates a head-to-toe patient evaluation to identify and document injuries. The student is expected to:

(A) define and summarize indicators of injury observed during a head-to-toe assessment;

(B) distinguish between the severity of various injuries and the appropriate level of treatment needed;

(C) document patient injuries, including location and type of injuries; and

(D) describe common closed-head, neck, or spinal injuries.

(14) The student explores treatment techniques for injuries commonly encountered in disaster situations. The student is expected to:

(A) define terms related to the layers of skin;

(B) classify the severity of burns;

(C) define and identify methods for controlling bleeding and preventing secondary infection;

(D) simulate techniques used for cleaning wounds and the application of dressings and bandages while on an incident scene;

(E) identify treatment options and actions for managing a foreign object impaled in a patient's body; and

(F) define and demonstrate methods for immobilization of joints immediately above and below an injury.

(15) The student examines search and rescue operations. The student is expected to:

(A) assess a rescue scene and formulate a plan of action based on available information;

(B) explain safe techniques for debris removal and victim extrication from below ground entrapments;

(C) create a plan for assigning staff to perform tasks for debris removal and victim extrication;

(D) identify necessary materials for stabilizing various hazards on an accident scene;

(E) describe how to stabilize an object prior to lifting to ensure responder and victim safety; and

(F) simulate a lift to gain access to a victim and troubleshoot possible impediments.

(16) The student researches documentation required during a disaster response by CERT members. The student is expected to simulate the collection and recording of documentation on incident status, location, access routes, identified hazards, and support locations.

(17) The student examines rescuer safety during search and rescue operations. The student is expected to:

(A) classify response activities based on team capabilities and training levels and scope and type of incident;

(B) evaluate an accident scene involving a trapped victim to determine whether a rescue can be safely attempted;

(C) define and use common terminology that supports effective communication and shared understanding at a rescue site; and

(D) determine team member roles based on the scope of an incident, strategic planning, review of resources, and evaluation of actions and results.

(18) The student examines the psychological impact of a disaster on rescuers and victims and principles of psychological first aid. The student is expected to:

(A) describe appropriate communication techniques for crises and disaster response situations;

(B) explain and analyze the emotional responses that can follow a disaster;

(C) identify steps rescuers can take to reduce stressors on disaster survivors and rescuers;

(D) analyze psychological and physiological responses observed in rescuers after a disaster;

(E) describe potential emotional responses experienced by survivors and rescuers and explain emotional response mitigation strategies that aid first responders during an emergency; and

(F) explain goals of on-scene psychological intervention.

(19) The student discusses terrorism and its implications on CERT operations and community preparedness. The student is expected to:

(A) define vocabulary related to terrorism and homeland security; and

(B) identify how to interpret environmental indicators and warning signs of a biological or chemical attack.

§127.757. Emergency Medical Technician-Basic (Two Credits), Adopted 2026.

(a) Implementation.

(1) The provisions of this section may be implemented by school districts beginning with the 2026-2027 school year.

(2) School districts shall implement the employability skills student expectations listed in §127.15(d)(2) of this chapter (relating to Career and Technical Education Employability Skills) as an integral part of this course.

(b) General requirements. This course is recommended for students in Grades 11 and 12. Prerequisite: Principles of Law, Public Safety, Corrections, and Security or Disaster Response. Recommended prerequisite: Biology, Medical Terminology, Pathophysiology, and Anatomy and Physiology. Students shall be awarded two credits for successful completion of this course.

(c) Introduction.

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

(2) Law and Public Service Career Cluster focuses on planning, managing, and providing legal services, public safety, protective services, and homeland security, including professional and technical support services.

(3) Emergency Medical Technician (EMT)-Basic provides students with the foundational knowledge needed to provide entry-level emergency medical care, life support, and ambulance service. Students are introduced to key concepts, knowledge, and skills needed by EMT-Basics in the areas of communications, assessment, treatment, transportation, and recordkeeping. This introductory course equips students interested in working in public safety, including fire, police, and emergency medical services (EMS), to perform the duties of an EMT-Basic safely and effectively.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations that foster leadership and career development in the profession.

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

(d) Knowledge and skills.

(1) The student explores EMS systems and roles and responsibilities of an EMT-Basic. The student is expected to:

(A) describe and explain the EMS systems available to patients;

(B) differentiate the roles, scope of practice, and responsibilities of an EMT-Basic from other pre-hospital care providers such as firefighters and law enforcement;

(C) describe roles and responsibilities of EMT-Basics related to personal safety and the safety of the crew, patient, and bystanders while responding to, operating at the scene of, and transporting from an emergency incident;

(D) summarize key Texas statutes and regulations governing EMS systems, including provisions from 25 Texas Administrative Code (TAC) Chapter 157 (relating to Emergency Medical Care) and Texas Health and Safety Code, Chapter 773; and

(E) research and analyze various methods of accessing an EMS system within a local community.

(2) The student explores medical, legal, and ethical considerations in emergency medical services operations as an EMT-Basic provider. The student is expected to:

(A) describe out-of-hospital (OOH) and do not resuscitate (DNR) directives as described in 25 TAC §157.25 (relating to Out-of-Hospital Do Not Resuscitate (OOH-DNR) Order), and explain local protocol regarding EMS application of DNR directives, including field termination procedures;

(B) define consent and differentiate between expressed and implied consent in emergency situations;

(C) summarize appropriate methods for obtaining patient consent;

(D) determine the conditions necessary for an EMT-Basic to have a duty to act;

(E) explain the importance, necessity, and legal protections of patient confidentiality;

(F) describe actions an EMT-Basic should take to preserve a crime scene; and

(G) identify conditions that require an EMT-Basic to notify local law enforcement officials.

(3) The student develops foundational knowledge of human anatomy and physiology to support emergency medical care. The student is expected to:

(A) define anatomical terms such as medial, lateral, proximal, distal, superior, inferior, anterior, posterior, midline, right and left, mid-clavicular, bilateral, and mid-axillary; and

(B) describe the basic anatomy and physiology of the respiratory, circulatory, musculoskeletal, nervous, and endocrine systems and explain the function of major organs within each system.

(4) The student demonstrates the importance of basic life support and the priority of artificial ventilation and airway protective skills. The student is expected to:

(A) compare signs of adequate and inadequate breathing;

(B) explain the importance of having a suction unit ready for immediate use when managing a patient's airway;

(C) explain and demonstrate proper suctioning techniques to clear a patient's airway of blood, vomitus, and other obstructions to prevent aspiration;

(D) explain and demonstrate proper techniques and devices for securing air flow for patients, including bag-valve-mask, Sellick maneuver, and pocket mask artificial ventilation;

(E) explain and demonstrate the skills of basic airway techniques, including use of oropharyngeal and nasopharyngeal airway adjuncts with a bag-valve-mask;

(F) explain and demonstrate the use of end-tidal capnography (ETCO2) by correctly applying ETCO2 nasal canula and endotracheal tube devices;

(G) interpret ETCO2 waveform and numeric value to assess adequate ventilation of patient's lungs; and

(H) explain and demonstrate proper use of a supraglottic airway device.

(5) The student recognizes that patient assessment serves as the foundation for all treatment decisions for any emergency scene. The student is expected to:

(A) evaluate an emergency scene for potential hazards to responders, patients, and bystanders;

(B) assess an emergency scene by identifying the number of patients, mechanism of injury or nature of illness, and severity of each patient's condition to determine if additional resources are needed;

(C) conduct an initial patient assessment, including forming a general impression, determining responsiveness, and assessing airway, breathing, and circulation;

(D) demonstrate a triage method to determine patient priority at emergency scenes with multiple casualties;

(E) describe and demonstrate methods of assessing patient traumatic injuries, including the rapid trauma assessment;

(F) explain and demonstrate the components of conducting a patient assessment, including documenting medical history of patients with medical complaints or signs and symptoms of medical need;

(G) explain and demonstrate the components of a detailed physical examination of a patient using a systematic head-to-toe approach to identify injuries or conditions not immediately apparent and determine interventions needed and reassess interventions to assure appropriate ongoing continuum of care;

(H) explain the components of common EMS communication systems, including radio procedures, interpersonal communication techniques, and patient care reporting formats;

(I) explain the components of a pre-hospital patient care written report, including documentation of chief complaint, history of present illness, allergies to medications, current medications, treatments provided during transport, and any changes to the patient's condition as a result of those treatments;

(J) describe components of a no transport report, including documentation of chief complaint, history of present illness, and attempts to gain consent from a patient for transport; and

(K) analyze legal considerations related to a patient refusal, including patient decision-making capacity and documentation of associated risks.

(6) The student explores the signs, symptoms, and pathophysiology of medical emergencies. The student is expected to:

(A) describe signs and symptoms of diabetic, cardiac, respiratory, neurological, and integumentary system emergencies and emergencies related to heat and cold exposure, bites, stings, and poisoning;

(B) describe the medical care for patients experiencing diabetic, cardiac, respiratory, neurological, and integumentary system emergencies and emergencies related to heat and cold exposure, bites, stings, and poisoning;

(C) identify common medications administered by an EMT-Basic and identify the steps for assisting a patient with self-administration of prescribed medications;

(D) identify common respiratory emergencies, including asthma, chronic obstructive pulmonary disease (COPD), and anaphylaxis;

(E) describe appropriate emergency medical care for respiratory distress, including the administration of oxygen, prescribed inhalers, and nebulized medications;

(F) identify cardiovascular emergencies, including heart attack, stroke, and cardiac arrest, and describe signs and symptoms of cardiovascular disease;

(G) describe and demonstrate standard placement protocols for applying 4-lead and 12-lead electrocardiogram (ECG) electrodes to a patient for cardiac monitoring;

(H) explain the purpose and procedures for transmitting a 12-lead ECG to a receiving hospital using appropriate communication equipment and procedures;

(I) simulate the administration of prescribed nitroglycerin for chest pain, following proper dosage, indications, and contraindications;

(J) explain the function and demonstrate the proper use of an automated external defibrillator (AED) for a cardiac arrest scenario;

(K) identify signs and symptoms of altered mental status associated with a patient taking diabetic medications;

(L) list steps in emergency medical care for a hypoglycemic patient, including the administration of oral glucose;

(M) identify the signs and symptoms of an allergic reaction, including respiratory distress, hives, and swelling;

(N) describe emergency care procedures for allergic reactions, including airway assessment and administration of a prescribed epinephrine auto-injector;

(O) identify the signs and symptoms of poisoning or overdose and ways poisons enter the body;

(P) explain emergency medical care for suspected poisoning, including indications, contraindications, and procedures for administering activated charcoal;

(Q) identify, assess, and record patient vital signs, including pulse, respiratory rate, blood pressure, and oxygen saturation;

(R) describe and demonstrate proper techniques for lifting and moving patients;

(S) list signs and symptoms of water-related emergencies and describe complications and medical care of near-drowning victims;

(T) define behavioral emergencies and explain their impact on patient care, scene safety, and EMS response;

(U) identify medical and legal considerations in psychological emergencies and describe common causes of psychological crises;

(V) describe emergency medical care for a patient experiencing behavioral distress, including assessment and de-escalation techniques;

(W) describe safe restraint techniques for violent or combative patients;

(X) list common pre-delivery pregnancy signs and symptoms related to medical complications that require immediate attention by a physician; and

(Y) identify practical steps to stabilize pregnant patient who exhibits signs and symptoms related to medical complications that require immediate attention by a physician.

(7) The student explores mechanisms of injury and pathophysiology of traumatic injury across body systems. The student is expected to:

(A) describe how shock affects major body systems, including the cardiovascular, respiratory, and renal systems, and demonstrate emergency medical care appropriate for a patient exhibiting signs and symptoms of shock;

(B) describe and demonstrate emergency care for controlling external bleeding, including the use of direct pressure, pressure points, and tourniquets;

(C) identify signs and symptoms of internal bleeding and describe appropriate emergency medical care;

(D) identify signs and symptoms of internal bleeding based on mechanism of injury;

(E) identify types of soft tissue injuries, including open, closed, and burn-related injuries;

(F) describe emergency care for closed soft tissue injuries, including contusions, hematomas, and crush injuries;

(G) describe and demonstrate proper techniques for dressing wounds, bandaging, and applying splints and tourniquets;

(H) identify bones of the musculoskeletal system and describe functions of each bone group;

(I) identify the difference between open fractures and closed fractures and explain how each type of fracture affects the implementation of musculoskeletal care;

(J) demonstrate proper immobilization of a painful, swollen, and deformed extremity using appropriate splinting techniques;

(K) analyze functional relationship between the skeletal and nervous systems;

(L) evaluate specific mechanisms of cervical spine injury; and

(M) describe and apply stabilization techniques for cervical spine injuries to a patient in a simulated setting.

(8) The student analyzes medical emergencies involving ill or injured infants and children. The student is expected to:

(A) differentiate emergency response care for infants, children, and adults based on anatomical and physiological differences;

(B) describe and demonstrate proper techniques of foreign body airway obstruction removal in children and infants;

(C) describe and demonstrate proper medical assessments, bag-valve-mask ventilations, and oxygen delivery for infants and children; and

(D) describe emergency care procedures for managing seizures, respiratory emergencies, hypoperfusion, and cardiac arrest in infants and children.

(9) The student describes the safe operation of an ambulance and related emergency response procedures. The student is expected to:

(A) describe state laws related to the operation of an ambulance;

(B) define cleaning, disinfection, high-level disinfection, and sterilization according to infection control standards;

(C) describe procedures for cleaning and disinfecting patient care equipment and preparing an ambulance for the next emergency response;

(D) identify the types and uses of personal protective equipment (PPE) required for an EMT-Basic in various emergency response scenarios;

(E) explain the purpose and fundamental components of patient extrication in emergency situations;

(F) distinguish between simple and complex access methods used during vehicle entrapment and describe considerations for patient safety;

(G) describe the roles and responsibilities of an EMT-Basic during a hazardous materials incident;

(H) describe the actions and sequential steps an EMT-Basic should take when responding to a hazardous materials call in accordance with safety protocols;

(I) identify the criteria used to identify a multiple-casualty incident;

(J) describe the criteria used to initiate disaster operations in response to large-scale emergencies; and

(K) explain and demonstrate triage principles used during a mass casualty incident and describe the components of an established triage system.

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

Filed with the Office of the Secretary of State on December 8, 2025.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 213. PRACTICE AND PROCEDURE

22 TAC §213.13

The Texas Board of Nursing (Board) proposes amendments to §213.13, relating to Complaint Investigation and Disposition. The amendments are being proposed under the authority of the Occupations Code §301.151.

BACKGROUND. The Board's Enforcement Department underwent an internal audit, with the final report issued on May 21, 2025. The audit found that portions of Board Rule 213.13 are outdated and do not align with current enforcement practices and procedures. The proposed amendments address the complaint submission requirements, as the audit identified that some of the information currently required may not be available to complainants, resulting in procedures that conflict with the rule. The amendments also revise the complaint priority system, as the agency has determined that enforcement personnel will no longer use priority level four when designating complaints, necessitating a rule change. Finally, the amendments clarify the timeline notification requirements to ensure consistency with current standards, as recommended in the audit report.

SECTION-BY-SECTION SUMMARY OVERVIEW. Proposed amendments to §213.13 are primarily intended to modernize and clarify existing language to reflect current agency processes for receiving and investigating complaints.

In subsection (a), the Board proposes to amend the rule to specify that complaints may be submitted in writing or by the agency's online complaint portal, reflecting the current means by which most complaints are received. The subsection also updates language identifying additional data to be collected to initiate or conduct an investigation, including the nurse's license number, contact information, patient identifiers, witness information, and the date and time of the incident. These additions clarify the type of information necessary for staff to begin investigative work and ensure that the rule reflects current operational practice. Proposed subsection (a) consolidates the requirements of current subsections (a) and (b). The proposed amendments remove language requiring additional information that may be unnecessary to undertake an investigation.

In proposed subsection (b), the language is updated with three defined levels of complaint priority based on the seriousness of the conduct and potential risk to clients or the public. Priority 4 is removed from the language as that priority is not currently being used by the agency.

The Board proposes to divide current subsection (d) into proposed subsections (c), (d), and (e) for clarity and to better reflect the structure of Texas Occupations Code §301.457. The Board proposes to amend subsection (c) to specify that, within 30 days after receipt of a complaint, staff will complete a preliminary investigation to determine the identity of the person named or described in the complaint, if not known, and process the complaint to determine priority scheduling, which establishes a schedule for case completion. This addition incorporates a step already followed in practice and improves clarity regarding early-stage complaint processing.

The Board proposes amendments to subsection (d) to ensure consistency with Texas Occupations Code §301.457. It provides that parties to the complaint will be notified of the expected timeline of the investigation as soon as practicable and that any change to the timeline will be documented in the case file and communicated to all parties. This addition promotes transparency and aligns the rule with statutory notice requirements.

These proposed amendments remove the language of current subsection (e), which requires background checks on the party identified in the complaint. While the background checks are conducted as part of agency procedure, they are not conducted at this stage in the investigatory process.

Proposed subsections (e) and (f) substantively retain their existing structure with only minor revisions to remove obsolete text. These provisions define when an investigation is considered complete and require staff to provide summary data to the executive director for cases extending beyond expected timelines.

Overall, the proposed amendments remove outdated language, incorporate modern complaint submission and investigation practices, and ensure compliance with current statutory requirements governing notification and investigative procedures.

FISCAL NOTE. Dr. Kristin Benton, RN, DNP, Executive Director, has determined that for each year of the first five years the proposed new sections will be in effect, there will be no anticipated change in the revenue to state government as a result of the enforcement or administration of the proposal.

PUBLIC BENEFIT/COST NOTE. Dr. Benton has also determined that for each year of the first five years that the proposed rules are in effect, the anticipated public benefit will be the adoption of rules that notice licensees and the public of the Board's investigative processes.

There are no new anticipated costs of compliance associated with the proposal. The proposed amendments do not impose any requirement or condition on board regulated entities. The Board does not anticipate any new costs of compliance resulting from the proposal. Further, the Board is not required to comply with the requirements of Tex. Gov't Code. §2001.0045(b) because the proposed amendments are not anticipated to result in new costs of compliance and are necessary to protect the health, safety, and welfare of the residents of this state.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES AND RURAL COMMUNITIES. The Government Code §2006.002(c) and (f) require, that if a proposed rule may have an economic impact on small businesses or micro businesses or rural communities, state agencies must prepare, as part of the rulemaking process, an economic impact statement that assesses the potential impact of the proposed rule on these businesses and communities and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. Section 2006.002(c-1) requires that the regulatory analysis "consider, if consistent with the health, safety, and environmental and economic welfare of the state, using regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small businesses" are feasible. Therefore, an agency is not required to consider alternatives that, while possibly minimizing adverse impacts on small and micro businesses, would not be protective of the health, safety, and environmental and economic welfare of the state.

The Government Code §2006.001(1) defines a micro business as a legal entity, including a corporation, partnership, or sole proprietorship that: (i) is formed for the purpose of making a profit; (ii) is independently owned and operated; and (iii) has not more than 20 employees. The Government Code §2006.001(2) defines a small business as a legal entity, including a corporation, partnership, or sole proprietorship, that: (i) is formed for the purpose of making a profit; (ii) is independently owned and operated; and (iii) has fewer than 100 employees or less than $6 million in annual gross receipts. Each of the elements in §2006.001(1) and §2006.001(2) must be met for an entity to qualify as a micro business or small business. The Government Code §2006.001(1-a) defines a rural community as a municipality with a population of less than 25,000.

These proposed rules cannot reasonably be expected to result in any costs of compliance for small businesses, micro businesses, or rural communities. As such, the Board is not required to prepare an economic impact statement and regulatory flexibility analysis.

GOVERNMENT GROWTH IMPACT STATEMENT. The Board is required, pursuant to Tex. Gov't Code §2001.0221 and 34 Texas Administrative Code §11.1, to prepare a government growth impact statement. The Board has determined for each year of the first five years the proposed amendments will be in effect: (i) the proposal does not create or eliminate a government program; (ii) implementation of the proposal does not require the creation of new employee positions or the elimination of existing employee positions, as the proposal is not expected to have an effect on existing agency positions; (iii) implementation of the proposal does not require an increase or decrease in future legislative appropriations to the Board, as the proposal is not as the Board intends to shift necessary resources to comply with the statutory mandate; (iv) the proposal does not require an increase or decrease in fees paid to the Board; (v) the proposal references new statutory requirements for the Board to follow in investigations but does not add additional requirements for licensees; (vi) the proposal does not expand or repeal an existing regulation; (vii) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and (viii) the proposal does not have an effect on the state's economy.

TAKINGS IMPACT STATEMENT. The Board has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. Comments on this proposal may be submitted to James W. Johnston, General Counsel, Texas Board of Nursing, 1801 Congress Avenue, Suite 10-200, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. Comments must be received no later than thirty (30) days from the date of publication of this proposal. If a hearing is held, written and oral comments presented at the hearing will be considered.

STATUTORY AUTHORITY. These rule sections are proposed under the authority of Texas Occupations Code §301.151.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Texas Occupations Code §§301.151, 301.457.

§213.13. Complaint Investigation and Disposition.

(a) Complaints shall be submitted to the Board in writing or by the agency's online complaint portal and should contain at least the following information: Nurse/Respondent Name, [~~License Number, Social Security Number, Date of Birth, Employer, Dates of Occurrence(s),~~] Description of Facts or Conduct, Location of Incident, and [~~Witnesses, Outcome,~~] Complainant Identification (Name, Mailing Address, Email Address, and Telephone Number). Additional data to be collected in order to initiate or conduct an investigation includes Nurse/Respondent License Number, Nurse/Respondent Contact Information, Patient(s) Identifier(s), Witness Information, and Date and Time of Incident. [~~, and Written Instructions For Providing Information to the Board. Complaints may be made on the agency's complaint form.~~]

[~~(b) A preliminary investigation shall be conducted to determine the identity of the person named or described in the complaint.~~]

(b) [~~(c)~~] Complaints shall be assigned a priority status:

(1) Priority 1--those indicating that credible evidence exists showing a guilty plea, with or without an adjudication of guilt, or conviction of a serious crime involving moral turpitude; a violation of the NPA involving actual deception, fraud, or injury to clients or the public or a high probability of immediate deception, fraud or injury to clients or the public;

(2) Priority 2--those indicating that credible evidence exists showing a violation of the NPA involving a high probability of potential deception, fraud, or injury to clients or the public; and

(3) Priority 3--those indicating that credible evidence exists showing a violation of the NPA. [~~involving a potential for deception, fraud, or injury to clients or the public; and~~]

[~~(4) Priority 4--all other complaints.~~]

(c) [~~(d)~~] Not later than the 30th day after a complaint is received, the staff shall complete a preliminary investigation to determine the identity of the person named or described in the complaint, if not known, and process the complaint to determine priority scheduling, which establishes a schedule for case completion. [~~place a time line for completion, not to exceed one year, in the investigative file and notify all parties to the complaint.~~]

(d) In compliance with Texas Occupations Code §301.457, parties to the complaint will be notified of the expected timeline of the investigation as soon as practicable. Any change in timeline [~~time line~~] must be noted in the file and all parties notified of the change not later than seven days after the change was made.

(e) For purposes of this rule, completion of an investigation in a disciplinary matter occurs when:

(1) staff determines insufficient evidence exists to substantiate the allegation of a violation of the NPA or [,] Board's rules [~~, or a Board order~~]; or

(2) staff determines sufficient evidence exists to demonstrate a violation of the NPA or [,] Board's rules [~~, or a Board order~~] and files [~~drafts proposed~~] formal charges.

[~~(e) Staff shall conduct a criminal background search of the party described in the complaint.~~]

(f) The staff shall provide summary data of complaints extending beyond the complaint timeline [~~time line~~] to the executive director.

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

Filed with the Office of the Secretary of State on December 5, 2025.

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James W. Johnston
General Counsel
Texas Board of Nursing
Earliest possible date of adoption: January 18, 2026
For further information, please call: (512) 305-6879

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CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §217.24

The Texas Board of Nursing (Board) proposes amendments to §217.24, relating Telemedicine Medical Service Prescriptions. The amendments are being proposed under the authority of the Occupations Code §301.151.

BACKGROUND. The proposed amendments to §217.24 reflect changes required by House Bill 1700, which amended Texas Occupations Code §111.004. Specifically, the bill specifies the informed consent documentation that is required when licensees perform telehealth service or telemedicine medical service. The proposed amendments ensure that a written record is maintained of informed consent when nursing services are provided by video or telephone.

SECTION-BY-SECTION SUMMARY OVERVIEW. Proposed amendments to §217.24 are primarily intended to comply with the requirements of new legislation.

In Subsection (a), the Board defines "telehealth service" and "telemedicine medical service" based on the relevant sections of Texas Occupations Code §111.001.

In proposed Subsection (b), the Board specifies that standards of care are the same regardless of the format of telehealth or telemedicine medical service, as required by HB 1700.

Subsection (c) specifies the requirements for documentation of informed consent prior to telehealth or telemedicine medical service. These requirements include signature by the patient, parent, or legal guardian, disclosure of complications, risks, hazards for treatment methods, nursing license numbers, and practice location. A nurse is also required to confirm the identity of the patient taking part in telehealth or telemedicine medical service, verify their health history, and inform the patient regarding risks of electronic and digital communications in the provision of care.

Subsection (d) required telehealth and telemedicine medical service records regarding informed consent must be retained for seven years.

Subsection (e) was not amended except for adding a title to clarify the content relates to issuance of prescriptions. Subsections (f), (g), (h) and (i) substantively retain their existing structure, except for amendments to Texas Medical Board rules citations, which were recently recodified by the agency.

FISCAL NOTE. Dr. Kristin Benton, RN, DNP, Executive Director, has determined that for each year of the first five years the proposed new sections will be in effect, there will be no anticipated change in the revenue to state government as a result of the enforcement or administration of the proposal.

PUBLIC BENEFIT/COST NOTE. Dr. Benton has also determined that for each year of the first five years that the proposed rules are in effect, the anticipated public benefit will be ensuring the public, participating in telehealth service or telemedicine medical service is appropriately informed of the potential risks of participating in said service.

There may be costs to licensees and/or their employers in drafting and/or implementing informed consent procedures for telehealth service or telemedicine medical service. However, the Board is not required to comply with the requirements of Tex. Gov't Code. §2001.0045(b) because the proposed amendments are necessary to implement legislation and to protect the health, safety, and welfare of the residents of this state.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES AND RURAL COMMUNITIES. The Government Code §2006.002(c) and (f) require, that if a proposed rule may have an economic impact on small businesses or micro businesses or rural communities, state agencies must prepare, as part of the rulemaking process, an economic impact statement that assesses the potential impact of the proposed rule on these businesses and communities and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. Section 2006.002(c-1) requires that the regulatory analysis "consider, if consistent with the health, safety, and environmental and economic welfare of the state, using regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small businesses" are feasible. Therefore, an agency is not required to consider alternatives that, while possibly minimizing adverse impacts on small and micro businesses, would not be protective of the health, safety, and environmental and economic welfare of the state.

The Government Code §2006.001(1) defines a micro business as a legal entity, including a corporation, partnership, or sole proprietorship that: (i) is formed for the purpose of making a profit; (ii) is independently owned and operated; and (iii) has not more than 20 employees. The Government Code §2006.001(2) defines a small business as a legal entity, including a corporation, partnership, or sole proprietorship, that: (i) is formed for the purpose of making a profit; (ii) is independently owned and operated; and (iii) has fewer than 100 employees or less than $6 million in annual gross receipts. Each of the elements in §2006.001(1) and §2006.001(2) must be met for an entity to qualify as a micro business or small business. The Government Code §2006.001(1-a) defines a rural community as a municipality with a population of less than 25,000.

The Board does not anticipate that any rural communities will be affected by the proposal. The Board anticipates few, if any, individual licensees will qualify as a small or micro business under §2006.001 and, therefore, be affected by the proposal. However, for those that may, the Board has determined that the proposal is necessary to protect the health, safety, and economic welfare of the state.

The purpose of the proposal is to implement the statutory requirements of Texas Occupations Code §111.004. In particular, the provisions of the proposal that may result in the cost of compliance are based upon the statutory mandates that require the same. The legislature has already determined that these requirements and associated costs are necessary to ensure that individuals participating in telehealth service or telemedicine medical service have documentation of appropriate informed

consent on file. The proposal does not impose any additional costs other than those already imposed by the legislature. As a result, the Board has determined that there are no additional regulatory alternatives to the proposed new requirements that will sufficiently protect the health, safety, and economic interests of Texas consumers and the welfare of the state.

GOVERNMENT GROWTH IMPACT STATEMENT. The Board is required, pursuant to Tex. Gov't Code §2001.0221 and 34 Texas Administrative Code §11.1, to prepare a government growth impact statement. The Board has determined for each year of the first five years the proposed amendments will be in effect: (i) the proposal does not create or eliminate a government program; (ii) implementation of the proposal does not require the creation of new employee positions or the elimination of existing employee positions, as the proposal is not expected to have an effect on existing agency positions; (iii) implementation of the proposal does not require an increase or decrease in future legislative appropriations to the Board; (iv) the proposal does not require an increase or decrease in fees paid to the Board; (v) the proposal references new statutory requirements for licensees to follow when performing telehealth or telemedicine medical service; (vi) the proposal does not expand or repeal an existing regulation; (vii) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and (viii) the proposal does not have an effect on the state's economy.

TAKINGS IMPACT STATEMENT. The Board has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. Comments on this proposal may be submitted to James W. Johnston, General Counsel, Texas Board of Nursing, 1801 Congress Avenue, Suite 10-200, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. Comments must be received no later than thirty (30) days from the date of publication of this proposal. If a hearing is held, written and oral comments presented at the hearing will be considered.

STATUTORY AUTHORITY. These rule sections are proposed under the authority of Texas Occupations Code §111.004(c) and §301.151.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Texas Occupations Code §§111.001, 301.151.

§217.24. Telehealth Service and Telemedicine Medical Service in Nursing [~~Telemedicine Medical Service Prescriptions~~].

(a) Definitions.

(1) "Telehealth service" shall have the meaning defined by Texas Occupations Code §111.001(3).

(2) "Telemedicine medical service" shall have the meaning defined by Texas Occupations Code §111.001(4).

(b) The same standards discussed in this rule are applicable to telehealth service and telemedicine medical service regardless of whether the patient interaction occurs in a video format or an audio-only format.

(c) Informed consent for either telehealth service or telemedicine medical service requires the nurse to ensure a written record is maintained of informed consent signed by the patient, or a parent or legal guardian of the patient, if the patient is a minor, or the patient has been adjudicated incompetent to manage the patient's personal affairs. A signed, written informed consent is required for all treatment plans and procedures where a reasonable possibility of complications from the treatment planned or a procedure exists, or the treatment plans and procedures involve risks or hazards that could influence a reasonable person in deciding to give or withhold consent. Such consent must disclose any and all complications, risks and hazards and include the following:

(1) the name and Texas nursing license number(s) and/or license number with multistate licensure privilege, contact information, and practice location involved in the patient's telehealth service and/or telemedicine medical service. This information must be kept current, accessible and provided in writing to the patient, parent, or legal guardian;

(2) an advanced practice registered nurse (APRN) who completes a telemedicine medical service must ensure that the informed consent of the patient includes disclosure to the patient of:

(A) the name of the delegating physician;

(B) the physician's Texas medical license number;

(C) the contact information of the physician including their primary practice address and phone number.

(d) When engaging in telehealth or telemedicine medical services, a licensee must:

(1) confirm the identity of the patient;

(2) verify and authenticate the patient's health history;

(3) obtain informed consent from the patient after disclosures have been made regarding the delivery models and treatment methods and limitations, to include any special informed consent regarding the use of telehealth service or telemedicine medical service. At a minimum, the informed consent must inform the patient and document acknowledgment of the risk and limitations of:

(A) the collection and use of electronic and digital communications in the provision of care;

(B) the potential for breach of confidentiality, or inadvertent access, of protected health information using electronic and digital communication in the provision of care; and

(C) the potential disruption of electronic and digital communication in the use of telehealth service or telemedicine medical service;

(4) inform the patient that it is the role of the licensee to determine whether the treatment is appropriate for a telehealth service or telemedicine medical service encounter; and

(5) state the requirement for explicit patient consent to forward patient identifiable information to a third party.

(d) Informed consent records must be retained at least seven years from the date of last treatment by a nurse or longer if required by other federal or state law. If a patient is under 18 years old, informed consent records must be retained until the patient reaches 21 years old, or seven years from the date of last treatment, whichever is longer.

(e) Issuance of Prescriptions. [~~(a)~~] The validity of a prescription issued as a result of a telemedicine medical service is determined by the same standards that would apply to the issuance of the prescription in an in-person setting.

(f) [~~(b)~~] This rule does not limit the professional judgment, discretion or decision-making authority of a licensed practitioner. A licensed practitioner is expected to meet the standard of care and demonstrate professional practice standards and judgment, consistent with all applicable statutes and rules when issuing, dispensing, delivering, or administering a prescription medication as a result of a telemedicine medical service.

(g) [~~(c)~~] A valid prescription must be:

(1) issued for a legitimate medical purpose by a practitioner as part of patient-practitioner relationship as set out in §111.005, Texas Occupations Code; and

(2) meet all other applicable laws before prescribing, dispensing, delivering, or administering a dangerous drug or controlled substance.

(h) [~~(d)~~] Any prescription drug orders issued as the result of telemedicine medical service, are subject to all regulations, limitations, and prohibitions set out in the federal and Texas Controlled Substances Act, Texas Dangerous Drug Act and any other applicable federal and state law.

(i) [~~(e)~~] Limitation on Treatment of Chronic Pain.

(1) For purposes of this rule, chronic pain has the same definition as used in 22 Texas Administrative Code §172.1(2) [~~§170.2(4)~~] (relating to Definitions).

(A) Telemedicine medical service [~~services~~] used for the treatment of chronic pain with scheduled drugs by any means other than via audio and video two-way communication is prohibited, unless a patient:

(i) is an established patient of the APRN being treated for chronic pain;

(ii) is receiving a prescription that is identical to a prescription issued at the previous visit; and

(iii) has been seen by the prescribing APRN, physician, or other health professional as defined in Tex. Occ. Code §111.001(1) in the last 90 days, either:

(I) in-person; or

(II) via telemedicine medical service using audio and video two-way communication.

(B) An APRN, when determining whether to utilize telemedicine medical service [~~services~~] for the treatment of chronic pain with controlled substances as permitted by paragraph (1)(A) of this subsection, shall give due consideration to factors that include, at a minimum, the date of the patient's last in-person visit, patient co-morbidities, and occupational related COVID risks. These are not the sole, exclusive, or exhaustive factors an APRN should consider under this rule.

(C) If a patient is treated for chronic pain with scheduled drugs through the use of telemedicine medical service [~~services~~] as permitted by paragraph (1)(A) of this subsection, the medical records must document the exception and the reason that a telemedicine medical service visit was conducted instead of an in-person visit.

(2) For purposes of this rule, acute pain has the same definition as used in 22 Texas Administrative Code §172.1(1) [~~§170.2(2)~~]. Telemedicine medical service [~~services~~] may be used for the treatment of acute pain with scheduled drugs, unless otherwise prohibited under federal and state law.

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

Filed with the Office of the Secretary of State on December 5, 2025.

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James W. Johnston
General Counsel
Texas Board of Nursing
Earliest possible date of adoption: January 18, 2026
For further information, please call: (512) 305-6821

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 51. EXECUTIVE
SUBCHAPTER G. NONPROFIT ORGANIZATIONS

31 TAC §51.164

The Texas Parks and Wildlife Department proposes an amendment to 31 TAC §51.164, concerning Best Practices (Officers and Directors). The proposed amendment would clearly stipulate that the provisions of subsection (b)(3), which prohibit an employee of the department from serving as a member of a non-profit partner (NP), do not apply to the Texas Parks and Wildlife Mutual Association. The Texas Parks and Wildlife Mutual Association (Association) was founded in 1956 with the mission of providing financial assistance to the families/beneficiaries of deceased members (department employees and their spouses). Members receive no compensation from the Association and serve on a voluntary basis.

Parks and Wildlife Code authorizes the department to work with nonprofit organizations to carry out the mission of the department. The department has determined that the Association assists the department by providing bereavement benefits to employees who are members, including peace officers commissioned by the department, who are not infrequently in life-threatening situations in the line of duty. Similarly, Government Code, Chapter 2255, requires a state agency to adopt rules regarding the relationship between donors and the agency, including the agency's employees, if the agency is authorized to accept donations or if "a private organization exists that is designed to further the purposes and duties of the agency." Although the Association's relationship with the department is not pecuniary, it does exist to assist and support employees of the agency in times of need.

The amendment is necessary to allow the department to recognize the Association as a NP and explicitly acknowledgment that a department employee may serve as an officer of the Association without affecting the Association's status as a NP.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the rule as proposed

is in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rule.

Mr. Macdonald also has determined that for each of the first five years that the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rule will be the facilitation of bereavement support for the beneficiaries of department employees who serve the public.

There will be no adverse economic effect on persons required to comply with the rule, as the proposed amendment does not affect anyone other than department employees who are members of the Association.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, or rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small and microbusinesses and rural communities. Those guidelines state that an agency need only consider a proposed rule's direct adverse economic impacts to determine if any further analysis is required. The department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the proposed rules would result in no direct economic effect on any small businesses, micro-businesses, or rural community, as the proposed amendments are purely administrative; therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of an existing fee; not create, expand, or repeal an existing regulation; not increase or decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rule may be submitted to Robert Macdonald (512) 389-4775, e-mail: robert.macdonald@tpwd.texas.gov. Comments also may be submitted via the department's website at http://www.tpwd.texas.gov/business/feedback/public_comment/.

The rule is proposed under Parks and Wildlife Code, Chapter 11, Subchapter J, which requires the commission to adopt rules governing best practices for nonprofit partners of the agency.

The proposed rule affects Parks and Wildlife Code, Chapter 11, Subchapter J.

§51.164. Best Practices (Officers and Directors).

(a) (No change.)

(b) In addition to subsection (a) of this section, NPs must comply with the best practices regarding officers and directors as prescribed in this section.

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

(3) NPs shall not elect or designate or otherwise select a department employee as an officer or director, other than as a non-voting uncompensated representative of the department. This paragraph does not apply to the Texas Parks and Wildlife Department Mutual Association.

(4) - (5) (No change.)

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

Filed with the Office of the Secretary of State on December 8, 2025.

TRD-202504441
James Murphy
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: January 18, 2026
For further information, please call: (512) 389-4775

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CHAPTER 53. FINANCE
SUBCHAPTER A. FEES
DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

31 TAC §53.15

The Texas Parks and Wildlife Department proposes an amendment to 31 TAC §53.15, concerning Miscellaneous Fisheries and Wildlife Licenses and Permits.

The proposed amendments would acknowledge the fee of $50 for field trial permits issued under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter J.

The Texas Legislature during the most recent regular session enacted Senate Bill 2801, which added new Chapter 43, Subchapter J, to create a new type of field trial permit limited to the pursuit of squirrels, furbearing animals, and nongame wildlife on privately owned land or public lands authorized by the department by rule. The fee for the permit is set by statute at $50; however, the department maintains by rule a list of fees for various permits and licenses and therefore wishes to add the new permit fee to keep that list contemporaneous and accurate.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the rule as proposed are in effect, any fiscal implications resulting from administration of the rule will be minimal and in any case the fee is established

under the provisions S.B. 2801 and not as a result of this rulemaking; therefore, there is no effect on persons required to comply with the rule as proposed.

Mr. Macdonald also has determined that for each of the first five years that the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rule will be the accuracy of fee schedules in department rules.

Under provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), in April 2008, the Office of the Attorney General issued guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that because the rule as proposed does not directly regulate any small business, microbusiness, or rural community, there will be no adverse economic impact on small businesses, microbusinesses, or rural communities as a result of the proposed rule.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of a fee; not create a new regulation; not expand an existing regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rule may be submitted to Kevin Mote, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 217-2779; email: kevin.mote@tpwd.texas.gov or via the department website at www.tpwd.texas.gov.

The amendment is proposed under Parks and Wildlife Code, §43.0762, which authorizes the commission to adopt regulations necessary to administer that subchapter.

The proposed amendment affects Parks and Wildlife Code, Chapters 43.

§53.15. Miscellaneous Fisheries and Wildlife Licenses and Permits.

(a) - (h) (No change.)

(i) Permit for Field Trial under the provisions of Parks and Wildlife Code, Subchapter J - $50.

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

Filed with the Office of the Secretary of State on December 8, 2025.

TRD-202504448
James Murphy
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: January 18, 2026
For further information, please call: (512) 389-4775

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CHAPTER 55. LAW ENFORCEMENT
SUBCHAPTER H. PARTY BOATS

The Texas Parks and Wildlife Department proposes the repeal of 31 TAC §55.406, amendments to §§55.401 - 5.403, and 55.405, and new 55.406, 55.408, and 55.410, concerning Party Boats. The proposed repeal, amendments, and new sections would function collectively to modernize, improve, reorganize, and streamline the regulation of commercial party boats on Texas inland waters in the interests of public safety.

In 2007, the 80th Texas Legislature responded to a spate of serious incidents involving commercial party boats (hereinafter, "party boats") on inland waters by enacting House Bill 12, which amended the Parks and Wildlife Code to add new Chapter 31, Subchapter G, to task the Parks and Wildlife Commission with the duty to regulate the operation of party boats (defined as a vessel operated by the owner of the vessel or an employee of the owner and rented or leased by the owner for a group recreational event for more than six passengers) on public fresh water as necessary to protect the public health and safety. The commission responded by promulgating 31 TAC Chapter 55, Subchapter H (32 TexReg 10011), which imposed various measures intended to protect and enhance the safety of the public, including requirements for party boat owners to obtain a department-issued license, mandatory annual inspections of party boats, party boat operator standards, limitations on the number of people that may be aboard a party boat while under way with paying passengers, basic emergency and safety requirements, and mandatory minimum liability insurance coverage.

Since 2007, the state has seen explosive growth in population and tourism and a corresponding increase in utilization of public surface water resources for outdoor recreation activities, including party boats, which are quite popular on lakes both large and small. A series of recent incidents caused the department to reassess the efficacy of current rules.

In May of 2018, a woman fell from a party boat on Lake Travis, striking her head and then drowning.

In August of 2021, a party boat on Lake Conroe capsized, throwing 53 passengers into the water along with a substantial quantity of diesel fuel, resulting in the death of one passenger and significant exposure to spilled fuel by the survivors. The vessel

had a history of regulatory issues (while operating under another name in another state), was prohibited by the U.S. Coast Guard from operating in federal waters, and had been renamed and relocated to Texas.

In July of 2022, the department arrested the operator of a party boat on Lake Austin and obtained a conviction for Boating While Intoxicated (BWI).

In May and June of 2025, the department conducted saturation patrols (an increased, temporary law enforcement presence on popular public waters during holiday or other high-use periods, intended to protect public safety by counteracting and minimizing common dangerous behaviors) on Lake Austin and Lake Travis, which resulted in 20 violations involving party boats, including: no evidence of inspection, no proof of insurance, passengers on the top deck while under way, inadequate staff preparation and education (e.g., CPR certification, boater education certification), no certificate of number (registration) onboard, unlawful party boat operation, no party boat operator license, and others. At least four boats over 30 feet were found operating illegally by claim of being livery vessels rather than party boats.

In August of 2025, department law enforcement personnel cited a party boat operator for operation without the required insurance, which had been allowed to expire.

Also in August of 2025, a party boat passenger Lake Travis overdosed and died, while in another incident a passenger was injured by a propeller strike.

The department is also aware of instances in which party boat owners have intentionally altered vessel length for the sole purpose of evading the applicability of the subchapter.

This is a sample of some of the major incidents that have occurred; department game wardens routinely encounter situations involving party boats in which borderline dangerous conditions or behavior are observed.

The department concludes, on the basis of continuing issues involving fatalities, injuries, insurance fraud, regulatory evasion, and other violations, that there is widespread intentional noncompliance with basic safety and documentation requirements, which warrants action to strengthen and improve party boat rules in the interest of public health and safety.

The proposed repeal of §55.406, concerning Violations and Penalties, is necessary to make room for proposed new §55.406, concerning Inspections and Certifications.

The proposed amendment to §55.401, concerning Definitions, would alter the definition of "inland waters" and add new definitions for "Owner's Agent," "Accredited Marine Surveyor," "Accredited Naval Architect," and "Stability Letter." The current definition of "inland waters" is not completely accurate, as it does not exclude certain border waters with Oklahoma and Louisiana that are considered navigable waters by the federal government and therefore subject to regulation by the U.S. Coast Guard (USCG), which supersede state regulations and are generally considered to be as or more efficacious than state regulations. The proposed amendment would add language to make the definition completely accurate. The proposed amendment would define "owner's agent" as "any person engaged, authorized, or otherwise allowed, directly or indirectly via an intermediary, to operate a vessel that is not owned by the person but is subject to the provisions of this subchapter." The department has encountered numerous instances of attempted evasion of regulatory compliance in the form of persons employing semantics to claim that some sort of lease or subcontractor arrangement absolves the actual owner of a vessel being used as a party boat from culpability for violations of provisions of the subchapter. Under Parks and Wildlife Code, §31.171, a party boat is defined as "a vessel operated by the owner of the vessel or an employee of the owner." The statutory definition is, in the determination of the department, unambiguous with respect to the legal responsibilities of a person who owns a vessel being used as a party boat; however, the department seeks to make it abundantly clear that a business arrangement between the owner of a vessel used as a party boat and a person who is technically not an employee of the owner but ultimately operates or oversees the operation of the vessel is irrelevant in the context of determining responsible parties in the course of administrative and enforcement activities. The proposed provision would make this clear.

The proposed amendment would define "accredited marine surveyor" as a person accredited by one of the four recognized professional trade organizations. The proposed rules would require party boats and initially and periodically thereafter to be inspected by an accredited third-party inspector; thus, a definition of the term is necessary to ensure that party boat inspections are conducted by person competent to perform them.

The proposed amendment would define "accredited naval architect" as a person accredited by one of the two recognized professional trade organizations. The proposed rules would require party boats and initially and periodically thereafter to be inspected by an accredited third-party inspector; thus, a definition of the term is necessary to ensure that party boat inspections are conducted by person competent to perform them.

Finally, the proposed amendment would define "stability letter" as "an affidavit from a naval architect or accredited marine surveyor attesting to the loading limits necessary for the safe operation of a vessel used as a party boat" and stipulate an occupancy limit. The proposed rules require every vessel operated as a party boat to be assessed initially and periodically thereafter for seaworthiness and for the particulars of that assessment to be put in writing in the form of a Stability Letter that is then submitted to the department; therefore, a definition of the term is necessary to provide guidance as to the content of the letter.

The proposed amendment to §55.402, concerning Applicability and Exceptions, would make alterations necessary to comport the section with other components of the proposed rulemaking, consisting of the insertion of a reference to proposed new §55.406, concerning Inspections and Certifications, in subsection (b), and the removal of current subsection (c)(2), which is no longer necessary because it address license reciprocity on border waters. Such waters are under USCG jurisdiction and a USCG license is required to operate a party boat on those waters; thus, because the proposed amendment would exempt persons in possession of a valid USCG captain's or pilot license from having to obtain a party boat license in Texas, party boat operators in Louisiana and Oklahoma would meet the exception to licensure in Texas. The proposed amendment would also eliminate current subsection (d)(3) to remove the reference to livery vessels, which has been misconstrued to somehow exempt owners of party boats from the requirements of the subchapter, which isn't the case.

The proposed amendment to §55.403, concerning License Required, would alter current subsections (a) and (c) to create an exception to licensing requirements for persons in possession of a valid USCG captain's or pilot's license. The department has determined that USCG requirements for such licenses meet or

exceed the requirements of this subchapter and therefore the department is satisfied that public safety is not being compromised by allowing federal licensure to be substituted for a party boat operator's license.

The proposed amendment to §55.405, concerning Employer/Owner Responsibilities, would update the section to comport it with the changes being made in this rulemaking, increase the minimum amount of liability insurance required to be carried, clarify that the liability insurance policy must be applicable on a per-incident basis, stipulate a records retention period, and eliminate current subsections (c) and (d).

The proposed amendment would add language to allow certain USGS certifications to be used in lieu of the inspections and certifications required under the subchapter. The Coast Guard requirements for certification of "K" or "T" class commercial boats meet or exceed the standards that would be imposed under the proposed rules and the department believes that because of that, exempting such vessels from the inspection and certification requirements of the subchapter does not jeopardize public safety.

Current rule requires a party boat operator to maintain a minimum of $300,000 of liability insurance from an insurer licensed to do business in Texas. The requirement for liability insurance is established by Parks and Wildlife Code, §31.175(c); however, the amount of insurance is set by the commission. Although the department considers that a survey of party boat operations indicates that most are carrying liability insurance that exceeds the $300,000 minimum, the department nonetheless believes it is prudent to adjust the minimum value. The current value was established in 2007. Thus, the proposed amendment would increase the required minimum to $500,000 to reflect the fact that the Consumer Price Index has increased significantly since 2007 (49%), and the requirement would represent the bare minimum with respect to the ability to respond to incidents resulting in damages or injuries. The proposed amendment also would clearly state that the insurance required by the subchapter is to be on a per-incident basis. The department has encountered situations in which persons have maintained that because the rules do not stipulate insurance on a per-incident basis, insuring on a per-vessel or per-fleet is therefore sufficient. The department disagrees, maintains that it should be intuitively obvious, and wishes to make this clear in rule. The proposed amendment also would require proof of insurance to be kept on board a party boat at all times and made available upon request to a department employee acting within the scope of official duties. The department believes it is necessary to be able to quickly determine that a party boat operator is in compliance with the minimum insurance requirements at any time the vessel is being used to accommodate paying passengers.

Similarly, the proposed amendment would require the retention of all documentation required by the subchapter for a period of two years, which is the statute of limitations for Parks and Wildlife Code violations under Parks and Wildlife Code, Chapter 31, Subchapter G.

Finally, the proposed amendment would remove current subsections (d) and (e). The provisions of subsection (d) would be relocated to proposed new §55.408, concerning Passenger Safety. Current subsection (e) would be eliminated because passenger load limits would be calculated by an accredited naval architect or marine surveyor as part of the inspection and assessment regime set forth in proposed new §55.406, concerning Inspections and Certifications.

Proposed new §55.406, concerning Inspections and Certifications, would prescribe general and specific requirements related to the department's ability to determine vessel safety.

Proposed new subsection (a) would clearly state that any person who operates or allows the operation of a vessel as a party boat when the vessel has not been inspected and certified as provided by the subchapter commits a criminal offense. The provision is necessary because the department believes it should be absolutely clear that no vessel is to be operated as a party boat unless it has been determined by the department or the USCG to be safe for that use. The proposed new subsection also would require a stability test to be performed following significant alterations to the vessel's structure or equipment, or following a reportable incident as described in Parks and Wildlife Code, §31.105, unless the incident does not involve physical damage to the vessel. The department reasons that any development or occurrence that could fundamentally alter a vessel's seaworthiness or stability merits the performance of a stability test to determine the vessel's ability to operate safely. Finally, the proposed new subsection would stipulate that when a vessel is required to be the subject of a stability test under the subsection, it is unlawful to operate that vessel as a party boat until the results of the stability test have been submitted to the department and the department has authorized resumption of operation as a party boat. The provision is necessary to provide a verification mechanism for vessels whose safety could potentially be compromised by alteration or incident.

Proposed new subsection (b) would establish a continuing inspection and assessment regime for vessels operated as party boats. Current rule requires a qualifying vessel to pass an annual safety inspection conducted by the department before it can be lawfully used as a party boat. The proposed new rule would replace the current requirement for a single annual inspection conducted by department law enforcement personnel with a new approach that would require 1) an initial comprehensive inspection/certification to be performed by an accredited naval architect or marine surveyor (and department verification of other water safety requirements as a condition of licensure), followed by 2) annual water safety compliance inspections conducted by the department, and 3) additional ongoing inspections by an accredited naval architect or marine surveyor no less frequently than once every five years. In addition to the serious incidents documented earlier in this preamble, the department has encountered numerous problematic issues with respect to compliance and compliance verification, highlighting not only the need for strengthening of regulatory oversight, but new approaches to providing for public safety. However, one significant operational constraint is game warden availability for inspection duties. The department's law enforcement personnel are tasked with a wide and diverse array of enforcement responsibilities, ranging from the enforcement of recreational hunting and fishing laws to environmental, water safety, and border security matters. There are 136 party boats licensed in Texas and 182 operator licenses currently active in the state and most are concentrated around a handful of large lakes, which places a unique burden on game wardens stationed in those areas with respect to scheduling and conducting the inspections required under current rule. Therefore, the department seeks to address the issue by providing for an initial comprehensive inspection and certification to be performed by an accredited naval architect or marine surveyor as opposed to a game warden (although department game wardens would still, prior to issuance, verify that initial water safety requirements have been satisfied). Not only would this approach

provide for an independent, professional assessment of vessel seaworthiness and safety, it would allow party boat owners and operators greater flexibility to schedule and have inspections performed. The proposed new subsection would require an initial inspection to be performed by an accredited naval architect or marine surveyor, consisting of an examination of a prospective party boat in dry dock to assess the integrity of the hull, steerage and propulsion systems, a USCG-approved stability test, and determination of an occupancy limit.

Proposed new subsection (d) would provide for a video inspection to be conducted in lieu of the inspection in dry dock, which is intended to provide an alternative method of compliance in instances where it is impractical or not possible for vessels to be taken out of the water. The rules would require a USCG-approved stability test because such tests are already widely performed, understood, and accepted as efficacious, which is necessary to document in writing the limitations on any given vessel necessary to prevent overloading of passengers, cargo, equipment, and fuel that could cause unsafe operational conditions.

Proposed new subsection (e) would require the acknowledgment required by subsection (c) to be maintained by the owner of the vessel and provided to the department upon request, which is necessary to provide a mechanism for verifying that the licensee has complied with the inspection requirements of the proposed new section.

Proposed new subsection (f) would require an annual water safety compliance inspection to be performed by the department, which would function to provide a continuous process for verifying that party boats and party boat operators are equipped and operating as required by law. The inspection would consist of confirmation of compliance with various statutory requirements of Parks and Wildlife Code, Chapter 31 (registration, lights, sound signal devices, fire extinguishers, passenger safety information, etc.), items mandated by department rules promulgated under Parks and Wildlife Code, Chapter 31 (first-aid kit), and the possession and display of required documentation, all of which the department considers necessary to demonstrate that any given party boat or operator is operating safely as required by law. Proposed new subsection (f) also would prescribe the process for requesting, scheduling, and performing the annual assessment inspection required under the subsection. As noted earlier, the department has experienced logistical and administrative stress with respect to inspections under the current rules. Current rules specify only that a party boat may not be operated unless an annual inspection has been performed within the previous 12 months. The department has determined that it is necessary to provide additional structure and timeliness to the process; therefore, the proposed provisions would require licensees to schedule an assessment inspection not more than 60 nor less than 30 days prior to the annual anniversary date of the inspection for initial licensure and would require the department to conduct the assessment inspection no more than 30 days prior to that date. By organizing and stratifying requests for inspection, the department can impose some sort of order on the process and avoid logjams that occur when multiple licensees wait until the last minute to obtain the inspections they cannot legally continue to operate without having.

Proposed new subsection (g) would require party boats to be inspected in dry dock or by video at five-year intervals by an accredited naval architect or marine surveyor to determine the suitability of the vessel for continued use as a party boat. Party boats are not pleasure craft, they are working vessels subjected to extensive, repetitive use that can impact hull, power, and steerage systems. The department believes it is prudent and appropriate to require party boats to be inspected in dry dock (or via video) at least once every five years to ensure the integrity of such systems.

Proposed new subsection (h) would require the acknowledgment required by subsection (g) to be maintained by the owner of the vessel and provided to the department upon request, which is necessary to provide a mechanism for verifying that the licensee has complied with the inspection requirements of the proposed new section.

Proposed new §55.408, concerning Passenger Safety, would set forth specific provisions intended to advance the safety of passengers aboard party boats. Proposed new subsection (a) would explicitly establish the number and types of personal flotation devices that must be aboard a party boat when it is carrying passengers, including provisions intended to provide adequate water safety for children and minors.

Proposed new subsection (b) would enumerate the specific emergency procedures that a party boat operator would be required to articulate to each paying passenger aboard a party boat and require those procedures to be conspicuously posted aboard the vessel for passenger reference. Those procedures are already required under current §55.405, relating to Employer/Owner Responsibilities, and are being relocated to the new section for greater organizational sense.

Proposed new §55.410, concerning Violations and Penalties, would restate verbatim the contents of current §55.406, which is proposed for repeal to create space for proposed new §55.406, concerning Inspections and Certifications.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state government as a result of enforcing or administering the rules as proposed.

There will be fiscal implications for persons required to comply with the rules as proposed, which are identical to those addressed in the discussion of the proposed rules impacts on small and micro businesses later in this preamble.

Mr. Macdonald also has determined that for each of the first five years that the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the proposed rules will be the protection of public health and safety by enhanced oversight of party boat operators and the safety of other recreational users who share the water with party boats, as well as reduced burdens on first responders.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the proposed rules will impose an adverse economic effect on small businesses and mi-

crobusinesses, namely, party boat operators. Department data indicate that there are 136 party boats licensed in Texas and 182 operator licenses currently active in Texas. To ensure that this analysis fully captures all entities that could be affected by the rules, this analysis assumes that all 136 party boats owners qualify as a small or microbusiness. The department has accordingly prepared the economic impact statement and regulatory flexibility analysis described in Government Code, Chapter 2006.

The proposed rules would require prospective licensees to engage an accredited naval architect or accredited marine surveyor to perform an initial inspection of the party boat as a condition of licensure, to consist of an analysis of the vessel's seaworthiness, a stability test, and the calculation of the maximum number of passengers the vessel is able to carry safely. Following initial licensure, the proposed rules would require an inspection by an accredited naval architect or marine surveyor at least once every five years, and following significant modifications that could affect vessel stability or reportable incidents resulting in damage. The distribution and availability of the services required varies across the state, but based on cursory research, the experience of knowledgeable law enforcement personnel, and anecdotal information, the department has determined that the total cost of compliance for initial licensure could range anywhere between approximately $1,500 and $3,000 per vessel.

The cost of a stability test is dependent on the length of the vessel. The minimum length of a party boat is 30 feet and there is no maximum; however, the largest vessel currently licensed to operate as a party boat is 100 feet long. Department records indicate that there are 81 party boats of between 30 and 41 feet in length (59.5%), 33 party boats of between 41 and 51 feet in length (24.2%), nine party boats of between 51 and 61 feet in length (6.6%), three party boats of between 61 and 71 feet in length (2.2%), two party boats of between 71 and 81 feet in length (1.4%), five party boats of between 81 and 91 feet in length (3.7%), and two party boats of between 91 and 100 feet in length (1.4%). The average length of a party boat is approximately 40 feet, which is approximately 60% of the fleet. Based on observation, inquiry, and anecdotal information, the amount of time necessary to perform a stability test on a 40-foot vessel is approximately three hours. Also based on observation, inquiry, and anecdotal information, the labor cost for a stability test is approximately $120 per hour. Therefore, the department estimates the average cost for a stability analysis to be approximately $360, plus any incidentals such as travel cost, which are incident-dependent and cannot be meaningfully quantified.

The cost of performing an inspection in dry dock (removal from the water) varies, depending on where the vessel is located, the length and tonnage of the vessel, the duration of the inspection, and the business model employed by the contractor. Based on observation, inquiry, and anecdotal information, the department estimates that the cost to dry dock a vessel 40 feet or less in length is approximately $25 per foot in most locations, and the cost for vessels longer than 40 feet in length is approximately $30 per foot. Some contractors charge a flat fee of anywhere from $1,500 to $2,400 to remove vessels from the water. Again, based on observation, inquiry, and anecdotal information, the cost of the actual inspection is estimated to be approximately $190 hour and that most if not all inspections are conducted in less than three hours. Therefore, the department estimates the cost of compliance for inspection, for a 40-foot vessel (the average vessel length in the current fleet), could range from approximately $1,570 to $2,970, consisting of a $1,000 to $2,400 dry-dock fee and $570 for a three-hour inspection at $190 per hour, plus any incidentals such as travel cost, which are incident-dependent and cannot be meaningfully quantified. For the largest party boat, the department estimates the minimum cost of compliance to be approximately $3,570, consisting of a $3,000 dry dock fee and a three-hour inspection cost of $570. The rules as proposed provide for the option of a video inspection in lieu of inspection in dry dock. Based on anecdotal information and data from the Bureau of Labor Statistics, the department estimates that the mean hourly rate for a commercial diver to conduct a survey of a vessel is approximately $40 per hour, to which would be added the cost for an accredited marine surveyor or naval architect to review the stored media for purposes of inspection at $190 per hour. The department anticipates that the dive-time for a survey would not exceed three hours and the time to review the stored media for inspection purposes to be not more than three hours as well; therefore, the cost of compliance with respect to a video inspection in lieu of inspection in dry dock is estimated to be approximately $690.

The proposed rules would require party boats to be equipped with a functional two-way communications apparatus and a First Aid kit in good condition. Current rule requires a party boat operator to post emergency procedures for passengers, including instructions for use of a radio-telephone and the location of First Aid equipment, which suggests that such items are necessary to pass the inspection; the proposed rules would explicitly require them. The department has determined that an appropriate First Aid kit costs approximately $50 to $200. With respect to communications equipment, the department concludes that it would be very rare for a commercial vessel taking paying passengers on trips not to be equipped with some sort of ability to communicate with the shore, especially in the age of cellular phones, but estimates the cost of compliance for two-way communications capability to be anywhere from $100 to $500.

The proposed rules would require party boat operators to carry a minimum of $500,000 of liability insurance on a per-incident coverage basis (the current requirement is for $300,000 of coverage). The department has surveyed the regulated community and determined that approximately 70 percent of party boats already meet this standard, which is to be expected, as it would be prudent business practice to acknowledges the legal risks inherent in the regulated activity; however, to ensure that a credible minimum standard exists, the rules would increase the required coverage by $200,000 to reflect the increase in the Consumer Price Index since 2007. The department estimates that the proposed rules, if adopted, would result in an additional cost of approximately $4,000 per license related to insurance. This figure is based on communications with the regulated community indicating annual premiums of approximately $3,000 for the current minimum coverage and $7,000 for licensees who are already insured at the proposed $500,000 minimum coverage. The department notes again that most and nearly all members of the regulated community carry liability insurance with coverage of $500,000 or greater.

The department has determined that the proposed rules will not impose a direct adverse economic impact on rural communities, as the proposed rules would not directly regulate any local community.

The department considered several alternatives to the rules as proposed.

One alternative considered was status quo. The department rejected this alternative because it has determined that the current rules are insufficient in achieving a statutorily mandated duty to

protect public health and safety with respect to regulation of party boats.

Another alternative considered was to increase law enforcement presence and effort on inland waters. This alternative was rejected because current department law enforcement commitments do not allow shifting of sufficient enforcement resources to party boat operations without negatively impacting other enforcement obligations.

A third alternative considered was to increase education and outreach efforts and rely upon the "honor system" to create a safe environment for the public with respect to party boat operations in the state. This alternative was rejected because the current state of affairs demonstrates that the current rules are not sufficient to discharge the agency's statutory duty to protect the public health and safety; thus, if the "honor system" concept was efficacious, the need for the proposed rules would not exist.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of a fee; not create a new regulation, but will expand an existing regulation (by requiring third-party inspections and certifications of party boats and increasing the minimum liability insurance required for party boats); neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rules may be submitted to Assistant Commander Cody Jones, Boating Law Administrator, at (512) 389-4624, email: or via the department website at www.tpwd.texas.gov.

31 TAC §§55.401 - 5.403, 55.405, 55.406, 55.408, 55.410

The amendments and new sections are proposed under the authority of Parks and Wildlife Code, §31.176, which requires the commission to promulgate rules regarding the requirements and procedures for the issuance and renewal of a party boat operator license to protect the public health and safety, and §31.180, which requires the commission to adopt and enforce rules necessary to implement Parks and Wildlife Code, Chapter 31, Subchapter G.

The proposed amendments and new sections affect Parks and Wildlife Code, Chapter 31.

§55.401. Definitions.

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

(1) Inland waters--all public waters of this state that lie:

(A) entirely within the state; and

(B) are not designated as navigable waters by the United States Coast Guard (USCG) [~~on the landward side of the coastal waters boundary as defined in §65.3(15) of this title (relating to Definitions)~~].

(2) Party boat--a vessel meeting the definition of "party boat" established in Parks and Wildlife Code, §31.171(2).

(3) Passenger--a person carried on board a party boat, but does not include:

(A) the vessel owner or the owner's agent;

(B) the vessel's operator or crew members, if they have not provided a consideration for their transportation before, during, or after the voyage; or

(C) a person being trained for the purposes of acquiring a party boat operator's license.

(4) Owner's Agent--Any person engaged, authorized, or otherwise allowed, directly or indirectly via an intermediary, to operate a vessel that is not owned by the person but is subject to the provisions of this subchapter.

(5) Accredited Marine Surveyor--A person accredited by one of the following organizations:

(A) National Association of Marine Surveyors (NAMSGlobal);

(B) Society of Accredited Marine Surveyors (SAMS);

(C) Association of Certified Marine Surveyors (ACMS); or

(D) United States Surveyors Association (USSA) / NAVTECH.

(6) Accredited Naval Architect--A person accredited by one of the following organizations:

(A) Society of Naval Architects and Marine Engineers (SNAME); or

(B) American Society of Naval Engineers (ASNE).

(7) Stability Letter--An affidavit from a naval architect or accredited marine surveyor attesting to the loading limits necessary for the safe operation of a vessel used as a party boat. For the purposes of this subchapter, a stability letter must specifically identify the number of persons that may be aboard the vessel without compromising vessel stability with respect to capsizing (hereinafter, "occupancy limit").

§55.402. Applicability and Exceptions.

(a) This subchapter applies to a party boat that operates on inland waters of this state.

(b) The annual water safety inspection required by §55.406(c) of this title (relating to Inspections and Certifications) [~~§55.405(a) of this title (relating to Employer/Owner Responsibilities)~~] is not required for a vessel that:

(1) is carrying passengers for hire; and

(2) carries a valid and current certificate of inspection issued pursuant to federal law.

(c) A person is not required to obtain a party boat operator's license if that person possesses[:]

[~~(1)~~] a valid and current federal pilot's or captain's license issued by the United States Coast Guard or other federal agency.[~~; or~~]

[~~(2) a valid license, issued by a state that shares a body of water with Texas, that is substantively similar in effect and scope to the party boat operator license required by this subchapter, provided:~~]

[~~(A) the issuing state allows Texas vessels to operate in the shared waters under the same conditions; and~~]

[~~(B) the party boat is operated only in waters shared by the issuing state and the state of Texas.~~]

(d) This subchapter does not apply to:

(1) a boat that is less than 30 feet in length;

(2) a sailboat; or

[~~(3) a vessel rented out for profit under a written contract by a vessel livery, as defined by Parks and Wildlife Code, §31.003(8), where all responsibility and liability for operating and provisioning the vessel is assumed by the party renting the vessel; or~~]

(3) [~~(4)~~] any vessel used for training or instructional purposes while it is not being used as a party boat.

§55.403. License Required.

(a) A person may not operate a party boat unless the person:

(1) has in the person's immediate possession:

(A) a party boat operator's license issued by the department; or

(B) a current and valid USCG pilot or captain's license; or

(2) is learning to operate the party boat for the purpose of acquiring a party boat operator's license and:

(A) is an employee of the owner of the party boat or the owner's agent; and

(B) is accompanied by a holder of a party boat operator's license issued by the department and the license holder occupies a space beside the unlicensed operator for the purpose of giving instruction on operating the party boat.

(b) It is a defense to prosecution under subsection (a)(1) of this section that the person charged produces in court:

(1) a party boat operator's license that was issued to the person and was valid when the offense was committed; or

(2) a current and valid pilot or captain's license issue by the USCG. [~~a valid license, issued by a state that shares a body of water with Texas, that is substantively similar in effect and scope to the party boat operator license required by this subchapter, provided:~~]

[~~(A) the issuing state allows Texas vessels to operate in the shared waters under the same conditions; and~~]

[~~(B) the party boat is operated only in waters shared by the issuing state and the state of Texas.~~]

§55.405. Employer/Owner Responsibilities.

(a) The owner of a vessel meeting the definition of a party boat may not operate or allow the operation of that vessel [~~a boat~~] as a party boat unless:

(1) the vessel and the owner are in compliance with the provisions of this subchapter with regard to inspections and certifications required under this subchapter; or [~~it has passed an annual water safety inspection conducted or authorized by the department within the previous 12 months~~]

(2) a current, valid, applicable USGS Certificate of Inspection as provided in 46 CFR Subchapter K or T has been issued for the vessel.

(b) The owner of a party boat shall maintain liability insurance of at least $500,000 per incident from an insurance provider authorized to do business in Texas. Proof of insurance must be:

(1) kept aboard the party boat at all times; and

(2) made available for inspection during normal business hours at the request of any department employee acting within the scope of official duties [~~The owner of a party boat must maintain at least a minimum of $300,000 of liability insurance from an insurer licensed to do business in this state~~].

(c) The owner of a party boat may not knowingly:

(1) permit a person to operate a party boat at any time that the person is prohibited under the provisions of this subchapter from operating a party boat; or

(2) train a person to operate a party boat for purposes of obtaining a party boat operator's license unless the person is employed by the owner and has completed a boating safety course approved by the department. This paragraph does not apply if six or fewer passengers are aboard at the time a person is being trained.

(d) All documentation required by this subchapter shall be retained for a period of two years from the date the document or digital media is created and made available for inspection during normal business hours at the request of any department employee acting within the scope of official duties.

[~~(d) The owner of a party boat shall ensure that a list of emergency procedures is posted in a conspicuous location on a party boat at all times that paying passengers are aboard the vessel. The list shall set forth, at a minimum, procedures or instructions for the following:~~]

[~~(1) use of radio-telephone, if the vessel is equipped with a radio-telephone;~~]

[~~(2) man overboard;~~]

[~~(3) fire or explosion;~~]

[~~(4) leaks or damage control;~~]

[~~(5) location of personal flotation devices;~~]

[~~(6) location of escape hatches and escape routes;~~]

[~~(7) abandoning ship; and~~]

[~~(8) location of first-aid kit.~~]

[~~(e) On vessels that do not have or are not required to have a vessel capacity plate, the passenger capacity may be determined from the application of any one of the following formulae to the vessel:~~]

[~~(1) one passenger per 30 inches of rail space available to passengers at the vessel's sides and across the transom;~~]

[~~(2) one passenger per 10 square feet of deck area available for passenger use, not including concession stands, toilets, washrooms, companionways, or stairways; and~~]

[~~(3) one passenger per 18 inches of width of fixed seating area provided.~~]

§55.406. Inspections and Certifications.

(a) General.

(1) It is an offense for a party boat owner to operate or allow the operation of a party boat unless the vessel has been inspected and certified as suitable for use as a party boat as prescribed in this section.

(2) The owner of a party boat shall ensure that a stability test is performed by an accredited naval architect or marine surveyor if:

(A) the vessel's structure or equipment (including, but not limited to, engines, generators, motors, air conditioning units or other major electrical or mechanical systems or components) have been modified to the extent that the weight or weight distribution of the vessel affects or could affect the stability of the vessel under normal operating conditions; or

(B) the vessel is involved in a reportable incident described by Parks and Wildlife Code, §31.105. This subparagraph does not apply to a reportable incident that does not involve physical damage to the party boat.

(C) A vessel subject to the provisions of this paragraph may not be used as a party boat until:

(i) the stability test required under this paragraph has been performed by an accredited naval architect or marine surveyor; and

(ii) the owner or owner's agent has submitted the resulting stability letter to the department and received written authorization to resume operation of the vessel as a party boat.

(b) Initial and Continuing Inspection/Certification. A vessel that has never been inspected for use as a party boat must undergo an initial inspection as provided in this paragraph before being used as a party boat. The initial inspection shall be conducted by an accredited naval architect or marine surveyor and shall consist of:

(1) an examination of the vessel in dry dock (including, but not limited to an assessment of the integrity of the vessel's hull and the external steerage and propulsion system components);

(2) a USCG-approved stability test for the type and size of boat, which must be compliant with the current Assumed Average Weight per Person standard adopted by the USCG for the type and size of boat; and

(3) a statement signed by the accredited naval architect or marine surveyor who conducted the inspection attesting to:

(A) the suitability and safety of the vessel for use as a party boat; and

(B) the occupancy limit of the vessel, to include, if the vessel has multiple decks, the maximum number of persons the boat can safely carry on each deck, together and separately.

(c) A vessel may not be used as a party boat until:

(1) the statement required by subsection (b)(3) of this section has been submitted to the department; and

(2) the owner or owner's agent has received acknowledgment from the department that the statement has been received.

(d) In lieu of an examination in dry dock, the inspection required by subsection (b) of this section may be performed on the vessel while it is in the water, provided the entire examination is recorded on digital media in such a fashion as to provide visual clarity of detail necessary to determine the seaworthiness of the hull and the integrity of all mechanical components of the vessel that are below the waterline.

(e) The acknowledgment required by subsection (c)(2) of this section must be maintained by the owner or agent and made available at the request of any department employee acting within the scope of official duties.

(f) Annual Water Safety Compliance Inspection and Certification.

(1) Following the inspection and certification required under subsection (a) of this section and continuing for as long as the vessel is used as a party boat, a party boat shall undergo an annual water safety compliance inspection as prescribed in this subsection.

(2) The inspection required under this subsection shall consist of the department's verification of:

(A) All applicable requirements of Parks and Wildlife Code, Chapter 31, relating or applicable to boat registration, titling, lighting, signaling, and safety equipment;

(B) a current stability letter posted aboard the vessel in compliance with the provisions of this subchapter;

(C) a First Aid kit in good condition aboard the vessel;

(D) an effectively functional two-way communication device (VHF radio or cellular phone with service) aboard the vessel;

(E) the list of emergency procedures enumerated in §55.408 of this title (relating to Passenger Safety), prominently posted in a conspicuous place for the benefit of passengers;

(F) all documentation, including proof of liability insurance, required by this subchapter and Parks and Wildlife Code, Chapter 31; and

(G) the log or records required under the provisions of §55.408(b) of this title indicating that emergency procedures have been communicated to passengers.

(3) The annual water safety inspection required by this subsection shall be conducted not more than 30 days prior to each anniversary of the initial inspection and certification required under subsection (b) of this section.

(4) A permittee must schedule the annual water safety inspection with the department in advance by completing and submitting a request to the department on a form supplied or provided by the department for that purpose.

(A) The request shall be submitted to the department not more than 60 days nor less than 30 days prior to each anniversary of the initial inspection required under subsection (b) of this section. The department will establish a mutually acceptable date for the annual water safety inspection.

(B) The department will not conduct an annual water safety inspection if the owner or representative is not present at the place, date, and time established for the annual water safety inspection under the provisions of subparagraph (A) of this paragraph.

(C) When an annual water safety inspection required by this subsection reflects compliance with the applicable requirements of this subchapter and Parks and Wildlife Code, Chapter 31, the department will provide the owner or representative with documentation of the inspection and the vessel may then be lawfully used as a party boat. Such documentation shall be prominently displayed in a conspicuous location aboard the vessel.

(5) If the annual water safety inspection required by this subsection is not performed before one year has passed since the date of the previous annual inspection, the vessel may not be used as a party boat until an inspection meeting the requirements of subsection (b) of this section has been performed.

(g) Five-year Inspection and Certification.

(1) Beginning the date of the initial inspection, stability test, and certification required by subsection (b) of this section or the effective date of this section, the owner of a party boat shall ensure that an examination of the vessel meeting the requirements of subsection (b) of this section is conducted by an accredited naval architect or marine surveyor not less than once every five years, as applicable.

(2) A statement signed by the accredited naval architect or marine surveyor who conducted the inspection, attesting to whether the vessel is or is not suitable for use as a party boat, must be submitted to the department within 30 days of the inspection required by this subsection. A vessel may not be used as a party boat until:

(A) the statement required by this paragraph has been submitted to the department; and

(B) the owner or owner's agent has received acknowledgment from the department that the statement has been received.

(3) A vessel may not be operated as a party boat if the vessel or owner is not in compliance with the provisions of this subsection, if applicable, and must be inspected and certified as described by subsection (b) of this section before being used as a party boat again.

(4) In lieu of an examination in dry dock, the inspection required by this subsection may be performed on the vessel while it is in the water, provided the entire examination is recorded on digital media in such a fashion as to provide visual clarity of detail necessary to determine the seaworthiness of the hull and the integrity of all mechanical components of the vessel that are below the waterline.

(h) The acknowledgment required under subsection (g)(2) of this section must be maintained by the owner or agent and made available at the request of any department employee acting within the scope of official duties.

§55.408. Passenger Safety.

(a) Personal flotation devices. It is unlawful to operate a party boat unless it carries:

(1) serviceable USCG-approved, wearable personal flotation devices meeting the requirements of Parks and Wildlife Code §31.066, in a number equivalent to the occupancy limit indicated on the annual inspection certificate issued by the department under this subchapter; and

(2) an additional number of personal flotation devices suitable for children equal to at least 10 percent of the occupancy limit established for the vessel under this subchapter. If more than 10% of the passengers on any voyage are children, a personal flotation device appropriate for children must be present for each child. For purposes of this subchapter, a child is any person younger than 13 years of age.

(b) Emergency Procedures.

(1) The owner of a party boat shall ensure, prior to the departure of the party boat from the dock, pier, or mooring where passengers board the vessel, that the safety procedures enumerated in paragraph (2) of this subsection have been presented and explained, verbally or in written form, to each passenger aboard the vessel, and that each passenger signs and dates an affidavit or log attesting to that fact.

(2) At all times that passengers are aboard a party boat, a list of emergency procedures shall be prominently displayed in a conspicuous place on the vessel. The list required by this subparagraph shall set forth, at a minimum, the procedures or instructions for:

(A) use of radio or telephone;

(B) man overboard;

(C) fire or explosion;

(D) leaks or damage control;

(E) location of personal flotation devices;

(F) location of escape hatches and escape routes;

(G) abandoning ship; and

(H) location of first-aid kit.

§55.410. Violations and Penalties.

A violation of any provision of this subchapter is punishable as prescribed by Parks and Wildlife Code, §31.127.

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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James Murphy
General Counsel
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

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31 TAC §55.406

The repeal is proposed under the authority of Parks and Wildlife Code, §31.176, which requires the commission to promulgate rules regarding the requirements and procedures for the issuance and renewal of a party boat operator license to protect the public health and safety, and §31.180, which requires the commission to adopt and enforce rules necessary to implement Parks and Wildlife Code, Chapter 31, Subchapter G.

The proposed repeal affects Parks and Wildlife Code, Chapter 31.

§55.406. Violations and Penalties.

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 57. FISHERIES
SUBCHAPTER A. HARMFUL OR POTENTIALLY HARMFUL FISH, SHELLFISH, AND AQUATIC PLANTS

31 TAC §57.114, §57.129

The Texas Parks and Wildlife Department proposes amendments to 31 TAC §57.114 and new §57.129, concerning Harmful and Potentially Harmful Exotic Fish, Shellfish, and Aquatic Plants. The proposed rules would authorize the issuance of permits for the possession, cultivation, sale, and transport of dotted duckweed (*Landoltia punctata*) under specific conditions.

Under current rule (§57.112(3)(C)(i)), dotted duckweed is designated a prohibited harmful or potentially harmful exotic aquatic plant and cannot be cultivated for commercial purposes. The department recently received a petition for rulemaking requesting the alteration of current rules to create an exception allowing the commercial cultivation of dotted duckweed under the existing commercial aquaculture permit. After comprehensive analysis of all significant parameters, the department determined that dotted duckweed can be safely cultivated, provided all culture and handling occurs in fully enclosed facilities under appropriate biosecurity standards. Dotted duckweed is a small, floating exotic aquatic plant native to Australia and Southeast Asia that is distributed easily via multiple transport pathways, has a high growth and propagation rate, and is known to outcompete native plant species. Climate match analysis indicates it could survive and become established in public waters throughout most of Texas should it escape culture, and it is deemed likely to have potential to become particularly problematic in smaller water bodies because it forms dense mats capable of suppressing native plants and potential degradation of sportfish habitat. Dotted duckweed can be easily transported to new water bodies by waterfowl, watercraft, and aquarium dumping, presenting a high spread potential should it escape. Notwithstanding, based on careful consideration of biosecurity risks associated with the proposed activity and escapement risk mitigation feasibility, staff has determined that under appropriate biosecurity and monitoring provisions there is an acceptably minimal, though not zero, risk of escape.

The amendment to §57.114, concerning Controlled Exotic Species Permit, would provide for the issuance of a commercial aquaculture facility permit for the possession, culture, sale, and transport of dotted duckweed.

Proposed new §57.129, concerning Special Provisions--Dotted Duckweed, would establish facility and processing standards that specifically apply to the cultivation of dotted duckweed.

Proposed new subsection (a)(1) would stipulate that the provisions of the proposed new section would be in addition to the minimum facility requirements already imposed by the subchapter, which is necessary to prevent confusion or misunderstanding. The proposed new section also would define the term "culture pond" as "any reservoir of water used as media for the cultivation and harvest of dotted duckweed in a facility permitted to do so under this subchapter," which is necessary to provide an unambiguous meaning of that term for purposes of compliance, administration, and enforcement.

Proposed new subsection (a)(2) would provide that the department will not issue a permit under the section for a facility located in a part of the state that is both south of SH 21 and east of I-35. The proposed provision is necessary because there is a significant portion of the state that regularly experiences, has experienced, or is at risk of experiencing inundation during hurricane events, which could result in escapement of dotted duckweed to surrounding aquatic systems. The department has determined that there is a significant enough potential threat to native species and systems to justify restricting the culture of dotted duckweed to areas of the state not likely to be affected by hurricane-related inundation events.

Proposed new subsection (b) would set forth the requirements for water handling within facilities permitted to culture dotted duckweed to minimize escape risks. New subsection (b)(1) would prohibit the draining of any water from culture ponds unless it has been chemically treated in accordance with applicable law to kill all dotted duckweed that may be present. The provision is necessary, in concert with the provisions of proposed new subsection (b)(2), to ensure that water leaving any facility is free of viable dotted duckweed. Proposed new subsection (b)(2) would require all water leaving a facility to be passed through equipment that reduces plant material to a size of 100 micrometers or smaller (based upon seed size), which must be maintained to meet the regulatory standard at all times. The department has determined that the combination of chemical and physical treatments of culture media result in reasonable confidence that viable dotted duckweed will not escape from facilities where it is cultivated. Proposed new paragraph (b)(3) would explicitly state that it is an offense for any person to allow or cause culture pond water to drain into any ditch, storm drain, channel, conduit, stream, or other pathway that drains into or could drain into public water to provide reasonable confidence that viable dotted duckweed will not be spread to the environment. The department wishes to make absolutely and unmistakably clear that failure to contain dotted duckweed as a result of pond draining procedures is a crime.

Proposed new subsection (c) would establish facility standards where dotted duckweed is authorized to be cultured. Proposed new subsection (c)(1) would require all facilities and infrastructure used for the culture, harvesting, and packaging of dotted duckweed to be completely enclosed within a permanent, department-approved structure. The provision is necessary to ensure that there is a physical barrier at all times between viable dotted duckweed and the external environment. Proposed new subsection (c)(2) would require all points of entry or access to structures containing viable dotted duckweed to be kept closed except for immediate use for ingress or egress of personnel, equipment, or machinery. The provision is necessary to minimize, to the greatest extent practicable, the opportunity for waterfowl or other vectors to transport dotted duckweed from facilities to the external environment.

Proposed new subsection (d) would prescribe best practices for the processing and transport of dotted duckweed. Proposed new subsection (d)(1) would stipulate that the processing of dotted duckweed occur only within permitted facilities, and reiterate that allowing dotted duckweed to leave a facility except as provided by rule is a criminal offense. The provision is necessary to make it abundantly clear that dotted duckweed cannot be removed or allowed to leave a facility except as specifically provided by rule.

Proposed new subsection (d)(2) would prohibit the removal of dotted duckweed and any byproducts of the processing of dotted duckweed from a facility unless it has been passed through at least one department-approved mechanical device that reduces plant material to particles of a size no greater than 100 micrometers, and for all such equipment to be constantly maintained to achieve this standard. As noted previously in this preamble, the department has determined that physical treatment of organic material to render it non-viable is necessary to provide reasonable confidence that viable dotted duckweed will not be spread to the environment from facilities where it is cultivated.

Proposed new subsection (d)(3) would specifically authorize the possession, transport, sale, and export of non-viable dotted duckweed remnants and plant material byproducts. The department has determined that upon satisfaction of the various provisions of the rules, there is no longer a need to regulate the possession of materials that are incapable of negative impacts to native ecosystems.

Proposed new subsection (e) would require a permittee to ensure that all water and wastewater discharges at a facility are compliant with applicable rules of the Texas Commission on Environmental Quality, which is necessary because such requirements may differ from animal aquaculture wastewater discharge authorization requirements applicable to other permitted aquaculture facilities.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the rules as proposed are in effect, there will be minimal fiscal implications to state or local governments as a result of administering or enforcing the rules. The department estimates that at least one controlled exotic species commercial aquaculture permit will be issued for dotted duckweed, resulting in first-year revenue to the department of $263. For each year after initial permit issuance, a permit may be renewed for one year at $74, three years at $168, or five years at $263, contingent upon compliance history.

There will be no fiscal implications for other units of state or local government as a result of enforcing or administering the rules.

Mr. Macdonald also has determined that for each of the first five years that the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the proposed rules will be adequate protection of public natural resources.

There will be adverse economic effect on persons required to comply with the rules as proposed, which are addressed later in this preamble in the analysis of the effect of the rules on small business, microbusiness, and rural communities. As noted elsewhere in this preamble, the department is aware of one entity that would engage in the culture of dotted duckweed if the rules as proposed are adopted, and that entity already meets the requirements of the proposed rules; thus, the estimated adverse economic effects of the rules would apply only to future applicants, if there are any.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, or rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small and microbusinesses and rural communities. Those guidelines state that an agency need only consider a proposed rule's direct adverse economic impacts to determine if any further analysis is required. The department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department is aware of one small business that would be engaged in the cultivation of dotted duckweed if the rules as proposed are adopted, namely, the petitioner. The rules as proposed would require the construction of some kind of permanent structure to house culture ponds and processing areas and require chemical and mechanical treatment of plant material and culture media. The entity that has petitioned the department is already culturing similar but non-prohibited species of aquatic plants in structures that would be compliant with the requirements of the proposed rules, using maceration equipment that also is compliant with the requirements of the proposed rules, and already possesses pesticides meeting the requirements of the proposed rule; thus, for the only small or microbusiness known or expected to be affected by the rules as proposed, there would be no direct adverse economic impacts or minimal adverse economic impacts. The department has no method of determining the future demand for permits to cultivate dotted duckweed; however, initial costs for prospective permittees would consist of approximately $3,000-$12,000 per greenhouse (enclosed structure), approximately $500 per macerator pump per facility or per greenhouse (dependent upon facility operational parameters); and approximately $500 for pesticides sufficient for one water draining event per year. The department notes that the rules do not stipulate specific construction materials or design elements for greenhouses, only that whatever structure is built must completely enclose all culture ponds and, in the determination of the department, function as a credible physical barrier between the culture ponds and the external environment; therefore, there is wide variability in possible structures and associated construction costs, ranging from simple hoop structures to more complex structures, as well a variety of materials, from hardened plastic or glass to wood or metal.

The department has determined that the rules as proposed will not have any direct economic effect on any rural community.

The department considered several alternatives to the rules as proposed.

One alternative considered was to remove dotted duckweed from the list of exotic harmful or potentially harmful plants, which would allow the cultivation of dotted duckweed without regulatory oversight, including by aquarium hobbyists. This alternative was rejected because the department has an affirmative duty under the Parks and Wildlife Code to protect native systems and species from harmful exotic species and unregulated possession of dotted duckweed is highly likely to result in escape.

One alternative was to do nothing and maintain status quo, leaving the possession and cultivation of dotted duckweed illegal. This alternative was rejected because the staff recommendation regarding the petition for rulemaking was to proceed to rulemaking.

Another alternative was to prescribe more prescriptive facility requirements to absolutely and definitively preclude the possible escape of dotted duckweed. This alternative was rejected because staff has determined that the measures as proposed are believed to be an appropriate and sensible accommodation of the petitioner's request while discharging the regulatory responsibilities of the department under the Parks and Wildlife Code.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of an existing fee; not create or repeal an existing regulation, but will expand an existing regulation (by adding dotted duckweed to the list of species for which commercial culture is permitted); not increase or decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rules may be submitted to Monica McGarrity, Senior Scientist for Aquatic Invasive Species, e-mail: monica.mcgarrity@tpwd.texas.gov. Comments also may be submitted via the department's website at http://www.tpwd.texas.gov/business/feedback/public_comment/.

The amendments are proposed under the authority of Parks and Wildlife Code, §66.007, which authorizes the department to make rules necessary to authorize the import, possession, sale, or introduction of harmful or potentially harmful exotic fish.

The proposed amendments affect Parks and Wildlife Code, Chapter 66.

§57.114. Controlled Exotic Species Permit.

(a) (No change.)

(b) Commercial Aquaculture Facility Permits.

(1) Controlled exotic species facility permits may be issued for commercial aquaculture, in accordance with the provisions of this subchapter, only for the following species:

(A) - (C) (No change.)

(D) Dotted duckweed--(*Landoltia punctata*) in compliance with the provisions of §57.129 of this title (relating to Special Provisions--Dotted Duckweed).

(2) (No change.)

(c) - (f) (No change.)

§57.129. Special Provisions--Dotted Duckweed.

(a) General.

(1) In addition to the requirements of the provisions of §57.119 of this title (relating to Minimum Facility Requirements), the provisions of this section apply to facilities permitted to culture dotted duckweed under the provisions of this subchapter. For the purposes of this section, a culture pond is any reservoir of water used as media for the cultivation and harvest of dotted duckweed in a facility permitted to do so under this subchapter.

(2) The department will not approve a permit under this section for any facility located in a part of the state that is both south of State Highway 21 and east of I-35.

(b) Culture ponds.

(1) Water may not be drained from a culture pond until all dotted duckweed in the culture pond has been killed in accordance with applicable law by application of pesticides or other chemicals approved for aquatic use by the U.S. Environmental Protection Agency and Texas Department of Agriculture.

(2) No water from a culture pond may be allowed to exit a greenhouse or other such confinement structure unless all culture pond water and plant material have been passed through at least one macerator pump or similar department-approved mechanical device that reduces plant material to particles of a size no greater than 100 micrometers. All equipment required by this subparagraph shall be maintained to ensure the particle size limit established by this subparagraph is not exceeded at any time.

(3) It is an offense for any person to allow or cause culture pond water to drain into any ditch, storm drain, channel, conduit, stream, or other pathway that drains into or could drain into public water.

(c) Facility requirements.

(1) All culture ponds and harvesting equipment (including but not limited to conveyor belts, transport infrastructure, processing infrastructure, and all other equipment or infrastructure associated with culture, harvest, and transport of dotted duckweed) within a facility shall be fully enclosed within a permanent, department-approved structure such as a greenhouse or other enclosure that the department determines is sufficient to prevent the escape of dotted duckweed.

(2) All doors and access points to greenhouses or structures used to enclose culture ponds and all access points to infrastructure used to transport dotted duckweed shall remain closed at all times except for purposes of immediate use for ingress or egress of personnel, equipment, or machinery.

(d) Processing requirements.

(1) Dotted duckweed may be processed only within a permitted aquaculture facility. Except as provided for drainwater under subsection (b) of this section, it is an offense for any person to allow or cause dotted duckweed to leave a facility for any reason.

(2) No plant material, including dotted duckweed and any byproducts or remnants of processing operations, may be removed from the permitted facility for any reason unless it has been passed through at least one macerator pump or similar department-approved mechanical device that reduces plant material to particles of a size no greater than 100 micrometers. All equipment required by this subparagraph shall be maintained to ensure the particle size limit established by this subparagraph is not exceeded at any time.

(3) Dotted duckweed remnants and plant material byproducts that have been rendered non-viable in accordance with the provisions of subsection (b)(2) of this section may be possessed, transported, sold, or exported without a controlled exotic species permit.

(e) Wastewater discharge. A permittee shall ensure that all discharge of wastewater from a permitted facility occurs in compliance with all applicable regulatory requirements of the Texas Commission on Environmental Quality.

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. INTRODUCTION OF FISH, SHELLFISH AND AQUATIC PLANTS

31 TAC §57.251, §57.252

The Texas Parks and Wildlife Department proposes amendments to 31 TAC §57.251 and §57.252, concerning Introduction of Fish, Shellfish, and Aquatic Plants. The proposed rules would function in concert to explicitly acknowledge that macroalgae, as well as plants that reproduce only by spores or fragmentation and emergent aquatic plants, are included in the applicability of department rules governing the introduction of aquatic plants in public waters.

Under Parks and Wildlife Code, §12.015, the department is required to regulate the introduction and stocking of fish, shellfish, and aquatic plants into the public water of the state. Under Parks and Wildlife Code, §66.015, the department is required to adopt rules governing the issuance of permits for the introduction of fish, shellfish, and aquatic plants into public waters and stipulates that no person may place any species of fish, shellfish, or aquatic plant into the public water of the state without a permit issued by the department. Under Agriculture Code, §134.005, the department is required to adopt rules to carry out its duties under that chapter with respect to the regulation of aquaculture.

The department has recently been approached by external parties interested in conducting introductions of marine macroalgae in public water for research purposes related to potential for aquaculture. In evaluating these inquiries, the department has identified what could be interpreted as a lacuna in the applicability of rules under which the department may authorize the introduction of aquatic plants, specifically, the sufficiency of the current regulatory definition of "aquatic plant" with respect to classes of aquatic plants such as macroalgae (and, in addition, plants that reproduce by means other than seeds, and emergent aquatic plants). The current definition has been in effect since the late 1970s and the department has determined that it should be restated to reflect the current status of botanical understanding of aquatic plants and clearly include macroalgae. The department has determined that any macroalgae introductions have the potential to adversely impact habitats and create user conflict and because oversight of such activities is necessary and warranted to protect native organisms and ecosystems, the definition should be amended to introduce greater clarity. The department emphasizes that if a prospective introduction to public water of any species is determined by the department to be problematic, it will not be authorized.

On this basis, the proposed amendment to §57.251, concerning Definitions, would replace the current definition with a new definition that more completely encompasses the variety of aquatic plants to which the rules apply.

The proposed amendment to §57.252, concerning General Provisions, would provide for department waiver of permit requirements for introductions coordinated with or conducted under the direction of the department for purposes of mitigation or restoration (or any other environmentally beneficial reason). In cases such as the aftermath of major storms, flood events, or environmental incidents, restoration efforts can be large and concentrated. The department seeks to facilitate the rapid recovery of ecosystems in such cases and reasons that waiver of permit requirements, in the presence of department coordination or direction is sensible.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the rules as proposed are in effect, there will be minimal fiscal implications to state or local governments as a result of administering or enforcing the rules, consisting of revenue lost as a result of the waiver of permit fees, which cannot be anticipated and therefore cannot be quantified.

There will be no fiscal implications for other units of state or local government as a result of enforcing or administering the rules.

Mr. Macdonald also has determined that for each of the first five years that the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the proposed rules will be accurate regulations and the resultant protection of public natural resources.

There will be no adverse economic effect on persons required to comply with the rules as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, or rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small and microbusinesses and rural communities. Those guidelines state that an agency need only consider a proposed rule's direct adverse economic impacts to determine if any further analysis is required. The department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. The department has determined that because the rules as proposed clarify the applicability of existing regulations, they do not directly affect any small business or microbusiness.

The department has determined that the rules as proposed will not affect rural communities, as the rules do not directly regulate any rural community.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number

of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of an existing fee; not create, repeal, or expand an existing regulation; not increase or decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rules may be submitted to Monica McGarrity, Senior Scientist for Aquatic Invasive Species, e-mail: monica.mcgarrity@tpwd.texas.gov. Comments also may be submitted via the department's website at http://www.tpwd.texas.gov/business/feedback/public_comment/.

The amendments are proposed under Parks and Wildlife Code, §12.015, which requires the department to regulate the introduction and stocking of fish, shellfish, and aquatic plants into the public water of the state; §66.015(c), which requires the department to establish rules related to the issuance of permits for the introduction of fish, shellfish, or aquatic plants into the public water of the state; and Agriculture Code, §134.005, which requires the commission to adopt rules necessary to carry out its responsibilities under that chapter to regulate aquaculture.

The proposed amendments affect Parks and Wildlife Code, Chapters 12 and 66, and Agriculture Code, Chapter 134.

§57.251. Definitions.

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

(1) (No change.)

(2) Aquatic plant--All plants (vascular or non-vascular) that grow either partially or totally submerged in water or in the substrate of a body of water, including freshwater macroalgae of genus *Chara* (muskgrass) or *Nitella* (stoneworts), and all marine macroalgae (seaweeds) [~~All plants whose seeds germinate in either the water phase or the substrate of a body of water and which must spend part of the life cycle in water (Reid, G.K., and R.O. Wood 1976, Ecology of Inland Waters and Estuaries)~~].

(3) - (11) (No change.)

§57.252. General Provisions.

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

(j) The department may waive the permit requirements of this subchapter for restoration or mitigation activities or other beneficial environmental purpose conducted in coordination with or at the direction of the department.

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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James Murphy
General Counsel
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CHAPTER 65. WILDLIFE

The Texas Parks and Wildlife Department proposes amendments to 31 TAC §§65.81, 65.88, 65.90, 65.91, 65.92, 65.94, 65.95, 65.97, 65.99, and 65.100, concerning Disease Detection and Response, and 65.610, concerning Deer Breeder Permits. The proposed amendments would function collectively to clearly define the areas of respective responsibility between the department and the Texas Animal Health Commission (TAHC) with respect to the management of chronic wasting disease (CWD) in Texas.

CWD is a fatal neurodegenerative disorder that affects some cervid species, including wildlife resources such as white-tailed deer and mule deer, but also exotic species such as elk, red deer, sika, and their hybrids (referred to collectively as "susceptible species"). It is classified as a TSE (transmissible spongiform encephalopathy), a family of diseases that includes scrapie (found in sheep), bovine spongiform encephalopathy (BSE, found in cattle and commonly known as "Mad Cow Disease"), and variant Creutzfeldt-Jakob Disease (vCJD) in humans. CWD is spread by prions (a misfolded protein that is the infectious agent) that other animals can acquire directly or indirectly via bodily fluids or contaminated environments. CWD prions are known to persist in soil, vegetation, water, and carcasses indefinitely and there is no practical method for denaturing them. Thus, if CWD is not contained and controlled, the implications of the disease for Texas and its multi-billion-dollar ranching, hunting, wildlife management, and real estate economies could be significant.

The department has been concerned for over two decades about the emergence of CWD in free-ranging and captive populations of white-tailed and mule deer in Texas. The department is the primary state agency for the management and protection of native wildlife in the state, while TAHC is the state agency responsible for protecting animal agriculture (livestock and poultry) from disease and human health from zoonotic disease. Under Agriculture Code, §161.101(a)(6), CWD is a reportable disease and requires a veterinarian, veterinary diagnostic laboratory, or person having care, custody, or control of an animal to report the existence of CWD to TAHC within 24 hours after diagnosis. Because CWD can be transmitted between wildlife and farmed animals, there is an obvious nexus of interagency responsibilities in certain situations.

A central component of the joint strategy for CWD management was the department's utilization of TAHC hold orders and quarantines as a regulatory mechanism for isolating and restricting the movement of infected or potentially infected animals. The proposed amendments would remove all references to TAHC (with exceptions as noted), hold orders, quarantines, and herd plans and replace references to hold orders, quarantines, and herd plans, as appropriate, with references to "disease management plan," which is necessary to create and implement a similar mechanism administered solely by the department and applicable only to white-tailed and mule deer, which are the only two species of native wildlife that are susceptible to CWD.

The proposed amendment to §65.88, concerning Deer Carcass Movement Restrictions, in addition to conforming changes regarding TAHC mentioned earlier in this preamble, would extend the applicability of the section to all dead deer being transported (i.e., not just deer killed by hunting) reword subsection (a) for purposes of clarity, and add new subsection (b) to address the disposal of deer that die within breeding facilities. The disposal methods for deer that die within exposed and positive breeding facilities are currently addressed under TAHC herd plans; there-

fore, the department must stipulate those standards in department rules in order to prevent the spread of CWD from breeding facilities where it might or has been confirmed to exist. Additionally, the proposed amendment would require persons transporting carcasses of dead breeder deer to a landfill (if the deer are not interred *in situ*) to possess a completed disposition document on a form approved or supplied by the department, which would be required to accompany deer carcasses during transport and until the carcasses are accepted at the landfill. The proposed amendment is necessary to aid in law enforcement investigations, if necessary, by documenting deer that no longer bear the permanent identification required under Parks and Wildlife Code, Chapter 43, Subchapter L.

The proposed amendment to §65.90, concerning Definitions, consists of a number of related changes intended to address intra-agency roles in CWD management in wildlife contexts and to make clarifications and improvements to definitions used throughout the subchapter. The changes are necessary to prevent misunderstandings and standardize the applicability of various specialized terms.

The proposed amendment would add new paragraph (14) to define "exposed facility" as "a facility that has received exposed deer," and alter current paragraphs (29) and (45) to make those provisions applicable to all types of facilities and not just to deer breeding facilities. The current rule defines "exposed deer" and "exposure" but does not explicitly address facilities that contain exposed deer. The current definitions in paragraphs (29) and (45) reflect the division of labor with respect to the former role of TAHC in CWD management. Because TAHC hold orders and quarantines will no longer be issued for premises on the basis of CWD in wildlife populations, the affected definitions must be made applicable to all facilities (rather than just to breeding facilities) to accommodate that fact.

The proposed amendment also would make several changes affecting terminology related to administrative mechanisms for authorizing the movement of breeder deer. In order to effectively and efficiently track the movement of breeder deer to and from deer breeders for purposes of law enforcement and disease investigations, the department created a specialized database commonly known as TWIMS, which allowed the automation of many permitting processes. Every location where breeder deer are kept or released is assigned a unique "facility ID" in TWIMS. Although the term "facility" has long been defined by rule to apply to any location required to be registered in TWIMS, the term has, for whatever reason, become synonymous with "deer breeding facility." Similarly, although the terms "Movement Qualified" (current paragraph (26)) and "Non-Movement Qualified" (current paragraph (28)), under current rule apply only to breeding facilities, they have for whatever reason erroneously become understood to include movement authorizations for other types of facilities, which is technically and legally not the case. The terms were promulgated to reflect the binary opposition states (predicated on compliance with disease-testing requirements) necessary for TWIMS to allow or prevent the activation of a transfer permit that allows deer movement to and from deer breeding facilities or to other types of facilities; however, the terms have become so commonly used to refer to release locations that the department believes it is easier and more effective to simply alter the rules to expand the applicability of the terms to include all types of facilities. Along the same lines, the term "transfer permit" has long been defined in Chapter 65, Subchapter T, to mean the authorization for movement of breeder deer to or from any type of facility, some confusion has arisen as to whether "to or from" means "to and from" even though release locations are terminal destinations (i.e., the transfer permit in such cases is a permanent and final "one-way only" authorization of movement to a location from which the deer cannot ever be removed while still alive). Finally, the proposed amendment would replace the term "release site" (current paragraph (34)), with the term "release facility." As discussed earlier in this preamble, every location where breeder deer are kept and every location where breeder deer are released are assigned a "facility ID" in TWIMS. To maintain continuity of terminology, the proposed amendments would remove all references to release sites and replace them with references to "release facility."

The proposed amendment to §65.91, concerning General Provisions, would eliminate references to TAHC and replace the term "herd plan" with the term "disease management plan" for reasons previously discussed in this preamble. The proposed amendment to subsection (d) would address situations in which a premise is subject to TAHC movement restrictions because of CWD exposure in a susceptible species other than white-tailed deer or mule deer. The department has determined that because native cervids are susceptible species, allowing breeder deer to be moved from an exposed location represents an unacceptable risk of spreading CWD to native free-ranging and captive deer populations unless a determination based on the particulars of a given circumstance indicate that risk is either non-existent or acceptable. The proposed amendment also would alter subsection (e) to create an exception that would allow the transfer of deer to or from a facility designated NMQ if authorized under a disease management plan. The department has determined that there may be unforeseen situations in which compliance with a disease management plan provides epidemiological confidence that the transfer of deer by a facility otherwise not allowed to move deer can be allowed. Finally, the proposed amendment would alter subsection (f) to clarify that the provisions of the subsection apply to facilities where CWD has been confirmed as well as facilities where CWD is suspected to be present, which is necessary to address situations in which a facility nominally linked to a positive facility can be cleared following epidemiological investigation.

The proposed amendment to §65.92, concerning CWD Testing, would make conforming changes discussed previously in this preamble.

The proposed amendment to §65.94, concerning Breeding Facility Minimum Movement Qualification, would make conforming changes discussed previously in this preamble.

The proposed amendment to §65.95, concerning Movement of Breeder Deer, makes conforming changes as discussed previously in this preamble and would stipulate that changes in land ownership do not affect the status of a property as a trace-out release site. The department has determined that because CWD is an existential threat to native wildlife, it is necessary to eliminate the potential for unscrupulous persons to evade disease-management obligations by way of real estate transactions.

The proposed amendment to §65.97, concerning Testing and Movement of Deer Pursuant to a Triple T or TTP Permit, would make conforming changes discussed previously in this preamble.

The proposed amendment to §65.99, concerning Breeding Facilities Epidemiologically Connected to Deer Infected with CWD; Positive Deer Breeding Facilities, would make conforming changes discussed previously in this preamble.

The proposed amendment to §65.100, concerning Violations and Penalties, would make conforming changes discussed previously in this preamble.

The proposed amendment to §65.610, concerning Transfer of Deer, would make conforming changes discussed previously in this preamble.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state and local governments as a result of enforcing or administering the rules as proposed, as department personnel currently allocated to the administration and enforcement of disease management activities will administer and enforce the rules as part of their current job duties.

Mr. Macdonald also has determined that for each of the first five years the amendments as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be the continued efficacy of department efforts to prevent the spread of CWD from locations where it does or has a reasonable probability to exist, thus ensuring the public of continued enjoyment of the resource and also ensuring the continued beneficial economic impacts of hunting in Texas.

There will be no adverse economic impact on persons required to comply with the rules as proposed.

Under provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, and rural communities. As required by Government Code, §2006.002(g), in April 2008, the Office of the Attorney General issued guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses, micro-businesses, and rural communities. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

Government Code, §2006.001(1), defines a small or micro-business as a legal entity "formed for the purpose of making a profit" and "independently owned and operated." A micro-business is a business with 20 or fewer employees. A small business is defined as a business with fewer than 100 employees, or less than $6 million in annual gross receipts. The department has determined that the proposed rules will not result in direct economic costs to small businesses and microbusinesses.

The department has determined that the proposed rules will not affect rural communities because the rules do not directly regulate any rural community.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not result in direct impacts to local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules. Any impacts resulting from the discovery of CWD in or near private real property would be the result of the discovery of CWD and not the proposed rule.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; not create a new regulation or repeal an existing regulation, but will modify existing rules to accommodate the cessation of TAHC involvement in the management of CWD efforts with respect to native wildlife; not increase the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rules may be submitted to Kory Gann, Big Game Program Director, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas, 78744; (512) 389-4363, (e-mail: kory.gann@tpwd.texas.gov); or via the department's website at www.tpwd.texas.gov.

SUBCHAPTER B. DISEASE DETECTION AND RESPONSE

DIVISION 1. CHRONIC WASTING DISEASE (CWD)

31 TAC §65.81, §65.88

The amendments are proposed under the authority of Parks and Wildlife Code, Chapter 43, Subchapter C, which requires the commission to adopt rules to govern the collecting, holding, possession, propagation, release, display, or transport of protected wildlife for scientific research, educational display, zoological collection, or rehabilitation; Subchapter E, which requires the commission to adopt rules for the trapping, transporting, and transplanting of game animals and game birds, urban white-tailed deer removal, and trapping and transporting surplus white-tailed deer; Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, sale, of breeder deer held under the authority of the subchapter; Subchapters R and R-1, which authorize the commission to establish the conditions of a deer management permit for white-tailed and mule deer, respectively; and §61.021, which provides that no person may possess a game animal at any time or in any place except as permitted under a proclamation of the commission.

The proposed amendments affect Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, R, R-1, and Chapter 61.

§65.81. Risk Mitigation Provisions.

(a) (No change.)

(b) Breeder Deer.

(1) - (7) (No change.)

(8) Deer that escape from a breeding facility any part of which is within five linear miles of a location where CWD has been detected in a free-range white-tailed deer or susceptible species, or within 25 linear miles of a location where CWD has been detected in a free-range mule deer, may not be recaptured and/or returned to a breeding facility except as expressly authorized in writing by the department or in a disease management [~~herd~~] plan.

(9) (No change.)

(c) (No change.)

§65.88. Deer Carcass Movement Restrictions.

(a) In addition to the provisions of §65.10 of this title (Possession of Wildlife Resources) and except as may be otherwise prohibited by this subchapter or a disease management plan, a dead white-tailed deer, mule deer, or susceptible species (or parts thereof) may be transported into or within this state from the location where the animal was killed or found, provided the[~~, a department herd plan, or a quarantine or hold order issued by TAHC, a white-tailed deer or mule deer or part of a white-tailed or mule deer killed in this state or a susceptible species or part of a susceptible species harvested outside of Texas may be transported from the location where the animal was killed as provided in this section. The~~] parts of the animal not retained for cooking, storage or taxidermy purposes are [~~shall be~~] disposed of as quickly as practicable by one of the following methods:

(1) - (3) (No change.)

(b) A white-tailed deer or mule deer that dies in an exposed breeding facility or positive breeding facility must be disposed of only as provided in subsection (a)(1) or (2) of this section. If a breeder deer is disposed of as provided in subsection (a)(1) of this section, a completed disposition document on a form provided or approved by the department must accompany the carcass(es) to the landfill and remain with the possessor until the carcass(es) has/have been accepted by the landfill.

(c) [~~(b)~~] The rendering of carcass parts is not a lawful method of disposal.

(d) [~~(c)~~] The carcass of a white-tailed or mule deer may be deboned at any location prior to transportation to a final destination, provided:

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

(e) [~~(d)~~] It is an offense for any person to dispose of those parts of an animal that the possessor does not retain for cooking, storage, or taxidermy purposes except as follows:

(1) - (3) (No change.)

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

Filed with the Office of the Secretary of State on December 8, 2025.

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James Murphy
General Counsel
Texas Parks and Wildlife Department
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DIVISION 2. CHRONIC WASTING DISEASE - COMPREHENSIVE RULES

31 TAC §§65.90 - 65.92, 65.94, 65.95, 65.97, 65.99, 65.100

The amendments are proposed under the authority of Parks and Wildlife Code, Chapter 43, Subchapter C, which requires the commission to adopt rules to govern the collecting, holding, possession, propagation, release, display, or transport of protected wildlife for scientific research, educational display, zoological collection, or rehabilitation; Subchapter E, which requires the commission to adopt rules for the trapping, transporting, and transplanting of game animals and game birds, urban white-tailed deer removal, and trapping and transporting surplus white-tailed deer; Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, sale, of breeder deer held under the authority of the subchapter; Subchapters R and R-1, which authorize the commission to establish the conditions of a deer management permit for white-tailed and mule deer, respectively; and §61.021, which provides that no person may possess a game animal at any time or in any place except as permitted under a proclamation of the commission.

The proposed amendments affect Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, R, R-1, and Chapter 61.

§65.90. Definitions.

The following words and terms shall have the following meanings, except in cases where the context clearly indicates otherwise.

(1) - (11) (No change.)

(12) Disease management plan--A set of requirements for disease testing and management developed by the department.

(13) [~~(12)~~] Exposed deer--A deer that meets any of the following criteria:

(A) - (C) (No change.)

(14) Exposed facility--A facility that has received an exposed deer.

(15) [~~(13)~~] Exposure--The period of time that has elapsed following the introduction of an exposed deer to a breeding facility.

(16) [~~(14)~~] Facility--Any location required to be registered in TWIMS under a deer breeder's permit, Triple T permit, TTP permit, or DMP, including release sites and/or trap sites.

(17) [~~(15)~~] Free-range deer--A deer that is not a breeder deer.

[~~(16) Herd Plan--A set of requirements for disease testing and management developed by the department and TAHC.~~]

(18) [~~(17)~~] Hunter-harvested deer--A deer required to be tagged under the provisions of Subchapter A of this chapter (relating to Statewide Hunting Proclamation).

(19) [~~(18)~~] Hunting year--That period of time between September 1 and August 31 of any year when it is lawful to hunt deer under the provisions of Subchapter A of this chapter (relating to Statewide Hunting Proclamation).

(20) [~~(19)~~] Inconclusive--A test result that is neither "positive" nor "not detected" on the basis of clinical deficiency.

(21) [~~(20)~~] "Insufficient follicles"--A test result indicating that a tonsil or rectal biopsy sample contained an insufficient number of lymphoid follicles to produce a valid test result.

(22) [~~(21)~~] Landowner (owner)--Any person who has an ownership interest in a tract of land and includes landowner's authorized agent.

(23) [~~(22)~~] Landowner's authorized agent (agent)--A person designated by a landowner to act on the landowner's behalf.

(24) [~~(23)~~] Last known exposure--The last date a deer in a trace-out or trace-in breeding facility was exposed to a trace deer prior to the death or transfer of that trace deer.

(25) [~~(24)~~] Liberated deer--A free-ranging deer that bears evidence of having been a breeder deer, including, but not limited to, a tattoo (including partial or illegible tattooing), or evidence of having been eartagged at any time (holes, rips, notches, etc. in the ear tissue), electronic identification devices, or any other signs that the deer was at any time a breeder deer.

(26) [~~(25)~~] Location of detection--The exact geographic location, to the extent that it can be determined, at which a deer or susceptible species confirmed to be positive for CWD died.

(27) [~~(26)~~] Movement Qualified (MQ)--A designation made by the department pursuant to this division that allows:

(A) a deer breeder to [~~lawfully~~] transfer breeder deer to another facility; or

(B) a facility to receive breeder deer.

(28) [~~(27)~~] Not available/unavailable for testing--For a Category B trace-out deer breeding facility, a deer that is no longer present in a facility and cannot be found or the whereabouts of which are otherwise unknown.

(29) [~~(28)~~] Not Movement Qualified (NMQ)--A designation made by the department pursuant to this division that prohibits:

(A) the transfer of deer by a deer breeder; or

(B) a facility from receiving breeder deer.

(30) [~~(29)~~] Positive [~~breeding~~] facility--A [~~deer breeding~~] facility where CWD has been confirmed to exist.

(31) [~~(30)~~] Post-mortem test--A CWD test performed on a dead deer.

(32) [~~(31)~~] Properly executed--A form or report required by this division on which all required information has been entered.

(33) [~~(32)~~] Reconciled herd--The breeder deer held in a breeding facility for which every birth, mortality, and transfer of breeder deer has been accurately reported as required by this division.

(34) [~~(33)~~] Release--The act of liberating a deer from captivity. For the purposes of this division the terms "release" and "liberate" are synonymous.

(35) [~~(34)~~] Release facility [~~site~~]--A specific tract of land to which deer are released, including the release of deer under the provisions of this chapter or Parks and Wildlife Code, Chapter 43, Subchapters E, L, R, or R-1.

(36) [~~(35)~~] Reporting year--For a deer breeder's permit, the period of time from April 1 of one calendar year through March 31 of the next calendar year.

(37) [~~(36)~~] RFID tag--A button-type ear tag conforming to the 840 standards of the United States Department of Agriculture's Animal Identification Number system.

(38) [~~(37)~~] Submit--When used in the context of test results, provided to the department, either directly from a deer breeder or via an accredited testing laboratory.

(39) [~~(38)~~] Susceptible species--Any cervid species or part of a cervid species that is susceptible to CWD.

(40) [~~(39)~~] Suspect--An initial CWD test result of "detected" that has not been confirmed.

(41) [~~(40)~~] TAHC--Texas Animal Health Commission.

(42) [~~(41)~~] Test-eligible--

(A) - (B) (No change.)

(43) [~~(42)~~] Test, Test Result(s), or Test Requirement--A CWD test, CWD test result, or CWD test requirement as provided in this division.

(44) [~~(43)~~] Trace deer--A deer that the department has determined had been in a CWD-positive deer breeding facility on or after the date the facility was first exposed to CWD, if known; otherwise, within the previous five years from the reported mortality date of the CWD-positive deer, or the date of the ante-mortem test result.

(45) [~~(44)~~] Trace-in breeding facility--A breeding facility that meets either of the following criteria:

(A) - (B) (No change.)

(46) [~~(45)~~] Trace-out [~~breeding~~] facility--A breeding or release facility that has received an exposed deer that was in a CWD-positive deer breeding facility.

(47) Transfer--The movement of breeder deer under a transfer permit executed as provided in Subchapter T of this chapter:

(A) from or to another breeding facility; or

(B) from a breeding facility to another type of facility.

(48) [~~(46)~~] Trap Site--A specific tract of land approved by the department for the trapping of deer under this chapter and Parks and Wildlife Code, Chapter 43, Subchapters E, L, R, and R-1.

(49) [~~(47)~~] Triple T permit--A permit to trap, transport, and transplant white-tailed or mule deer (Triple T permit) issued under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter E, and Subchapter C of this chapter (relating to Permits for Trapping, Transporting, and Transplanting Game Animals and Game Birds).

(50) [~~(48)~~] Trap, Transport and Process (TTP) permit--A permit issued under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter E, and Subchapter C of this chapter (relating to Permits for Trapping, Transporting, and Transplanting Game Animals and Game Birds), to trap, transport, and process surplus white-tailed deer (TTP permit).

(51) [~~(49)~~] TWIMS--The department's Texas Wildlife Information Management Services (TWIMS) online application.

(52) [~~(50)~~] Whole-herd test--The administration of an ante-mortem test to the entirety of test-eligible deer in the inventory of a breeding facility.

§65.91. General Provisions.

(a) - (b) (No change.)

(c) Except as provided in this division or as expressly authorized and in accordance with the provisions of a disease management [~~herd~~] plan, [~~no person shall transfer deer to or from~~] any facility for which a CWD test result of "suspect" or "positive" has been obtained from an accredited testing laboratory, irrespective of how the sample was obtained or who collected the sample, is automatically NMQ and the [~~The~~] provisions of this subsection take effect immediately [~~upon the notification of a CWD "suspect" test result, and continue in effect until the department expressly authorizes the resumption of permitted activities at that facility~~].

(d) Notwithstanding any provision of this division, no person may cause or allow breeder deer to be transferred from a facility subject to [~~moved from a facility for any purpose if such movement is prohibited by a herd plan associated with~~] a TAHC hold order or TAHC quarantine applicable to a trace susceptible species unless specifically

authorized to do so under a disease management plan or the department has authorized movement following an epidemiological assessment.

(e) No person may transfer deer to or from a facility that has been designated NMQ by the department unless:

(1) specifically authorized by the department for the holder of a scientific research permit when the proposed research is determined to be of use in advancing the etiology of CWD in susceptible species; or

(2) authorized by a disease management plan.

(f) Immediately upon the notification that a facility has received a CWD "suspect" test result (a CWD-suspect facility) or a CWD "positive" test result (a CWD-positive facility), all facilities that have received [~~that have been in possession of~~] a deer [~~that was~~] held in or transferred to the [~~CWD suspect~~] facility within the previous five years shall be designated NMQ by the department until it is determined that the facility is not epidemiologically linked to the CWD-suspect or CWD-positive [~~CWD suspect~~] deer, or it is determined upon further testing that the "suspect" deer is not a confirmed positive.

(g) - (i) (No change.)

§65.92. CWD Testing.

(a) (No change.)

(b) Except as provided in §65.95(c)(7) of this title (relating to Movement of Breeder Deer) or subsection (d) of this section, an ante-mortem CWD test is not valid unless it is performed by an accredited laboratory on retropharyngeal lymph node, rectal mucosa, or tonsillar tissue with at least six lymphoid follicles collected within eight months of submission by a licensed veterinarian authorized pursuant to statutes and regulations governing the practice of veterinary medicine in Texas [~~and regulations of the TAHC~~] from a live deer that:

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

(c) - (j) (No change.)

(k) Upon notification by the department that CWD is suspected or confirmed in a deer as a result of ante-mortem testing in a facility, the facility is automatically NMQ and the permittee shall:

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

(l) (No change.)

§65.94. Breeding Facility Minimum Movement Qualification.

(a) Notwithstanding any other provision of this division, a breeding facility is designated NMQ and is prohibited from transferring breeder deer anywhere for any purpose if the breeding facility:

(1) (No change.)

(2) is not authorized pursuant to a disease management plan [~~herd plan associated with a TAHC hold order or TAHC quarantine~~];

(3) - (4) (No change.)

(b) - (d) (No change.)

(e) The department may decline to designate a facility as MQ under subsection (d) of this section:

(1) (No change.)

(2) upon the recommendation of a licensed veterinarian or epidemiologist employed by the department [~~or TAHC~~]. The recommendation must:

(A) - (B) (No change.)

(f) - (i) (No change.)

§65.95. Movement of Breeder Deer.

(a) - (b) (No change.)

(c) Release Facilities [~~Sites~~]; Release of Breeder Deer.

(1) An approved release facility [~~site~~] consists solely of the specific tract of land to which deer are released and the acreage is designated as a release facility [~~site~~] in TWIMS. A release facility [~~site~~] owner may modify the acreage registered as the release facility [~~site~~] to recognize changes in acreage (such as the removal of cross-fencing or the purchase of adjoining land), so long as the release facility [~~site~~] owner notifies the department of such modifications prior to the acreage modification. The release facility [~~site~~] requirements set forth in this division apply to the entire acreage modified under the provisions of this paragraph.

(2) Liberated breeder deer must have complete, unrestricted access to the entirety of the release facility [~~site~~]; provided, however, deer may be excluded from areas for safety reasons (such as airstrips) or for the purpose of protecting areas such as crops, orchards, ornamental plants, and lawns from depredation.

(3) All release facility [~~sites~~] onto which breeder deer are liberated must be surrounded by a fence of at least seven feet in height that is capable of retaining deer at all times under reasonable and ordinary circumstances. The owner of the release facility [~~site~~] is responsible for ensuring that the fence and associated infrastructure retain deer under reasonable and ordinary circumstances.

(4) The department will not authorize the liberation of breeder deer at a release facility [~~site~~] registered in TWIMS following the effective date of this subsection unless the owner of the release facility [~~site~~] submits to the department a letter of endorsement by a person authorized by the department to conduct fence inspections under the provisions of §65.603 of this title (relating to Application and Permit Issuance) stating that the person has personally conducted an on-site inspection at the release facility identified in the application and affirming that the release facility [~~site~~] is surrounded by a perimeter fence meeting the requirements of paragraph (3) of this subsection. This paragraph does not apply to release facility [~~sites~~] that have received deer prior to the effective date of this paragraph. It is an offense for any person the department has authorized as a facility inspector to submit the letter of endorsement required by this paragraph if the person has not personally conducted an onsite inspection at the facility.

(5) No person may intentionally cause or allow any live deer to leave or escape from a release facility [~~site~~] onto which breeder deer have been liberated.

(6) The owner of a release facility [~~site~~] where deer from a facility subject to the provisions of §65.99 of this title (relating to Breeding Facilities Epidemiologically Connected to Deer Infected with CWD; Positive Deer Breeding Facilities) or deer from a CWD-positive facility have been released shall maintain a harvest log at the release facility [~~site~~] that complies with §65.93 of this title (relating to Harvest Log).

(7) No person may transfer a breeder deer to a release facility or cause or allow a breeder deer to be transferred to a release facility unless:

(A) - (B) (No change.)

(C) the deer bears the identification prescribed by Parks and Wildlife Code, §43.3561, and any applicable disease management [~~herd~~] plan.

(D) - (F) (No change.)

(d) Trace-out Release Facility [~~Site~~].

(1) A release facility [~~site~~] is a trace-out release facility [~~site~~] if it has[~~:~~]

[~~(A)~~] received trace deer directly or indirectly from a positive breeding facility, unless the department has determined that the landowner of the release facility has satisfied the requirements of a disease management plan for the property[~~; or~~]

[~~(B) it has not been released from a hold order or quarantine related to activity described in subparagraph (A) of this paragraph~~].

(2) The landowner of a trace-out release facility [~~site~~] must:

(A) within 60 days of notification by the department that trace-out release status has been confirmed, remove every trace deer at the release facility [~~site~~], either by lawful hunting or as specifically authorized in writing by the department (or both), and submit post-mortem CWD samples for each deer within seven days of mortality; and

(B) submit post-mortem CWD test results for 100 percent of all hunter-harvested deer until the department is confident that CWD is not present at the release facility [~~site~~] or as prescribed in a disease management [~~herd~~] plan.

(3) No breeder deer may be transferred to a trace-out release facility [~~site~~] unless the deer has been tagged in one ear with a button-type RFID tag approved by the department.

(4) A change in ownership of a tract of land does not affect the status of the property as a trace-out release site for the purposes of this subchapter.

(e) The owner of a trace-out release facility [~~site~~] that is not in compliance with applicable provisions of this division is ineligible for enrollment or continued participation in the Managed Lands Deer Program under Subchapter A of this chapter.

§65.97. Testing and Movement of Deer Pursuant to a Triple T or TTP Permit.

(a) General.

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

(3) In addition to the reasons for denying a Triple T permit as provided in §65.107 of this title (relating to Permit Application and Processing) and §65.109 of this title (relating to Issuance of Permit), the department will not issue a Triple T permit if the department determines, based on epidemiological assessment, [~~and consultation with TAHC~~]that to do so would create an unacceptable risk for the spread of CWD.

(4) - (7) (No change.)

(b) - (c) (No change.)

§65.99. Breeding Facilities Epidemiologically Connected to Deer Infected with CWD; Positive Deer Breeding Facilities.

(a) (No change.)

(b) No deer from a facility subject to the provisions of this section may be transferred or liberated except as provided in this section or expressly authorized in a disease management [~~herd~~] plan and then only in accordance with the provisions of this division and the disease management [~~herd~~] plan.

(c) (No change.)

(d) Category A trace-out breeding facility.

(1) - (3) (No change.)

(4) The department [~~in consultation with TAHC~~] may decline to authorize a custom testing plan under subsection (h) of this section if an epidemiological assessment determines that a custom testing plan is inappropriate.

(5) (No change.)

(e) Category B trace-out breeding facility.

(1) - (4) (No change.)

(5) The department [~~in consultation with TAHC~~] may decline to authorize a custom testing plan under subsection (h) of this section if an epidemiological assessment determines that a custom testing plan is inappropriate.

(6) (No change.)

(f) The department shall, provided the provisions of this subchapter do not otherwise prevent restoration of MQ status, restore MQ status to a breeding facility that has been designated NMQ under the provisions of subsection (e) of this section as provided in this paragraph.

(1) MQ status may be restored for a facility in which all trace deer available for testing are tested in accordance with subsection (e) of this section and trace deer unavailable for testing were received by the trace facility less than 36 months prior to the date of detection in the positive breeding facility, provided:

(A) - (D) (No change.)

(E) Compliance with the requirements of this subsection does not relieve any person of any obligation or requirement of a disease management [~~herd~~] plan.

(2) MQ status may be restored for a facility in which:

(A) - (D) (No change.)

(E) Compliance with the requirements of this subsection does not relieve any person of any obligation or requirement of a disease management [~~herd~~] plan.

(g) Trace-in breeding facility. Immediately upon notification by the department of trace-in facility status, a facility is automatically NMQ.

(1) - (3) (No change.)

(4) The department [~~in consultation with TAHC~~] may decline to authorize a custom testing plan under subsection (g) of this section if an epidemiological assessment determines that a custom testing plan is inappropriate.

(5) (No change.)

(h) Custom Testing Plan. Within seven days of being notified by the department that a breeding facility has been designated a Category A, Category B, or trace-in facility, a permittee may, in lieu of meeting the applicable testing requirements of subsections (d) - (g) of this section, request the development of a custom testing plan by the department [~~in consultation with TAHC~~] based upon an epidemiological assessment conducted by the department [~~and TAHC. A custom testing plan under this subsection is not valid unless it has been approved by the department and TAHC~~].

(1) - (5) (No change.)

(i) Positive Facility.

(1) Upon notification by the department that CWD is suspected in a deer in a facility, the facility is automatically NMQ and the permittee shall:

(A) - (C) (No change.)

(D) euthanize all trace deer within seven days of confirmation of the positive test result, unless authorized by the department or in a disease management [~~herd~~] plan;

(E) - (F) (No change.)

(2) Unless otherwise provided in writing by the department, a permittee must enter into a disease management [~~herd~~] plan within six months of being designated a positive facility or agree to conduct a depopulation of the breeder deer within the facility.

(3) Fencing meeting the specifications in §65.605 of this title shall be installed around a positive facility no later than the completion of the disease management [~~herd~~] plan and removal of a quarantine unless the owner of the facility conducts a complete depopulation of the breeder deer.

§65.100. Violations and Penalties.

(a) A person who violates a provision of this division or a condition of a deer breeder's permit, DMP, Triple T permit, TTP permit, disease management [~~herd~~] plan, or custom testing plan commits an offense and is subject to the penalties prescribed by the applicable provisions of the Parks and Wildlife Code.

~~[(b) A person who possesses or receives white-tailed deer or mule deer under the provisions of this division and/or Subchapters C, D, or T of this chapter is subject to the provisions of TAHC regulations at 4 TAC Chapter 40 (relating to Chronic Wasting Disease) that are applicable to white-tailed or mule deer].~~

(b) [~~(c)~~] A person who fails to comply with a provision of this division or a condition of a deer's breeder permit, DMP, Triple T permit, TTP permit, disease management [~~herd~~] plan, or custom testing plan may be prohibited by the department from future permit eligibility or issuance.

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

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SUBCHAPTER T. DEER BREEDER PERMITS

31 TAC §65.610

The amendment is proposed under the authority of Parks and Wildlife Code, Chapter 43, Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, sale, of breeder deer held under the authority of the subchapter

The proposed amendment affects Parks and Wildlife Code, Chapter 43, Subchapter L.

§65.610. Transfer Permits.

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

(e) Release.

(1) - (4) (No change.)

(5) It is an offense for any person to:

(A) release, cause, allow, or participate in the release of a breeder deer that does not bear the identification prescribed by Parks and Wildlife Code, §43.3561, and any applicable disease management [~~herd~~] plan; or

(B) (No change.)

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

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SUBCHAPTER F. PERMITS FOR AERIAL MANAGEMENT OF WILDLIFE AND EXOTIC SPECIES

31 TAC §65.151, §65.152

The Texas Parks and Wildlife Department proposes amendments to 31 TAC §65.151 and §65.152, concerning Permits for Aerial Management of Wildlife and Exotic Species. The proposed amendments would comport existing rules governing the take of wildlife and exotic animals from aircraft to reflect the provisions of Senate Bill (S.B.) 1245, enacted by the most recent session of the Texas Legislature. Senate Bill 1245 amended Parks and Wildlife Code, Chapter 43, Subchapter G, to allow a qualified landowner or landowner's agent to contract to participate as a hunter or observer in using a helicopter to take depredating aoudad sheep from a helicopter under a permit issued by the department.

The proposed amendments add "aoudad sheep" where necessary to make the provisions of the subchapter functional with respect to the management of aoudad sheep by means of aircraft. Such changes are made throughout the rules as necessary.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state government as a result of enforcing or administering the rules as proposed.

There will be no effect on persons required to comply with the rules as proposed.

Mr. Macdonald also has determined that for each of the first five years that the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rules will be compliance with the directives of the Texas Legislature.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the proposed rules affect a permit that privileges individual persons to manage wildlife and exotic species and therefore do not directly affect small businesses, micro-businesses, or rural communities. There will be no adverse economic effect on small businesses, microbusinesses, or rural communities as a result of the rules. On this basis, the department has determined that neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of a fee; not create a new regulation, but will expand an existing regulation (by allowing the take of aoudad sheep from aircraft under a department-issued permit); neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rules may be submitted to Kory Gann, Big Game Program Director, at (512) 389-4363, email: kory.gann@tpwd.texas.gov, or via the department website at www.tpwd.texas.gov.

The amendments are proposed under the provisions of Senate Bill (S.B.) 1245, enacted by the 89th Texas Legislature (R.S.), which allows a qualified landowner or landowner's agent to contract to participate as a hunter or observer in using a helicopter to take depredating aoudad sheep from a helicopter under a permit issued by the department, and Parks and Wildlife Code, Chapter 43, Subchapter G, which provides the commission with authority to make regulations governing the management of wildlife or exotic animals by the use of aircraft, including forms and procedures for permit applications; procedures for the management of wildlife or exotic animals by the use of aircraft; limitations on the time and the place for which a permit is valid; establishment of prohibited acts; rules to require, limit, or prohibit any activity as necessary to implement Parks and Wildlife Code, Chapter 43, Subchapter G.

The proposed amendments affect Parks and Wildlife Code, Chapter 43, Subchapter G.

§65.151. Definitions.

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

(1) - (11) (No change.)

(12) Subagent--A person designated by an Agent to act as a gunner for the purpose of taking of feral hogs, aoudad sheep, or coyotes.

(13) (No change.)

§65.152. General Rules.

(a) - (b) (No change.)

(c) It is lawful for a person who holds an AMP to contract with a qualified Landowner, Agent, or Subagent to act as a gunner the taking of depredating feral hogs, aoudad sheep, or coyotes from a helicopter, provided:

(1) - (3) (No change.)

(d) A person (which includes a pilot, applicant, gunner, observer, or Subagent) commits an offense if:

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

(3) the person participates in the take or attempted take of any wildlife or exotic animals other depredating feral hogs, aoudad sheep, or coyotes without having on his or her person a valid hunting license issued by the department;

(4) - (12) (No change.)

(e) - (g) (No change.)

(h) The department will not approve an LOA for the take of feral hogs or aoudad sheep on a tract of land where feral hogs or aoudad sheep have been released or liberated by or with the approval of the Landowner or Agent for the purpose of being hunted.

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

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SUBCHAPTER H. PUBLIC HUNTING PROCLAMATION

31 TAC §65.191, §65.194

The Texas Parks and Wildlife Department proposes amendments to 31 TAC §65.191, concerning Definition, and §65.194,

concerning Competitive Hunting Dog (Field Trials) Events and Fees.

The proposed amendments would remove all references to "field trial" and "field trial permits" and instead refer to those activities as "competitive hunting dog events," which is necessary to prevent confusion, as well as waive insurance and bond requirements for certain types of competitive hunting dog events conducted under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter J.

Under Parks and Wildlife Code, §62.016, the department is authorized to issue a permit for "competitive hunting dog events" in an area designated by the commission as a public hunting area and places no restrictions on the species that such permits may be used to pursue. Department rules (§65.194) therefore provide for the issuance and use of such permits, and employ the term "field trial" as a useful shorthand. Under Parks and Wildlife Code, Chapter 43, Subchapter F, the department may issue a Private Bird Hunting Area Permit on private lands, and persons who hold such a permit may apply for a "field trial" permit as provided by Parks and Wildlife Code, §43.0763, which is limited to the pursuit of banded, pen-raised game birds.

The Texas Legislature during the most recent regular session enacted Senate Bill 2801, which added new Chapter 43, Subchapter J, to create another type of field trial permit limited to the pursuit of squirrels, furbearing animals, and nongame wildlife on privately owned land or public lands authorized by the department by rule. The department has determined that having three kinds of permits with the same or similar name that are valid for at least four different regulatory scenarios under multiple fee standards could create confusion; therefore, in proposed rulemakings published elsewhere in this issue of the *Texas Register* the department would create the "Field Trial Permit" explicitly required by S.B. 2801, while in this proposed rulemaking eliminate references to "field trial permit," and instead refer to those activities as "competitive hunting dog events." The proposed amendment also would reduce the length of the submission deadline (from 90 days to 30 days), waive the insurance and bond requirements of the subchapter for events authorized under the provisions of S.B. 2801; require all officials, participants, and spectators of events conducted under the provisions of S.B 2801 to obtain and possess during all activities either a Limited Public Use (LPU) permit or Annual Public Hunting (APH) permit; make changes to modernize program administration by requiring applicants to provide an email address as part of the contact information; and rephrase paragraph (9)(B) for clarification.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the rules as proposed are in effect, there will be minimal fiscal implications to the department in the form of revenue from the sale of a small number of LPU and APH permits required under the proposed rule, which is not expected to be greater than $1,000.

There will be no fiscal implications to other units of state or local government as a result of administering the rules.

The rules will result in costs to persons required to comply, as all officials, participants, and handlers in affected activities would be required to purchase a $12 LPU permit or a $48 APH permit, at the discretion of the participant.

Mr. Macdonald also has determined that for each of the first five years that the rules as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rules will be elimination of confusing regulatory language.

(B) Under provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), in April 2008, the Office of the Attorney General issued guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that because the rules as proposed do not directly regulate any small business, microbusiness, or rural community, there will be no adverse economic impact on small businesses, microbusinesses, or rural communities as a result of the proposed rules.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; reduce the amount of a fee; not create a new regulation; not expand an existing regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rules may be submitted to Kevin Mote, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 217-2779; email: kevin.mote@tpwd.texas.gov or via the department website at www.tpwd.texas.gov.

The amendments are proposed under Parks and Wildlife Code, §81.403, which authorizes the commission to issue a permit authorizing access to public hunting land or for specific hunting, fishing, recreational, or other use and to impose a fee, and under Parks and Wildlife Code, §81.404, which authorizes the commission to adopt rules governing recreational activities in wildlife management areas.

The proposed amendments affect Parks and Wildlife Code, Chapter 81.

§65.191. Definitions.

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

§65.3 of this title (relating to Statewide Hunting and Fishing Proclamation).

(1) - (9) (No change.)

(10) Competitive hunting dog event [~~(field trial)~~]--A department-sanctioned contest in which the skills of hunting dogs are tested.

(11) - (49) (No change.)

§65.194. Competitive Hunting Dog Event [~~(Field Trials) and Fees~~].

The department may authorize competitive hunting dog events [~~field trials~~] on public hunting lands. All activities conducted pursuant to this section shall be subject to the provisions of this subchapter, except as specifically provided in this section.

(1) No person shall conduct or participate in a competitive hunting dog event [~~field trial~~] on public hunting lands unless the event has been sanctioned by the department through the issuance of a Competitive Hunting Dog Event [~~Field Trial~~] Permit in accordance with this section.

(2) An application for a Competitive Hunting Dog Event [~~Field Trial~~] Permit shall be submitted at least 30 [~~90~~] days in advance of the proposed event to the Wildlife Division regional director in whose region the proposed event would take place. The application shall include, at a minimum:

(A) the name, address, email address, and telephone number of the sponsoring person(s) or organization(s), and the Social Security number of the person to whom the permit will be issued, if approved;

(B) - (D) (No change.)

(E) the estimated number of participating dogs, dog handlers, and officials, respectively, and the estimated number of spectators;

(F) the species of animals or birds to be pursued during the event;

(G) [~~(F)~~] the fee for the competitive hunting dog event [~~field trial~~] permit [~~as assessed according to the number of participating dog handlers and officials~~] as specified by Chapter 53, Subchapter A of this title, (relating to Fees).

(H) [~~(G)~~] proof of liability insurance for the event in the amount of at least $250,000, which shall include coverage of personal injury and property damage; and

(I) [~~(H)~~] a performance bond in the amount of $5,000 to assure restoration of the involved public hunting lands to pre-event [~~pre-field trial~~] conditions.

(J) The provisions of subparagraphs (H) and (I) of this paragraph do not apply to an applicant seeking authorization to pursue squirrels, fur-bearing animals, and nongame wildlife under a permit pursuant to Parks and Wildlife Code, Chapter 43, Subchapter J.

(K) All officials, participants, and spectators at permitted activities occurring on public hunting lands under a permit issued pursuant to Parks and Wildlife Code, Chapter 43, Subchapter J, shall obtain and be in physical possession of a valid Limited Public Use Permit or Annual Public Hunting Permit issued by the department at all times such persons are present on public hunting lands.

(3) (No change.)

(4) The regional director shall, within 30 days of receipt of such application, notify the applicant of approval or denial of the application. If the application is approved, the [~~field trial~~] permit shall be issued in the form of a letter to the applicant. Any requirements or restrictions in addition to the provisions of this subchapter shall be specified in the permit.

(5) A permit issued under the provisions of this section [~~The field trial permit~~] shall be present and available on-site during all permitted [~~field trial~~] activities. The permittee shall, prior to commencing any competition, attach to the permit an accurate list containing the names of all dog handlers and officials who at any time participate in the event, and the names of all spectators. [~~The aggregate number of participants named on the list shall not exceed the number of participants authorized by the field trial permit.~~] The list shall be sent to the regional director no later than ten days following the conclusion of the event.

(6) (No change.)

(7) The permittee is responsible and liable for the actions of all [~~field trial~~] participants, spectators, and dogs during all activities conducted during an [~~this~~] event conducted under the provisions of this section.

(8) All construction, facilities emplacement, or other site alterations shall be performed and removed strictly in accordance with the conditions specified in [~~of~~] the [~~field trial~~] permit. The permittee shall not be released from the obligations of this section and the performance bond shall not be returned to the permittee until the department is satisfied that the site has been restored to pre-event [~~pre-trial~~] conditions.

(9) During any [~~field trial~~] activity conducted under the provisions of this section, it is an offense for any person attending the event or named on the list required by paragraph (2) of this section to:

(A) violate any condition of the [~~field trial~~] permit; or

(B) kill or injure any wildlife resource [~~take or attempt to take any animal or bird~~].

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 W. SPECIAL PERMITS

31 TAC §65.908

The Texas Parks and Wildlife Department proposes new 31 TAC §65.908, concerning Field Trial Permit. The proposed new rule would implement provisions required or authorized under Senate Bill 2801, enacted during the Regular Session of the 89th Texas Legislature, which amended the Parks and Wildlife Code by adding new Chapter 43, Subchapter J, to create a field trial permit allowing the pursuit of squirrels, furbearing animals, and nongame wildlife on privately owned land or public lands identified by commission rule. The fee for the permit is fixed by statute at $50.

Proposed new subsection (a) would explicitly identify the field trial permit authorized by S.B. 2801 and clearly distinguish it from other, similar types of permits already issued by the department under existing statutory and regulatory authority. The department wishes to eliminate, to the extent possible, any confusion with respect to various dog-related permits administered by the department.

Proposed new subsection (b) would prescribe the process and content for applications for a field trial permit. The proposed provision would specify the issuance of permits to named individuals only, which is necessary to facilitate enforcement activities by providing for the clear identification of a responsible party with respect to conduct regulated under the rule. The proposed provision also would allow for the department to prescribe permit conditions necessary to manage and protect wildlife resources subject to permitted activities. Because Texas is a large state with many types of ecological systems and property conditions, the circumstances of any given permit cannot be anticipated and articulated by rule; therefore, the provision would allow the department to prescribe permit conditions unique to a given permit if necessary.

Proposed new subsection (c) would require the permittee or a designee to be present at all times during the period of validity of the permit, to possess a list of all participants present during the period of the validity of the permit (including identification and contact information), a map or boundary description of the property where the activity is taking place, and written landowner consent for permitted activities (if the permittee is not the landowner of the property where permitted activities are taking place), all of which are necessary to assist the department in determining regulatory compliance. The proposed amendment also would require all officials, participants, and spectators of events conducted on public hunting lands under the provisions of S.B. 2801 to obtain and possess during all activities either a Limited Public Use (LPU) permit or Annual Public Hunting (APH) permit, which provides an effective waiver of liability for the state in the absence of the liability insurance and bond requirements established by Chapter 65, Subchapter H for other types of hunting dog events.

Proposed new subsection (d) would identify the units of department-owned public lands where field trial permits under the provisions of the proposed new section could be issued, which is required under the provisions of S.B. 2801; provided the activity does not occur during public hunting activities or interfere with research or management activities.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the rules as proposed are in effect, there will be minimal fiscal implications to the department in the form of revenue from the sale of a small number of LPU and APH permits required under the proposed rule, which is not expected to be greater than $1,000 per year.

There will be no fiscal implications to other units of state or local government as a result of administering the rules.

There will be fiscal implications on persons required to comply with the rule as proposed, namely the cost of a permit ($50); however, that fee is established under the provisions S.B. 2801 and is not a result of this rulemaking. Additionally, persons engaging in permitted activities on public hunting lands will incur a cost of $12 for a LPU permit or a cost of $48 for an APH permit, at the discretion of the participant.

Mr. Macdonald also has determined that for each of the first five years that the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rule will be compliance with the directives of the Texas Legislature.

Under provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), in April 2008, the Office of the Attorney General issued guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that because the rule as proposed does not directly regulate any small business, microbusiness, or rural community, there will be no adverse economic impact on small businesses, microbusinesses, or rural communities as a result of the proposed rule.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of a fee; create a new regulation (to implement a process for obtain a Field Trial Permit); not expand an existing regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rule may be submitted to Kevin Mote, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 217-2779 or via the department website at www.tpwd.texas.gov.

The new rule is proposed under the provisions of Senate Bill 2801 (R.S. 2025), which amended Parks and Wildlife Code, Chapter 43, by adding new Subchapter J, to authorize the commission to prescribe by rule the manner of application for and issuance of the field trial permit authorized by the subchapter, rules necessary to administer the subchapter, and rules to specify public lands where field trial permits under the subchapter may be issued.

The proposed new rule affects Parks and Wildlife Code, Chapter 43, Subchapter J.

§65.908. Field Trial Permit.

(a) General.

(1) The department may issue a Field Trial Permit to a qualified applicant as provided by Parks and Wildlife Code, Chapter 43, Subchapter J. A permit under this section may be issued for a single field trial that takes place on multiple private lands or multiple public lands, but not for an event that takes place on both private and public lands.

(2) A permit under this section is not required for an activity lawfully conducted under the provisions of:

(A) Parks and Wildlife Code, Chapter 43, Subchapter F; or

(B) §65.194 of this title (relating to Competitive Dog Events).

(3) A permit under this section may not be substituted for or used in lieu of a permit described in:

(A) Parks and Wildlife Code, Chapter 43, Subchapter F; or

(B) §65.194 of this title (relating to Competitive Dog Events).

(4) A permit under this section is valid only on the specific properties or public lands for which it was issued and authorizes only the activities identified in Parks and Wildlife Code, Chapter 43, Subchapter J.

(5) For the purposes of this section, "public lands" means the department-owned or department-managed lands listed in subsection (d) of this section.

(b) Application and issuance.

(1) A permit under this section shall be issued only to a named individual and not in the name of any organization or association.

(2) The department will not issue a permit under this section until an administratively complete application for a Field Trial Permit has been submitted to the department on a form supplied or approved by the department for that purpose.

(3) The department may prescribe permit conditions as necessary to manage and protect wildlife resources subject to the activity authorized by the permit.

(c) On-site requirements. The person to whom a Field Trial Permit is issued (permittee) may designate another person to act on his or her behalf for purposes of compliance with this subsection. Such designation shall be in writing and shall be possessed on the person of the designee during permitted activities. The permittee or designee shall possess on their person at all times during the time period specified by the permit for the conduct of permitted activities:

(1) the Field Trial Permit (original, photocopy, or photograph);

(2) a list of all persons participating in permitted activities (participants). The list shall consist of, for each participant:

(A) the participant's full legal name;

(B) address and a functioning telephone number or email address; and

(C) the driver's license or state-issued personal identification number issued by the participant's state of residence;

(D) a map or boundary description of the property where the permitted activities are to take place, if the prospective activity is to take place on private lands; and

(E) if the property where the permitted activity is taking place is owned by a person other than the permittee, written consent from the owner of the land where the permitted activity is taking place to use the property for the purposes authorized by the permit.

(3) All officials, participants, and spectators at permitted activities occurring on public hunting lands under a permit issued pursuant to Parks and Wildlife Code, Chapter 43, Subchapter J, shall obtain and be in physical possession of a valid Limited Public Use Permit or Annual Public Hunting permit issued by the department under the provisions of Subchapter H of this chapter at all times such persons are present on public hunting lands.

(d) A permit under this section may be issued for designated areas within the following units of public hunting lands, provided the prospective activity does not interfere with public hunting, research, or management activities.

(1) Alazan Bayou WMA (including Blunt property);

(2) Big Lake Bottom WMA);

(3) Black Gap WMA;

(4) Blue Elbow Swamp-Tony Houseman WMA;

(5) Caddo Lake WMA;

(6) Chaparral WMA;

(7) Dam B WMA (including Angelina-Neches Scientific Area)

(8) Gus Engeling WMA;

(9) Las Palomas WMA;

(10) Elephant Mountain WMA;

(11) Gene Howe WMA (does not include Pat Murphy Unit);

(12) Guadalupe Delta WMA;

(13) James Daughtrey WMA;

(14) Justin Hurst WMA;

(15) Matador WMA;

(16) McGillvray and Leona McKie Muse WMA;

(17) Moore Plantation WMA;

(18) Nannie Stringfellow WMA;

(19) Old Sabine Bottom WMA;

(20) Pat Mayse WMA;

(21) Ray Roberts;

(22) Roger Fawcett WMA; and

(23) White Oak Creek WMA.

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

Filed with the Office of the Secretary of State on December 8, 2025.

TRD-202504449
James Murphy
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: January 18, 2026
For further information, please call: (512) 389-4775

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 342. STANDARDS FOR HOUSING NON-TEXAS JUVENILES IN TEXAS DETENTION AND CORRECTIONAL FACILITIES

37 TAC §342.1

The Texas Juvenile Justice Department (TJJD) proposes to amend 37 TAC §342.1, Authority to House Out-of-State Juveniles.

SUMMARY OF CHANGES

Amendments to §342.1 will include changing the phrase *juveniles convicted of offenses committed against the laws of another state or the United States* to *juveniles convicted of offenses committed against the laws of another state of the United States*; and changing the current phrases referring *to detention and pre-adjudication*, while the statute refers to *state juvenile inmates convicted of offenses*.

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, Policy Director, 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 this section will be to better align policy with statute.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of the 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 §221.053, Human Resources Code, which requires the Board to develop rules, procedures, and minimum standards applicable to county or private correctional facilities housing out-of-state juvenile inmates

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

No other statute, code, or article is affected by this proposal.

§342.1. Authority to House Out-of-State Juveniles.

The only entities other than the state authorized to operate a [~~pre-adjudication secure detention facility,~~] post-adjudication secure correctional facility[~~,~~] or non-secure correctional facility in this state to house juveniles convicted of offenses committed against the laws of another state of [~~or~~] the United States are:

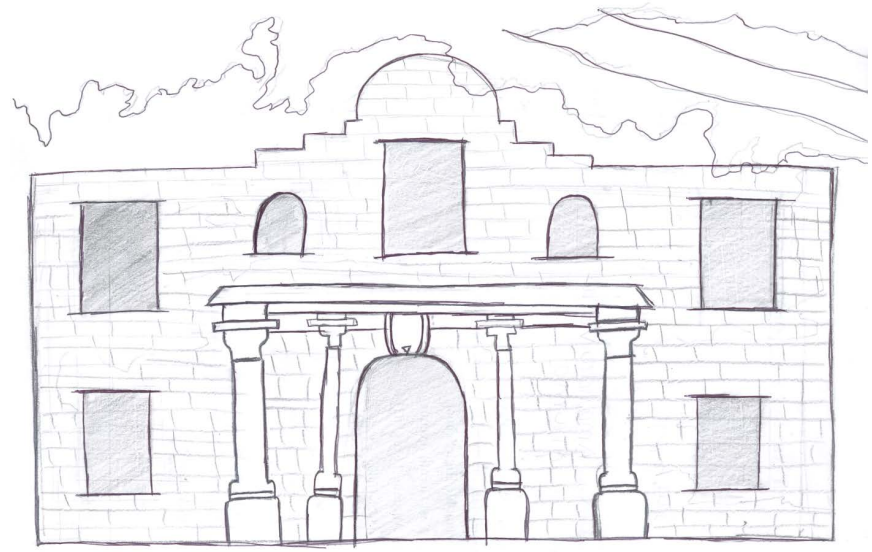
(1) a governmental unit in this state; or

(2) a private vendor operating a [~~pre-adjudication secure detention facility,~~] post-adjudication secure correctional facility[~~,~~] or non-secure correctional facility under a contract with a governmental unit in this state.

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

Filed with the Office of the Secretary of State on December 8, 2025.

TRD-202504447
Jana Jones
General Counsel
Texas Juvenile Justice Department
Earliest possible date of adoption: January 18, 2026
For further information, please call: (512) 490-7278



WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER Q. APPROVAL OF OFF-CAMPUS AND SELF-SUPPORTING COURSES AND PROGRAMS FOR PUBLIC INSTITUTIONS

19 TAC §§4.270 - 4.279

The Texas Higher Education Coordinating Board withdraws the proposed repeal of §§4.270 - 4.279 which appeared in the July 25, 2025, issue of the *Texas Register* (50 TexReg 4162).

Filed with the Office of the Secretary of State on December 3, 2025.

TRD-202504409
Douglas Brock
General Counsel
Texas Higher Education Coordinating Board
Effective date: December 3, 2025
For further information, please call: (512) 427-6182

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER F. PERMITS FOR AERIAL MANAGEMENT OF WILDLIFE AND EXOTIC SPECIES

31 TAC §§65.151, 65.152, 65.154, 65.160

The Texas Parks and Wildlife Department withdraws proposed amendments to §§65.151, 65.152, 65.154, 65.160 which appeared in the July 18, 2025, issue of the *Texas Register* (50 TexReg 4081).

Filed with the Office of the Secretary of State on December 8, 2025.

TRD-202504439
James Murphy
General Counsel
Texas Parks and Wildlife Department
Effective date: December 8, 2025
For further information, please call: (512) 389-4775

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Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 11. QUALIFIED ALLOCATION PLAN (QAP)

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 11, Qualified Allocation Plan (QAP) that was published in the September 19, 2025 issue of the *Texas Register* (50 TexReg 6097). Subchapter A, §11.4, Subchapter D, §11.303 and §11.306, and Subchapter F, §§11.1004 - 11.1007 are being adopted with changes to the rules titles from the proposal and will be republished. The other rules being repealed in Subchapters A through Subchapter F are being adopted without changes and will not be republished.

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

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

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

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

The adopted repeal does not require additional future legislative appropriations.

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

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

The adopted action will repeal an existing regulation, but is associated with a simultaneous adoption of the subchapters in 10 TAC Chapter 11, the Qualified Allocation Plan, in order to better address the requirements of Tex. Gov't Code Ch. 2306 Subchapter DD.

The adopted repeal will not increase or decrease the number of individuals subject to the rules' applicability.

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

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

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

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

The adopted repeal does not contemplate or authorize a takings by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX GOV'T CODE §2001.024(a)(6).

The Department has evaluated the adopted repeal as to its possible effects on local economies and has determined that for the first five years the adopted repeal would be in effect there would be no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rules.

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

Mr. Wilkinson has also determined that, for each year of the first five years the adopted repeal is in effect, the public benefit anticipated as a result of the repealed section would be an updated and more germane rule for administering the allocation of LIHTC. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(4).

Mr. Wilkinson has determined that for each year of the first five years the adopted repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT. The public comment period was held September 20, 2024, to October 11, 2024, to receive stakeholder comment on the repealed section. No comments on the repeal were received.

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

10 TAC §§11.1 - 11.10

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

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

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 8, 2025.

TRD-202504457
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 28, 2025
Proposal publication date: September 19, 2025
For further information, please call: (512) 475-3959

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SUBCHAPTER B. SITE AND DEVELOPMENT REQUIREMENTS AND RESTRICTIONS

10 TAC §11.101

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

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 28, 2025
Proposal publication date: September 19, 2025
For further information, please call: (512) 475-3959

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SUBCHAPTER C. APPLICATION SUBMISSION REQUIREMENTS, INELIGIBILITY CRITERIA, BOARD DECISIONS AND WAIVER OF RULES

10 TAC §§11.201 - 11.207

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

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 8, 2025.

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 28, 2025
Proposal publication date: September 19, 2025
For further information, please call: (512) 475-3959

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SUBCHAPTER D. UNDERWRITING AND LOAN POLICY

10 TAC §§11.301 - 11.306

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

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

§11.303. Market Analysis Rules and Guidelines.

§11.306. Scope and Cost Review Guidelines.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 8, 2025.

TRD-202504460
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 28, 2025
Proposal publication date: September 19, 2025
For further information, please call: (512) 475-3959

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SUBCHAPTER E. FEE SCHEDULE, APPEALS, AND OTHER PROVISIONS

10 TAC §§11.901 - 11.907

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

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 8, 2025.

TRD-202504461
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 28, 2025
Proposal publication date: September 19, 2025
For further information, please call: (512) 475-3959

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SUBCHAPTER F. SUPPLEMENTAL HOUSING TAX CREDITS

10 TAC §§11.1001 - 11.1009

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

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

§11.1004. Procedural Requirements for Requests for State Housing Tax Credits Associated with Competitive HTC Applications.

§11.1005. Required Documentation for State Housing Tax Credit Request Submission Associated with Competitive HTC Applications.

§11.1006. State Housing Tax Credits Underwriting and Loan Policy Associated with Competitive HTC.

§11.1007. State Housing Tax Credits Selection Criteria Associated with Competitive HTC Applications.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 8, 2025.

TRD-202504462
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 28, 2025
Proposal publication date: September 19, 2025
For further information, please call: (512) 475-3959

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CHAPTER 11. QUALIFIED ALLOCATION PLAN (QAP)

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 11, Qualified Allocation Plan (QAP), containing §§11.1 - 11.10, 11.101, 11.201 - 11.207, 11.301 - 11.306, 11.901 - 11.907, and 11.1001 - 11.1008, with changes to the text previously published in the September 19, 2025 issue of the *Texas Register* (50 TexReg 6100). The rules will be republished. The purpose of the adopted new section is to provide compliance with Tex. Gov't Code §2306.67022 and to update the rule to: clarify multiple definitions; update the Program Calendar; revise or eliminate several scoring items; increase eligible building costs to respond to inflation; increase Rehabilitation Cost thresholds; introduce a per unit Total Development cost limit; allow staff to approve one-time, six-month extensions to the deadline to place-in-service for good cause; prohibits cash-out to a related-party seller in an identity of interest transaction for Competitive Housing Tax Credit Applications; create a minimum score for all 9% Applications; Add a new tie breaker preference for the lowest Housing Tax Credit request per Low-Income Unit; and introduce a scoring option for Developments in an Opportunity Zone.

Tex. Gov't Code §2001.0045(b) does not apply to the rule adopted for action for two reasons: 1) the state's adoption of the QAP is necessary to comply with IRC §42; and 2) the state's adoption of the QAP is necessary to comply with Tex. Gov't Code §2306.67022. The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

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

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

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

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

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

4. The rule changes will not result in any increases or decreases in fees, with the exception of proposed language that clarifies no additional fee will be charged for Competitive HTC Applications that include a request for State Housing Tax Credits. The cost of this fee was previously $2500 per Application.

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

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

Some "expansions" are offset by corresponding "contractions" in the rules, compared to the 2024 QAP. Notably, the Department has sought to remove superfluous language wherever possible and to consolidate rules to reflect current process. These additions, removals, and revisions to the QAP are necessary to ensure compliance with IRC §42 and Tex. Gov't Code §2306.67022, among other federal and state requirements.

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

8. The adopted rule will not negatively affect the state's economy and may be considered to have a positive effect on the state's economy because changes at 10 TAC §11.9(c)(7), Proximity to

Job Areas, may help to encourage the Development of affordable multifamily housing in robust markets with strong and growing economies.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX GOV'T CODE §2006.002. The Department, in drafting this adopted rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code §2306.67022. Some stakeholders have reported that their average cost of filing an Application is between $50,000 and $60,000, which may vary depending on the specific type of Application, location of the Development Site, and other non-state of Texas funding sources utilized. The adopted rules do not, on average, result in an increased cost of filing an application as compared to existing program rules.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. There are approximately 100 to 150 small or micro-businesses subject to the adopted rule for which the economic impact of the rule may range from $480 to many thousands of dollars, just to submit an Application for Competitive or non-Competitive HTCs. The Department bases this estimate on the potential number of Applicants and their related parties who may submit applications to TDHCA for LIHTC. The fee for submitting an Application for LIHTC is $30 per unit, and all Applicants are required to propose constructing, at a minimum, 16 Units. While, in theory, there is no limit to the number of Units that could be proposed in a single Application, practically speaking, the Department sees few proposed Developments larger than 350 Units, which, by way of example, would carry a fee schedule of $10,500. These Application Fee costs are not inclusive of external costs required by the basic business necessities underlying any real estate transaction, from placing earnest money on land, conducting an Environmental Site Assessment, conducting a market study, potentially retaining counsel, hiring an architect and an engineer to construct basic site designs and elevations, and paying any other related, third-party fees for securing the necessary financing to construct multifamily housing. Nor does this estimate include fees from the Department for Applications that successfully attain an award.

There are 1,376 rural communities potentially subject to the adopted rule for which the economic impact of the rule is projected to be $0. The adopted rule places no financial burdens on rural communities, as the costs associated with submitting an Application are born entirely by private parties. If anything, a rural community securing a LIHTC Development will experience an economic benefit, not least among which is the potential increased property tax revenue from a large multifamily Development.

3. The Department has determined that because there are rural tax credit awardees, this program helps promote construction activities and long term tax base in rural areas of Texas. Aside from the fees and costs associated with submitting an Application, there is a probable positive economic effect on small or micro-businesses or rural communities that receive LIHTC awards and successfully use those awards to construct multifamily housing, although the specific impact is not able to be quantified in advance

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX GOV'T CODE §2007.043. The adopted rule does not contemplate or authorize a takings by the Department. Therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the proposed rule may provide a possible positive economic effect on local employment in association with this rule since LIHTC Developments often involve a total input of, typically at a minimum, $5 million in capital, but often an input of $10 million - $30 million. Such a capital investment has concrete direct, indirect, and induced effects on the local and regional economies. However, because the exact location of where program funds and development are directed is not determined in rule, there is no way to determine during rulemaking where the positive effects may occur. Furthermore, while the Department knows that any and all impacts are positive, that impact is not able to be quantified for any given community until a proposed Development is actually awarded LIHTC, given the unique characteristics of each proposed multifamily Development and region in which it is being developed. Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule…" Considering that significant construction activity is associated with any LIHTC Development and that each apartment community significantly increases the property value of the land being developed, there are no probable negative effects of the new rule on particular geographic regions. If anything, positive effects will ensue in those communities where developers receive LIHTC awards.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be an updated and more germane rule for administering the allocation of LIHTC with considerations made for applicants as it relates to the impact of the COVID-19 pandemic on the application process. Other than the fees mentioned in section a4 above, there is no change to the economic cost to any individuals required to comply with the new section because the same processes described by the rule have already been in place through the rule found at this section being repealed. The average cost of filing an application remains between $50,000 and $60,000, which may vary depending on the specific type of application, location of the development site, and other non-state of Texas funding sources utilized. The proposed rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules.

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

SUMMARY OF PUBLIC COMMENT. The public comment period was held September 19, 2025, to October 11, 2025, to receive stakeholders comment on the new proposed sections. Comment was received from 41 commenters as listed below:

(1) Auxano Development, (2) Betco Housing Lab, (3) Brinshore Development, (4) Charles Holcomb, (5) City of Austin, (6) City of San Antonio, (7) Coalition of Texans with Disabilities, (8) Coats Rose, (9) Daikin Comfort Technologies, (10), National Drowning Prevention Alliance, (11) Disability Rights Texas, (12) DMA, (13) Dominium, (14) Express Group, (15) Fort Worth Housing Solutions, (16) Representative Gary Gates, (17) Generation Housing Partners, (18) Gyani Capital, (19) Hearthly, (20) Hoke Development Services, (21) Houston Housing Authority, (22) Inclusive Communities Project, (23) Institute of RE Management, (24) ITEX, (25) JES Holdings, (26) Knight Development, (27) Lakewood Property Management, (28) Lonestar Development Partners, (29) National Church Residences, (30) Palladium USA, (31) Pivotal, (32) Purple Martin Real Estate, (33) Rural Rental Housing Association, (34) Strategic HFC, (35) Structure Development, (36) Texas Affiliation of Affordable Housing Providers, (37) Texas Association of Local Housing Finance Agencies, (38) Texas Homeless Network, (39) Texas Housers, (40) Texas Water Safety Coalition, and (41) Safe Kids Austin.

It should be noted that in the interest of brevity, some of the more extensive comments received have been summarized significantly; however, copies of all comments received have the commenter's number denoted, and are all available on the Department Website.

Section 11.5(3)(F) - At-Risk Set-Aside.

COMMENT SUMMARY:

Commenter 8 is concerned that the new At-Risk language related to the definition of nearing expiration is too restrictive and should be limited only to Section 42 requirements. They suggest removing the insertion regarding the Department's rules since this does not affect/shorten the Affordability Period for the Development.

Commenter 26 recommends TDHCA should explicitly list RAD and Section 18 conversions under the At-Risk Set-Aside for 9% deals.

STAFF RESPONSE:

Staff appreciates Commenter 8's concerns about the adjustments to language and how this may be more restrictive to developments. Staff believes that this proposed language clarifies the intention of the existing rule

Staff appreciates Commenter 26's suggestion to allow units with RAD and Section 18 funding to be eligible for the At-Risk Set-Aside for 9% deals. Staff was not able to make this change as State statute dictates what type of subsidy qualifies an At-Risk Development.

Section 11.6(d)(126)(B)(vi) Definition of Supportive Housing.

COMMENT SUMMARY:

Commenter 39 suggests removing the language regarding prior eviction history and sex offender registration as part of the Tenant Selection Criteria. Commenter 39 believes this is a detriment to potential tenants who are applying to live in Supportive Housing developments and that the language should better mirror federal and state rules on lookback periods.

STAFF RESPONSE:

Staff appreciates Commenter 39's concerns regarding the possible effects of this item. The rule in question was originally introduced to bring clarity and consistency to tenant screening criteria imposed by Supportive Housing developments. Staff does not recommend making adjustments to the definition at this stage in the 2026 QAP Development process without additional research and discussion with the relevant stakeholders. Staff encourages Commenter 39 to introduce this concept during the 2027 QAP development process.

Section 11.6(3)(C)(iii) Competitive HTC Allocation Process.

COMMENT SUMMARY:

Commenter 2 supports the removal of the 50% limitation of Rehabilitation and Reconstruction developments in each Subregion.

STAFF RESPONSE:

Staff appreciates the support from Commenter 2 for removing the 50% limitation of Rehabilitation and Reconstruction developments in all Subregions.

Section 11.6(6) Credit Returns Due to Unforeseen Short-term Delays.

COMMENT SUMMARY:

Commenter 39 proposes to make financial statements and underwriting reports publicly available when a development uses this rule in order to improve transparency.

Commenter 8 supports the refining of these criteria since originally drafted but suggests additional adjustments to the language should be made. Suggested language is provided that refines the requirement for the development owner to be properly insured, given there would be no such insurance prior to construction and closing. Additionally, Commenter 8 is concerned that the requirement of this rule that it can only be used once is problematic for the affordable housing industry given the varying circumstances that may cause delay at any time. Commenter 8 suggests removing subsection (G) of the language in response.

Commenter 2 requests clarification between the distinction of "existing deadline" and "original deadline" in this paragraph.

STAFF RESPONSE:

Staff appreciates Commenter 39's interest in enhancing transparency regarding Force Majeure requests. Staff does not find it necessary to underwrite each request, as they typically involve only a time extension with no material changes to the deal. In cases where significant changes are proposed, a material amendment is processed, and a new underwriting report is published to the Department website.

Staff acknowledges Commenter 8's concerns regarding the insurance requirement but does not believe a change is warranted in response. The term "properly insured" may vary in meaning depending on the stage of development. If no insurance coverage is required at a particular stage, the development would be considered "properly insured" for that point in time. Regarding subsection (G), staff maintains that the limitation remains appropriate, as there is no restriction on requesting Board approval for an additional extension if circumstances warrant it.

Regarding Commenter 2, staff concurs that clarification is needed and has made a responsive change to consistently use "original deadline" in the paragraph.

Section 11.7 Tie Breaker Factors.

COMMENT SUMMARY:

Commenters 1, 24, 31, 35 recommend giving applicants the ability to use a single plot of land with multiple amenities for this tie breaker as they believe this follows the intent of the tie breaker item. Commenter 24 speaks to the fact that some campuses have amenities that are co-located with schools and because of the way the rule is written, only one amenity on the site can be counted. Commenters 24, 31, 35 do not believe this goes along with the intent of Tie Breaker as it prevents some amenities from being counted.

Commenter 32 supports the continued prohibition of using a school campus facility as a park.

Commenter 6 supports expanding the second Tie Breaker proximity beyond just elementary schools.

Commenters 11 and 39 believe there should be a Tie Breaker that incentivizes the lowest income units, which are of the highest need in the state. Commenter 11 supports a suggestion by Commenter 39 regarding a proposed Tie Breaker that prioritizes more affordable units over efficient use of tax credits. Commenter 39 has provided suggested language and further explanation on how the potential Tie Breaker could function.

Commenters 14, 15, 17, 32 believe the refined language regarding a public announcement regarding school closure would be too administratively difficult for staff to administer. Commenters 14, 15, 17, 32 suggest that this item should be based on the school being in operation as of the Application Acceptance Period.

STAFF RESPONSE:

Staff appreciates Commenters 6 and 32 for their support on the revisions related to the schools and parks aspects of the Tie Breaker.

Staff appreciates the suggestion by Commenters 1, 24, 31, 35 to allow a single plot of land with multiple amenities to count as separate items in this Tie Breaker. Adjustments have been made to the QAP in response to these comments.

Staff appreciates hearing from Commenters 11 and 39 and thanks them for proposing an alternative method to determine Tie Breaks. Staff recognizes the importance of incentivizing and increasing the number of 30% units in the program, as they are the most in-demand in the state. Given that there have been several adjustments to the existing language, including adding a new level to the Tie Breaker, staff does not recommend additional significant change to this rule immediately preceding adoption.

Staff appreciates the concern from Commenter 14, 15, 17, and 32's regarding potential administrative difficulties in reviewing the public announcement requirement but believes that this item is acceptable as is and can be revised in the 2027 QAP development process if needed.

Section 11.7(3) Tie Breaker Factors- Housing Tax Credit Per Low Income Unit.

COMMENT SUMMARY:

Commenters 2 and 33 believe this additional Tie Breaker would create a "race to the bottom" and would not be good for residents, developers, or stakeholders. Commenter 2 speaks to this provision being something that has already been tried and did not provide the desired result. Commenter 2 suggests that if this Tie Breaker cannot be removed, it should be made the final Tie Breaker. Commenter 33 believes that while this item has good intentions, it may lead to lower construction quality and a diminished impact for the community.

Commenter 14, 15, 17, 32 supports the placement of this new Tie Breaker behind the community amenities Tie Breaker.

Commenter 14, 15, 17, 32, 33 is worried that with this new Tie Breaker, applicants will not be as informed to make business decisions on whether to pursue a project. Additionally, this Tie Breaker incentivizes applicants to limit the amount of tax credits requested, which would create issues given the difficult economic environment. Commenters 14, 15, 17, 32, 33 request for this Tie Breaker option to be removed and an alternative be developed in future years.

STAFF RESPONSE:

Staff appreciates Commenter 14, 15, 17 and 32 for their support of the placement of this new Tie Breaker behind the amenities Tie Breaker.

Staff recognizes the risks noted by Comments 2, 14, 15, 17, 32, and 33 regarding the potential for the policy to incentivize developments to request fewer Tax Credits than may be needed; however, staff believes the policy advances a Department priority to promote the efficient use of public resources and does not anticipate that it will result in lower-quality construction.

Regarding the concern from Commenters 14, 15, 17, 32, and 33 that this tie breaker will lead to less informed business decisions, staff is sympathetic but emphasizes that since this not a first priority Tie Breaker it will not be pertinent in determining the competitiveness of many Applications.

Section 11.9(a)(3) Competitive HTC Selection Criteria.

COMMENT SUMMARY:

Commenter 2 appreciates staff's clarification of this circumstance as it has become more common.

STAFF RESPONSE:

Staff appreciates Commenter 2's support of this item.

Section 11.9(b)(2) Sponsor Characteristics.

COMMENT SUMMARY:

Commenter 2 suggests a cleanup to the language given one of the items is not properly referenced in the first part of the subsection.

Commenter 16 supports the inclusion of Item (D) as it reserves points that are intended to incentivize Developments that do not use property tax exemptions; however, Commenter 16 opposes the inclusion of Item (E) which gives a point advantage to housing authorities and their instrumentalities over other projects that use a second layer of public subsidy. Commenter 16 believes that receiving this second layer of subsidy should come along with increased benefit so that the return to the community is clear and measurable.

Commenters 5, 14, 15, 17, and 32 though request that the Item (E) be expended to include Housing Finance Corporations in addition to Housing Authorities.

Commenters 34 and 39 are confused by the section as it appears some public entities can be awarded these points while others are restricted. Commenter 34 says that this change disincentives partnerships with entities that have been reformed by the legislature, even though reforms were done to increase the

public benefit of Housing Finance Corporation (HFC) partnerships. Commenter 34 recommends that the Department revisit this subsection to include entities that have been reformed by recent legislation in the 89th legislature.

Commenters 16 and 39 agree with the Board's concerns regarding the level of benefit that is delivered from Tax-Exempt partnerships. Commenters 16 and 39 recommend that this section should be rewritten to make points available to all types of Tax-exempt partnerships, but only if they provide additional benefits in exchange for accessing both tax credits and tax exemption. Commenters 16 and 39 have separately provided language to this extent. Commenters 16 and 39 believe their suggested language will assist in incentivizing applicants to pay property taxes while also providing more benefits to the residents.

Commenter 1 states that the new HUB language could disadvantage some third-party independent HUBs that are building capacity to become primary developers or applicants. Commenter 1 suggests excluding related parties and contracted consultants would be a good step forward to get what the agency aims for.

Commenter 5 appreciates the changes to the section that allow for HUBs to be either General Partner or Special Limited Partner, a change that better facilitates with Housing Finance Corporations.

Commenters 14, 15, 17, and 32 believe this newly added subsection should be deleted as they believe the tax credit development industry benefits from experienced sponsors. Commenters 14, 15, 17, and 32 believe that with the removal of previously required experience metrics, the agency should better establish programs to partner experienced individuals with newer individuals. Commenters 14, 15, 17, and 32 suggest that the HUB scoring option should not exclude those HUBs with significant experience in the tax credit program.

Commenter 19 believes that no change should be made to the HUB section in Sponsor Characteristics as it still meets the standards of the State of Texas.

Commenter 27 requests clarification on whether this includes developments where the Applicant's control has ended. Commenter 27 has provided language to this extent that clarifies that developments listed on the Previous Participation Form should not include those where the Control has ended.

STAFF RESPONSE:

In response to a recent announcement from the Texas Comptroller of Public Accounts that new HUB certificates are not being issued currently, staff has removed the scoring item for HUBs from the QAP. Staff appreciates all stakeholder input that was received on this item.

Staff appreciates Commenter 2's recommendation to address language in this section so that the section reads as intended, and has made a responsive change to this section of the proposed Rule.

Staff appreciates Commenter 16's support of this addition to allow Sponsor Characteristic points to be scored based on a project paying ad valorem taxes to the local taxing jurisdiction.

Staff acknowledges Commenter 5, 14, 15, 17, and 32's request to expand item (E) to also include Housing Finance Corporations in addition to Housing Authorities. Additionally, Commenter's 34 and 39 support including entities that have been reformed in the 89th legislature. Staff has made a response change to this request to include Housing Finance Corporations in the section.

Staff appreciates Commenter 16 and 39's suggestion to allow developments to received Tax Credits and additional public subsidy only if they provide additional benefit to residents. Staff believes that the discussion around these additional benefits is warranted and would suggest bringing these ideas up during the 2027 Roundtable discussions.

Section 11.9(b)(3) Quantity of Low-Income Units.

COMMENT SUMMARY:

Commenters 2 and 32 support the removal of this scoring item.

STAFF RESPONSE:

Staff appreciates Commenters 2 and 32 support for removing Quantity of Low-Income Units scoring item.

Section 11.9(c)(4) Residents with Special Housing Needs- 811 PRA Program.

COMMENT SUMMARY:

Commenter 33 has serious concerns regarding this section of the QAP as it has caused many difficulties for Rural Applicants. Commenter 33 requests USDA and At-Risk be exempt from these points since the developments compete statewide.

Commenter 30 speaks to issues related to timing, lack of support for residents completing required forms, and general confusion among applicants and residents. Commenter 30 explains that this causes difficulties for their management teams in complying with all rules and regulations around this item, and believes the program has intrinsic issues that need to be addressed before developments participate in this program.

STAFF RESPONSE:

Staff acknowledges the concerns from Commenters 30 and 33 regarding the difficulties of working with 811 PRA funding. Staff recognizes these issues and has made additions to the rule that allow for flexibility in the resolution of issues that come up when working with the 811 Program. Despite the complexities of the program, Staff believes the scoring item serves a key Department goal and has retained it in the draft proposed Rule.

Section 11.9(c)(4)(C) Residents with Special Housing Needs - Continuum of Care.

COMMENT SUMMARY:

Commenters 7, 11, 38, and 39 oppose the proposed reduction of the initial Continuum of Care (CoC) hold period in both urban and rural subregions as it would significantly hinder efforts to connect homeless Texans with stable affordable housing. Commenters 7, 11, 38, and 39 say that these hold periods are in place to provide the necessary timeframes so that eligible residents can be identified and assisted towards long-term housing stability.

Commenter 11 suggests that the agency should encourage developers to work more closely with their CoC to effectively market these units. Commenter 7 e'ho's all the recommendations provided by Commenter 11.

Commenter 38 suggests willingness to enter into formal partnerships with tax credit developers to coordinate this process.

Commenter 39 suggests that the shortcomings from this effort are more to do with shortcomings in coordination between property owners, the agency, and service providers. Commenter 39 believes the current hold periods should be maintained, and that the agency should take more of a connector role between developers and the Continuum of Care infrastructure. Commenter 39

suggests that the agency should more precisely update the Vacancy Clearinghouse so that it is clearer when and where these units are available so that service providers can connect the right people to the right type of unit.

Commenters 19 and 33 support reducing the hold period requirement but believes for USDA and At-Risk Developments should be exempt from the points. If not exempted in the final rule, Commenters 19 and 33 suggest requiring Continuum of Care providers to disclose all areas they cover in the Application materials. Commenter 33 also notes the difficulty of finding residents for these units, as potential residents may not live near the housing.

STAFF RESPONSE:

Staff appreciates the engagement around this issue regarding how this process can be improved to best serve tenants. Staff encourages a more open communication from all stakeholders regarding the proper coordination that should happen to connect individuals with these housing units. Staff recommends this item be brought up for further discussion during the 2027 QAP Roundtable discussions. Staff also intends to post additional resources on our website with the 2026 Application to assist in this process.

Staff is sympathetic to Commenter 7, 11, 38, and 39's opposition to reducing the initial Continuum of Care (CoC) hold period, but believes this change is necessary to better balance availability of CoC units with the feasibility of Developments as they place into service.

Staff appreciates Commenter 38 for their willingness to enter into partnerships with tax credit developers to help facilitate this process.

Staff appreciates Commenter 19 and 33's suggestion to make USDA and At-Risk Developments exempt from this item. Staff believes these hold periods are valuable, regardless of what part of the state a Development is located in. Staff has committed to providing additional resources to our website to assist in this process.

Section 11.9(c)(7) Competitive HTC Selection Criteria- Proximity to Jobs.

COMMENT SUMMARY:

Commenter 6 opposes the expansion of the radius for this item as this would negate the intent of the scoring item. Commenter 6 believes that restricting the radius is more beneficial to residents as it would represent a more realistic distance families would travel to access such amenities.

Commenter 32 suggests clean-up language regarding a deadline for the data used under this subsection.

STAFF RESPONSE:

Staff appreciates Commenter 32's suggestion to address an inconsistent deadline for data under Proximity to Jobs. Staff has made a responsive change.

Staff appreciates Commenter 6's comment regarding the appropriate radius for providing the best service to residents, and encourages further discussion and data development regarding this item up during the 2027 QAP Roundtable discussions. No change was made to this aspect of the proposed Rule.

Section 11.9(d)(4) Quantifiable Community Participation.

COMMENT SUMMARY:

Commenter 39 suggests that tenants living in existing HTC properties should be notified of any actions regarding the properties in which they reside. Commenter 39 suggests that new language should be added to specifically allow tenant organizations to be Neighborhood Organizations. This language would also include a provision that tenant organizations that consist primarily of residents of the property should be exempt from needing to be on record with the Secretary of State's office.

STAFF RESPONSE:

Staff appreciates Commenter 39's suggestion to include Tenant Organizations as Neighborhood Organizations. Since this comment is regarding a section that has not been adjusted yet this year, we suggest bringing this concept up at the 2027 QAP Roundtables.

Section 11.9(d)(7) Concerted Revitalization Plan or Opportunity Zone.

COMMENT SUMMARY:

Commenters 2, 19, 32, 33, and 36 all support the addition of Opportunity Zones as a new 7-point scoring item alongside the Concerted Revitalization Plan.

Commenters 11, 22, and 39 oppose the inclusion of Opportunity Zones within the 2026 QAP. Commenters 22 and 39 strongly opposes the way Opportunity Zones have been introduced within the 2026 QAP, specifically as a 7-point alternative to Concerted Revitalization Plans. Commenters 22 and 39 states that Opportunity Zones should not be equivalent to a Concerted Revitalization Plan, as Opportunity Zones lack local participation from municipalities.

STAFF RESPONSE:

Staff appreciates the support from Commenters 2, 19, 32, 33, and 36 for adding Opportunity Zones as a new 7- point scoring item as an alternative for Concerted Revitalization Plans.

Staff acknowledges the opposition of Commenters 11 and 22 to including Opportunity Zones as a new alternative scoring item for Concerted Revitalization Plans. Staff believes this is an appropriate new point item, as Opportunity Zones were specifically selected by the Governor as areas of the state where additional investment is encouraged.

Section 11.9(e) Funding Request Amount.

COMMENT SUMMARY:

Commenter 32 supports and appreciates the deletion of this scoring item.

STAFF RESPONSE:

Staff appreciates the support from Commenter 32 for removing the Funding Request Amount scoring item.

Section 11.9(e)(8) Readiness to Proceed.

COMMENT SUMMARY:

Commenter 30 recommends that staff reevaluate the criteria for deciding whether a project is "ready to proceed". Commenter 30 does not believe the purchase of the land should be the indicator used for making this determination, as it does not indicate whether the project will close sooner. Commenter 30 believes that this process creates tremendous risk for developers to take down land prior to closing, yet this risk is not shared evenly among all regions due to varying land costs. Commenter 30 also expresses timing issues with environmental clearance timelines.

Commenter 30 suggests that the submission of building permits and financing applications should be sufficient to demonstrate readiness to proceed.

STAFF RESPONSE: While staff acknowledges Commenter 30's concerns regarding risk and the uneven cost of land among subregions, financing applications do not appear to be an equivalent development milestone to a land purchase and thus would not be an appropriate substitute. Staff recommends no change.

Section 11.9(e)(4) Leveraging of Private, State, and Federal Resources.

COMMENT SUMMARY: Commenter 26 recommends allowing Federal Home Loan Bank's Affordable Housing Program (FHLB AHP) to qualify for leveraging points in scoring and financial feasibility analysis.

STAFF RESPONSE: Staff acknowledges the recommendation to include FHLB AHP funding as qualifying source for the point item; however Staff believes it would be too late to include additional ideas before the upcoming 9% Cycle. Regarding feasibility analysis, staff will consider such funding appropriately in the underwriting process.

Section 11.9(e)(6)(B) Historic Preservation.

COMMENT SUMMARY:

Commenter 2 requests clarification on the changes to this item related to syndications of historic transactions. Commenter 2 specifies that if this rule were to look at prior transactions, that 2003 awards would be the last year developments would be eligible for syndication. Commenter 2 says that rules for this topic were under a different section and eligible for a higher number of points at the time in the 2003 QAP.

STAFF RESPONSE:

Staff appreciates Commenter 2 for bringing up this issue regarding historic transactions. Staff has made a responsive change to this section for clarity.

Section 11.101 Site and Development Requirements and Restrictions.

COMMENT SUMMARY:

Commenter 9 urges TDHCA to update the metrics and values from the Department of Energy conservation standards for air conditioners and heat pumps. Commenter 9 provided a table with recommended revisions to reflect current market values.

Commenter 23 recommends that the agency includes IREM Certified Sustainable Property (CSP) certification to the section. Commenter 23 describes this certification as ensuring critical sustainability strategies and included in multifamily properties. Commenter 23 has provided language to this extent and supplied resources and explanations on the various features of this certification.

STAFF RESPONSE:

Staff appreciates the recommendations and data provided by Commenter 9 regarding energy conservation standards and the recommendations from Commenter 23 to include IREM Certified Sustainable Property within the QAP. Staff has made changes to in response to the updates made by the Department of Energy to Seasonal Energy Efficiency Ratio (SEER) ratings. Regarding the other proposed changes, Staff recommends that both commenters participate in the 2027 QAP Roundtables and bring these items up for discussion. Staff also encourages Commenters 9 and 23 to present these suggestions, and any other potentially outdated requirements--earlier in the 2027 development process so proper consideration and collection of data can be given to potential changes.

Section 11.101(a)(3) Neighborhood Risk Factors.

COMMENT SUMMARY:

Commenter 24 suggests there should be a revision to the exemption language, so it better aligns with the Department's stated policy goal of preserving both federally assisted and state-regulated affordable housing. Commenter 24 states that the current conjunction of "and" in the language excludes legitimate preservation projects, such as HUD-insured properties, that are not HUD-Assisted.

Commenter 24 does not support the use of NeighborhoodScout.com as a violent crime indicator. Commenter 24 states using data from NeighborhoodScout.com eliminates flexibility to use local law-enforcement or grid-level datasets. Commenter 24 also recommends mitigation credit should be available for developments incorporating CPTED design, dedicated security funding, and/or documented off-duty patrol agreements.

Commenter 35 requests changing the language for rehabilitation development's exemption for high violent crime Neighborhood Risk Factors. Commenter 35 states the requested linage change would allow deals with existing federal assistance and existing LURAs would be exempt from the violent crime NRF.

Commenter 39 acknowledges the removal of TEA School Ratings in the QAP due to SB 2137 and looks forward to seeing the results of the required study from TDHCA regarding the removal of TEA School Ratings. Commenter 39 hopes that schools remain a priority within the QAP after SB 2137 is not in effect.

STAFF RESPONSE:

Staff does not recommend making changes in response to Commenter 24's concerns with the conjunction ‘and.' Staff recommends that the commenter address this matter at future roundtable discussions so that the full impact of this change can be considered by stakeholders.

Staff acknowledges Commenter 24's opposition to using NeighborhoodScout.com as a violent crime indicator. If a Development Site triggers the violent crime NRF threshold, Applicants are allowed to provide local police beat data as mitigation, and this is stated in §11.101(a)(3)(E)(ii) of the QAP.

Staff appreciates Commenter 35's request to provide clarifying language regarding rehabilitation exemptions for high violent crime. Staff believes the current language is sufficient for allowing deals with existing federal assistance and LURAs to be exempt from violent crime NRFs.

Staff recognizes Commenter 39's request to have schools remain a priority within the QAP after SB 2137 is not in effect.

11.101(a)(7)(C)(vii) - Eviction Protection Program.

COMMENT SUMMARY:

Commenter 11 raises the issue of residents who rely on social security and veteran's benefits typically not receiving their payments on the first of the month and therefore are often late on rent due to circumstances outside of their control. Commenter 11 requests this item contain reasonable accommodations for those receiving certain benefits to ensure that these residents are not being charged late fees.

Commenter 39 supported the inclusion of this item in the 2025 rule but has identified several areas of improvement and clarifications for this scoring item. Commenter 39 has provided language to this extent, including but not limited to forbidding rent increases for an amount of time, caping late fees, establishing case manager standards that assists tenants in handling their concerns.

STAFF RESPONSE:

Staff appreciates Commenter 11's recognition of residents who rely on social security and veteran's benefits. Staff will not be making an addition to the rule as this issue is already addressed under 10 TAC §1.204, which covers Reasonable Accommodations.

Staff appreciates Commenter 39's suggestion to add language to this section to further the impact of this point item. Staff desires to see how this item works in practice before making any changes to it given that it is new enough and most likely has not been able to be placed-in-service yet. We recommend that the commenter continue this conversation into the coming years of QAP development.

Section 11.101(b)(1)(A)(viii) Site and Development Requirements- General Ineligibility Requirements- Minimum Age for Rehabilitation.

COMMENT SUMMARY:

Commenters 6 and 8 appreciate that this item will only apply to the 9% program but does not support making developments younger than 20 years ineligible as it will delay financing that is often critical for maintaining safe and quality housing. Commenter 6 warns this could cause properties to be sold outside of the program if they become too costly to maintain or increase the cost of delayed maintenance that would be needed to bring the property up to standard at year 20. Commenter 6 suggests the Department should only apply this standard for new developments entering for the first time but not require this for existing properties who followed the assumption of new tax credits partway through the extended affordability period. Commenter 8 requests that this provision should be eliminated entirely.

Commenter 18 shares concerns that post postponing syndication beyond Year 20 may create unintended consequences for residents, investors, and physical assets. Commenter 18 recommends that TDHCA revert back to a Year 15 eligibility for syndication, as well as adopt a condition-based criteria rather than a fixed time thresholds to determine readiness for new credits.

Commenter 39 strongly supports a proposal to make applications involving existing HTC properties that placed in service in 2006 or later ineligible.

STAFF RESPONSE:

Staff appreciates Commenter 39 for their support on this item. Additionally, staff appreciates Commenter 6 and 8 for their support on this item only applying for the 9% program.

Staff recognizes the concerns of Commenters 6, 8, and 18 regarding the impacts of delayed financing on projects less than 20 years old. Additionally, Staff appreciates Commenter 6's suggestion to apply this only to first-time properties and not to existing ones. Staff believes that introducing this item is a necessary change to appropriately balance the use of limited Competitive Housing Tax Credits between preservation projects and new construction. Staff recommends no change.

Staff appreciates hearing Commenter 18's concerns and for providing the suggestion to adopt some sort of condition-based criteria for determining readiness for new credits. Staff encourages any suggestions regarding this topic and recommends bringing these concerns up during the 2027 Roundtable discussions.

Section 11.101(b)(1)(A)(x) Site and Development Requirements- General Ineligibility Requirements - Minimum Score.

COMMENT SUMMARY:

Commenters 1, 18, 19, 31, 33, 35, and 36 request that this minimum score threshold be lowered to 120-130 points instead of 150, as the proposed higher threshold would hurt otherwise viable projects. Commenters 14, 15, 17, 18, 31, 32, 33, and 36 recommend a 120 minimum score citing that this is 74% of the average over the past two tax credit cycles. Commenters 14, 17, 18, and 32 believe that a development that still meets more than 70% of the Department's benchmarks will still provide significant benefit to the region. Commenter 18 believes this would significantly hinder the production of Rural housing projects and does not allow for equity across subregions. Commenter 19 believes a lower minimum score would help make project viable in challenging subregions.

Commenters 2, 33, and 35 understand that it is important to establish other minimum and threshold items in the QAP but is concerned that establishing a minimum score would result in overprescribing a program that is already complex, especially for rural subregions. Commenters 2, 33, and 36 suggest that this could impede affordable housing in areas that may not receive tax credits otherwise.

Commenter 20 believes this minimum score item should be removed or should be closer to 100 points if it remains.

Commenter 29 believes the minimum score for At-Risk deals should be lowered by an equal number of points not available to those applications. Commenter 29 believes a minimum score of 160 is too high and would exclude projects that should otherwise be feasible. Commenters 31 and 35 believe a minimum score of 120 would help deals in the At-Risk Set-Aside remain feasible and competitive. Commenter 33 believes this will hurt some USDA Applications that are in areas of that state that generally do not score well and that a minimum score of 120 is appropriate.

Comment 39 recommends that staff reinstate the proposed language under §11.101(b)(1)(A)(x) in the prior version of the Draft published for the September 4, 2025, Governing Board meeting, in order to render ineligible for tax credit awards any applications that receive no points under §11.9(c)(1) and (2)."

STAFF RESPONSE:

Staff acknowledges Commenters 1, 3, 14, 15, 17, 18, 19, 29, 31, 32, 33, 35, and 36 request to lower the minimum score threshold from 160 to 120. Staff has made a responsive change in response to the comments received.

Staff acknowledges Commenters 2, 33, and 35 concerns regarding the new minimum score threshold item.

Staff acknowledges Commenter 20's request to remove the minimum scoring threshold or the make the minimum score 100 points. Staff will make a responsive change to make the minimum score 120 as opposed to 150 listed in the 2027 QAP Draft.

Staff acknowledges Commenter 39's recommendation to reinstate the proposed language in the staff draft for

§11.101(b)(1)(A)(x). Staff believes that the new minimum score threshold is a comparable requirement to the language in the staff draft for §11.101(b)(1)(A)(x). Staff will monitor the impact of the new minimum score threshold in the upcoming 9% cycle, but for the moment recommends no change.

Section 11.101 (b)(1)(A)(viii-xi) Ineligible Developments - Per-Unit Cost Cap.

COMMENT SUMMARY:

Commenter 36 supports keeping the $500,000 per unit cap to prevent excessive costs but recommends allowing waivers for projects with clearly documented, extraordinary cost factors like historic rehab or infrastructure needs.

STAFF RESPONSE:

Staff appreciates Commenter 36's support of the cap. Staff acknowledges that some projects have unique cost factors, but does not believe a change to the item is necessary as Applicants may request a waiver of the rule as written if these circumstances arise.

Section 11.101(b)(3)(C) Site and Development Requirements-General Ineligibility Requirements - Rehabilitation Costs.

COMMENT SUMMARY:

Commenter 28 expresses concern regarding the proposed increase in the minimum rehabilitation cost from $30,000 to $35,000 per unit under Building Costs and Site Work. Commenter 28 believes this is a substantial increase that will unnecessarily inflate the tax credit request, particularly for those projects built on or after 2000. Commenter 28 recommends the $30,000 minimum cap remain in place for developments built on or after 2000.

Commenter 39 supports the new minimum per unit spending of building work and site costs for rehabilitation projects. Commenter 39 believes these items should help address properties with poor conditions as a result of poor management seeking resyndication and sets a stronger baseline investment in rehabilitation.

STAFF RESPONSE:

Staff acknowledges the concerns from Commenter 28 regarding the increase in the minimum rehabilitation cost per unit. Staff notes that it has been several years since this threshold was last updated, and during that time, inflation has occurred. While staff understands that the change may increase the cost of conducting rehabilitation work, staff also recognizes the benefit of requiring additional capital to better address properties that may be in poor condition.

Staff appreciates Commenter 39 for their support on this item.

Section 11.101(b)(4) - Mandatory Development Amenities.

COMMENT SUMMARY:

Commenter 4 believes that if washers and dryers are installed in each unit, then there should be no reason to provide a central laundry area.

STAFF RESPONSE:

Staff acknowledges Commenter 4's request that if washers and dryers are installed in every unit, then no laundry area should be provided. Staff will need further information and data regarding this issue in order to respond appropriately and incorporate into the QAP. No change is recommended at this time.

Section 11.101(b)(5) & (6) Site and Development Requirements-Common Amenities & Unit Requirements.

COMMENT SUMMARY:

Commenter 39 strongly supports both additions to this section related a new point item for transit stop seating and extended hours for use of swimming pools. Additionally, Commenter 39 supports the proposed changes to Unit Requirements that remove the automatic 5-point base score for rehabilitation developments with new construction. Commenter 39 believes that TDHCA should remove or amend unit requirements as to not incentivize bar seating units for elderly population units and should incentivize properties to provide generator-powered refrigerators to keep medicine cold during emergencies. Commenter 39 urges TDHCA to continue seeking out tenant feedback on rules and policies that impact their lives and look forward to future opportunities for community input and collaboration.

STAFF RESPONSE:

Staff appreciates the support from Commenter 39 on adding the new point item for transit stop seating and extended hours for swimming pools. Staff also appreciates Commenter 39's support for the changes under Unit Requirements that remove the automatic 5-point base score for rehabilitation developments with new construction. Staff acknowledges Commenter 39's statement on tenant feedback on rules and policies related to the QAP.

Section 11.101(b)(5) Site and Development Requirements-Common Amenities- Health Fitness.

COMMENT SUMMARY:

Commenters 10, 40, and 41 recommend the inclusion of a point item related to the implementation of the most up to date pool safety standards. Commenters 10, 40, and 42 have provided language and resources to this extent.

STAFF RESPONSE:

Staff appreciates Commenters 10, 40, and 41 recommendations on developing a scoring item for swimming pool safety in developments. The water safety features listed from Commenters 10, 40, and 41 appear to already be required under various laws and statutes for swimming pools on multifamily developments. Staff believes there is no need to replicate the rule within the QAP, but requests that the Commenters in question continue to provide suggestions in future QAP development cycles that may result in enhanced pool safety.

Section 11.101(b)(5)(C)(iv)(XVI) Common Amenities - Design/Landscaping Amenities.

COMMENT SUMMARY:

Commenters 19 and 33 recommend that staff also include a School Bus Stop in the language for the new point item related to a covered waiting area for public transportation.

STAFF RESPONSE:

Staff appreciates Commenters 19 and 33 recommendations to include school bus stops under the new point item for public transportation waiting areas. Staff has made a responsive change.

Section 11.101(b)(7) Site and Development Requirements- Resident Supportive Services.

COMMENT SUMMARY:

Commenters 19 and 33 would like The Department to add a few items back to the list that were available under prior rules and very valuable to small rural areas where services are difficult to come by. Commenters 19 and 33 suggest options include Resident assisted business services, quarterly health and nutrition programs, and arts, crafts and other recreational and social events. Commenter 19 and 33 have provided language to this extent.

Commenter 39 states that they conducted research among low-income tenants and found out that a major issue was the provision and availability of amenities. Commenter 39 says that tenants have signed leases expected certain amenities to end up being told that those amenities were switched out for other items without the tenant's knowledge. Commenter 39 says that tenants should be notified when amenities change because tenants often move to housing for certain amenities.

Commented 11 states that some residents move into Developments to have access to certain amenities but subsequently find out they were swapped out for a different option. Commenter 11 has provided suggested language which maintains developer's ability to switch amenities being offered at the property but requires notification of tenants prior to the changes of these services and that the services replaced are of the same point value.

STAFF RESPONSE:

Staff appreciates Commenters 19 and 33 suggestions to add back items to Resident Supportive Services. Staff believes it would be too late to include additional scoring options before the upcoming 9% Cycle.

Staff acknowledges Commenter 39's study on tenants and the issue of amenity availability and recommends that Commenter 39 bring up this topic during the comment period for 10 TAC §10, the Compliance Monitoring Rule. Staff also appreciates hearing the concerns of Commenter 11 regarding the amenities tenants expect and how this rule works in practice, and likewise recommends that this issue be brought forward for further discussion during the comment period for 10 TAC §10, the Compliance Monitoring Rule.

Section 11.202(1)(O) Ineligible Applicants and Applications- Repeated Return and Reallocation of Credits.

COMMENT SUMMARY:

Comment 12 opposes this new rule as the use of the Force Majeure rule has been critical for developers in the 9% round in the past 3 years due to labor and material shortages, rising interest rates, and decreased equity pricing. Commenter 12 explains that developers need more time to complete projects in this environment and that the retroactive nature of this rule will hurt developers who went through these difficult situations. Commenter 12 recommends this rule be removed. If the item cannot be removed, Commenter 12 requests that this item be contingent upon receiving a certificate of substantial completion by the July date.

Commenter 25 believes this item should be revised to read as "started construction" rather than "placed in service". Commenter 25 believes projects under construction meet the intent of this provision. Commenter 25 believes the consequence of sitting out until remaining projects are placed in service is unproductive for both the development community and the State of Texas as they pursue affordable housing goals..

STAFF RESPONSE:

Staff acknowledges the concerns of Commenters 12 and 25 regarding the proposed rule and the challenges developments have faced in recent years; however, Staff believes this is an important addition to ensure that all applicants have the capacity to take on additional new Developments. Staff acknowledges the recommendations from each Commenter regarding the potential triggering events in the rule and recommends bringing these suggestions up for discussion during the 2027 Roundtables.

Section 11.203 Public Notifications.

COMMENT SUMMARY:

Commenter 39 recommends that staff update this section to increase transparency with tenants and support tenant engagement. Language suggestions include defying tenant organizations, clarifying when and for what tenants should be notified of when it comes to property amenities, and providing clear instructions on how tenants can provide input for the HTC application process. Commenter 39 has provided language to this extent.

STAFF RESPONSE:

Staff acknowledges Commenter 39's recommendation on notifying tenants about how they can provide input during the HTC application process. Staff recommends bringing up this item up for discussion during the 2027 QAP Roundtables to solicit feedback and data from staff and stakeholders, but recommends no changes to the draft proposed QAP.

Section 11.204(1)(J) Required Documentation for Application Submission- Certification, Acknowledgement, and Consent of Development Owner.

COMMENT SUMMARY:

Commenter 8 requests revisions to this item be clarified to reflect that there are some exceptions in place and that will be followed for situations where the alterations needed to achieve current standards are infeasible or too expensive for the project to reasonably make such changes. Commenter 8 has provided suggested language for how this exception could be added to the proposed rule.

Commenter 11 is concerned that existing Tax Credit properties, most of which built prior to 2008, that have major disability-accessibility issues. Commenter 11 estimates that with over 1,000 units in the program built prior to 2008, there is a chance that a large portion of those may also be out of compliance with federal accessibility requirements, and therefore the QAP.

Commenters 11 and 39 recommend that the Department require that any applicant certify that all properties in their TX portfolio are accessible, according to federal law. Commenter 11 has provided evidence and suggested language to this extent.

Commenter 39 supports the addition of this item but recommends strengthening the language to achieve compliance with accessibility standards. Commenter 39 does not believe the proposed language prevents applicants from receiving new awards while their older properties are out of compliance with accessibility regulations. Commenter 39 has provided language to this extent.

Commenter 19 recognizes the importance of applicant certification but emphasizes that Department reviews must happen upfront to ensure compliance at the beginning.

STAFF RESPONSE:

Staff appreciates Commenter 39's support for the inclusion of this item.

Staff appreciates Commenter 8 for providing context around possible exceptions to the rule based on these requirements being too costly for some developments. Staff believes this rule is nonetheless important to include so that accessibility requirements are understood and followed.

Staff appreciates Commenter 11 for raising this issue and for suggesting language for how this rule can be adjusted. Staff desires to see data regarding the impact of this language before any additions are made, so it is recommended that this information be presented for discussion during the 2027 QAP Roundtables.

Staff acknowledges the concern by Commenter 11 and 39 that this language is not strong enough to get existing Tax Credit properties to remediate any deficiencies with accessibility rules. Staff believes this is a starting point for language around this subject and would recommend bringing any suggestions for further changes to the 2027 QAP Roundtable discussions.

Staff appreciates Commenter 19's recognition of the importance of this item and suggestion that Department reviews must happen upfront. Staff recognizes this, but also recognizes the importance of enforcing rules related to accessibility.

Section 11.302(d)(4)(D) - Acceptable Debt Coverage Ratio Range.

COMMENT SUMMARY:

Commenters 3 and 36 believe the Debt Coverage Ratio language should be changed to allow for a maximum of 1.50 for Housing Tax Credit Developments with seller notes required by §11.302(e)(1)(A)(iii), and for Housing Tax Credit Developments at cost certification. Commenters 3 and 36 believe this change is necessary due to implications of their additional request related to Cash-Out on Identity of Interest Transactions. Commenters 3 and 36 have provided language to this extent.

STAFF RESPONSE:

Staff acknowledges Commenter 3 and 36's concerns on the maximum DCR in regard to cash flow seller's notes. Staff does not believe a rule change is necessary. It is current practice for any application, that if the DCR is above the maximum 1.35, Real Estate Analysis assumes any payment amount up to the fully amortized payment to keep the DCR below the 1.35.

Section 11.302(e)(1)(A)(iii) Underwriting and Loan Policy- Cash-Outs.

COMMENT SUMMARY:

Commenters 2, 5, and 8 oppose the suggested language for cash-outs in the 2026 QAP, and recommend the suggested language be removed. Commenter 2 requests a revision to cash-out, so it is defined as the less of the appraised value or purchase price.

Commenters 3, 15, 21 and 32 request a revision to provide an exemption for Cash-Outs on Competitive Tax Credit developments sponsored by affiliates of Housing Authorities that qualify for HUD Choice Neighborhood or Housing Authorities who score under §11.9(b)(2) Sponsor Characteristics. Commenters 3, 15, 21 and 32 provide recommended language regarding the exemptions.

Commenter 20 requests language to be added to provide an exemption for any Development owned by a Public Housing Authority.

Commenters 3, 14 and 17 believe that Developments that are required to use a seller note as a source of funds should be able to structure hard pay permanent debt with a maximum of 1.50-year one debt coverage ratio. Commenters 14 and 17 provided suggested language in §11.392(d)(4)(D) Acceptable Debt Coverage Ratio Range regarding the seller notes.

Commenter 18 provides recommendations regarding cash-outs by listing a valuation-based approach. Capping at the lesser of purchase price or restricted appraised value, determined by an independent appraisal approved by The Department. Maintaining requirements for restricted appraisals, related-party disclosure, and cost certification.

Commenter 24 recommends The Department should clarify that "cash-out" applies only when a related party receives net proceeds beyond repayment of unrelated third-party debt and bona fide seller notes that remain in place post-acquisition.

Commenter 29 provides suggested language on defining "cash-out" by adding a requirement for documentation such as an audit or confirmation from a 3rd party accountant regarding estimated balance at closing and accrued simple interest at market rate, which should not exceed 7%.

Commenter 36 provide recommendations on cash-outs by listing the following refinements: Define what is *not* cash-out; Seller-note expectations; Clarification on the Appraised Value; and Higher starting debt coverage ratio (1.5 DSCR in year one). Commenter 36 provides suggested language that defines "cash-out" as the as-is restricted appraised values to be determined by an independent 3rd party appraisal.

STAFF RESPONSE:

Staff appreciates Commenters 2, 5, and 8's opposition to the rule. Staff believes the rule encourages a priority of the Department for the efficient use of limited 9% tax credits. Staff does not recommend to adjust the rule at this stage in the 2026 QAP Development process, as the decision warrants additional discussion with the relevant stakeholders. Staff encourages Commenters to bring this item up at the 2027 QAP Roundtable on Rules Committee for discussion.

Regarding Commenter 2, staff concurs that clarification is needed and has made a responsive change to clarify that cash-out should be defined as " the lesser of the amount reflected in the Site Control documents for the property or the as-is restricted appraised value as determined by an appraisal that meets the requirements of §11.304 of this chapter."

Staff appreciates Commenters 3, 15, 20, 21 and 32's request for a revision to provide an exemption for some Cash-Outs, but believes this is a significant change and warrants additional data and discussion with the relevant stakeholders. Staff encourages Commenters 3, 15, 20, 21 and 32 to bring this item up at the 2027 QAP Roundtable and Rules Committee for discussion.

Staff acknowledges Commenters 3, 14 and 17's concerns on the maximum DCR in regard to cash flow seller's notes. Staff does not believe a rule change is necessary. It is current practice for any application that if the DCR is above the maximum 1.35, REA assumes any payment amount up to the fully amortized payment to keep the DCR below the 1.35.

Staff acknowledges Commenter 18's recommendations regarding cash-outs and believes the rule as amended with this clarification, "the lesser of the amount reflected in the Site Control documents for the property or the as-is restricted appraised value as determined by an appraisal that meets the requirements of §11.304 of this chapter," meets Commenter 18's recommendation.

Staff acknowledges Commenter 24's recommended wording for clarification but does not believe a clarification of rule is needed. The cash-out rule is written in context of the larger appraisal rules.

Staff appreciates Commenter 29's suggestion to add language on defining "cash-out" by adding documentation requirements. Staff does not believe the audits are necessary for calculating cash-outs and do not want to add undue burden or costs. In regard to allowing interest on seller's notes up to 7%, Staff believes the draft proposed rule as-is encourages a priority of the Department for the efficient use of limited 9% tax credits. Staff does not recommend making adjustments to the definition at this stage in the 2026 QAP Development process, as the decision warrants additional research and discussion with the relevant stakeholders. Staff encourages Commenter 29 to bring this item up at the 2027 QAP Roundtable and Rules Committee for discussion.

Staff appreciates Commenter 36's language recommendations and believes all points have been addressed with the inclusion of the clarification language, "the lesser of the amount reflected in the Site Control documents for the property or the as-is restricted appraised value as determined by an appraisal that meets the requirements of §11.304 of this chapter," and noting that it is current practice for any application that if the DCR is above the maximum 1.35, REA assumes any payment amount up to the fully amortized payment to keep the DCR below the 1.35.

Section 11.302(e)(6) Underwriting Rules and General Guidelines - General Contractor Fee.

COMMENT SUMMARY: Commenters 5, 13, 28, 34, 36, and 37 all oppose the proposed 2026 language for general contractor fees. Commenters 5, 13, 36, and 37 all recommend the proposed changes be tabled for the 2026 QAP, while having general contractor fees be brought up during discussion during the 2027 QAP Planning Process. Commenter 34 recommends striking the proposed language entirely. Commenter 28 suggests that sales tax exemption related fees be included within the Developer Fee, stating that the proposed language inaccurately assigns responsibility for sales tax exemption related fees to the General Contractor.

STAFF RESPONSE:

Staff appreciates Commenter 5, 13, 28, 34, 36, and 37's concern that including the sales tax exemption fee paid to the entity listed as the General Contractor within the General Contractor Fee may limit the profit realized by the actual General Contractor. Staff acknowledges this concern and believes this is ultimately a business decision for the Developer. Staff believes that any fee paid to the General Contractor should appropriately be included in the General Contractor Fee.

Staff believes Commenter 28's suggestion to have the sales tax exemption fee included in Developer Fee is too significant of a change that has not been discussed with relevant stakeholders. Staff encourages Commenter 28 to bring this item up at the 2027 QAP Roundtable for discussion.

Section 11.302(e)(10) Underwriting Rules and General Guidelines- Soft Costs.

COMMENT SUMMARY: Commenters 13, 36 and 37 both recommend removing the proposed language for soft costs in the 2026 QAP. Commenters 36 and 37 suggest this item be brought up during a roundtable discussion for the 2027 QAP. Commenter 13 believes that the proposed 2026 provisions work against the objective by widening funding gaps and complicating the underwriting process. Commenter 36 notes that soft costs can result in increased funding gaps if the proposed language is accepted. Commenter 37 notes that the proposed language is a major change that has had little to no discussion, which can affect the partnerships and economic viability of future developments.

Commenter 39 recommends amending the proposed language to include a cap of how much of the payments to tax-exempt entities in exchanging for participation in the project can count towards the eligible basis.

STAFF RESPONSE:

Staff appreciates Commenter 36 and 37's comment that this should be discussed at the 2027 QAP roundtables. The rule in question was introduced at the 2026 QAP roundtables and was adjusted in response to those discussions. Originally, the proposed rule required that the property tax exemption fees be included in developer fee, but the industry felt strongly that this was limiting on their already tight developer fee, therefore, staff updated the rule to include these fees in the soft costs, where there is no cap.

Staff acknowledges Commenters 13 and 36's comments that soft costs can increase the funding gap but does not believe that showing fees paid for property tax exemption in soft costs increases the funding gap or affects the partnerships or economic viability of developments. These fees are already being paid as a cost to the development and should be reflected in the development cost schedule; this rule clarifies where they should be entered on the development cost schedule.

Staff acknowledges Commenter 39's comment to include a cap on these fees. Staff does not recommend making adjustments to the rule at this stage in the 2026 QAP Development process, as the decision warrants additional data, research and discussion with the relevant stakeholders.

Section 11.304(c)(10) Appraisal Rules and Guidelines.

COMMENT SUMMARY:

Commenter 13 opposes the favorable financing within the land and building split. Commenter 13 states the prescribed 25/75 allocation is inherently arbitrary and will negatively impact depreciation, taxable value, and LIHTC eligible basis. Commenter 13 also states that comp sheets will become less reliable as appraisals embedded with financing adjustments while others do not, complicates reconciliation and underwriting.

Commenter 33 appreciates staff codifying a process for how favorable financing will be approached going forward. Commenter 33 has provided recommended language regarding favorable financing. The recommended language requests that a "lesser of" approach be made related to favorable financing. Commenter 19 supports the comments of Commenter 33, while recommending the suggested language of Commenter 33.

STAFF RESPONSE:

Staff appreciates Commenter 13's response. Favorable financing is associated with below market rate loans provided by government entities, usually USDA or Department loans, and are transferable when properties are purchased. Favorable financing is a separate value in the appraisal and has historically been applied to land and building value in proportion to values ascribed in the appraisal. Favorable financing is usually involved with USDA developments and the Department feels they should benefit from the 25%/75% split on the favorable financing value only. Staff believes that clarification is needed and has made a responsive change to include "with favorable financing from a government entity".

Staff believes Commenter 19 and 33's comment is too significant of a change from what was discussed with relevant stakeholders and does not recommend changes at this stage in the 2026 QAP Development process. The as-is land value in the appraisal will be attributed to land, and the as-is building value will be attributed to the building value; in addition, 25% of the favorable financing will be attributed to land value and 75% of favorable financing will be attributed to building value.

Section 11.1003 & §11.1007 State Housing Tax Credit Allocation Process Associated with Competitive HTC Applications.

COMMENT SUMMARY:

Commenter 39 supports the proposed language of a minimum $3 million request amount; however, Commenter 39 opposes striking eligibility restrictions regarding high violent crime and poverty rate Neighborhood Risk Factors. Commenter 39 requests that neighborhood risk factors not be considered for the State Housing Tax Credit Application Process.

STAFF RESPONSE:

Staff appreciates the support for the new $3 million request amount for State Housing Tax Credit Requests. Staff acknowledges the suggestion to retain the restrictions on Applications containing neighborhood risk factors; however this change serves to increase the pool of potential Applicants in response to limited demand for State Credits at this time.

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

10 TAC §§11.1 - 11.10

STATUTORY AUTHORITY. The adoption of these sections of rule is made pursuant to Tex. Gov't Code §§2306.053 and 2306.67022, which authorize the Department to adopt rules and, specifically, this Qualified Allocation Plan.

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

§11.1. General.

(a) Authority. This chapter applies to the awarding and allocation by the Texas Department of Housing and Community Affairs (the Department) of Competitive Housing Tax Credits, the state Housing Tax Credit, and the issuance of Determination Notices for non-Competitive Housing Tax Credits. The federal laws providing for the awarding and allocation of Competitive Housing Tax Credits and issuance of Determination Notices for non-Competitive Housing Tax Credits require states to adopt a qualified allocation plan. Pursuant to Tex. Gov't Code, Chapter 2306, Subchapter DD, the Department is assigned responsibility for this activity and pursuant to Tex. Gov't Code, Chapters 171 and 233, the Department is assigned responsibility for the adoption of rules relating to the State Housing Tax Credit. As required by Internal Revenue Code (the Code), §42(m)(1), the Department has developed this Qualified Allocation Plan (QAP) and it has been duly approved to establish the procedures and requirements relating to an award and allocation of Competitive Housing Tax Credits and issuance of Determination Notices for non-Competitive Housing Tax Credits. All requirements herein and all those applicable to a Housing Tax Credit Development or an Application under Chapter 10 of this title (relating to Post Award and Asset Management Requirements, Compliance Monitoring, and Incomes and Rents rules) collectively constitute the QAP required by Tex. Gov't Code §2306.67022 and §42(m)(1)(B) of the Code. Unless otherwise specified, certain provisions in this section and §§11.2 - §11.4 of this title also apply to non-Competitive Housing Tax Credits and Multifamily Direct Loans. Subchapters B - E of this chapter also apply to non-Competitive Housing Tax Credits and Multifamily Direct Loans. Applicants are required to certify, among other things, that they have familiarized themselves with the rules that govern that specific program including, but not limited to, Chapter 1 of this title (relating to Administration), Chapter 2 of this title (relating to Enforcement), Chapter 10 of this title (relating to Uniform Multifamily Rules), Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules), Chapter 13 of this title (relating to Multifamily Direct Loan Rule), and other Department rules. This subchapter does not apply to operating assistance programs or funds unless incorporated by reference in whole or in part in a Notice of Funding Availability (NOFA) or rules for such a program, except to the extent that Developments receiving such assistance and otherwise subject to this chapter remain subject to this chapter. This chapter is subject to change based on any changes in applicable rule or law.

(b) Due Diligence and Applicant Responsibility.

(1) Department staff may, from time to time, make available for use by Applicants information and informal guidance in the form of reports and responses to specific questions. The Department encourages communication with staff in order to clarify any issues that may not be fully addressed in the QAP, or may be unclear when applied to specific facts. However, while these resources are offered to help Applicants prepare and submit accurate information, Applicants should also appreciate that this type of guidance is limited by its nature, and that staff will apply the rules of the QAP to each specific situation as it is presented in the submitted Application. The *Multifamily Programs Procedures Manual* is not a rule and is provided as good faith guidance and assistance, but in all respects the statutes and rules governing the Low Income Housing Tax Credit program supersede these guidelines and are controlling. Moreover, after the time that an issue is initially presented and guidance is provided, additional information may be identified and the issue itself may continue to develop based upon additional research and guidance. Thus, until confirmed through final action of the Board, staff guidance must be considered merely as an aid and an Applicant continues to assume full responsibility for any actions Applicant takes regarding an Application. In addition, although the Department may compile data from outside sources in order to assist Applicants in the Application process, it remains the sole responsibility of the Applicant to perform independently the necessary due diligence to research, confirm, and verify any data, opinions, interpretations, or other information upon which an Applicant bases an Application or includes in any submittal in connection with an Application.

(2) Developments with Existing LURAs. Applicants proposing to submit an Application requesting an award of Housing Tax Credits or a Direct Loan for a Development that already has a LURA in place should review the existing LURA(s) on the Property to ensure there are no conflicts with the proposed Application. Where an Applicant has identified a potential conflict, it is incumbent upon the

Applicant to consult with staff regarding the steps that may be necessary to resolve the conflict(s). This may include, but is not limited to, an Application amendment or LURA amendment, a waiver, or other action that may necessitate additional staff time for review or a Board determination. Depending on the timing constraints associated with the proposed Application, Applicants should be mindful that resolving issues relating to the existing LURA and for Direct Loans the existing Contract may not coincide with the timing needed for a new award if such requests are not submitted early in the process. A copy of the existing LURA must be included in the Application.

(c) Competitive Nature of Program. Applying for Competitive Housing Tax Credits is a technical process that must be followed completely and correctly. Any person who desires to request any reasonable accommodation for any aspect of this process is directed to §1.1 of this title (relating to Reasonable Accommodation Requests to the Department). As a result of the highly competitive nature of applying for Competitive Housing Tax Credits, an Applicant should proceed on the assumption that deadlines are fixed and firm as further provided for in subsection (f) of this section.

(d) Definitions. The capitalized terms or phrases used herein are defined below. Any capitalized terms not specifically mentioned in this section or any section referenced in this document shall have the meaning as defined in Tex. Gov't Code Chapter 2306, Internal Revenue Code (the Code) §42, the HOME Final Rule, and other federal or Department rules, as applicable. Defined terms, when not capitalized, are to be read in context and construed according to common usage.

(1) Adaptive Reuse--The change-in-use of an existing building not, at the time of Application, being used, in whole or in part, for residential purposes, into a building which will be used, in whole or in part, for residential purposes. Adaptive Reuse requires that at least 75% of the original building remains at completion of the proposed Development. Ancillary non-residential buildings, such as a clubhouse, leasing office, or amenity center may be newly constructed outside the walls of the existing building or as detached buildings on the Development Site. Adaptive Reuse Developments will be considered as New Construction.

(2) Administrative Deficiency--Information requested by Department staff to clarify, explain, confirm, or restrict the Development proposal to a logical and definitive plan or to provide missing information in the original Application or pre-application; or to assist staff in evaluating the Application or pre-application that, in the Department staff's reasonable judgment, may be cured by supplemental information or explanation which will not necessitate a substantial reassessment or re-evaluation of the Application or pre-application. Administrative Deficiencies may be issued at any time while the Application or pre-application is under consideration by the Department, including at any time after award or allocation and throughout the Affordability Period. A matter may begin as an Administrative Deficiency but later be determined to have constituted a Material Deficiency. Applicants must intend that the pre-Application or Application is the final version to be reviewed by staff, and should not rely on the Administrative Deficiency process when applying for funding.

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

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

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

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

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

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

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

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

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

(iii) Except at staff's written request, changes to the Application that alter the amount of Housing Tax Credits or Direct Loan requested.

(C) In all cases, final determinations regarding the sufficiency of documentation submitted to cure a Deficiency as well as the distinction between material and non-material missing information are reserved for the Department Staff and Board.

(3) Affiliate--An individual, corporation, partnership, joint venture, limited liability company, trust, estate, association, cooperative, or other organization or entity of any nature whatsoever that directly, or indirectly through one or more intermediaries, has Control of, is Controlled by, or is under common Control with any other Person. All entities that share a Principal are Affiliates.

(4) Affordability Period--The Affordability Period commences as specified in the Land Use Restriction Agreement (LURA) or federal regulation, or commences on the first day of the Compliance Period as defined by the Code §42(i)(1), and continues through the appropriate program's affordability requirements or termination of the LURA, whichever is earlier. The term of the Affordability Period shall be imposed by the LURA or other deed restriction, and in some circumstances may be terminated upon foreclosure or deed in lieu of foreclosure. The Department reserves the right to extend the Affordability Period for Developments that fail to meet program

requirements. During the Affordability Period, the Department shall monitor to ensure compliance with programmatic rules, as applicable, regulations, and Application representations.

(5) Applicable Percentage--The percentage used to determine the amount of the Housing Tax Credit for any Development, as defined more fully in Code, §42(b). For purposes of the Application, the Applicable Percentage will be:

(A) nine percent for 70% present value credits; or

(B) four percent for 30% present value credits.

(6) Applicant--Any Person or a group of Persons and any Affiliates of those Persons who file an Application with the Department requesting funding or a tax credit allocation subject to the requirements of this chapter or Chapters 12 or 13 of this title and who have undertaken or may contemplate the later formation of one or more business entities, such as a limited partnership, that is to be engaged in the ownership of a Development.

(7) Application Acceptance Period--That period of time during which Applications may be submitted to the Department. For Tax-Exempt Bond Developments it is the date the Application is submitted to the Department.

(8) Award Letter --A document that may be issued to an awardee of a Direct Loan before the issuance of a Contract which preliminarily sets forth the terms and conditions under which the Direct Loan will be made available. An Award Letter will typically be contingent on the awardee satisfying certain requirements prior to executing a Contract.

(9) Bank Trustee--A federally insured bank with the ability to exercise trust powers in the State of Texas.

(10) Bathroom--either:

(A) Full Bathroom--A portion of a Unit that is self-contained and includes all of the components of a Half Bathroom, plus a shower or bathtub (including a shower curtain rod if applicable) and towel bar. Rehabilitation (excluding Reconstruction) Developments in which Full Bathroom configurations are not being altered, will be exempt from the requirements, except as needed to comply with accessibility requirements.

(B) Half Bathroom--A portion of a Unit that is self-contained with a door and that has at least one toilet, wall-hung toilet paper holder, ventilation fan, electrical outlets, wall mirror, sink, and a faucet. Rehabilitation (excluding Reconstruction) Developments in which Half Bathroom configurations are not being altered, will be exempt from the requirements, except as needed to comply with accessibility requirements.

(11) Bedroom--A portion of a Unit which is no less than 100 square feet; has no width or length less than eight feet; is self-contained with a door (or the Unit contains a second level sleeping area of 100 square feet or more); has at least one window that provides exterior access; and has at least one closet that is not less than two feet deep and three feet wide and high enough to accommodate five feet of hanging space. A den, study, or other similar space that could reasonably function as a Bedroom and meets this definition is considered a Bedroom. Rehabilitation (excluding Reconstruction) Developments in which Unit configurations are not being altered will be exempt from the bedroom and closet width, length, and square footage requirements. Supportive Housing Developments will be exempt from the bedroom and closet width, length, and square footage requirements.

(12) Breakeven Occupancy--The occupancy level at which rental income plus secondary income is equal to all operating expenses, including replacement reserves and taxes, and mandatory debt service requirements for a Development.

(13) Building Costs--Cost of the materials and labor for the vertical construction or rehabilitation of buildings and amenity structures.

(14) Carryover Allocation--An allocation of current year tax credit authority by the Department pursuant to the provisions of the Code, §42(h)(1)(C) and U.S. Treasury Regulations, §1.42-6.

(15) Carryover Allocation Agreement--A document issued by the Department, and executed by the Development Owner, pursuant to §11.907 of this title (relating to Carryover Agreement General Requirements and Required Documentation).

(16) Cash Flow--The funds available from operations after all expenses and debt service required to be paid have been considered.

(17) Certificate of Reservation or Traditional Carryforward Designation--The notice given by the Texas Bond Review Board (TBRB) to an issuer reserving a specific amount of the private activity bond state ceiling for a specific Development.

(18) Code--The Internal Revenue Code of 1986, as amended from time to time, together with any applicable regulations, rules, rulings, revenue procedures, information statements, or other official pronouncements issued thereunder by the U.S. Department of the Treasury or the Internal Revenue Service (IRS).

(19) Code of Federal Regulations (CFR)--The codification of the general and permanent rules and regulations of the federal government as adopted and published in the *Federal Register.*

(20) Commitment Notice (also referred to as Commitment)--An agreement issued pursuant to §11.905(a) of this title (relating to General Information for Commitments or Determination Notices), setting forth the terms and conditions under which Competitive Housing Tax Credits from the Department will be made available. A Commitment or Commitment Notice does not mean commitment of federal funds under the Direct Loan Program.

(21) Commitment of Funds--Occurs after the Development is approved by the Board and once a Contract is executed between the Department and Development Owner. The Department's Commitment of Funds may not align with commitments made by other financing parties.

(22) Common Area-- All enclosed or covered space not included in Net Rentable Area.

(23) Comparable Unit--A Unit, when compared to the subject Unit, is similar in net rentable square footage, number of Bedrooms, number of bathrooms, overall condition, location (with respect to the subject Property based on proximity to employment centers, amenities, services, and travel patterns), age, Unit amenities, utility structure, and common amenities.

(24) Competitive Housing Tax Credits --Sometimes referred to as Competitive HTC. Tax credits available from the State 9% Housing Credit Ceiling.

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

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

(27) Contract--A legally binding agreement between the Development Owner and the Department, setting forth the terms and

conditions under which Multifamily Direct Loan Program funds will be made available.

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

(29) Contractor--See General Contractor.

(30) Control (including the terms "Controlling," "Controlled by," and "under common Control with")--The power, ability, or authority, acting alone or in concert with others, directly or indirectly, to manage, direct, superintend, restrict, regulate, govern, administer, or oversee. As used herein "acting in concert" involves more than merely serving as a single member of a multi-member body. A member of a multi-member body is not acting in concert and therefore does not exercise control in that role, but may have other roles, such as executive officer positions, which involve actual or apparent authority to exercise control. Controlling entities of a partnership include the general partners, may include special limited partners when applicable, but not investor limited partners or special limited partners who do not possess other factors or attributes that give them Control. Persons with Control of a Development must be identified in the Application. Controlling individuals and entities are set forth in subparagraphs (A) - (E) of this paragraph. Multiple Persons may be deemed to have Control simultaneously.

(A) For for-profit corporations, any officer authorized by the board of directors, regardless of title, to act on behalf of the corporation, including, but not limited to, the president, vice president, secretary, treasurer, and all other executive officers, and each stock holder having a 50% or more interest in the corporation, and any individual who has Control with respect to such stockholder.

(B) For nonprofit corporations or governmental instrumentalities (such as housing authorities), any officer authorized by the board, regardless of title, to act on behalf of the corporation, including, but not limited to, the president, vice president, secretary, treasurer, and all other executive officers, the Audit committee chair, the Board chair, and anyone identified as the executive director or equivalent.

(C) For trusts, all beneficiaries that have the legal ability to Control the trust who are not just financial beneficiaries.

(D) For limited liability companies, all managers, managing members, members having a 50% or more interest in the limited liability company, any individual Controlling such members, or any officer authorized to act on behalf of the limited liability company.

(E) For partnerships, Principals include all General Partners, and Principals with ownership interest and special limited partners with ownership interest who also possess factors or attributes that give them Control.

(31) Debt Coverage Ratio (DCR)--Sometimes referred to as the "Debt Coverage" or "Debt Service Coverage." Calculated as Net Operating Income for any period divided by scheduled debt service required to be paid during the same period, and as described in §11.302(d)(4) of this chapter (relating to Operating Feasibility).

(32) Deferred Developer Fee--The portion of the Developer Fee used as a source of funds to finance the development and construction of the Property, and as described in §11.302(i)(2) of this chapter (relating to Feasibility Conclusion).

(33) Deobligated Funds--The funds released by the Development Owner or recovered by the Department canceling a Contract or award involving some or all of a contractual financial obligation between the Department and a Development Owner or Applicant.

(34) Determination Notice--A notice issued by the Department to the Development Owner of a Tax- Exempt Bond Development which specifies the Department's preliminary determination as to the amount of tax credits that the Development may be eligible to claim pursuant to the Code, §42(m)(1)(D).

(35) Developer--Any Person entering into a contractual relationship with the Owner to provide Developer Services with respect to the Development and receiving the right to earn a fee for such services and any other Person receiving any portion of a Developer Fee, whether by subcontract or otherwise, except if the Person is acting as a consultant with no Control. The Developer may or may not be a Related Party or Principal of the Owner.

(36) Developer Fee--Compensation in amounts defined in §11.302(e)(7) of this chapter (relating to Total Housing Development Costs) paid by the Owner to the Developer for Developer Services inclusive of compensation to a Development Consultant(s), Development Team member, or any subcontractor that performs Developer Services or provides guaranties on behalf of the Owner will be characterized as Developer Fee. A person who is entitled to a Developer Fee assumes the risk that it may not be paid if the anticipated sources of repayment prove insufficient.

(37) Developer Services--A scope of work relating to the duties, activities, and responsibilities for pre-development, development, design coordination, and construction oversight of the Property generally including, but not limited to:

(A) Site selection and purchase or lease contract negotiation;

(B) Identifying and negotiating sources of construction and permanent financing, including financing provided by the Department;

(C) Coordination and administration of activities, including the filing of applications to secure such financing;

(D) Coordination and administration of governmental permits, and approvals required for construction and operation;

(E) Selection and coordination of development consultants including architect(s), engineer(s), third- party report providers, attorneys, and other design or feasibility consultants;

(F) Selection and coordination of the General Contractor and construction contract(s);

(G) Construction oversight;

(H) Other consultative services to and for the Owner;

(I) Guaranties, financial, or credit support if a Related Party or Affiliate; and

(J) Any other customary and similar activities determined by the Department to be Developer Services.

(38) Development--A residential rental housing project that consists of one or more buildings under common ownership and financed under a common plan which has applied for Department funds. This includes a proposed qualified low income housing project, as defined by Code, §42(g), that consists of one or more buildings containing multiple Units that is financed under a common plan, and that is owned by the same Person for federal tax purposes, and may consist of multiple buildings that are located on scattered sites and contain only rent restricted Units. (§2306.6702(a)(6)).

(A) Development will be considered to be a scattered site if the Property where buildings or amenities are located do not share a common boundary and there is no accessible pedestrian route

that the Development Owner controls (transportation in a motor vehicle will not meet the requirement for an accessible route).

(B) A Development for which several parcels comprise the Development Site and are separated only by a private road controlled by the Development Owner, or a public road or similar barrier where the Development Owner has a written agreement with the public entity for at least the term of the LURA stating that the accessible pedestrian route will remain, is considered contiguous. The written agreement with the public entity must be in place by the earlier of the 10% Test for Competitive HTC, the Determination Notice date for a Tax-Exempt Bond Development issued by the Department, Cost Certification for Tax-Exempt Bond Developments where the Determination Notice is issued administratively, or the execution of the Multifamily Direct Loan Contract, as applicable.

(39) Development Consultant or Consultant--Any Person who provides professional or consulting services relating to the filing of an Application, or post award documents, as required by the program.

(40) Development Owner (also referred to as "Owner")--Any Person, General Partner, or Affiliate of a Person who owns or proposes a Development or expects to acquire Control of a Development under a purchase contract or ground lease approved by the Department and is responsible for performing under the allocation or Commitment with the Department. (§2306.6702(a)(7)).

(41) Development Site--The area or, if more than one tract (which may be deemed by the Internal Revenue Service or the Department to be a scattered site), areas on which the Development is proposed and to be encumbered by a LURA, including access to that area or areas through ingress and egress easements.

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

(43) Direct Loan--Funds provided through the HOME Program, Neighborhood Stabilization Program (NSP), National Housing Trust Fund (NHTF), HOME American Rescue Plan (HOME-ARP), Tax Credit Assistance Program Repayment Funds (TCAP RF), Texas Housing Trust Fund (THTF), or other programs available through the Department for multifamily development. The terms and conditions for Direct Loans will be determined by provisions in Chapter 13 of this title (relating to Multifamily Direct Loan Rule), the NOFA under which they are awarded, the Contract, and the loan documents. The tax-exempt bond program is specifically excluded.

(44) Educational Provider-- A school district; open-enrollment charter school; or Education Service Center. Private schools and private childcare providers, whether nonprofit or for profit, are not eligible parties, unless the private school or private childcare provider has entered into a partnership with a school district or open-enrollment charter school to provide a HQ Pre-K program in accordance with Texas Education Code Chapter 29, Subchapter E-1.

(45) Economically Distressed Area--An area that is in a census tract that has a median household income that is 75% or less of the statewide median household income and in a municipality or, if not within a municipality, in a county that has been awarded funds under the Economically Distressed Areas Program administered by the Texas Water Development Board. Notwithstanding all other requirements, for funds awarded to another type of political subdivision (e.g., a water district), the Development Site must be within the jurisdiction of the political subdivision.

(46) Effective Gross Income (EGI)--As provided for in §11.302(d)(1)(D) of this chapter (relating to Operating Feasibility). The sum total of all sources of anticipated or actual income for a rental Development, less vacancy and collection loss, leasing concessions, and rental income from employee-occupied units that is not anticipated to be charged or collected.

(47) Efficiency Unit--A Unit without a separately enclosed Bedroom.

(48) Elderly Development--A Development that either meets the requirements of the Housing for Older Persons Act (HOPA) under the Fair Housing Act, or a Development that receives federal funding that has a requirement for a preference or limitation for elderly persons or households, but must accept qualified households with children.

(49) Eligible Hard Costs--Hard Costs includable in Eligible Basis for the purposes of determining a Housing Credit Allocation.

(50) Environmental Site Assessment (ESA)--An environmental report that conforms to the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E 1527) and conducted in accordance with §11.305 of this chapter (relating to Environmental Site Assessment Rules and Guidelines) as it relates to a specific Development.

(51) Existing Residential Development--Any Development Site which contains any type of existing residential dwelling at any time as of the beginning of the Application Acceptance Period.

(52) Extended Use Period--With respect to an HTC building, the period beginning on the first day of the Compliance Period and ending the later of:

(A) The date specified in the LURA; or

(B) The date which is 15 years after the close of the Compliance Period.

(53) First Lien Lender--A lender whose lien has first priority as a matter of law or by operation of a subordination agreement or other intercreditor agreement.

(54) Forward Commitment--the issuance of a Commitment of Housing Tax Credits from the State Housing Credit Ceiling for the calendar year following the year of issuance, made subject to the availability of State Housing Credit Ceiling in the calendar year for which the Commitment has been made.

(55) General Contractor (including "Contractor")--One who contracts to perform the construction or rehabilitation of an entire Development, rather than a portion of the work. The General Contractor hires subcontractors, such as plumbing contractors, electrical contractors, etc., coordinates all work, and is responsible for payment to the subcontractors. A prime subcontractor will also be treated as a General Contractor, and any fees payable to the prime subcontractor will be treated as fees to the General Contractor, in the scenarios described in subparagraphs (A) or (B) of this paragraph:

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

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

(56) General Partner--Any person or entity identified as a general partner in a certificate of formation for the partnership or is later admitted to an existing partnership as a general partner that is the Development Owner and that Controls the partnership. Where a

limited liability corporation is the legal structure employed rather than a limited partnership, the manager or managing member of that limited liability corporation is deemed, for the purposes of these rules, to be the functional equivalent of a general partner.

(57) Governing Body--The elected or appointed body of public or tribal officials responsible for the enactment, implementation, and enforcement of local rules and the implementation and enforcement of applicable laws for its respective jurisdiction.

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

(59) Gross Capture Rate--Calculated as the Relevant Supply divided by the Gross Demand, and as described in §11.302(i)(1) of this chapter (relating to Feasibility Conclusion).

(60) Gross Demand--The sum of Potential Demand from the Primary Market Area (PMA) and demand from other sources, as described in §11.303(d)(9)(E)(ii) of this chapter (relating to Market Analysis Rules and Guidelines).

(61) Gross Program Rent--Maximum rent limits based upon the tables promulgated by the Department's division responsible for compliance, which are developed by program and by county or Metropolitan Statistical Area (MSA) or Primary Metropolitan Statistical Area (PMSA) or national non-metro area.

(62) Guarantor--Any Person that provides, or is anticipated to provide, a guaranty for all or a portion of the equity or debt financing for the Development.

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

(64) Historically Underutilized Businesses (HUB)--An entity that is certified as such under and in accordance with Tex. Gov't Code, Chapter 2161.

(65) HOME Match Eligible Unit--A Unit in the Development that may or may not be assisted with HOME Program funds, but would qualify as eligible for Match under 24 CFR Part 92 and CPD Notice 97-03 or subsequent HUD guidance.

(66) Housing Contract System (HCS)--The electronic information system established by the Department for tracking, funding, and reporting Department Contracts and Developments. The HCS is primarily used for Direct Loan Programs administered by the Department.

(67) Housing Credit Allocation--An allocation of Housing Tax Credits by the Department to a Development Owner as provided for in Code.

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

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

(70) HTC Property--See HTC Development.

(71) Initial Affordability Period--The Compliance Period or such longer period as shall have been elected by the Owner as the minimum period for which Units in the Development shall be retained for low-income tenants and rent restricted, as set forth in the LURA.

(72) Integrated Disbursement and Information System (IDIS)--The electronic grants management information system established by HUD to be used for tracking and reporting HOME and NHTF funding and progress, and which may be used for other sources of funds as established by HUD.

(73) Land Use Restriction Agreement (LURA)--An agreement, regardless of its title, between the Department and the Development Owner which is a binding covenant upon the Development Owner and successors in interest, that, when recorded, encumbers the Development with respect to the requirements of the programs for which it receives funds. (§2306.6702)

(74) Low-Income Unit (also referred to as a Rent Restricted Unit)--A Unit that is intended to be restricted for occupancy by an income eligible household, as defined by the Department utilizing its published income limits.

(75) Managing General Partner--A general partner of a partnership (or, as provided for in the definition of General Partner in this subsection, its functional equivalent) that is vested with the authority to take actions that are binding on behalf of the partnership and the other partners. The term Managing General Partner can also refer to a manager or managing member of a limited liability company where so designated to bind the limited liability company and its members under its Agreement or any other person that has such powers in fact, regardless of their organizational title.

(76) Market Analysis--Sometimes referred to as "Market Study." An evaluation of the economic conditions of supply, demand, and rental rates conducted in accordance with §11.303 of this chapter (relating to Market Analysis Rules and Guidelines) as it relates to a specific Development.

(77) Market Analyst--A real estate appraiser or other professional satisfying the qualifications in §11.303(c) of this chapter, and familiar with the subject property's market area who prepares a Market Analysis.

(78) Market Rent--The achievable rent at the subject Property for a Unit without rent and income restrictions determined by the Market Analyst or Underwriter after adjustments are made to actual rents on Comparable Units to account for differences in net rentable square footage, functionality, overall condition, location (with respect to the subject Property based on proximity to primary employment centers, amenities, services, and travel patterns), age, Unit amenities, utility structure, and Common Area amenities. The achievable rent conclusion must also consider the proportion of market Units to total Units proposed in the subject Property.

(79) Market Study--See Market Analysis.

(80) Material Deficiency--Any deficiency in a pre-application or an Application or other documentation that exceeds the scope of an Administrative Deficiency. Inability to provide documentation that existed prior to submission of an Application to substantiate claimed points or meet threshold requirements may be considered material and may result in denial of the requested points or a termination in the case of threshold items. It is possible that multiple deficiencies that could individually be characterized as Administrative Deficiencies, when taken as a whole, would create a need for substantial re-review of the Application and as such would be characterized as constituting a Material Deficiency.

(81) Multifamily Programs Procedures Manual--The manual produced and amended from time to time by the Department which reiterates and implements the rules and provides guidance for the filing of multifamily related documents. The Manual is not a rule and is provided only as good faith guidance and assistance.

(82) National Standards for the Physical Inspection of Real Estate (NSPIRE)-- As developed by the Real Estate Assessment Center of HUD.

(83) Net Operating Income (NOI)--The income remaining after all operating expenses, including replacement reserves and taxes have been paid, as provided for in §11.302(d)(3) of this chapter (relating to Operating Feasibility).

(84) Net Program Rent--Calculated as Gross Program Rent less Utility Allowance.

(85) Net Rentable Area (NRA)--The Unit space that is available exclusively to the tenant and is heated and cooled by a mechanical HVAC system. NRA is measured to the outside of the studs of a Unit or to the middle of walls in common with other Units. If the construction does not use studs, NRA is measured to the outside of the material to which the drywall is affixed. Remote Storage of no more than 25 square feet per Unit may be included in NRA. For Developments using Multifamily Direct Loan funds the Remote Storage may only be included in NRA if the storage area shares a wall with the residential living space. NRA does not include common hallways, stairwells, elevator shafts, janitor closets, electrical closets, balconies, porches, patios, or other areas not actually available to the tenants for their furnishings, nor does NRA include the enclosing walls of such areas.

(86) Non-HTC Development--Sometimes referred to as Non-HTC Property. Any Development not utilizing Housing Tax Credits or Exchange funds.

(87) Notice of Funding Availability (NOFA)--A notice issued by the Department that announces funding availability, usually on a competitive basis, for multifamily rental programs requiring Application submission from potential Applicants.

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

(89) Off-Site Construction--Improvements up to the Development Site such as the cost of roads, water, sewer, and other utilities to provide access to and service the Site.

(90) One Year Period (1YP)--The period commencing on the date on which the Department and the Owner agree to the Qualified Contract price in writing and continuing for 12 calendar months.

(91) Owner--See Development Owner.

(92) Person--Without limitation, any natural person, corporation, partnership, limited partnership, joint venture, limited liability company, trust, estate, association, cooperative, government, political subdivision, agency or instrumentality, or other organization or entity of any nature whatsoever, and shall include any group of Persons acting in concert toward a common goal, including the individual members of the group.

(93) Person or Persons with Disabilities--With respect to an individual, means that such person has:

(A) A physical or mental impairment that substantially limits one or more major life activities of such individual;

(B) A record of such an impairment; or

(C) Is regarded as having such an impairment, to include persons with severe mental illness and persons with substance abuse disorders.

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

(95) Place--An area defined as such by the United States Census Bureau which, in general, includes an incorporated city, town, or village, as well as unincorporated areas known as Census Designated Places. Any part of a Census Designated Place that, at the time of Application, is within the boundaries of an incorporated city, town, or village will be considered as part of the incorporated area. Areas that are annexed by a city, town, or village through limited-purpose annexation are considered to be part of the incorporated area of that city, town, or village for purposes of this chapter. The Department may provide a list of Places for reference.

(96) Post Award Activities Manual--The manual produced and amended from time to time by the Department which explains the post award requirements and provides guidance for the filing of such documentation.

(97) Potential Demand--The number of income-eligible, age-, size-, and tenure-appropriate target households in the designated market area at the proposed placement in service date.

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

(99) Primary Market--Sometimes referred to as "Primary Market Area." The area defined by the Market Analyst as described in §11.303 of this chapter (relating to Market Analysis Rules and Guidelines) from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.

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

(101) Principal--Persons that will be capable of exercising Control pursuant to §11.1(d) of this chapter (relating to the definition of Control) over a partnership, corporation, limited liability company, trust, or any other private entity.

(102) Pro Forma Rent--For a restricted Unit, the lesser of the Net Program Rent or the Market Rent. For an unrestricted Unit, the Market Rent. Contract Rents, if applicable, will be used as the Pro Forma Rent.

(103) Property--The real estate and all improvements thereon which are the subject of the Application (including all items of personal property affixed or related thereto), whether currently existing or proposed to be built or rehabilitated thereon in connection with the Application.

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

(105) Qualified Contract (QC)--A bona fide contract to acquire the non-low-income portion of the building for fair market value and the low-income portion of the building for an amount not less than the Applicable Fraction (specified in the LURA) of the calculation as defined within §42(h)(6)(F) of the Code.

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

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

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

(109) Qualified Nonprofit Development--A Development which meets the requirements of Code, §42(h)(5), includes the required involvement of a Qualified Nonprofit Organization, and is seeking Competitive Housing Tax Credits.

(110) Qualified Nonprofit Organization--An organization that meets the requirements of Code §42(h)(5)(C) for all purposes, and for an allocation in the nonprofit set-aside or subsequent transfer of the Property, when applicable, meets the requirements of Tex. Gov't Code §2306.6706, and §2306.6729, and Code, §42(h)(5), including having a Controlling interest in the Development.

(111) Reconstruction--The demolition of one or more residential buildings in an Existing Residential Development and the construction of Units on the same or another Development Site. At least one Unit must be reconstructed in order to qualify as Reconstruction. The total number of Units to be reconstructed will be determined by program requirements. Developments using Multifamily Direct Loan funds are required to follow the applicable federal requirements.

(112) Rehabilitation--The improvement or modification of an Existing Residential Development through alteration, incidental addition, or enhancement. The term includes the demolition of an Existing Residential Development and the Reconstruction of any Development Units on the Development Site, but does not include Adaptive Reuse. (§2306.004(26-a)) Reconstructed Units will be considered New Construction for purposes of calculating the Replacement Reserves under §11.302(d)(2)(I) (relating to Operating Feasibility). More specifically, Rehabilitation is the repair, refurbishment, or replacement of existing mechanical or structural components, fixtures, and finishes. Rehabilitation will correct deferred maintenance, reduce functional obsolescence to the extent possible, and may include the addition of: energy efficient components and appliances; life and safety systems; site and resident amenities; and other quality of life improvements typical of new residential Developments.

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

(A) The proposed subject Units; and

(B) Comparable Units in previously approved but Unstabilized Developments in the PMA.

(114) Report--See Underwriting Report.

(115) Request--See Qualified Contract Request.

(116) Reserve Account--An individual account:

(A) Created to fund any necessary repairs or other needs for a Development; and

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

(117) Right of First Refusal (ROFR)--An Agreement to provide a series of priority rights to negotiate for the purchase of a Property by a Qualified Entity or a Qualified Nonprofit Organization at a negotiated price at or above the minimum purchase price as defined in Code §42(i)(7) or as established in accordance with an applicable LURA.

(118) Rural Area--

(A) A Place that is located:

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

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

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

(B) For areas not meeting the definition of a Place, the designation as a Rural Area or Urban Area is assigned in accordance with §11.204(5)(A) of this chapter (relating to Required Documentation for Application Submission) or as requested in accordance with §11.204(5)(B) of this chapter.

(119) Scope and Cost Review (SCR)--Sometimes referred to as "Physical Needs Assessment," "Project Capital Needs Assessment," or "Property Condition Report." The SCR provides an evaluation of the physical condition of an existing Property to evaluate the immediate cost to rehabilitate and to determine costs of future capital improvements to maintain the Property. The SCR must be prepared in accordance with §11.306 of this chapter (relating to Scope and Cost Review Guidelines), as it relates to a specific Development.

(120) Scoring Notice--Notification provided to an Applicant of the score for their Application after staff review. More than one Scoring Notice may be issued for a Competitive HTC or a Direct Loan Application.

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

(122) Site Control--Ownership or a current contract or series of contracts that meets the requirements of §11.204(9) of this chapter, that is legally enforceable giving the Applicant the ability, not subject to any legal defense by the Owner or anyone else, to develop and operate a Property and subject it to a LURA reflecting the requirements of any awards of assistance it may receive from the Department.

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

(124) State Housing Credit Ceiling--The aggregate amount of Competitive Housing Credit Allocations that may be made by the Department during any calendar year, as determined from time to time by the Department in accordance with applicable federal law, including Code, §42(h)(3)(C), and Treasury Regulation §1.42-14.

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

(126) Supportive Housing--A residential rental Development and Target Population meeting the requirements of subparagraphs (A) - (F) of this paragraph:

(A) Be intended for and targeting occupancy for households in need of specialized and specific non-medical services in order to maintain housing or transition into independent living;

(B) Be owned and operated by an Applicant or General Partner that must:

(i) have supportive services provided by the Applicant, an Affiliate of the Applicant, or a Third Party provider if the service provider is able to demonstrate a record of providing substantive

services similar to those proposed in the Application in residential settings for at least three years prior to the beginning of the Application Acceptance Period, or Application Acceptance Date for Multifamily Direct Loan Applications;

(ii) provide no less than 30 square feet of Common Area space per Unit that is specifically used for the delivery of supportive services or an amenity for the residents;

(iii) secure sufficient funds necessary to maintain the Supportive Housing Development's operations throughout the entire Affordability Period;

(iv) provide evidence of a history of fundraising activities reasonably deemed to be sufficient to address any unanticipated operating losses;

(v) provide a fully executed guaranty agreement whereby the Applicant or its Affiliate assume financial responsibility of any outstanding operating deficits, as they arise, and throughout the entire Affordability Period; and

(vi) have Tenant Selection Criteria that fully comply with §10.802 of this title (regarding Written Policies and Procedures), which require a process for evaluation of prospective residents against a clear set of credit, criminal conviction, and prior eviction history that may disqualify a potential resident. This process must also follow §1.204 of this title (regarding Reasonable Accommodations), and:

(I) The criminal screening criteria must not allow residents to reside in the Development who are subject to a lifetime sex offender registration requirement; and provide at least, for:

(-a-) Temporary denial for a minimum of seven years from the date of conviction based on criminal history at application or recertification of any felony conviction for murder related offense, sexual assault, kidnapping, arson, or manufacture of a controlled substance as defined in §102 of the Controlled Substances Act (21 U.S.C. 802); and

(-b-) Temporary denial for a minimum of three years from the date of conviction based on criminal history at application or recertification of any felony conviction for aggravated assault, robbery, drug possession, or drug distribution;

(II) The criminal screening criteria must include provisions for approving applications and recertification despite the tenant's criminal history on the basis of mitigation evidence. Applicants/tenants must be provided written notice of their ability to provide materials that support mitigation. Mitigation may be provided during initial tenant application or upon appeal after denial. Mitigation may include personal statements/certifications, documented drug/alcohol treatment, participation in case management, letters of recommendation from mental health professionals, employers, case managers, or others with personal knowledge of the tenant. In addition, the criteria must include provision for individual review of permanent or temporary denials if the conviction is more than 7 years old, or if the applicant/resident is over 50 years of age, and the prospective resident has no additional felony convictions in the last 7 years. The criteria must prohibit consideration of any previously accepted criminal history or mitigation at recertification, unless new information becomes available. Criminal screening criteria and mitigation must conform to federal regulations and official guidance, including HUD's 2016 Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records; and

(III) Disqualifications in a Development's Tenant Selection Criteria cannot be a total prohibition, unless such a prohibition is required by federal statute or regulation (i.e. the Development must have an appeal process for other required criteria). As part of the appeal process the prospective resident must be allowed to demonstrate that information in a third party database is incorrect;

(C) Where supportive services are tailored for members of a household with specific needs, such as:

(i) homeless or persons at-risk of homelessness;

(ii) persons with physical, intellectual, or developmental disabilities;

(iii) youth aging out of foster care;

(iv) persons eligible to receive primarily non-medical home or community-based services;

(v) persons transitioning out of institutionalized care;

(vi) persons unable to secure permanent housing elsewhere due to specific, non-medical, or other high barriers to access and maintain housing;

(vii) Persons with Special Housing Needs including households where one or more individuals have alcohol or drug addictions, Violence Against Women Act Protections (domestic violence, dating violence, sexual assault, and stalking), HIV/AIDS, or is a veteran with a disability; or

(viii) other target populations that are served by a federal or state housing program in need of the type and frequency of supportive services characterized herein, as represented in the Application and determined by the Department on a case-by-case basis;

(D) Supportive services must meet the minimum requirements provided in clauses (i) - (iv) of this subparagraph:

(i) regularly and frequently offered to all residents, primarily on-site;

(ii) easily accessible and offered at times that residents are able to use them;

(iii) must include readily available resident services or service coordination that either aid in addressing debilitating conditions, or assist residents in securing the skills, assets, and connections needed for independent living; and

(iv) a resident may not be required to access supportive services in order to qualify for or maintain tenancy in a rent restricted Unit that the household otherwise qualifies for; and

(E) Supportive Housing Developments must meet the criteria of either clause (i) or (ii) of this subparagraph:

(i) not financed with any debt containing foreclosure provisions or debt that contains scheduled or periodic repayment provisions, except for the following:

(I) Construction financing;

(II) A direct Loan from the Department;

(III) A permanent foreclosable loan from a local, state, or federal government or instrumentality thereof if the loan is deferred-forgivable, deferred payable, or cash-flow contingent, the foreclosure provisions are triggered only by default on non-monetary default provisions, and the maturity date is after the end of the Affordability Period;

(IV) A permanent foreclosable loan from an Affiliate if the funds are originally sourced from charitable contributions, nonprofit equity, the Federal Home Loan Bank's Affordable Housing

Program, Capital Magnet Fund, or pass-through government funds, if the loan is deferred-forgivable, deferred-payable, or cash-flow contingent, and if the foreclosure provisions are triggered only by default on non-monetary default provisions, and the maturity date is after the end of the Affordability Period;

(V) For tax credit applications only, permanent foreclosable debt that contains scheduled or periodic repayment provisions (including payments subject to available cash-flow) is permissible if sourced by federal funds and otherwise structured to meet valid debt requirements for tax credit eligible basis considerations.

(VI) Any amendment to an Application or Underwriting Report resulting in the addition of debt prohibited under this definition will result in the revocation of IRS Form(s) 8609, and may not be made for Developments that have Direct Loans after a LURA is executed, except as a part of Work Out Development approved by the Asset Management Division.

(ii) financed with debt that meets feasibility requirements under Subchapter D of this chapter without exemptions and must also be supported by project-based rental or project-based operating subsidies for 25% of the Units evidenced by an executed agreement with an unaffiliated or governmental third party able to make that commitment, and meet all of the criteria in subclauses (I) - (VI) of this clause:

(I) the Application includes documentation of how resident feedback has been incorporated into design of the proposed Development;

(II) the Development is located less than 1/2 mile from regularly-scheduled public transportation, including evenings and weekends;

(III) at least 10% of the Units in the proposed Development meet the 2010 ADA standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" 79 Federal Register 29671 for persons with mobility impairments;

(IV) multiple systems will be in place for residents to provide feedback to Development staff;

(V) the Development will have a comprehensive written eviction prevention policy that includes an appeal process; and

(VI) the Development will have a comprehensive written services plan that describes the available services, identifying whether they are provided directly or through referral linkages, by whom, and in what location and during what days and hours. A copy of the services plan will be readily accessible to residents.

(F) Supportive housing Units included in an otherwise non-Supportive Housing Development do not meet the requirements of this definition.

(127) Target Population--The designation of types of housing populations shall include Elderly Developments and those that are Supportive Housing. All others will be considered to serve general populations without regard to any subpopulations, although the Application may request that any other populations required for targeting, preference, or limitation by a federal or state fund source are identified.

(128) Tax-Exempt Bond Development--A Development requesting or having been issued a Determination Notice for Housing Tax Credits and which receives a portion of its financing from the proceeds of Tax-Exempt Bonds which are subject to the state volume cap as described in Code, §42(h)(4).

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

(130) TDHCA Operating Database--Sometimes referred to as "TDHCA Database." A consolidation of recent actual income and operating expense information collected through the Department's Annual Owner Financial Certification process, as required and described in Chapter 10, Subchapter F of this title (relating to Compliance Monitoring), and published on the Department's website (www.tdhca.state.tx.us).

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

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

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

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

(D) In Control with respect to the Development Owner.

(132) Total Housing Development Cost--The sum total of the acquisition cost, Hard Costs, soft costs, Developer Fee, and General Contractor fee incurred or to be incurred through lease-up by the Development Owner in the acquisition, construction, rehabilitation, and financing of the Development.

(133) Transitional Housing--A Supportive Housing Development funded with HOME, NSP, HOME-ARP or TCAP RF, and not layered with Housing Tax Credits that includes living Units with more limited individual kitchen facilities and is:

(A) Used exclusively to facilitate the transition of homeless individuals and those at-risk of becoming homeless to independent living within 24 months; and

(B) Is owned by a Development Owner that includes a Governmental Entity or a nonprofit which provides temporary housing and supportive services to assist such individuals in, among other things, locating and retaining permanent housing. The limited kitchen facilities in individual Units must be appropriately augmented by suitable, accessible shared or common kitchen facilities.

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

(135) Underwriting Report--Sometimes referred to as the Report. A decision making tool prepared by the Department's Real Estate Analysis Division that contains a synopsis of the proposed Development and that reconciles the Application information, including its financials and market analysis, with the underwriter's analysis. The Report allows the Department and Board to determine whether the Development will be financially feasible as required by Code §42(m), or other federal or state regulations.

(136) Uniform Multifamily Application Templates--The collection of sample resolutions and form letters, produced by the Department, as may be required under this chapter or Chapters 12 and 13 of this title (relating to Multifamily Housing Bond Rules and Multifamily Direct Loan Rule, respectively) that may, but are not required to, be used to satisfy the requirements of the applicable rule.

(137) Unit--Any residential rental Unit in a Development consisting of an accommodation, including a single room used as an accommodation on a non-transient basis, that contains complete physical

facilities and fixtures for living, sleeping, eating, cooking, and sanitation.

(138) Unit Type--Units will be considered different Unit Types if there is any variation in the number of Bedrooms, bathrooms, features, or a square footage difference equal to or more than 120 square feet.

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

(140) U.S. Department of Housing and Urban Development (HUD)-regulated Building--A building for which the rents and utility allowances of the building are reviewed by HUD.

(141) Unstabilized Development--A Development with Comparable Units that has been approved for funding by the Department's Board of Directors or is currently under construction or has not maintained a 90% occupancy level for at least 90 days following construction completion. A development may be deemed stabilized by the Underwriter based on factors relating to a development's lease-up velocity, Sub-Market rents, Sub-Market occupancy trends, and other information available to the Underwriter. The Market Analyst may not consider such development stabilized in the Market Study.

(142) Urban Area--A Place that is located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area other than a Place described in paragraph (117)(A) of this subsection, definition of Rural Area. For areas not meeting the definition of a Place, the designation as a Rural Area or Urban Area is assigned in accordance with §11.204(5) of this chapter.

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

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

(e) Data. Where this chapter requires the use of American Community Survey or Housing & Urban Development data, the Department shall use the most current data available as of August 1 of the year prior to Application, unless specifically otherwise provided in federal or state law or in the rules, with the exception of census tract boundaries for which 2020 Census boundaries will be used, unless otherwise noted. All references to census tracts throughout this chapter will mean the 2020 Census tracts, unless otherwise noted. Applicants may need to provide Census tract information based on the 2020 boundaries as well as the ones defined by 2010 boundaries, if data based on 2020 tract boundaries are not available as of August 1, 2025 for the specific item in question. All American Community Survey (ACS) data must be 5-year estimates, unless otherwise specified and it is the ACS data that will be used for population determination. The availability of more current data shall be disregarded. Where other data sources are specifically required, such as NeighborhoodScout, the data available after August 1, but before Full Application Final Delivery Date, will be permissible. The NeighborhoodScout report submitted in the Application must include the report date. All references to QCTs throughout this chapter mean the 2026 QCTs designated by HUD to be effective in 2026.
Where this chapter requires the division of Census tracts into quartiles, if the number of tracts is not evenly divisible by four, the Department shall divide the quartiles in the following manner:

(1) If the division of the tracts into quartiles leaves one excess tract, then the first quartile shall contain the excess tract.

(2) If the division of the tracts into quartiles leaves two excess tracts, then the first and second quartiles shall contain an excess tract each.

(3) If the division of the tracts into quartiles leaves three excess tracts, then the first, second, and third quartiles shall contain one excess tract each.

(f) Deadlines. Where a specific date or deadline is identified in this chapter, the information or documentation subject to the deadline must be received by the Department on or before 5:00 p.m. Austin local time on the day of the deadline. If the deadline falls on a weekend or holiday, the deadline is 5:00 p.m. Austin local time on the next day which is not a weekend or holiday and on which the Department is open for general operation. Unless otherwise noted or provided in statute, deadlines are based on calendar days. Deadlines, with respect to both date and time, cannot be waived except where authorized and for truly extraordinary circumstances, such as the occurrence of a significant natural disaster that could not have been anticipated and makes timely adherence impossible. Applicants should further ensure that all required documents are included, legible, properly organized, and tabbed, and that materials in required formats involving digital media are complete and fully readable. Applicants are strongly encouraged to submit the required items well in advance of established deadlines.

(g) Documentation to Substantiate Items and Representations in a Competitive HTC Application. In order to ensure the appropriate level of transparency in this highly competitive program, Applications and all correspondence and other information relating to each Application are posted on the Department's website and updated on a regular basis. Applicants must use the Application form posted online to provide appropriate support for each item substantiating a claim or representation, such as claims for points, qualification for set-asides, meeting of threshold requirements, or timely requesting a waiver or determination. Any Application that staff identifies as having insufficient support information will be directed to cure the matter via the Deficiency process. Applicants are reminded that this process may not be used to increase a scoring item's points or to change any aspect of the proposed Development, financing structure, or other element of the Application. Although a responsive narrative will be created after Application submission, all facts and materials to substantiate any item in response to such an Administrative Deficiency must have been clearly established at the time of submission of the Application.

(h) Board Standards for Review. Some issues may require or benefit from Board review. The Board is not constrained to a particular standard, and while its actions on one matter are not binding as to how it will address another matter, the Board does seek to promote consistency with its policies, including the policies set forth in this chapter.

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

(j) Public Information Requests. Pursuant to Tex. Gov't Code §2306.6717, any pre-application and any full Application, including all supporting documents and exhibits, must be made available to the public, in their entirety, on the Department's website. The filing of a pre-application or Application with the Department shall be deemed as consent to the release of any and all information contained therein, including supporting documents and exhibits. As part of its certifications, the Applicant shall certify that the authors of the reports and other information and documents submitted with the Application have given their consent to the Applicant to submit all reports and other in-

formation and documents to the Department, and for the Department to publish anything submitted with the Application on its website and use such information and documents for authorized purposes.

(k) Responsibilities of Municipalities and Counties. In considering resolutions regarding housing de-concentration issues, threshold requirements, or scoring criteria, municipalities and counties should consult their own staff and legal counsel as to whether their handling of actions regarding such resolution(s) are consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any Fair Housing Activity Statement-Texas (FHAST) form on file, any current Analysis of Impediments to Fair Housing Choice, any current Assessment of Fair Housing, or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds, such as HOME or CDBG funds.

(l) Request for Staff Determinations. Where the requirements of this chapter do not readily align with the activities proposed in an Application, an Applicant may request and Department staff may provide a determination to an Applicant explaining how staff will review an Application in relation to the applicable rules. In no instance will staff provide a determination regarding a scoring item. Any such request must be received by the Department prior to submission of the pre-application (if applicable to the program) or Application (if no pre-application was submitted). Staff may, in its sole discretion, provide the request to the Board for it to make the determination. Staff's determination may take into account the articulated purpose of or policies addressed by a particular rule or requirement, materiality of elements, substantive elements of the development plan that relate to a term or definition, a common usage of the particular term, or other issues relevant to a rule or requirement. All such requests and determinations will be conveyed in writing. If the determination is finalized after submission of the pre-application or Application, the Department may allow corrections to the pre-application or the Application that are directly related to the issues in the determination. It is an Applicant's sole responsibility to request a determination and an Applicant may not rely on any determination for another Application regardless of similarities in a particular fact pattern. For any Application that does not request and subsequently receive a determination, the definitions and applicable rules will be applied as used and defined herein. An Applicant may appeal a determination for their Application, using the Appeal Process provided for in §11.902 of this chapter (relating to Appeals Process), if the determination provides for a treatment that relies on factors other than the explicit definition. A Board determination may not be appealed. A staff or Executive Director determination not timely appealed cannot be further appealed or challenged.

§11.2. Program Calendar for Housing Tax Credits.

(a) Competitive HTC Deadlines. Non-statutory deadlines specifically listed in the Program Calendar may be extended by the Department for a period of not more than 5 business days provided that the Applicant has, in writing, requested an extension prior to the date of the original deadline and has established to the reasonable satisfaction of the Department that there is good cause for the extension. Figure: 10 TAC §11.2(a)

(b) Tax-Exempt Bond and Direct Loan-only Application Dates and Deadlines. Applicants are strongly encouraged to submit the required items well in advance of published deadlines. Other deadlines may be found in Chapters 12 and 13 or a NOFA.

(1) Full Application Delivery Date. The deadline by which the Application must be received by the Department. For Direct Loan Applications, deadlines including the Application Acceptance Date will be defined in the applicable NOFA and for Tax-Exempt Bond Developments, such deadlines are more fully explained in §11.201 of this chapter (relating to Procedural Requirements for Application Submission).

(2) Administrative Deficiency Response Deadline. Such deadline shall be five business days after the date on the deficiency notice, unless extended as provided for in §11.201(6) of this chapter (relating to Deficiency Process).

(3) Third Party Report Delivery Date (Environmental Site Assessment (ESA), Scope and Cost Review (SCR) (if applicable), Appraisal (if applicable), Market Analysis and the Feasibility Report (if applicable)). For Direct Loan Applications, the Third Party reports meeting the requirements described in §11.205 of this title (relating to Required Third Party Reports) must be submitted in order for the Application to be considered complete, unless the Application is made in conjunction with an Application for Housing Tax Credits or Tax-Exempt Bond, in which case the Delivery Date for those programs will apply. For Tax-Exempt Bond Developments, the Third Party Reports must be received by the Department pursuant to §11.201(2) of this chapter.

(4) Resolutions Delivery Date. Resolutions required for Tax-Exempt Bond Developments must be received by the Department no later than 14 calendar days before the Board meeting or prior to the issuance of the Determination Notice, as applicable. If the Direct Loan Application is made in conjunction with an Application for Housing Tax Credits, or Tax-Exempt Bond Developments, the Resolution Delivery Date for those programs will apply to the Direct Loan Application.

(5) Challenges to Neighborhood Organization Opposition Delivery Date. Challenges must be received by the Department no later than 45 calendar days prior to the Board meeting at which consideration of the award will occur.

§11.3. Housing De-Concentration Factors.

(a) Rules reciting statutory limitations are provided as a convenient reference only, and to the extent there is any deviation from the provisions of statute, the statutory language is controlling.

(b) Two Mile Same Year Rule (Competitive HTC Only).

(1) As required by Tex. Gov't Code §2306.6711(f), staff will not recommend for award, and the Board will not make an award to an Application that proposes a Development Site located in a county with a population that exceeds one million, if the proposed Development Site is also located less than two linear miles from the proposed Development Site of another Application within said county that is awarded in the same calendar year. If two or more Applications are submitted that would violate §2306.6711(f), the following priorities will be used to determine which Application is reviewed:

(A) Priority will first be determined using the steps described in the Award Recommendation Methodology described in §11.6(3).

(B) In the event that two Applications are considered for review during the same step of Award Recommendation Methodology, then priority will be given to the higher-scoring Application, including consideration of tie breakers.

(C) Regardless of the priority established by (A) or (B), an Application that is not recommended for an award at the July Board meeting at which awards from the Application Round will be made will not be given priority over another Application that would otherwise be recommended for an award.

(2) This subsection does not apply if an Application is located in an area that meets the requirements of Tex. Gov't Code §2306.6711(f-1), which excludes any municipality with a population

of two million or more where a federal disaster has been declared by the Full Application Delivery Date as identified in §11.2(a) of this chapter (relating to Competitive HTC Deadlines), and the governing body of the municipality containing the Development has by vote specifically authorized the allocation of housing tax credits for the Development in a resolution submitted by the Full Application Delivery Date as identified in §11.2(a) of this chapter, and the municipality is authorized to administer disaster recovery funds as a subgrant recipient.

(c) Twice the State Average Per Capita (Competitive HTC and Tax-Exempt Bond Only). As provided for in Tex. Gov't Code §2306.6703(a)(4), if a proposed Development is located in a municipality, or if located completely outside a municipality, a county, that has more than twice the state average of units per capita supported by Housing Tax Credits or private activity bonds at the time the Application Acceptance Period Begins (or for Tax-Exempt Bond Developments, Applications submitted after the Application Acceptance Period Begins), then the Applicant must obtain prior approval of the Development from the Governing Body of the appropriate municipality or county containing the Development. Such approval must include a resolution adopted by the Governing Body of the municipality or county, as applicable, setting forth a written statement of support, specifically citing Tex. Gov't Code §2306.6703(a)(4) in the text of the actual adopted resolution, and authorizing an allocation of Housing Tax Credits for the Development. An acceptable, but not required, form of resolution may be obtained in the Uniform Multifamily Application Templates. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2(a) of this chapter (relating to Competitive HTC Deadlines) or Resolutions Delivery Date in §11.2(b) of this chapter (relating to Tax-Exempt Bond and Direct Loan Only Application Dates and Deadlines), as applicable.

(d) One Mile Three Year Rule (Competitive HTC and Tax-Exempt Bond Only). (§2306.6703(a)(3)).

(1) An Application that proposes the New Construction or Adaptive Reuse of a Development that is located one linear mile or less (measured between closest boundaries by a straight line on a map) from another development that meets all of the criteria in subparagraphs (A) - (C) of this paragraph shall be considered ineligible.

(A) A Development that serves the same Target Population as the proposed Development, regardless of whether the Development serves general, Elderly, or Supportive Housing; and

(B) A Development that has received an allocation of Housing Tax Credits or private activity bonds, or a Supplemental Allocation of credits, for any New Construction at any time during the three-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments the three-year period preceding the date the Certificate of Reservation is issued); and

(C) The Development in subparagraph (B) of this paragraph has not been withdrawn or terminated from the Housing Tax Credit Program.

(2) Paragraph (1) of this subsection does not apply to a proposed Development:

(A) That is using federal HOPE VI (or successor program) funds received through HUD;

(B) That is using locally approved funds received from a public improvement district or a tax increment financing district;

(C) That is using funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §§12701 et seq.);

(D) That is using funds provided to the state and participating jurisdictions under the Housing and Community Development Act of 1974 (42 U.S.C. §§5301 et seq.);

(E) That is located in a county with a population of less than one million;

(F) That is located outside of a metropolitan statistical area; or

(G) That the Governing Body of the appropriate municipality or county where the Development is to be located has by vote specifically allowed the construction of a new Development located within one linear mile or less from a Development described under paragraph (1)(A) of this subsection. An acceptable, but not required, form of resolution may be obtained in the Uniform Multifamily Application Templates. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2(a) of this chapter, regarding Competitive HTC Deadlines, or Resolutions Delivery Date in §11.2(b) of this chapter, regarding Tax-Exempt Bond and Direct Loan Only Development Dates and Deadlines, as applicable.

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

(e) Limitations on Developments in Certain Census Tracts. An Application that proposes the New Construction or Adaptive Reuse of a Development proposed to be located in a census tract that has more than 20% Housing Tax Credit Units per total households as reflected in the Department's current Site Demographic Characteristics Report shall be considered ineligible unless the Governing Body of the appropriate municipality or county containing the Development has adopted a resolution that the Governing Body of the appropriate municipality or county containing the Development has no objection to the Application. Rehabilitation Developments are not required to obtain such resolution. The resolution must be submitted by the Full Application Delivery Date as identified in §11.2(a) of this chapter or Resolutions Delivery Date in §11.2(b) of this chapter, as applicable.

(f) Proximity of Development Sites. (Competitive HTC Only) In a county with a population that is less than one million, if two or more HTC Applications, regardless of the Applicant(s), are proposing Developments serving the same Target Population on sites separated by 1,000 feet or less, the lower scoring of the Application(s), including consideration of Tie Breakers, will be considered ineligible and will not be reviewed unless the higher scoring Application is terminated or withdrawn.

(g) One Award per Census Tract Limitation (Competitive HTC Only). If two or more Competitive HTC Applications are proposing Developments in the same census tract in an urban subregion, the lower scoring of the Application(s), including consideration of tie breakers, will be considered ineligible and will not be reviewed unless the higher scoring Application is terminated or withdrawn. This subsection does not apply to Applications submitted under §11.5(2) of this chapter (relating to USDA Set-Aside) or §11.5(3) (relating to At-Risk Set-Aside).

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

(a) Credit Amount (Competitive HTC Only). (§2306.6711(b)) The Board may not award or allocate to an Applicant, Developer, Affiliate, or Guarantor (unless the Guarantor is also the General Contractor

or provides the guaranty only during the construction period, and is not a Principal of the Applicant, Developer or Affiliate of the Development Owner) Housing Tax Credits in an aggregate amount greater than $6 million in a single Application Round. Prior to posting the agenda for the last Board meeting in June, an Applicant that has Applications pending for more than $6 million in credit may notify staff in writing or by email of the Application(s) they will not pursue in order to bring their request within the $6 million cap. Any other Applications they do not wish to pursue will remain on the waiting list if not otherwise terminated. If the Applicant has not made this self-selection by this date, staff will first select the Application(s) that will enable the Department to comply with the state and federal non-profit set-asides, and will then select the highest scoring Application, including consideration of Tie Breakers if there are tied scores. The Application(s) that does not meet Department criteria will not be reviewed unless the Applicant withdraws an Application that is eligible for an award and has been reviewed. All entities that are under common Control are Affiliates. For purposes of determining the $6 million limitation, a Person is not deemed to be an Applicant, Developer, Affiliate, or Guarantor solely because it:

(1) Raises or provides equity;

(2) Provides "qualified commercial financing";

(3) Is a Qualified Nonprofit Organization or other not-for-profit entity that is providing solely loan funds, grant funds or social services;

(4) Receives fees as a consultant or advisor that do not exceed $200,000; or

(5) Is a mezzanine finance company that does not have Control.

(b) Maximum Request Limit (Competitive HTC Only). For any given Development, an Applicant may not request more than 150% of the credit amount available in the subregion based on estimates released by the Department on December 1, or $2,000,000 whichever is less. In addition, for Elderly Developments in a Uniform State Service Region containing a county with a population that exceeds one million, the request may not exceed the final amount published on the Department's website after the annual release of the Internal Revenue Service notice regarding the credit ceiling (2306.6711(h)). For all Applications, the Department will consider the amount in the funding request of the pre-application and Application to be the amount of Housing Tax Credits requested and will reduce the Applicant's request to the maximum allowable under this subsection through the underwriting process. While the Housing Tax Credit request amount for an Application may be reduced through the underwriting process or at the written request of staff, the Department shall otherwise consider the request amount final. The Tax Credit request amount cannot be changed through the Administrative Deficiency process. Regardless of the credit amount requested or any subsequent changes to the request made by staff, the Board may not award to any individual Development more than $2 million in a single Application Round. (§2306.6711(b)).

(c) Increase in Eligible Basis (30% Boost). Applications will be evaluated for an increase of up to 30% in Eligible Basis provided they meet any one of the criteria identified in paragraphs (1) - (4) of this subsection. Staff will recommend no increase or a partial increase in Eligible Basis if it is determined it would cause the Development to be over sourced, as determined by the Department, in which case a credit amount necessary to fill the gap in financing will be recommended. In no instance will the boost exceed more than the amount of credits required to create the HTC rent-restricted Units. The criteria in paragraph (3) of this subsection are not applicable to Tax-Exempt Bond Developments.

(1) The Development is located in a Qualified Census Tract (QCT) (as determined by the Secretary of HUD) that has less than 20% Housing Tax Credit Units per total households in the tract as reflected in the Department's current Site Demographic Characteristics Report. New Construction or Adaptive Reuse Developments located in a QCT that has in excess of 20% Housing Tax Credit Units per total households are not eligible for a 30% increase in Eligible Basis, which would otherwise be available for the Development Site pursuant to §42(d)(5) of the Code, unless the Application includes a resolution acknowledging the Development is located in a census tract that has more than 20% Housing Tax Credits Units per total households and stating that the Governing Body of the appropriate municipality or county containing the Development has no objection to the Application. Rehabilitation Developments where this rule is triggered are eligible for the boost and are not required to obtain such a resolution from the Governing Body. An acceptable, but not required, form of resolution may be obtained in the Multifamily Uniform Application Templates. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2(a) of this chapter (relating to Competitive HTC Deadlines), or Resolutions Delivery Date in §11.2(b) of this chapter (relating to Tax-Exempt Bond and Direct Loan Application Dates and Deadlines), as applicable. The Application must include a census map that includes the 11-digit census tract number and clearly shows that the proposed Development is located within a QCT.

(2) The Development is located in a Small Area Difficult Development Area (SADDA)) (based on Small Area Fair Market Rents as determined by the Secretary of HUD) or for Rural areas located in a Difficult Development Area (DDA) that has high construction, land and utility costs relative to the AMGI. The Application must include the SADDA or DDA map that clearly shows the proposed Development is located within the boundaries of a SADDA or DDA as applicable.

(3) For Competitive HTC only, Development meets one of the criteria described in subparagraphs (A) - (F) of this paragraph pursuant to Code, §42(d)(5)(B)(v):

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

(B) The Development is entirely Supportive Housing and is in accordance with §11.1(d) of this chapter (relating to the definition of Supportive Housing);

(C) The Development meets the criteria for the Opportunity Index as defined in §11.9(c)(5) of this chapter (relating to Competitive HTC Selection Criteria);

(D) The Applicant elects to restrict 10% of the proposed low income Units for households at or below 30% of AMGI. These Units may not be used to meet any scoring criteria, or used to meet any Multifamily Direct Loan program requirement;

(E) The Development is in an area covered by a concerted revitalization plan, is not an Elderly Development, and is not located in a QCT. A Development will be considered to be in an area covered by a concerted revitalization plan if it is eligible for and elects points under §11.9(d)(7) of this chapter; or

(F) The Development is located in a Qualified Opportunity Zone designated under the Bipartisan Budget Act of 2018 (H.R. 1892). Pursuant to Internal Revenue Service Announcement 2021-10, the boundaries of the Opportunity Zone are unaffected by 2020 Decennial Census changes.

(4) For Tax-Exempt Bond Developments, as a general rule, a QCT, non-metro DDA or SADDA designation would have to coincide with the program year the Certificate of Reservation is issued in order for the Department to apply the 30% boost in its underwriting evaluation. The Department acknowledges guidance contained in the

Federal Register regarding effective dates of QCT, non-metro DDA and SADDA designations. Pursuant to the Federal Register Notice, unless federal guidance states otherwise, complete Applications (including all Third Party Reports) with a corresponding Certificate of Reservation that are submitted to the Department in the year the QCT, non-metro DDA or SADDA designation is not effective may be underwritten to include the 30% boost, provided a complete application was submitted to the bond issuer in the year the QCT, non-metro DDA or SADDA designation was effective. Where this is the case, the Application must contain a certification from the issuer that speaks to the date on which such complete application (as defined in the Notice) was submitted. If the issuer is a member of the organizational structure then such certification must come from the bond counsel to the issuer.

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

This section identifies the statutorily-mandated Set-asides which the Department is required to administer. An Applicant may elect to compete in each of the Set-asides for which the proposed Development qualifies. In order to be eligible to compete in the Set-aside, the Application must meet the requirements of the Set-aside as of the Full Application Delivery Date. Election to compete in a Set-aside does not constitute eligibility to compete in the Set-aside, and Applicants who are ultimately deemed not to qualify to compete in the Set-aside will be considered not to be participating in the Set- aside for purposes of qualifying for points under §11.9(e)(3) of this chapter (related to Criteria promoting the efficient use of limited resources and applicant accountability). Commitments of Competitive HTCs issued by the Board in the current program year will be applied to each Set-aside, Rural regional allocation, Urban regional allocation, and USDA Set-aside for the current Application round as appropriate.

(1) Nonprofit Set-Aside. (§2306.6729 and §2306.6706(b)). At least 10% of the State Housing Credit Ceiling for each calendar year shall be allocated to Qualified Nonprofit Developments which meet the requirements of Code, §42(h)(5) and Tex. Gov't Code §2306.6729 and §2306.6706(b). Qualified Nonprofit Organizations must have the controlling interest in the Development Owner applying for this Set-aside (i.e., greater than 50% ownership in the General Partner). If the Application is filed on behalf of a limited partnership, the Qualified Nonprofit Organization must be the manager of the Managing General Partner. If the Application is filed on behalf of a limited liability company, the Qualified Nonprofit Organization must be the Manager of the controlling Managing Member. Additionally, for Qualified Nonprofit Development in the Nonprofit Set-aside the nonprofit entity or its nonprofit Affiliate or subsidiary must be the Developer or a co-Developer as evidenced in the development agreement. An Applicant that meets the requirements to be in the Qualified Nonprofit Set-aside is deemed to be applying under that Set-aside unless their Application specifically includes an affirmative election to not be treated under that Set-aside and a certification that they do not expect to receive a benefit in the allocation of tax credits as a result of being affiliated with a nonprofit. The Department reserves the right to request a change in this election or to not recommend credits for those unwilling to change elections if insufficient Applications in the Nonprofit Set-Aside are received. Applicants may not use different organizations to satisfy the state and federal requirements of the Set-aside.

(2) USDA Set-Aside. (§2306.111(d-2)). 5% of the State Housing Credit Ceiling for each calendar year shall be allocated to Rural Developments which are financed through USDA. If an Application in this Set-aside involves Rehabilitation it will be attributed to and come from the At- Risk Development Set-aside; if an Application in this set-aside involves New Construction it will be attributed to and come from the applicable Uniform State Service Region and will compete within the applicable subregion unless the Application is receiving USDA Section 514 funding. Applications must also meet all requirements of Tex. Gov't Code §2306.111(d-2).

(A) Eligibility of Certain Developments to Participate in the USDA or Rural Set-asides. (§2306.111 (d-4)). A proposed or Existing Residential Development that, before September 1, 2013, has been awarded or has received federal financial assistance provided under §§514, 515, or 516 of the Housing Act of 1949 (42 U.S.C. §§1484, 1485, or 1486) may be attributed to and come from the At-Risk Development Set-aside or the Uniform State Service Region in which the Development is located, regardless of whether the Development is located in a Rural Area.

(B) All Applications that are eligible to participate under the USDA Set-aside will be considered Rural for all scoring items under this chapter. If a Property receiving USDA financing is unable to participate under the USDA Set-aside and it is located in an Urban subregion, it will be scored as Urban.

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

(A) At least 15% of the State Housing Credit Ceiling for each calendar year will be allocated under the At-Risk Development Set-aside and will be deducted from the State Housing Credit Ceiling prior to the application of the regional allocation formula required under §11.6 of this chapter (relating to Competitive HTC Allocation Process). Through this Set-aside, the Department, to the extent possible, shall allocate credits to Applications involving the preservation of Developments identified as At-Risk Developments. (§2306.6714) 5% of the State Housing Credit Ceiling associated with this Set-aside will be given as priority to Rehabilitation Developments under the USDA Set-aside; additional Applications that qualify under the USDA Set-Aside may compete within the At-Risk Set-Aside only if they meet the definition for an At-Risk Development, have submitted sufficient supporting documentation within the Application to demonstrate qualification as an At-Risk Development, and were not submitted under the USDA Set-Aside. Applications submitted under the USDA Set-Aside in excess of meeting the 5% priority do not qualify for the At-Risk Set-Aside.

(B) An At-Risk Development qualifying under Tex. Gov't Code §2306.6702(a)(5)(A) must meet the following requirements:

(i) Pursuant to Tex. Gov't Code §2306.6702(a)(5)(A)(i), a Development must have received the benefit of a subsidy in the form of a qualified below-market interest rate loan, interest rate reduction, rental subsidy, Section 8 housing assistance payment, rental supplement payment, rental assistance payment, or equity incentive from any of the programs provided in subclauses (I) to (VIII) of this clause. Applications participating in the At-Risk Set-Aside must include evidence of the qualifying subsidy.

(I) Sections 221(d)(3) and (5), National Housing Act (12 U.S.C. §1715l);

(II) Section 236, National Housing Act (12 U.S.C. §1715z-1);

(III) Section 202, Housing Act of 1959 (1 2 U.S.C. §1701q);

(IV) Section 101, Housing and Urban Development Act of 1965 (12 U.S.C. §1701s);

(V) the Section 8 Additional Assistance Program for housing developments with HUD-Insured and HUD-Held Mortgages administered by the United States Department of Housing and Urban Development as specified by 24 CFR Part 886, Subpart A;

(VI) the Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects administered by the United States Department of Housing and Urban Development as specified by 24 CFR Part 886, Subpart C; (VII) §§514, 515, and 516, Housing Act of 1949 (42 U.S.C. §§1484, 1485, and 1486);

(VII) §§514, 515, and 516, Housing Act of 1949 (42 U.S.C. §§1484, 1485, and 1486); or

(VIII) §42, Internal Revenue Code of 1986.

(ii) Any stipulation to maintain affordability in the contract granting the subsidy or any HUD-insured or HUD-held mortgage as described in §2306.6702(a)(5)(A)(ii)(a) will be considered to be nearing expiration or nearing the end of its term if the contract expiration will occur or the term will end within two years after July 31 of the year the Application is submitted. Developments with HUD-insured or HUD-held mortgages qualifying as At-Risk under §2306.6702(a)(5)(A)(ii)(b) will be considered eligible if the HUD-insured or HUD-held mortgage is eligible for prepayment.

(iii) Developments with existing Department LI-HTC LURAs must have completed all applicable Right of First Refusal procedures prior to the pre-application Final Delivery Date.

(C) An At-Risk Development qualifying under Tex. Gov't Code §2306.6702(a)(5)(B) must meet one of the requirements under clause (i), (ii) or (iii) of this subparagraph and also meet the stipulations noted in clause (iv) of this subparagraph:

(i) Units to be Rehabilitated or Reconstructed must be owned by a public housing authority or a public facility corporation created by a public housing authority under Chapter 303, Local Government Code and received assistance under §9, United States Housing Act of 1937 (42 U.S.C. §1437g); or

(ii) Units to be Rehabilitated or Reconstructed must have been proposed to be disposed of or demolished, or already disposed or demolished within the two-year period preceding the date the Application is submitted, by a public housing authority or public facility corporation created by a public housing authority under Chapter 303, Local Government Code and received assistance under §9, United States Housing Act of 1937 (42 U.S.C. §1437g); or

(iii) To the extent that an Application is eligible under Tex. Gov't Code §2306.6702(a)(5)(B)(iii), the Development must receive assistance through the Rental Assistance Demonstration (RAD) program administered by the United States Department of Housing and Urban Development (HUD). Applications must include evidence that RAD participation is included in the applicable public housing plan that was most recently approved by HUD, and evidence that HUD has approved the Units proposed for Rehabilitation or Reconstruction for participation in the RAD program; and

(iv) Notwithstanding any other provision of law, an At-Risk Development described by Tex. Gov't Code §2306.6702(a)(5)(B) that was previously allocated housing tax credits set aside under subsection (a) of this section does not lose eligibility for those credits if the portion of Units reserved for public housing as a condition of eligibility for the credits under Tex. Gov't Code §2306.6714 (a-1)(2) are later converted under RAD.

(D) An Application for a Development that includes the demolition of the existing Units which have received the financial benefit described in Tex. Gov't Code §2306.6702(a)(5)(i) will not qualify as an At-Risk Development unless the redevelopment will include at least a portion of the same site. Alternatively, pursuant to Tex. Gov't Code §2306.6702(a)(5)(B), an Applicant may propose relocation of the existing Units in an otherwise qualifying At-Risk Development if:

(i) the affordability restrictions and any At-Risk eligible subsidies are approved to be transferred with the units proposed for Rehabilitation or Reconstruction prior to the tax credit Carryover deadline;

(ii) the Applicant seeking tax credits must propose at least the same number of restricted Units (the Applicant may, however, add market rate Units, and other rules, limitations, approvals, and potential conflicting requirements based on fund source, number and unit type may be implicated by creating more units than the original number); and

(iii) the new Development Site must either:

(I) qualify for points on the Opportunity Index under §11.9(c)(5) of this chapter (relating to Competitive HTC Selection Criteria); or

(II) the local Governing Body of the applicable municipality or county (if completely outside of a municipality) in which that Development is located must submit a resolution confirming that the proposed Development is supported by the municipality or county in order to carry out a previously adopted plan that meets the requirements of §11.9(d)(7) of this chapter. Development Sites that cross jurisdictional boundaries must provide such resolutions from both local governing bodies.

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

(i) Evidence of the legal requirements that will unambiguously cause the loss of affordability and that this will occur within the two calendar years of July 31 of the year the Application is submitted, and must be included with the application.

(ii) For Developments qualifying under Tex. Gov't Code §2306.6702(a)(5)(B), only a portion of the subsidy must be retained for the proposed Development, but no less than 25% of the proposed Units must be public housing units supported by public housing operating subsidy. (§2306.6714(a-1). If less than 100% of the public housing benefits are transferred to the proposed Development, an explanation of the disposition of the remaining public housing benefits must be included in the Application, as well as a copy of the HUD-approved plan for demolition and disposition.

(F) Nearing expiration on a requirement to maintain affordability includes Developments eligible to request a Qualified Contract under both Code, §42 and Department rules. Evidence must be provided in the form of a copy of the recorded LURA, the first year's IRS Forms 8609 for all buildings showing Part II of the form completed and, if applicable, documentation from the original application regarding the Right of First Refusal. The Application must also include evidence that any applicable Right of First Refusal procedures have been completed prior to the pre-application Final Delivery Date.

(G) An amendment to any aspect of the existing tax credit property sought to enable the Development to qualify as an At-Risk Development, that is submitted to the Department after the Application has been filed and is under review will not be accepted.

§11.6. Competitive HTC Allocation Process.

This section identifies the general allocation process and the methodology by which awards during the Application Round are made.

(1) Regional Allocation Formula. The Department shall initially make available in each Rural Area and Urban Area of each Uniform State Service Region (subregion) Housing Tax Credits in an

amount not less than $750,000 in each Rural and Urban subregion, consistent with the Regional Allocation Formula developed in compliance with Tex. Gov't Code §2306.1115. As authorized by Tex. Gov't Code §2306.111(d-3), the Department will reserve $750,000 in housing tax credits for Applications in rural areas in each uniform state service region. The process of awarding the funds made available within each subregion shall follow the process described in this section. Where a particular situation that is not contemplated and addressed explicitly by the process described herein, Department staff shall formulate a recommendation for the Board's consideration based on the objectives of the regional allocation formula together with other policies and purposes set out in Tex. Gov't Code, Chapter 2306 and the Department shall provide the public the opportunity to comment on and propose alternatives to such a recommendation. In general, such a recommendation shall not involve broad reductions in the funding request amounts solely to accommodate regional allocation and shall not involve rearranging the competitive ranking of Applications within a particular subregion or set-aside except as described herein. If the Department determines that an allocation recommendation would cause a violation of the $6 million credit limit per Applicant, the Department will make its recommendation based on the criteria described in §11.4(a) of this chapter (relating to Tax Credit Request, Award Limits and Increase in Eligible Basis). The Department will publish on its website on or before December 1 of each year, initial estimates of Regional Allocation Formula percentages and limits of credits available, and the calculations periodically, if those calculations change, until the credits are fully allocated.

(2) Credits Returned and National Pool Allocated After January 1. For any credits returned after January 1 and eligible for reallocation (not including credit returned and reallocated under force majeure provisions), the Department shall first return the credits to the subregion or set-aside from which the original allocation was made. The credits will be treated in a manner consistent with the allocation process described in this section and may ultimately flow from the subregion and be awarded in the collapse process to an Application in another region, subregion or set-aside. Consistent with the allocation process described in this section, credits that are returned to the USDA or At-Risk Set-Asides are not eligible to flow to another subregion or set-aside unless no eligible Applications remain in the Set-Aside to which the credits were returned. For any credit received from the "national pool" after the initial approval of awards in late July, the credits will be added to any remaining credits and awarded to the next Application on the waiting list for the state collapse, if sufficient credits are available to meet the requirements of the Application as may be amended after underwriting review.

(3) Award Recommendation Methodology. (§2306.6710(a) - (f); §2306.111) The Department will assign, as described herein, Developments for review by the program and underwriting divisions. In general, Applications reviews will be conducted in the order described in subparagraphs (A) - (F) of this paragraph based upon the Applicant self-score and an initial program review. The procedure identified in subparagraphs (A) - (F) of this paragraph will also be used in making recommendations to the Board.

(A) USDA Set-Aside Application Selection (Step 1). The first set of reviews will be those Applications with the highest scores in the USDA Set-Aside until the minimum requirements stated in §11.5(2) of this chapter (relating to Competitive HTC Set-Asides. (§2306.111(d)) are attained. The minimum requirement may be exceeded in order to award the full credit request or underwritten amount of the last Application selected to meet the USDA Set-Aside requirement.

(B) At-Risk Set-Aside Application Selection (Step 2). The second set of reviews will be those Applications with the highest scores in the At-Risk Set-Aside statewide until the minimum requirements stated in §11.5(3) of this chapter (relating to At-Risk Set-Aside) are attained. This may require the minimum requirement to be exceeded to award the full credit request or underwritten amount of the last Application selected to meet the At-Risk Set-Aside requirement. This step may leave less than originally anticipated in the 26 subregions to award under the remaining steps. If all eligible Applications participating in the At-Risk Set-Aside are awarded and the minimum requirement stated in §11.5(3) has not been met, the Department will award the highest scoring Applications in the USDA Set-Aside that are otherwise eligible to participate in the At-Risk Set-Aside until that threshold is met.

(C) Initial Application Selection in Each Subregion (Step 3). The highest scoring Applications within each of the 26 subregions will then be selected provided there are sufficient funds within the subregion to fully award the Application with the priorities in this subparagraph first prioritized. Applications electing the At-Risk or USDA Set-Asides will not be eligible to receive an award from funds made generally available within each of the subregions. In Urban subregions in which credits available do not allow for all of the priorities in clauses (iii) to (v) of this subparagraph to be achieved, the priorities will be followed in the order reflected in this subparagraph.

(i) In Uniform State Service Regions containing a county with a population that exceeds one million, the Board may not allocate more than the maximum percentage of credits available for Elderly Developments, unless there are no other qualified Applications in the subregion. The Department will, for each such Urban subregion, calculate the maximum percentage in accordance with Tex. Gov't Code §2306.6711(h), and will publish such percentages on its website.

(ii) In accordance with Tex. Gov't Code, §2306.6711(g), in Uniform State Service Regions containing a county with a population that exceeds 1.7 million, the Board shall allocate competitive tax credits to the highest scoring Development, if any, that is part of a concerted revitalization plan that meets the requirements of §11.9(d)(7) (except for §11.9(d)(7)(A)(ii)(III) and §11.9(d)(7)(B)(iii)), is located in an Urban subregion, and is within the boundaries of a municipality with a population that exceeds 500,000.

(iii) In Urban subregions containing a county with a population that exceeds 750,000, the Board shall allocate competitive tax credits to the highest scoring Development, if any, that is located in a neighborhood which is a recipient of a HUD Choice Neighborhood Planning or Implementation grant in the preceding five years from the date of Application submission and funds from the HUD Choice Neighborhood awardee are reflected in the Application's Sources and Uses.

(iv) In Urban subregions containing a county with a population that exceeds 1,000,000, the Board shall allocate competitive tax credits to the highest scoring Development, if any, that elects to provide a High-Quality Pre-Kindergarten (HQ Pre-K) program and associated educational space at the Development Site that meets the requirements of items (a)-(c) of subparagraph (C)(i)(I) of §11.101(b)(5)-(related to Common Amenities). Developments serving a Target Population that is Elderly or Supportive Housing are not eligible for this item.

(v) In Urban and Rural subregions that do not contain a county with a population of at least 2,500,000, no more than one Application with a Supportive Housing Target Population will be awarded unless there are no other eligible Applications in the subregion. Awards made in the At-Risk Set-Aside will not count towards this limitation.

(vi) In Urban subregions that contain a county with a population of at least 2,500,000, no more than two Applications with

a Supportive Housing Target Population will be awarded unless there are no other eligible Applications in the subregion. Awards made in the At-Risk Set-Aside will not count towards this limitation.

(D) Rural Collapse (Step 4). If there are any tax credits set-aside for Developments in a Rural Area in a specific Uniform State Service Region (Rural subregion) that remain after award under subparagraph (C) of this paragraph, those tax credits shall be combined into one "pool" and then be made available in any other Rural Area in the state to the Application in the most underserved Rural subregion as compared to the subregion's allocation, continuing with the priorities and limitations established in §11.6(3)(C). This rural redistribution will continue until all of the tax credits in the "pool" are allocated to Rural Applications and at least 20% of the funds available to the State are allocated to Applications in Rural Areas. (§2306.111(d)(3)) In the event that more than one subregion is underserved by the same percentage, the priorities described in clauses (i) - (ii) of this subparagraph will be used to select the next most underserved subregion:

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

(ii) the subregion that was the most underserved during the Application Round during the year immediately preceding the current Application Round.

(E) Statewide Collapse (Step 5). Any credits remaining after the Rural Collapse, including those in any subregion in the State, will be combined into one "pool." The funds will be used to award the highest scoring Application, and continuing with the priorities and limitations established in §11.6(3)(C), in the most underserved subregion in the State compared to the amount originally made available in each subregion. In Uniform State Service Regions containing a county with a population that exceeds one million, the Board may not allocate more than the maximum percentage of credits available as calculated through the Regional Allocation Formula (RAF) for Elderly Developments, within an Urban subregion of that service region. Therefore, certain Applications for Elderly Developments may be excluded from receiving an award from the collapse. The Department will, for each such Urban subregion, calculate the maximum percentage in accordance with Tex. Gov't Code §2306.6711(h) and will publish such percentages on its website. This process will continue until the funds remaining are insufficient to award the next highest scoring Application that is not rendered ineligible through application of the elderly cap in the next most underserved subregion. At least seven calendar days prior to the July Board meeting of the Department at which final awards of credits are authorized, the Department will post on its website the most current 2024 State of Texas Competitive Housing Tax Credit Ceiling Accounting Summary which includes the Regional Allocation Formula percentages including the maximum funding request/award limits, the Elderly Development maximum percentages and limits of credits available, and the methodology used for the determination of the award determinations within the State Collapse. In the event that more than one subregion is underserved by the same degree, the priorities described in clauses (i) and (ii) of this subparagraph will be used to select the next most underserved subregion:

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

(ii) the subregion that was the most underserved during the Application Round during the year immediately preceding the current Application Round.

(F) Contingent Qualified Nonprofit Set-aside Step (Step 6). If an insufficient number of Applications participating in the Nonprofit Set-Aside are selected after implementing the criteria described in subparagraphs (A) - (E) of this paragraph to meet the requirements of the 10% Nonprofit Set-Aside, action must be taken to modify the criteria described in subparagraphs (A) - (E) of this paragraph to ensure the Set-aside requirements are met. Therefore, the criteria described in subparagraphs (C) - (E) of this paragraph will be repeated after selection of the highest scoring Application(s) under the Nonprofit Set-aside statewide are selected to meet the minimum requirements of the Nonprofit Set- Aside. This step may cause some lower scoring Applications in a subregion to be selected instead of a higher scoring Application not participating in the Nonprofit Set-aside.

(4) Waiting List. The Applications that do not receive an award by July 31 and remain active and eligible will be recommended for placement on the waiting list. The waiting list is not static. The allocation process will be used in determining the next Application to award. If credits are returned through any process, those credits will first be made available in the set-aside or subregion from which they were originally awarded. The first Application on the waiting list is in part contingent on the nature of the credits that became available for award. The Department shall hold all credit available after the late-July awards until September 30 in order to collect credit that may become available when tax credit Commitments are submitted. Credit confirmed to be available, as of September 30, may be awarded to Applications on the waiting list unless insufficient credits are available to fund the next Application on the waiting list. For credit returned after September 30, awards from the waiting list will be made when the remaining balance is sufficient to award the next Application as may be amended on the waiting list based on the date(s) of returned credit. Notwithstanding the foregoing, if decisions related to any returns or rescissions of tax credits are under appeal or are otherwise contested, the Department may delay awards until resolution of such issues. The Department will evaluate all waiting list awards for compliance with requested Set-asides. This may cause some lower scoring Applications to be selected instead of a higher scoring Application. Where sufficient credit becomes available to award an Application on the waiting list later in the calendar year, staff may allow flexibility in meeting the Carryover Allocation submission deadline and changes to the Application as necessary to ensure to the extent possible that available resources are allocated by December 31. (§2306.6710(a) - (f); §2306.111).

(5) Credit Returns Resulting from Force Majeure Events. In the event that the Department receives a return of Competitive HTCs during the current program year from an Application that received a Competitive Housing Tax Credit award during any of the preceding three years, and the Development cannot be completed within six months of its initial deadline to place in service, such returned credit will, if the Board determines that all of the requirements of this paragraph are met to its satisfaction, be allocated separately from the current year's tax credit allocation, and not be subject to the requirements of paragraph (2) of this section. The Board determination must indicate the year of the Multifamily Rules to be applied to the Development. The Department's Governing Board may impose a deadline that is earlier than the Placed in Service Deadline and may impose conditions that were not placed on the original allocation. Requests to allocate returned credit separately where all of the requirements of this paragraph have not been met or requests for waivers of any part of this paragraph will not be considered. In addition, requests will only be presented to the Board within 180 days of the applicable Placed in Service deadline. For purposes of this paragraph, credits returned after September 30 of the preceding program year may be considered to have been returned on January 1 of the current year in accordance with the treatment described in §(b)(2)(C)(iii) of Treasury Regulation 1.42-14. The Board may approve the execution of a current program year Carryover Agreement regarding the returned credits with the Development Owner that returned such credits only if:

(A) The credits were returned as a result of "Force Majeure" events that occurred before issuance of Forms 8609. Force Majeure events are the following sudden and unforeseen circumstances outside the control of the Development Owner: acts of God such as fire, tornado, flooding, significant and unusual rainfall or subfreezing temperatures, or loss of access to necessary water or utilities as a direct result of significant weather events; explosion; vandalism; orders or acts of military authority; unrelated party litigation; changes in law, rules, or regulations; national emergency or insurrection; riot; acts of terrorism; supplier failures; or materials or labor shortages. If a Force Majeure event is also a presidentially declared disaster, the Department may treat the matter under the applicable federal provisions. Force Majeure events must make construction activity impossible or materially impede its progress;

(B) Acts or events caused by the negligent or willful act or omission of the Development Owner, Affiliate or a Related Party shall under no circumstance be considered to be caused by Force Majeure. In order for rainfall, material shortages, or labor shortages to constitute Force Majeure, the Development Owner must clearly explain and document how such events could not have been reasonably foreseen and mitigated through appropriate planning and risk management. Staff may use Construction Status reports for the subject or other Developments in conducting their review and forming a recommendation to the Board;

(C) To be eligible for consideration, construction of the Development must have already commenced;

(D) A Development Owner claiming Force Majeure must provide evidence of the type of event, as described in subparagraph (A) of this paragraph, when the event occurred, and that the loss was a direct result of the event;

(E) The Development Owner must prove that reasonable steps were taken to minimize or mitigate any delay or damages, that the Development Owner substantially fulfilled all obligations not impeded by the event, including timely closing of all financing and start of construction, that the Development and Development Owner was properly insured and that the Department was timely notified of the likelihood or actual occurrence of an event described in subparagraph (A) of this paragraph;

(F) The event prevents the Development Owner from meeting the placement in service requirements of the original allocation;

(G) The requested current year Carryover Agreement allocates the same amount of credit as that which was returned; and

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

(6) Credit Returns Due to Unforeseen Short-term Delays. In the event that the Department receives a return of Competitive HTCs during the current program year from an Application that received a Competitive Housing Tax Credit award during any of the preceding three years, and the Development is anticipated to be completed within six months of its original deadline to place in service, such returned credit will, if the staff determines that all of the requirements of this paragraph are met to its satisfaction, be allocated separately from the current year's tax credit allocation, and not be subject to the requirements of paragraph (2) of this section. The Multifamily Rules from the initial year of allocation shall be applicable to the Development, to the extent allowed by federal or state law. The new deadline to place in service will be no more than six months from the original deadline. Requests to allocate returned credit separately where all of the requirements of this paragraph have not been met or requests for waivers of any part of this paragraph will not be considered. For purposes of this paragraph, credits returned after September 30 of the preceding program year may be considered to have been returned on January 1 of the current year in accordance with the treatment described in §(b)(2)(C)(iii) of Treasury Regulation 1.42-14. Staff may issue and execute a current program year Carryover Agreement regarding the returned credits with the Development Owner that returned such credits only the following requirements are met. In the event that staff cannot reasonably conclude that all necessary conditions have been met, it may present the matter to the Board for determination:

(A) The credits were returned for good cause as solely determined by staff or the Board;

(B) A Development Owner claiming good cause must provide evidence of the circumstances;

(C) The Development Owner must prove that reasonable steps were taken to minimize or mitigate any delay or damages, that the Development Owner substantially fulfilled all reasonable obligations, that the Development and Development Owner was properly insured and that the Department was timely notified of the likelihood of delay;

(D) The good cause event prevents the Development Owner from meeting the placement in service requirements of the original allocation;

(E) The requested current year Carryover Agreement allocates the same amount of credit as that which was returned;

(F) If the good cause event necessitates an insurance claim, the Department's Real Estate Analysis Division determines that the Development continues to be financially feasible in accordance with the Department's underwriting rules after taking into account any insurance proceeds related to the event; and

(G) The Development Owner has not previously returned the credit allocation and had it reallocated under any provision of this chapter.

§11.7. Tie Breaker Factors.

In the event there are Competitive HTC Applications that receive the same number of points in any given set-aside category, rural regional allocation or urban regional allocation, or rural or statewide collapse, the Department will utilize the factors in this section, in the order they are presented, to determine which Development will receive preference in consideration for an award. For the purposes of this section, all measurements will include ingress/egress requirements and any easements regardless of how they will be held. The tie breaker factors are not intended to specifically address a tie between equally underserved subregions in the rural or statewide collapse.

(1) For Applications funded through the USDA Set-Aside:

(A) Applications proposed to rehabilitate the Property with the earliest year of initial construction as a residential Development.

(i) Only the year of initial construction will be taken into consideration. The specific date of construction or conversion will not affect this tie breaker. A tie will persist if two Applications have the same year. In the event that a Development was constructed over a number of years, the earliest year will be used.

(ii) Year submitted must be evidenced by the initial USDA loan documentation. If such documentation does not exist or cannot be provided, the Application is ineligible for this tiebreaker.

(B) Once 5% or more of the State Housing Credit Ceiling has been allocated to USDA developments, no further applications with USDA financing shall receive preference under this tie breaker but may receive preference under subsections (2) and (3) of this paragraph.

(2) For all other competitive Applications:

(A) Applications proposed to be located in closest proximity to the following features as of the Full Application Delivery Date. A feature will be disqualified if, as of the Full Application Delivery Date, a public announcement has been made regarding its anticipated closure:

(i) A park or a parcel of land dedicated for public use by either a governmental entity or an entity authorized or created by a governmental entity that is used as parkland or for a recreational purpose. This feature must have been designated by the relevant authority and operating as a public park one year prior to the Full Application Delivery Date. Features that charge admission for the general public to access the entire property for the majority of the calendar year are not eligible for consideration. A school campus' facilities may not be used for this feature. Unimproved land that has been dedicated but that is not operating as a public park will not qualify; however, wilderness areas with an intentional recreational use (e.g., established hiking trails, bird-watching areas, community gardens, or natural retreats) may qualify so long as they meet all requirements.

(ii) The closest public school campus of any grade level that is part of an independent school district.

(iii) A full service grocery store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed Development; offering a wide variety of fresh, frozen, canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items.

(iv) A Public Library with indoor space, physical books that can be checked out and that are of general and wide-ranging subject matter, computers and internet access, and that is: Open 35 hours or more per week in an Urban Area and 25 hours or more per week in a Rural Area. The library must not be age or subject-restricted and must be at least partially funded with government funding.

(B) The linear measurement will be performed from closest parcel boundary of the Development Site to closest parcel boundary of each feature. The Department may prescribe a specific form to be used for the calculation of these distances using GPS coordinates provided by the Applicant.

(C) In calculating this proximity, each feature's distance will be required for submittal, with the sum of the three closest features being used to produce the result. The Application with the lowest sum of proximity will receive preference.

(D) In the event that one of the top three features is disqualified due to not conforming to the definitions provided or a substantial misrepresentation of distance from the development, the fourth will be used as an opportunity to replace the disqualified feature. If multiple features are disqualified, the Application will not receive preference. If the competing application(s) also has multiple disqualified features the tie will persist.

(E) In the event that the sum proximities described under §11.7(2)(B) for two tied Applications differ by 100 or fewer feet, the tie will persist.

(3) If the tie persists, preference will be given to the Application that proposes the lowest Housing Tax Credit request per Low-Income Unit. This calculation will be determined based on the initial Application, and will not be adjusted in the event that the Department's Real Estate Analysis Division recommends a lower Housing Tax Credit award than was initially requested.

(4) If the tie persists, preference will be determined using this final tiebreaker. Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development that serves the same Target Population and that was awarded 15 or fewer years ago. Years are measured in whole years, and are calculated by deducting the year of the award from the "Board Approval" column of the property inventory from the Site Demographics Characteristics report from the current year. The specific month and date of the award are disregarded for this analysis. Developments awarded Housing Tax Credits but do not yet have a Land Use Restriction Agreement in place will be considered Housing Tax Credit assisted Developments for purposes of this paragraph according to the property inventory included in the HTC Site Demographic Characteristics Report. The linear measurement will be performed from closest boundary to closest boundary of the Site presented at Pre-Application, if a pre-application is submitted, or the Site presented at full Application, whichever is closest.

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

(a) General Submission Requirements. The pre-application process allows Applicants interested in pursuing an Application to assess potential competition across the 13 state service regions, subregions, and set-asides. Based on an understanding of the potential competition they can make a more informed decision about whether they wish to proceed to prepare and submit an Application. A complete pre-application is a pre-application that meets all of the Department's criteria, as outlined in subsections (a) and (b) of this section.

(1) The pre-application must be submitted using the URL provided by the Department, as outlined in the Multifamily Programs Procedures Manual, along with the required pre-application fee as described in §11.901 of this chapter (relating to Fee Schedule), not later than the pre-application Final Delivery Date as identified in §11.2(a) of this chapter (relating to Competitive HTC Deadlines). If the pre-application and corresponding fee is not submitted on or before this deadline the Applicant will be deemed to have not made a pre-application.

(2) Only one pre-application may be submitted by an Applicant for each Development Site and for each Site Control document.

(3) Department review at this stage is limited, and not all issues of eligibility and threshold are reviewed or addressed at pre-application. Acceptance by staff of a pre-application does not ensure that an Applicant satisfies all Application eligibility, threshold or documentation requirements. While the pre-application is more limited in scope than the Application, pre-applications are subject to the same limitations, restrictions, or causes for disqualification or termination as Applications, and pre-applications will thus be subject to the same consequences for violation, including but not limited to loss of points and termination of the pre-application.

(4) The pre-application becomes part of the full Application if the full Application claims pre-application points.

(5) Regardless of whether a Full Application is submitted, a pre-application may not be withdrawn after the Full Application Delivery Date described in §11.2(a) of this chapter.

(b) Pre-Application Threshold Criteria. Pursuant to Tex. Gov't Code §2306.6704(c) pre-applications will be terminated unless they meet the threshold criteria described in subsection (a) of this section and paragraphs (1) and (2) of this subsection:

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

(A) Site Control meeting the requirements of §11.204(9) of this title (relating to Required Documentation for Application Submission). For purposes of meeting this specific requirement related to pre-application threshold criteria, proof of consideration and any documentation required for identity of interest transactions is not required at the time of pre-application submission but will be required at the time of full application submission;

(B) Funding request;

(C) Target Population;

(D) Requested set-asides (At-Risk, USDA, Nonprofit, or Rural);

(E) Total Number of Units proposed;

(F) Census tract number or numbers in which the Development Site is located, and a map of the census tract(s) with an outline of the proposed Development Site;

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

(H) Proposed name of ownership entity;

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

(J) The name and coordinates of the nearest park, grocery store, and library meeting the criteria established in 10 TAC §11.7(2) as well as the name and coordinates of the school to be used for the Tie Breaker;

(K) For Applications funded through the USDA Set-Aside; year of initial construction as evidenced by the initial USDA loan documentation;

(L) If a high-quality Pre-Kindergarten is to be provided under §11.6(3)(C)(v), the election must be made at pre-application and may not change at full Application; and

(M) The name and address of the nearest Housing Tax Credit assisted Development that serves the same Target Population and was awarded 15 or fewer years ago following the calculation established in 10 TAC §11.7(3) according to the Department's property inventory tab of the Site Demographic Characteristics Report.

(2) Evidence in the form of a certification provided in the pre-application, that all of the notifications required under this paragraph have been made. (§2306.6704).

(A) The Applicant must list in the pre-application all Neighborhood Organizations on record with the county or state 30 days prior to the beginning of the Application Acceptance Period whose boundaries include the entire proposed Development, where a reasonable search for applicable entities has been conducted.

(B) Notification Recipients. Developments located in an ETJ of a municipality are required to notify both municipal and county officials. The notifications may be sent by e-mail, fax or mail with registered return receipt or similar tracking mechanism in the format included in the Public Notification Template provided in the Uniform Multifamily Application Template or in an alternative format that meets the applicable requirements and achieves the intended purpose. The Applicant is required to retain proof of delivery in the event the Department requests proof of notification. Acceptable evidence of such delivery is demonstrated by signed receipt for mail or courier delivery and confirmation of delivery for fax and e-mail. Officials to be notified are those officials in office at the time the pre-application is submitted; however, a mailed notification that is addressed to the entity or officeholder rather than a specific person is acceptable so long as it is mailed to the correct address and otherwise meets all requirements. Between the time of pre-application (if made) and full Application, the boundaries of an official's jurisdictions may change. If there is a change in jurisdiction between pre-application and the Full Application Delivery Date that results in the Development being located in a new jurisdiction, additional notifications must be made at full Application to any entity that has not been previously notified by the Applicant. Meetings and discussions do not constitute notification. Only a timely and compliant written notification to the correct entity constitutes notification. No later than the date the pre-application is submitted, notification must be sent to all of the entities prescribed in clauses (i) - (viii) of this subparagraph:

(i) Neighborhood Organizations on record with the state or county 30 days prior to the beginning of the Application Acceptance Period whose boundaries include the entire proposed Development Site;

(ii) Superintendent of the school district in which the Development Site is located;

(iii) Presiding officer of the board of trustees of the school district in which the Development Site is located;

(iv) Mayor of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

(v) All elected members of the Governing Body of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

(vi) Presiding officer of the Governing Body of the county in which the Development Site is located;

(vii) All elected members of the Governing Body of the county in which the Development Site is located; and

(viii) State Senator and State Representative of the districts whose boundaries include the proposed Development Site.

(C) Contents of Notification.

(i) The notification must include, at a minimum, all of the information described in subclauses (I) - (IX) of this clause:

(I) The Applicant's name, address, an individual contact name and phone number;

(II) The Development name, address, city, and county;

(III) A statement informing the entity or individual being notified that the Applicant is submitting a request for Housing Tax Credits with the Texas Department of Housing and Community Affairs;

(IV) Whether the Development proposes New Construction, Reconstruction, Adaptive Reuse, or Rehabilitation;

(V) The physical type of Development being proposed (e.g. single family homes, duplex, apartments, high-rise, etc.);

(VI) The approximate total number of Units and approximate total number of Low-Income Units;

(VII) The residential density of the Development, i.e., the number of Units per acre;

(VIII) Information on how and when an interested party or Neighborhood Organization can provide input to the Department; and

(IX) Information on any proposed property tax exemption.

(ii) The notification may not contain any false or misleading statements. Without limiting the generality of the foregoing, the notification may not create the impression that the proposed Development will serve a population exclusively or as a preference unless such targeting or preference is documented in the Application and is in full compliance with all applicable state and federal laws, including state and federal fair housing laws.

(iii) Notifications or any other communications may not contain any statement that violates Department rules, statute, code, or federal requirements.

(c) Pre-Application Results. Only pre-applications which have satisfied all of the pre-application requirements, including those in §11.9(e)(3) of this chapter (relating to Criteria promoting the efficient use of limited resources and applicant accountability), will be eligible for pre-application points. The order and scores of those Developments released on the pre-application Submission Log do not represent a Commitment on the part of the Department or the Board to allocate tax credits to any Development and the Department bears no liability for decisions made by Applicants based on the results of the pre-application Submission Log. Inclusion of a pre-application on the pre-application Submission Log does not ensure that an Applicant will receive points for a pre-application.

(d) Applicants that may be requesting a Multifamily Direct Loan from the Department may submit a Request for Preliminary Determination on or before February 13, 2026. The results of evaluation of the Request may be used as evidence of review of the Development and the Principals for purposes of scoring under §11.9(e)(1)(F) of this chapter. Submission of a Request for Preliminary Determination does not obligate the Applicant to request Multifamily Direct Loan funds with their full Application.

§11.9. Competitive HTC Selection Criteria.

(a) General Information. This section identifies the scoring criteria used in evaluating and ranking Applications. The criteria identified in subsections (b) - (e) of this section include those items required under Tex. Gov't Code, Chapter 2306, Code §42, and other criteria established in a manner consistent with Chapter 2306 and Code §42.

(1) There is no rounding of numbers in this section for any of the calculations in order to achieve the desired requirement or limitation, unless rounding is explicitly stated as allowed for that particular calculation or criteria. The Application must include one or more maps indicating the location of the Development Site and the related distance to the applicable facility. Distances are to be measured from the nearest boundary of the Development Site to the nearest boundary of the property or easement containing the facility, unless otherwise noted. For the purposes of this section, all measurements will include ingress/egress requirements and any easements regardless of how they will be held.

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

(3) For scoring items that relate directly to the Application's finances, when costs or financing change after completion of underwriting or award (whichever occurs later), the points attributed to an Application will not be reassessed unless there is clear evidence that the information in the Application was intentionally misleading or incorrect.

(b) Criteria promoting development of high quality housing.

(1) Size and Quality of the Units. (§2306.6710(b)(1)(D); 2306.6725(b)(1); §42(m)(1)(C)(iii) and (ix)) An Application may qualify for up to fifteen (15) points under subparagraphs (A) and (B) of this paragraph.

(A) Unit Sizes (6 points). The Development must meet the minimum requirements identified in this subparagraph to qualify for points. Points for this item will be automatically granted for Applications involving Rehabilitation (excluding Reconstruction), for Developments receiving funding from USDA, or for Supportive Housing Developments without meeting these square footage minimums only if requested in the Self Scoring Form. If the Development involves both Rehabilitation and Reconstruction or New Construction, the Reconstruction or New Construction Units must meet these requirements:

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

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

(iii) eight-hundred fifty (850) square feet for a two Bedroom Unit;

(iv) one-thousand fifty (1,050) square feet for a three Bedroom Unit; and

(v) one-thousand two-hundred fifty (1,250) square feet for a four Bedroom Unit.

(B) Unit, Development Construction, and Energy and Water Efficiency Features (9 points). Applicants that elect in an Application to provide specific amenity and quality features in every Unit at no extra charge to the tenant will be awarded points based on the point structure provided in §11.101(b)(6)(B) of this title (relating to Unit, Development Construction, and Energy and Water Efficiency Features) and as certified to in the Application. The amenities will be required to be identified in the LURA. Rehabilitation Developments and Supportive Housing Developments will start with a base score of five (5) points.

(2) Sponsor Characteristics. (§42(m)(1)(C)(iv)) An Application may qualify to receive either one (1) or two (2) points if it meets the requirements of either subparagraphs (A), (B), (C), or (D) of this paragraph.

(A) Qualified Nonprofit Organization. The ownership structure contains a Qualified Nonprofit Organization provided the Application is submitted in the Nonprofit Set-Aside. The Qualified Nonprofit Organization must have some combination of ownership interest in the General Partner of the Applicant, Cash Flow from operations, and Developer Fee which taken together equal at least 50%, and no less than 5% for any category. For HUD 202 Rehabilitation projects which prohibit for-profit ownership, ownership will not be required for a nonprofit, only for Cash Flow or Developer Fee; the total ownership percentage must still equal 50%, even if it is only attributable to one of the two categories.

(i) The Qualified Nonprofit Organization must materially participate in the Development and operation of the Development throughout the Compliance Period and must have experience directly related to the housing industry, which may include experience with property management, construction, development, financing, or compliance. Material participation means that the Qualified Nonprofit

Organization is regularly, continuously, and substantially involved in providing services integral to the Development Team; providing services as an independent contractor is not sufficient.

(ii) A Principal of the Qualified Nonprofit Organization cannot be a Related Party to or Affiliate, including the spouse, of any other Principal of the Applicant, Developer, or Guarantor (excluding another Principal of said Qualified Nonprofit Organization). (2 points).

(iii) The Qualified Nonprofit Organization must be involved with the Development Services or in the provision of on-site tenant services during the Development's Affordability Period. A Principal of the Qualified Nonprofit Organization cannot be a Related Party to or Affiliate, including the spouse of, any other Principal of the Applicant, Developer, or Guarantor (excluding another Principal of said Qualified Nonprofit Organization). (1 point).

(B) Nonprofit Organization. The ownership structure contains a nonprofit organization that meets the requirements of IRC §42(h)(5)(C) on the Application Delivery Date, with at least 51% ownership in the General Partner of the Applicant. (2 points)

(i) The nonprofit organization must maintain Control of the Development and materially participate in the operation of the Development throughout the Compliance Period. Nonprofit organizations that formally operate under a parent organization may assign Control of the Development to that parent organization, so long as it meets the requirements of IRC §42(h)(5)(C).

(ii) The nonprofit organization, or individuals with Control of the nonprofit organization, must provide verifiable documentation of at least 10 years' experience in the continuous operation of a Development that provides services similar to those in the proposed Development.

(iii) The Applicant will provide a minimum of 3 additional points under §11.101(7) of this chapter (related to Resident Supportive Services), in addition to points selected under subsection (c)(3) of this section.

(C) Property Tax Status. The Application does not include any exemptions, abatements, rebates, or similar reductions related to the ad valorem taxes imposed by the taxing units in the Development Site's district. The Application must include a certification from the Development Owner that no such exemption or abatement will be sought or effected prior to the expiration of the federal Compliance period, as defined by Code, §42 (2 points).

(D) Housing Authority or HFC. The ownership structure contains a Housing Finance Corporation organized under Local Government Code Chapter 394, a Housing Authority organized under Local Government Code Chapter 392 or an instrumentality thereof, and the entire Development Site is located within that entity's area of operation. (2 points)

(c) Criteria to serve and support Texans most in need.

(1) Income Levels of Residents. (§§2306.111(g)(3)(B) and (E); 2306.6710(b)(1)(C) and (e); and §42 (m)(1)(B)(ii)(I)) An Application may qualify for up to sixteen (16) points for rent and income restricting a Development for the entire Affordability Period at the levels identified in subparagraph (A), (B), (C), or (D) of this paragraph.

(A) For any Development located within a non-Rural Area of the Dallas, Fort Worth, Houston, San Antonio, or Austin MSAs that propose to use either the 20-50 or 40-60 election under §42(g)(1)(A) or §42(g)(1)(B) of the Code, respectively:

(i) At least 60% of all Low-Income Units at 50% or less of AMGI in a Supportive Housing Development proposed by a Qualified Nonprofit (16 points);

(ii) At least 40 % of all Low-Income Units at 50% or less of AMGI (15 points);

(iii) At least 30% of all Low-Income Units at 50% or less of AMGI (13 points); or

(iv) At least 20% of all Low-Income Units at 50 %or less of AMGI (11 points).

(B) For Developments proposed to be located in areas other than those listed in subparagraph (A) of this paragraph and that propose to use either the 20-50 or 40-60 election under §42(g)(1)(A) or §42(g)(1)(B) of the Code, respectively:

(i) At least 60% of all Low-Income Units at 50% or less of AMGI in a Supportive Housing Development proposed by a Qualified Nonprofit (16 points);

(ii) At least 20% of all Low-Income Units at 50% or less of AMGI (15 points);

(iii) At least 15% of all Low-Income Units at 50% or less of AMGI (13 points); or

(iv) At least 10% of all Low-Income Units at 50% or less of AMGI (11 points).

(C) For any Development located within a non-Rural Area of the Dallas, Fort Worth, Houston, San Antonio, or Austin MSAs that propose to use the Average Income election under §42(g)(1)(C) of the Code:

(i) The Average Income and Rent restriction for all Low-Income Units for the proposed Development will be 54% or lower (15 points);

(ii) The Average Income and Rent restriction for all Low-Income Units for the proposed Development will be 55% or lower (13 points); or

(iii) The average income and Rent restriction for all Low-Income Units for the proposed Development will be 56% or lower (11 points).

(D) For Developments proposed to be located in the areas other than those listed in subparagraph (C) of this paragraph and that propose to use the Average Income election under §42(g)(1)(C) of the Code:

(i) The Average Income and Rent restriction for all Low-Income Units for the proposed Development will be 55% or lower (15 points);

(ii) The Average Income and Rent restriction for all Low-Income Units for the proposed Development will be 56% or lower (13 points); or

(iii) The Average Income and Rent restriction for all Low-Income Units for the proposed Development will be 57% or lower (11 points).

(2) Rent Levels of Tenants. (§2306.6710(b)(1)(E)) An Application may qualify to receive up to thirteen (13) points for rent and income restricting a Development for the entire Affordability Period. If selecting points from paragraph (1)(A) or paragraph (1)(B) of this subsection, these levels are in addition to those committed under paragraph (1) of this subsection. If selecting points from paragraph (1)(C) or paragraph (1)(D) of this subsection, these levels are included in the income average calculation under paragraph (1) of this subsection. These units

must be maintained at this rent level throughout the Affordability Period regardless of the Average Income calculation. Scoring options include:

(A) At least 20% of all Low-Income Units at 30% or less of AMGI for Supportive Housing Developments proposed by a Qualified Nonprofit (13 points);

(B) At least 10% of all Low-Income Units at 30% or less of AMGI or, for a Development located in a Rural Area, 7.5% of all Low-Income Units at 30% or less of AMGI (11 points); or

(C) At least 5% of all Low-Income Units at 30% or less of AMGI (7 points).

(3) Resident Supportive Services. (§2306.6710(b)(3) and (1)(G), and §2306.6725(a)(1)) A Development may qualify to receive up to eleven (11) points.

(A) The Applicant certifies that the Development will provide a combination of resident supportive services equaling at least ten points, which are listed in §11.101(b)(7) of this chapter (relating to Development Requirements and Restrictions) and meet the requirements of that section. (10 points).

(B) The Applicant certifies that the Development will contact local nonprofit and governmental providers of services that would support the health and well-being of the Department's residents, and will make Development community space available to them on a regularly-scheduled basis to provide outreach services and education to the tenants. Applicants may contact service providers on the Department list, or contact other providers that serve the general area in which the Development is located. (1 point).

(4) Section 811 Project Rental Assistance Program (811 PRA) and Residents with Special Housing Needs. (§2306.6710(b)(4); §42(m)(1)(C)(v)) An Application may qualify to receive up to four (4) points by serving Residents with Special Housing Needs. Only Applications that are unable to meet the requirements of subparagraph (A) of this paragraph may qualify for points under subparagraphs (B) or (C) of this paragraph relating to Residents with Special Housing Needs. The point available under subparagraph (D) of this paragraph is available to all Applications that qualify. The Units identified for this scoring item may not be the same Units identified previously for the Section 811 PRA Program. Due to the complexity of determining a Development's eligibility for 811 PRA, the Department will work with Applicants to resolve any errors made in good faith pertaining to this scoring item to allow the Application to maintain the requested points.

(A) Section 811 Project Rental Assistance Program (811 PRA). An Application may qualify to receive three (3) points by serving tenants with special housing needs through participation in the 811 PRA Program. Points will be awarded as described in clauses (i) through (ii) of this subparagraph.

(i) An Applicant or Affiliate that Owns or Controls an Existing Development that is eligible to participate in the Section 811 PRA Program, as referenced in 10 TAC §8.4, Qualification Requirements for Existing Developments. In order to qualify for points, the Existing Development must commit to the Section 811 PRA Program at minimum 5% of the total Units, unless the Integrated Housing Rule, 10 TAC §1.15, or the 811 Project Rental Assistance Rule (811 Rule), 10 TAC Chapter 8, limits the Existing Development to fewer Section 811 PRA Program Units. The same Section 811 PRA Program Units cannot be used to qualify for points in more than one HTC Application. The Applicant or Affiliate will comply with the requirements of 10 TAC Chapter 8. (3 points)

(ii) In order to be eligible for points, Applicants must commit at least 5% of the total Units in the proposed Development for participation in the Section 811 PRA Program unless the Integrated Housing Rule, 10 TAC §1.15, or the 811 Rule, 10 TAC Chapter 8, limits the Development to fewer Section 811 PRA Program Units. The Applicant will comply with the requirements of 10 TAC Chapter 8. (3 points)

(B) The Development must commit at least 5% of the total Units to Persons with Special Housing Needs. For purposes of this subparagraph, Persons with Special Housing Needs is defined as a household where one or more individuals have alcohol or drug addictions, is a Colonia resident, a Person with a Disability, has Violence Against Women Act Protections (domestic violence, dating violence, sexual assault, and stalking), HIV/AIDS, homeless, veterans, and farmworkers. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to specifically market Units to Persons with Special Housing Needs. In addition, the Department will require an initial minimum twelve-month period during which Units must either be occupied by Persons with Special Housing Needs or held vacant, unless the Units receive HOME funds from any source. After the initial twelve-month period, the Development Owner will no longer be required to hold Units vacant for Persons with Special Housing Needs, but will be required to continue to specifically market Units to Persons with Special Housing Needs. (2 points)

(C) If the Development has committed Units under subparagraph (B) of this paragraph, the Development must commit at least an additional 2% of the total Units to Persons referred from the Continuum of Care or local homeless service providers to be made available for those experiencing homelessness. Rejection of an applicant's tenancy for those referred may not be for reasons of credit history or prior rental payment history. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to specifically market the 2% of Units through the Continuum of Care and other homelessness providers local to the Development Site. In addition, the Department will require an initial minimum six-month period in Urban subregions, and an initial three-month period in Rural subregions, during which Units must either be occupied by Persons referred from the Continuum of Care or local homeless service providers, or held vacant, unless the Units receive HOME funds from any source. After the initial six-month or three-month period, the Development Owner will no longer be required to hold Units vacant but will be required to continue to provide quarterly notifications to the Continuum of Care and other homeless service providers local to the Development Site on the availability of Units at the Development Site. A Development is not eligible under this paragraph unless points have also been selected under subparagraph (B) of this paragraph. (1 point)

(D) If the Development is Supportive Housing and has a proposed occupancy preference or limitation for Veterans or a subgroup of only Veterans that is required or allowed by other federal or state financing by the Full Application Delivery Date. These points are only available to Developments that are proposed to be located on sites owned by the United States Department of Veterans Affairs (1 point).

(5) Opportunity Index. (42(m)(1)(C)(i)) The Department may refer to locations qualifying for points under this scoring item as high opportunity areas in some materials. Based on the American Community Survey (ACS) data, a Development is eligible for a maximum of seven (7) opportunity index points from subparagraphs (A) and (B) of this paragraph.

(A) A proposed Development is eligible for up to two (2) opportunity index points if it is located entirely within a census tract with a poverty rate less than 20% or the median poverty rate among

tracts for the region, whichever is greater, and meets the requirements in clause (i),(ii), or (iii) of this subparagraph:

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

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

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

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

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

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

(III) is contiguous to a census tract that is in the first or second quartile among tracts for median household income in the region, and has a poverty rate less than 20% or the median poverty rate among tracts for the region, whichever is greater, and the Development Site is no more than 2 miles from the boundary between the census tracts (1 point); or

(iii) The Development Site is located in a Rural Area and:

(I) is located entirely located within a Census tract that has a poverty rate less than 20% or the median poverty rate among Census tracts for the region, whichever is greater, and

(II) is located in a Place which experienced an increase in population since the 2010 Decennial Census according to the Site Demographics Characteristics Report; (1 point).

(B) An Application that meets one of the foregoing criteria in subparagraph (A) of this paragraph may qualify for additional points for any one or more of the factors in clause (i) or (ii) of this subparagraph. Each amenity may be used only once for scoring purposes, unless allowed within the scoring item, regardless of the number of categories it fits. All members of the Applicant or Affiliates cannot have had an ownership position in the amenity or served on the board or staff of a nonprofit that owned or managed that amenity within the year preceding the Pre-Application Final Delivery Date. All amenities must be operational or have started Site Work at the Pre-Application Final Delivery Date. Any age restrictions associated with an amenity must positively correspond to the Target Population of the proposed Development.

(i) For Developments located in an Urban Area (other than Applicants competing in the USDA Set- Aside), an Application may qualify to receive points through a combination of requirements in subclauses (I) - (XVI) of this clause.

(I) The Development Site is located on a route, with sidewalks for pedestrians, that is 1/2 mile or less from the entrance to a public park with a playground or from a multiuse hike-bike trail. The entirety of the sidewalk route must consist of smooth hard surfaces, curb ramps, and marked pedestrian crossings when traversing a street. (1 point).

(II) The Development Site is located on a route, with sidewalks for pedestrians, that is within a specified distance from the entrance of a public transportation stop or station with a route schedule that provides regular service to employment and basic services. The entirety of the sidewalk route must consist of smooth hard surfaces, curb ramps, and marked pedestrian crossings when traversing a street. Only one of the following may be selected:

(-a-) The Development Site is 1/2 mile or less from the stop or station and the scheduled service is beyond 8 a.m. to 5 p.m., plus weekend service (both Saturday and Sunday) (1 point); or

(-b-) The Development Site is 1/2 mile or less from the stop or station and the scheduled service arrives every 15 minutes, on average, between 6 a.m. and 8 p.m., every day of the week (2 points).

(III) The Development Site is located within 2 miles of a full-service grocery store. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed Development; offering a wide variety of fresh, frozen, canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items. (2 point).

(IV) The Development Site is located within 2 miles of a pharmacy. For the purposes of this menu item only, the pharmacy may be claimed if it is within the same building as a grocery store. (2 point).

(V) The Development Site is located within 4 miles of a health-related facility, such as a full service hospital, community health center, minor emergency center, emergency room or urgent care facility. Physician offices and physician specialty offices are not considered in this category. (1 point).

(VI) The Development Site is within 3 miles of a center that is licensed by the Department of Family and Protective Services (DFPS) specifically to provide a school-age program or to provide a child care program for infants, toddlers, or pre-kindergarten. The Application must include evidence from DFPS that the center meets the above requirements. (1 point)

(VII) The Development Site is located in a census tract with a property crime rate of 26 per 1,000 persons or less as defined by neighborhoodscout.com, or local law enforcement data sources. If employing the latter source, the formula for determining the crime rate will include only data relevant to the census tract in which the Development Site is located. (1 point)

(VIII) The Development Site is located within 2 miles of a public library that has indoor meeting space, physical books that can be checked out and that are of a general and wide-ranging subject matter, computers and internet access, and that is open 50 hours or more per week. The library must not be age or subject-restricted and must be at least partially funded with government funding. (1 point)

(IX) The Development Site is located within 6 miles of an accredited university or community college, as confirmed by the Texas Higher Education Coordination Board (THECB). To be considered a university for these purposes, the provider of higher education must have the authority to confer bachelor's degrees. Two-year colleges are considered community colleges, and to be considered for these purposes must confer at least associate's degrees. The university or community college must have a physical campus, where classes are regularly held for students pursuing their degrees, within the required distance; online-only institutions do not qualify under this item. (1 point)

(X) Development Site is located in a census tract where 27% or more of adults age 25 and older has an Associate's Degree or higher as tabulated by the American Community Survey 5-year Estimate. (1 point)

(XI) Development Site is within 2 miles of an indoor recreation facility available to the public. Examples include, but are not limited to, a gym, health club, a bowling alley, a theater, or a municipal or county community center. A facility that is primarily a restaurant or bar with recreational facilities is not eligible. (1 point)

(XII) Development Site is within 2 miles of an outdoor, dedicated, and permanent recreation facility available to the public. Examples include, but are not limited to, swimming pools or splash pads, tennis courts, golf courses, softball fields, or basketball courts. (1 point).

(XIII) Development Site is within 2 miles of community, civic or service organizations that provide regular and recurring substantive services, beyond exclusively congregational or member-affiliated activities, available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club as long as they make services available without regard to affiliation or membership). (1 point).

(XIV) Development Site is in the current service area of Meals on Wheels or similar nonprofit service that provides regular visits and meals to individuals in their homes. (1 point).

(XV) (§2306.6710(b)(4)) If at Application, the Development is located in a county with a population of 1.2 million or more, but less than 4 million, and is located not more than two miles from a veteran's hospital, veteran's affairs medical center, or veteran's affairs health care center, (which include all providers listed under the Veteran's Health Administration categories, excluding Benefits Administration offices, listed at this link https://www.va.gov/directory/guide/fac_list_by_state.cfm?State=TX&dnum=ALL), and has federal or state financing that requires or allows preference for leasing units in the Development to low income veterans, and agrees to provide that preference. (1 point).

(ii) For Developments located in a Rural Area and any Application qualifying under the USDA set- aside, an Application may qualify to receive points through a combination of requirements in subclauses (I) - (XIV) of this clause.

(I) The Development Site is located within 5 miles of a full-service grocery store. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed Development; offering a wide variety of fresh, frozen, canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items. (2 point).

(II) The Development Site is located within 5 miles of a pharmacy. For the purposes of this menu item only, the pharmacy may be claimed if it is within the same building as a grocery store. (2 point).

(III) The Development Site is located within 5 miles of health-related facility, such as a full service hospital, community health center, minor emergency center, or a doctor with a general practice that takes walk-in patients. Physician specialty offices are not considered in this category. (1 point).

(IV) The Development Site is located within 5 miles of a center that is licensed by the Department of Family and Protective Services (DFPS) specifically to provide a school-age program or to provide a child care program for infants, toddlers, or pre-kindergarten. The Application must include evidence from DFPS that the center meets the above requirements. (1 point).

(V) The Development Site is located in a census tract with a property crime rate 26 per 1,000 or less, as defined by neighborhoodscout.com, or local law enforcement data sources. If employing the latter source, the formula for determining the crime rate will include only data relevant to the census tract in which the Development Site is located. (1 point).

(VI) The Development Site is located within 5 miles of a public library that has indoor meeting space, physical books that can be checked out and that are of a general and wide-ranging subject matter, computers and internet access, and that is open 40 hours or more per week. The library must not be age or subject-restricted and must be at least partially funded with government funding. (1 point).

(VII) The Development Site is located within 5 miles of a public park with a playground. (1 point).

(VIII) The Development Site is located within 15 miles of an accredited university or community college, as confirmed by the Texas Higher Education Coordination Board (THECB). To be considered a university for these purposes, the provider of higher education must have the authority to confer bachelor's degrees. Two-year colleges are considered community colleges, and to be considered for these purposes must confer at least associate's degrees. The university or community college must have a physical campus, where classes are regularly held for students pursuing their degrees, within the required distance; online-only institutions do not qualify under this item. (1 point).

(IX) Development Site is located in a census tract where 27% or more of adults age 25 and older has an Associate's Degree or higher as tabulated by the American Community Survey 5-year Estimate. (1 point).

(X) Development Site is within 4 miles of an indoor recreation facility available to the public. Examples include, but are not limited to, a gym, health club, a bowling alley, a theater, or a municipal or county community center. A facility that is primarily a restaurant or bar with recreational facilities is not eligible. (1 point).

(XI) Development Site is within 4 miles of an outdoor, dedicated, and permanent recreation facility available to the public. Examples include, but are not limited to, swimming pools or splash pads, tennis courts, golf courses, softball fields, or basketball courts. (1 point).

(XII) Development Site is within 4 miles of community, civic or service organizations that provide regular and recurring substantive services, beyond exclusively congregational or member-affiliated activities, available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club as long as they make services available without regard to affiliation or membership). (1 point).

(XIII) Development Site is in the current service area of Meals on Wheels or similar nonprofit service that provides regular visits and meals to individuals in their homes. (1 point).

(6) Underserved Area. (§§2306.6725(a)(4) and (b)(2); 2306.127(3), 42(m)(1)(C)(i) and (ii)). Points are not cumulative and an Applicant is therefore limited to selecting one subparagraph. If an Application qualifies for points under paragraph (5) of this subsection,

then the Application is not eligible for points under subparagraphs (A) and (B) of this paragraph. Years are measured in whole years, and are calculated by deducting the year of the award from the "Board Approval" column of the property inventory of the Site Demographic Characteristics Report from the current year. The specific month and date of the award are disregarded for this analysis. The Application must include evidence that the Development Site meets the requirements. An Application may qualify to receive up to five (5) points if the Development Site meets any one of the criteria described in subparagraphs (A) - (G) of this paragraph:

(A) (§2306.127(3)). The Development Site is located wholly or partially within the boundaries of a colonia as such boundaries are determined by the Office of the Attorney General and within 150 miles of the Rio Grande River border (5 points);

(B) (§2306.127(3)). The Development Site is located entirely within the boundaries of an Economically Distressed Area that has been awarded funds by the Texas Water Development Board in the previous five years ending at the beginning of the Application Acceptance Period (1 point);

(C) (§2306.6725(b)(2)). The Development Site is located entirely within a census tract that does not have another Development that was awarded 20 or fewer years ago that serves the same Target Population as the proposed Development. Applications proposing Rehabilitation shall not consider the Development's prior allocation(s) as another development for the purposes of this scoring item (5 points);

(D) For areas not scoring points for subparagraph (C), the Development Site is located entirely within a census tract that does not have another Development that was awarded 15 or fewer years ago according to the Department's property inventory tab of the Site Demographic Characteristics Report (4 points);

(E) For areas not scoring points for subparagraphs (C) or (D) of this paragraph, the Development Site is located entirely within a census tract that does not have another Development that was awarded 10 or fewer years ago according to the Department's property inventory in the Site Demographic Characteristics Report (3 points);

(F) The Development Site is located within a census tract and the census tract itself and all of its contiguous census tracts do not have another Development that was awarded 10 or fewer years ago that serves the same Target Population as the proposed Development. Applications proposing Rehabilitation shall not consider the Development's prior allocation(s) as another development for the purposes of this scoring item. This item will apply to Development Sites located entirely in a Place, or its ETJ, with a population of 50,000 or more for Urban subregions and 10,000 or more for Rural subregions, and will not apply in the At-Risk or USDA Set-Asides; (5 points)

(i) The Development Site may intersect the boundaries of multiple Places so long as each has a population of at least 50,000 for Urban subregions, and 10,000 for Rural subregions.

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

(G) An At-risk or USDA Development placed in service 25 or more years ago, that is still occupied, and that has not yet received federal funding, or LIHTC equity, for the purposes of Rehabilitation for the Development. If the Application involves multiple sites, the age of all sites will be averaged for the purposes of this scoring item. (3 points).

(H) The Development Site is located entirely within a Census tract with a median household income in the highest quartile among Census tracts within the uniform service region according to the Site Demographics Characteristics Report (5 points).

(7) Proximity to Job Areas. (§42(m)(1)(C)(i)) An Application may qualify to receive up to four (4) points if the Development Site is located in one of the areas described in subparagraphs (A), (B), or (C) of this paragraph, and the Application contains evidence substantiating qualification for the points. The data used will be based solely on that available through US Census' OnTheMap tool. Jobs counted are limited to those based on the work area, all workers, and all primary jobs. This determination will be based on the latest data set posted to the US Census website on or before August 1, 2025. The Development will use OnTheMap's function to import GPS coordinates that clearly fall within the Development Site, and the OnTheMap chart/map report submitted in the Application must include the report date. This scoring item will not apply to Applications under the At-Risk or USDA Set-Aside.

(A) Proximity to Jobs. For Development Sites in Urban subregions a Development may qualify for points under this subparagraph if it meets one of the criteria in clauses (i) - (iv) of this subparagraph.

(i) The Development is located within 5 miles of 10,000 jobs. (4 points)

(ii) The Development is located within 5 miles of 8,000 jobs. (3 points)

(iii) The Development is located within 5 miles of 6,500 jobs. (2 points)

(iv) The Development is located within 5 miles of 4,500 jobs. (1 points)

(B) Proximity to Jobs. For Development Sites in Rural subregions a Development may qualify for points under this subparagraph if it meets one of the criteria in clauses (i) - (iv) of this subparagraph.

(i) The Development is located within 5 miles of 6,000 jobs. (4 points)

(ii) The Development is located within 5 miles of 4,500 jobs. (3 points)

(iii) The Development is located within 5 miles of 3,000 jobs. (2 points)

(iv) The Development is located within 5 miles of 1,500 jobs. (1 points)

(C) Access to Jobs. A Development site which qualifies for at least 2 points under subparagraph (A) or (B) may qualify for up to 2 additional points under this subparagraph if the Development Site is located on a route, with sidewalks for pedestrians, that is within one half-mile from the entrance of a public transportation stop or station with a route schedule that provides regularly scheduled service to employment and basic services. The entirety of the sidewalk route must consist of smooth hard surfaces, curb ramps, and marked pedestrian crossings when traversing a street. (2 points)

(d) Criteria promoting community support and engagement.

(1) Local Government Support. (§2306.6710(b)(1)(B)) An Application may qualify for up to seventeen (17) points for a resolution or resolutions voted on and adopted by the bodies reflected in subparagraphs (A) - (C) of this paragraph, as applicable. The resolution(s) must be dated prior to Final Input from Elected Officials Delivery Date and must be submitted to the Department no later than the Final Input from Elected Officials Delivery Date as identified in §11.2(a) of this

chapter, relating to Competitive HTC Deadlines. Such resolution(s) must specifically identify the Development whether by legal description, address, Development name, Application number or other verifiable method. Resolutions received by the Department setting forth that the municipality and/or county objects to or opposes the Application or Development will result in zero points awarded to the Application for that Governing Body. If a Development site is located partially within a municipality and partially within a county or extraterritorial jurisdiction, positive points will only be awarded if a resolution is obtained from both entities. Such resolutions will be added to the Application posted on the Department's website. Once a resolution is submitted to the Department it may not be changed or withdrawn. For an Application with a proposed Development Site that, at the time of the initial filing of the Application, is:

(A) Within a municipality, the Application will receive points from either:

(i) Seventeen (17) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or

(ii) Fourteen (14) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development.

(B) Within the extraterritorial jurisdiction of a municipality, the Application may receive points under clause (i) or (ii) of this subparagraph and under clause (iii) or (iv) of this subparagraph.

(i) Eight and one-half (8.5) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development.

(ii) Seven (7) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development.

(iii) Eight and one-half (8.5) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development.

(iv) Seven (7) points for a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(C) Within a county and not within a municipality or the extraterritorial jurisdiction of a municipality, the Application will receive points from either:

(i) Seventeen (17) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

(ii) Fourteen (14) points for a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(2) Commitment of Development Funding by Local Political Subdivision. (§2306.6725(a)(5)) The source of the funding cannot be the Applicant, Developer, or an Affiliate of the Applicant. The commitment of Development funding must be reflected in the Application as a financial benefit to the Development, i.e. reported as a source of funds on the Sources and Uses Form or reflected in a lower cost in the Development Cost Schedule, such as notation of a reduction in building permits and related costs. Documentation must include a letter from an official of the municipality, county, or other instrumentality with jurisdiction over the proposed Development stating they will provide a loan, grant, reduced fees or contribution of other value that equals $500 or more for Applications located in Urban subregions or $250 or more for Applications located in Rural subregions for the benefit of the Development. The letter must describe the value of the contribution, the form of the contribution, e.g. reduced fees or gap funding, and any caveats to delivering the contribution. Once a letter is submitted to the Department it may not be changed or withdrawn. (1 point)

(3) Declared Disaster Area. (§2306.6710(b)(1)(H); §42(m)(1)(C)(i)) An Application may receive ten (10) points if at the time of Application submission or at any time within the two-year period preceding the date of submission, the Development Site is located in an area declared to be a disaster area under the Tex. Gov't Code §418.014.

(4) Quantifiable Community Participation. (§2306.6710(b)(1)(I); §2306.6725(a)(2)) An Application may qualify for up to nine (9) points for written statements from a Neighborhood Organization. In order for the statement to qualify for review, the Neighborhood Organization must have been in current, valid existence with boundaries that contain the entire Development Site. In addition, the Neighborhood Organization must be on record 30 days prior to the beginning of the Application Acceptance period with the Secretary of State or county in which the Development Site is located as of the beginning of the Application Acceptance Period. Once a letter is submitted to the Department it may not be changed or withdrawn. The written statement must meet all of the requirements in subparagraph (A) of this paragraph. Letters received by the Department setting forth that the eligible Neighborhood Organization objects to or opposes the Application or Development will be added to the Application posted on the Department's website. Written statements from the Neighborhood Organizations included in an Application and not received by the Department from the Neighborhood Organization will not be scored but will be counted as public comment.

(A) Statement Requirements. If an organization cannot make the following affirmative certifications or statements then the organization will not be considered a Neighborhood Organization for purposes of this paragraph:

(i) the Neighborhood Organization's name, a written description and map of the organization's boundaries, signatures and contact information (phone, email and mailing address) of at least two individual members with authority to sign on behalf of the organization;

(ii) certification that the boundaries of the Neighborhood Organization contain the entire Development Site and that the Neighborhood Organization meets the definition pursuant to Tex. Gov't Code §2306.004(23-a) and includes at least two separate residential households;

(iii) certification that no person required to be listed in accordance with Tex. Gov't Code §2306.6707 with respect to the Development to which the Application requiring their listing relates participated in any way in the deliberations of the Neighborhood Organization, including any votes taken;

(iv) certification that at least 80% of the current membership of the Neighborhood Organization consists of homeowners and/or tenants living within the boundaries of the Neighborhood Organization; and

(v) an explicit expression of support, opposition, or neutrality. Any expression of opposition must be accompanied with at least one reason forming the basis of that opposition. A Neighborhood Organization should be prepared to provide additional information with regard to opposition.

(B) Technical Assistance. For purposes of this paragraph, if and only if there is no Neighborhood Organization already

in existence or on record, the Applicant, Development Owner, or Developer is allowed to provide technical assistance in the creation of or placing on record of a Neighborhood Organization. Technical assistance is limited to:

(i) the use of a facsimile, copy machine/copying, email and accommodations at public meetings;

(ii) assistance in completing the QCP Neighborhood Information Packet, providing boundary maps and assisting in the Administrative Deficiency process;

(iii) presentation of information and response to questions at duly held meetings where such matter is considered; and

(iv) notification regarding deadlines for submission of responses to Administrative Deficiencies.

(C) Point Values for Quantifiable Community Participation. An Application may receive points based on the values in only one of the clauses (i) - (vi) of this subparagraph. Points will not be cumulative. Where more than one written statement is received for an Application, the average of all statements received in accordance with this subparagraph will be assessed and awarded.

(i) Nine (9) points for explicit support from a Neighborhood Organization that, during at least one of the three prior Application Rounds, provided a written statement that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged.

(ii) Eight (8) points for explicitly stated support from a Neighborhood Organization.

(iii) Six (6) points for explicit neutrality from a Neighborhood Organization that, during at least one of the three prior Application Rounds provided a written statement, that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged.

(iv) Four (4) points for statements of neutrality from a Neighborhood Organization or statements not explicitly stating support or opposition, or an existing Neighborhood Organization provides no statement of either support, opposition or neutrality, which will be viewed as the equivalent of neutrality or lack of objection.

(v) Four (4) points for areas where no Neighborhood Organization is in existence, equating to neutrality or lack of objection, or where the Neighborhood Organization did not meet the explicit requirements of this section.

(vi) Zero (0) points for statements of opposition meeting the requirements of this subsection.

(D) Challenges to opposition. Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local Governmental Entity having jurisdiction or oversight over the finding or determination. If any such statement is challenged, the challenger must declare the basis for the challenge and submit such challenge by the Challenges to Neighborhood Organization Opposition Delivery Date May 1, 2026. The Neighborhood Organization expressing opposition will be given seven calendar days to provide any information related to the issue of whether their assertions are contrary to the findings or determinations of a local Governmental Entity. All such materials and the analysis of the Department's staff will be provided to a fact finder, chosen by the Department, for review and a determination of the issue presented by this subsection. The fact finder will not make determinations as to the accuracy of the statements presented, but only with regard to whether the statements are contrary to findings or determinations of a local Governmental Entity. The fact finder's determination will be final and may not be waived or appealed. Should the Neighborhood Organization's statements be found to be contrary to findings or determinations of a local Government Entity, or should the Neighborhood Organization not respond in seven calendar days, then the Application shall be eligible for four (4) points under subparagraph (C)(v) of this subsection.

(5) Community Support from State Representative. (§2306.6710(b)(1)(J); §2306.6725(a)(2); §2306.6710(f) and (g)) Applications may receive up to eight (8) points for express support, zero points for neutral statements, or have deducted up to eight (8) points for express opposition.

(A) Letter from a State Representative. To qualify under this subparagraph, letters must be on the State Representative's letterhead or submitted in such a manner as to verify the sender, be signed by the State Representative, identify the specific Development and express whether the letter conveys support, neutrality, or opposition. This documentation will be accepted with the Application or through delivery to the Department from the Applicant or the State Representative and must be submitted no later than the Final Input from Elected Officials Delivery Date as identified in §11.2(a) of this chapter (relating to Competitive HTC Deadlines). Letters received by the Department from State Representatives will be added to the Application posted on the Department's website. Once a letter is submitted to the Department it may not be changed or withdrawn. Therefore, it is encouraged that letters not be submitted well in advance of the specified deadline in order to facilitate consideration of all constituent comment and other relevant input on the proposed Development. State Representatives to be considered are those in office at the time the letter is submitted and whose district boundaries include the Development Site. If the office is vacant, the Application will be considered to have received a neutral letter. Neutral letters or letters that do not specifically refer to the Development will receive zero (0) points. A letter from a state representative expressing the level of community support may be expressly based on the representative's understanding or assessments of indications of support by others, such as local government officials, constituents, or other applicable representatives of the community. In providing this letter, pursuant to Tex. Gov't Code §2306.6710(b)(1)(J), a representative may either express their position of support, opposition, or neutrality regarding the Application, which shall be presumed to reflect their assessment of the views of their constituents, or they may provide a statement of the support, opposition, or neutrality of their constituents regarding the Application without expressing their personal views on the matter.

(B) No Letter from a State Representative. To qualify under this subparagraph, no written statement can be received for an Application from the State Representative who represents the geographic area in which the proposed Development is located, unless the sole content of the written statement is to convey to the Department that no written statement will be provided by the State Representative for a particular Development. Points available under this subparagraph will be based on how an Application scores under paragraph (1) of this subsection (relating to Local Government Support). If a Development site is located partially within a municipality and partially within a county or extraterritorial jurisdiction, positive points will only be awarded if a resolution is obtained from both entities. For an Application with a proposed Development Site that, at the time of the initial filing of the Application, is:

(i) Within a municipality, the Application will receive:

(I) Eight (8) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or

(II) Zero (0) points for no resolution or a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development; or

(III) Negative eight (-8) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality opposes the Application or Development.

(ii) Within the extraterritorial jurisdiction of a municipality, the Application will receive points under subclause (I) or (II) or (III) of this subparagraph, and under subclause (IV) or (V) or (VI) of this subparagraph.

(I) Four (4) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development.

(II) Zero (0) points for no resolution or a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development.

(III) Negative four (-4) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality opposes the Application or Development.

(IV) Four (4) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development.

(V) Zero (0) points for no resolution or a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(VI) Negative four (-4) points for a resolution from the Governing Body of that county expressly setting forth that the county opposes the Application or Development.

(iii) Within a county and not within a municipality or the extraterritorial jurisdiction of a municipality:

(I) Eight (8) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

(II) Zero (0) points for no resolution or a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development; or

(III) Negative eight (-8) points for a resolution from the Governing Body of that county expressly setting forth that the county opposes the Application or Development.

(6) Input from Community Organizations. (§2306.6725(a)(2)) Where, at the time of Application, the Development Site does not fall within the boundaries of any qualifying Neighborhood Organization or there is a qualifying Neighborhood Organization that has given no statement or a statement of neutrality (as described in subparagraph B(4)(C)(iv) or (v) of this subsection), then, in order to ascertain if there is community support, an Application may receive up to four (4) points for letters that qualify for points under subparagraphs (A), (B), or (C) of this paragraph. No more than four (4) points will be awarded under this point item under any circumstances. All letters of support must be submitted within the Application. Once a letter is submitted to the Department it may not be changed or withdrawn. Should an Applicant elect this option and the Application receives letters in opposition, then one (1) point will be subtracted from the score under this paragraph for each letter in opposition, provided that the letter is from an organization that would otherwise qualify under this paragraph. However, at no time will the Application receive a score lower than zero (0) for this item. Letters received by the Department setting forth that the community organization objects to or opposes the Application or Development will be added to the Application posted on the Department's website.

(A) An Application may receive two (2) points for each letter of support submitted from a community or civic organization that serves the community in which the Development Site is located. Letters of support must identify the specific Development and must state support of the specific Development at the proposed location. To qualify, the organization must be qualified as tax exempt and have as a primary (not ancillary or secondary) purpose the overall betterment, development, or improvement of the community as a whole or of a major aspect of the community such as improvement of schools, fire protection, law enforcement, city-wide transit, flood mitigation, or the like. The Applicant must provide evidence that the community or civic organization remains in good standing by providing evidence from a federal or state government database confirming that the exempt status continues. An Organization must also provide evidence of its participation in the community in which the Development Site is located including, but not limited to, a listing of services or members, brochures, annual reports, etc. Letters of support from organizations that cannot provide reasonable evidence that they are active in the area that includes the location of the Development Site will not be awarded points. For purposes of this subparagraph, community and civic organizations do not include neighborhood organizations, governmental entities (excluding Special Management Districts as described in subparagraph C), or taxing entities.

(B) An Application may receive two (2) points for a letter of support from a property owners association created for a master planned community whose boundaries include the Development Site and that does not meet the requirements of a Neighborhood Organization for the purpose of awarding points under paragraph (4) of this subsection.

(C) An Application may receive two (2) points for a letter of support from a Special Management District formed under Tex. Local Gov't Code chapter 375 whose boundaries, as of the Full Application Delivery Date as identified in §11.2(a) of this chapter, (relating to Competitive HTC Deadlines, Program Calendar for Competitive Housing Tax Credits), include the Development Site.

(D) Input that evidences unlawful discrimination against classes of persons protected by Fair Housing law or the scoring of which the Department determines to be contrary to the Department's efforts to affirmatively further fair housing will not be considered. If the Department receives input that could reasonably be suspected to implicate issues of non-compliance under the Fair Housing Act, staff will refer the matter to the Texas Workforce Commission for investigation, but such referral will not, standing alone, cause staff or the Department to terminate the Application. Staff will report all such referrals to the Board and summarize the status of any such referrals in any recommendations.

(7) Concerted Revitalization Plan or Opportunity Zone. (§42(m)(1)(B)(ii)(III) and (C)(iii)). An Application may qualify for up to seven (7) points under this paragraph only if no points are elected under subsection (c)(5) of this section, related to Opportunity Index.

(A) Concerted Revitalization Plans for Developments located in an Urban Area:

(i) An Application may qualify to receive points if the Development Site is geographically located within an area for which a concerted revitalization plan (plan or CRP) has been developed and published by the municipality.

(ii) A plan may consist of one or two complementary local planning documents that together have been approved by the municipality as a plan to revitalize the specific area. The plan and supporting documentation must be submitted using the CRP Application Packet. No more than two local plans may be submitted for each proposed Development. The concerted revitalization plan may be a Tax Increment Reinvestment Zone (TIRZ) or Tax Increment Finance (TIF) or similar plan. A city- or county-wide comprehensive plan, including a consolidated plan or one-year action plan required to receive HUD funds does not equate to a concerted revitalization plan. However, a comprehensive plan may include plans for specific areas targeted for revitalization that would qualify so long as that plan meets all requirements of this section.

(iii) The proposed Development must be entirely located within the targeted revitalization area.

(iv) The Application must include a copy of the plan or a link to the online plan and a description of where specific information required below can be found in the plan. The plan must meet the criteria described in subclauses (I) and (II) of this clause:

(I) The concerted revitalization plan, or each of the local planning documents that compose the plan, must have been published by the municipality or county in which the Development Site is located.

(II) The plan must be current at the time of Application.

(v) If the Application includes an acceptable Concerted Revitalization Plan, up to seven (7) points will be awarded as follows:

(I) the proposed Development Site is located within a Qualified Census Tract and has submitted a letter from the appropriate local official for the municipality (or county if the Development Site is completely outside of a municipality) that explicitly identifies the proposed Development as contributing to the concerted revitalization efforts of the municipality or county (as applicable) (7 points); or

(II) the proposed Development Site is not located within a Qualified Census Tract and has submitted a letter from the appropriate local official for the municipality (or county if the Development Site is completely outside of a municipality) that explicitly identifies the proposed Development as contributing to the concerted revitalization efforts of the municipality or county (as applicable) (7 points); or

(III) the proposed Development Site does not have a letter described in items (I) and (II) of this subclause (5 points).

(B) For Developments located in a Rural Area, the Rehabilitation or demolition and Reconstruction of a Development that has been leased and occupied at 85% or greater for the six months preceding Application by low income households and which was initially constructed 25 or more years prior to Application submission as either public housing or as affordable housing with support from USDA, HUD, the HOME program, or the CDBG program. The occupancy percentage will not include Units that cannot be occupied due to needed repairs, as confirmed by the SCR or CNA. Demolition and relocation of units must be determined locally to be necessary to comply with the Affirmatively Furthering Fair Housing Rule, or if necessary to create an acceptable distance from Undesirable Site Features or Neighborhood Risk Factors. (7 points)

(C) Opportunity Zones For Developments located in either an Urban or Rural Area. The Development Site is located entirely within a Federal Opportunity Zone as designed by the Governor no later than the Full Application Delivery Date (7 points).

(e) Criteria promoting the efficient use of limited resources and Applicant accountability.

(1) Financial Feasibility. (§2306.6710(b)(1)(A)) All eligible Applications are awarded twenty-six (26) points, conditioned upon the successful completion of underwriting in accordance with this chapter.

(2) Cost of Development per Square Foot. (§2306.6710(b)(1)(F) and (§2306.67022(b)-(c)); §42(m)(1)(C)(iii)) For the purposes of this scoring item, Eligible Building Costs will be defined as Building Costs voluntarily included in Eligible Basis for the purposes of determining a Housing Credit Allocation. Eligible Building Costs will exclude structured parking or commercial space that is not included in Eligible Basis, and voluntary Eligible Hard Costs will include general contractor overhead, profit, and general requirements. The square footage used will be the Net Rentable Area (NRA). The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule. If the proposed Development is a Supportive Housing Development, the NRA will include Common Area up to 75 square feet per Unit, of which at least 50 square feet will be conditioned. The Department will annually compare the increase in the Consumer Price Indexes for All Urban Consumers between the two most recently available full years and adjust the square foot cost targets in this item by that same percentage.

(A) Applications proposing New Construction or Reconstruction or Adaptive Reuse will be eligible for twelve (12) points if one of the following conditions is met:

(i) the voluntary Eligible Building Cost per square foot is less than or equal to $155.12 per square foot; or

(ii) the voluntary Eligible Hard Cost per square foot is less than or equal to $207.21 per square foot.

(B) Applications proposing New Construction or Reconstruction will be eligible for eleven (11) points if one of the following conditions is met:

(i) the voluntary Eligible Building Cost per square foot is less than or equal to $165.54 per square foot; or

(ii) the voluntary Eligible Hard Cost per square foot is less than or equal to $217.63 per square foot.

(C) Applications proposing Rehabilitation (excluding Reconstruction) will be eligible for points if one of the following conditions is met:

(i) Twelve (12) points for Applications which include voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than or equal to $207.21 per square foot; or

(ii) Twelve (12) points for Applications which include voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than or equal to $268.57 per square foot, located in an Urban Area, and that qualify for 5 or more points under subsection (c)(5)(A) and (B) of this section, related to Opportunity Index; or

(iii) Eleven (11) points for Applications which include voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than or equal to $268.57 per square foot.

(3) Pre-application Participation. (§2306.6704) An Application may qualify to receive up to six (6) points provided a pre-application was submitted by the Pre-Application Final Delivery Date. Applications that meet all of the requirements described in subparagraphs (A) - (K) of this paragraph will qualify for six (6) points:

(A) The total number of Units does not increase by more than 10% from pre-application to Application;

(B) The designation of the proposed Development as Rural or Urban remains the same;

(C) The proposed Development serves the same Target Population;

(D) The pre-application and Application are participating in the same set-asides (At-Risk, USDA, Non-Profit, or Rural);

(E) The Application final score (inclusive of only scoring items reflected on the self-score form) does not vary by more than four (4) points from what was reflected in the pre-application self-score;

(F) If points are claimed related to Underserved Area and/or Proximity to Jobs, the point elections may not change from what was reflected in the pre-application self-score and the supporting documentation for these points must be substantially similar to what was submitted with the Pre-Application;

(G) The Development Site at Application is at least in part the Development Site at pre-application, and the census tract number or numbers listed at pre-application is the same at Application. The site at full Application may not require notification to any person or entity not required to have been notified at pre-application;

(H) The distance used to determine the Tie Breaker established in 10 TAC §11.7(2) remains the same or does not decrease between pre-application and full Application. If closer features to the Development Site are identified that could potentially result in a lower distance used for the Tie Breaker, Applicants may elect to continue using the higher distance submitted with the Pre-Application in order to not be disqualified from pre-application points;

(I) For Applications funded through the USDA Set-Aside; year of initial construction as a residential Development remains the same or is not earlier;

(J) If a high quality Pre-Kindergarten is to be provided under §11.6(3)(C)(v), the election must be made at pre-application and may not change at full Application;

(K) The pre-application met all applicable requirements.

(4) Leveraging of Private, State, and Federal Resources. (§2306.6725(a)(3))

(A) An Application may qualify to receive up to three (3) points if at least 5% of the total Units are restricted to serve households at or below 30% of AMGI (restrictions elected under other point items may count) and the Housing Tax Credit funding request for the proposed Development meet one of the levels described in clauses (i) - (iv) of this subparagraph:

(i) the Development leverages CDBG Disaster Recovery, HOPE VI, RAD, or Choice Neighborhoods funding and the Housing Tax Credit Funding Request is less than 10% of the Total Housing Development Cost (3 points). The Application must include a commitment of such funding; or

(ii) if the Housing Tax Credit funding request is less than 10% of the Total Housing Development Cost (3 points); or

(iii) if the Housing Tax Credit funding request is less than 11% of the Total Housing Development Cost (2 points); or

(iv) if the Housing Tax Credit funding request is less than 12% of the Total Housing Development Cost (1 point).

(B) The calculation of the percentages stated in subparagraph (A) of this paragraph will be based strictly on the figures listed in the Funding Request and Development Cost Schedule. Should staff issue an Administrative Deficiency that requires a change in either form, then the calculation will be performed again and the score adjusted, as necessary. However, points may not increase based on changes to the Application. In order to be eligible for points, no more than 50% of the Developer Fee can be deferred.

(5) Extended Affordability. (§§2306.6725(a)(5) and (7); 2306.111(g)(3)(C); 2306.185(a)(1) and (c); 2306.6710(e)(2); and 42(m)(1)(B)(ii)(II)) An Application may qualify to receive up to four (4) points for this item.

(A) Development Owners that agree to extend the Affordability Period for a Development to 45 years total. (4 points)

(B) Development Owners that agree to extend the Affordability Period for a Development to 40 years total. (3 points)

(C) Development Owners that agree to extend the Affordability Period for a Development to 35 years total. (2 points)

(6) Historic Preservation. (§2306.6725(a)(6); §42(m)(1)(C)(x)).

(A) An Application may qualify to receive two (2) points if:

(i) For Developments with under 100 total Units at least 55% of the residential Units shall be constructed fully or partially within the Certified Historic Structure.

(ii) For Developments with 100 total Units or more, at least 55 of the residential Units shall be constructed fully or partially within the Certified Historic Structure.

(B) To qualify for points, the Development must receive historic tax credits before or by the issuance of Forms 8609. The Application must include either documentation from the Texas Historical Commission that the Property is currently a Certified Historic Structure, or documentation determining preliminary eligibility for Certified Historic Structure status and evidence that the Texas Historic Commission received the request for determination of preliminary eligibility and supporting information on or before February 1 of the current year.

(C) Each Development may qualify for these points only once. An Application may not receive these points if it involves a Development that was previously awarded Competitive Housing Tax Credits through an Application that earned points based on eligibility of a Certified Historic Structure (2 points).

(7) Right of First Refusal. (§2306.6725(b)(1); §42(m)(1)(C)(viii)). An Application may receive points under subparagraphs (A) or (B) of this paragraph.

(A) An Application may qualify to receive (1 point) for Development Owners that will agree to provide a right of first refusal to purchase the Development upon or following the end of the Compliance Period in accordance with Tex. Gov't Code, §2306.6726 and the

Department's rules including §10.407 of this title (relating to Right of First Refusal) and §10.408 of this title (relating to Qualified Contract Requirements).

(B) The Development at the time of LURA execution is single family detached homes on separate lots or is organized as condominiums under Chapter 81 or 82 of the Texas Property Code and commits to offer a right of first refusal to tenants of the property to purchase the dwelling at a selected term but no earlier than the end of the Compliance Period and no later than the Extended Use Period. A de minimis amount of a participating tenant's rent may be attributed to the purchase of a Unit. Such commitment will be reflected in the LURA for the Development. The Applicant must provide a description of how they will implement the 'rent-to-own' activity, how they will make tenants aware of the opportunity, and how they will implement the right at the end of the selected term. If a Development is layered with National Housing Trust Funds, HOME-ARP, or another MFDL source where homeownership is not an eligible activity, the right of first refusal may not be earlier than the end of the Federal Affordability Period. §42(m)(1)(C)(viii). (1 point)

(8) Readiness to Proceed. The Application includes a certification that site acquisition and building construction permit submission will occur on or before the last day of March of the following year or as otherwise permitted under subparagraph (B) of this paragraph. These points are not available in the At-Risk or USDA Set-Asides. (1 point)

(A) The Board cannot and will not waive the deadline and will not consider waiver under its general rule regarding waivers. Failure to acquire the site and submit construction permits by the March deadline will result in penalty under 10 TAC §11.9(f), as determined solely by the Board.

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

(f) Factors Affecting Scoring and Eligibility in current and future Application Rounds. Staff may recommend to the Board and the Board may find that an Applicant or Affiliate should be ineligible to compete in the following year's competitive Application Round or that it should be assigned a penalty deduction in the following year's competitive Application Round of no more than two points for each submitted Application (Tex. Gov't Code §2306.6710(b)(2)) because it meets the conditions for any of the items listed in paragraphs (1) - (4) of this subsection. For those items pertaining to non-statutory deadlines, an exception to the penalty may be made if the Board or Executive Director, as applicable, makes an affirmative finding setting forth that the need for an extension of the deadline was beyond the reasonable control of the Applicant and could not have been reasonably anticipated. Any such matter to be presented for final determination of deduction by the Board must include notice from the Department to the affected party not less than 14 days prior to the scheduled Board meeting. The Executive Director may, but is not required, to issue a formal notice after disclosure if it is determined that the matter does not warrant point deductions. The Executive Director may make a determination that the matter does not warrant point deduction only for paragraph (1) of this subsection. (§2306.6710(b)(2)) Any deductions assessed by the Board for paragraph (1), (2), (3), or (4) of this subsection based on a Housing Tax Credit Commitment from a preceding Application round will be attributable to the Applicant or Affiliate of an Application submitted in the Application round referenced above.

(1) If the Applicant or Affiliate failed to meet the original Carryover submission or 10% Test deadline(s) or has requested an extension of the Carryover submission deadline or the 10% Test deadline (relating to either submission or expenditure).

(2) If the Applicant or Affiliate failed to meet the federal commitment or expenditure requirements, deadlines to enter into a Contract or close a Direct Loan, or did not meet benchmarks of their Contract with the Department.

(3) If the Applicant or Affiliate, in the Competitive HTC round immediately preceding the current round, failed to meet the deadline to both close financing and provide evidence of an executed construction contract under subsection (c)(9) of this section (related to Readiness to Proceed).

(4) If the Developer or Principal of the Applicant has violated or violates the Adherence to Obligations.

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

(a) The purpose of the Third Party Request for Administrative Deficiency (RFAD) process is to allow an unrelated person or entity to bring new, material information about an Application to staff's attention. Such Person may request staff to consider whether a matter in an Application in which the Person has no involvement should be the subject of an Administrative Deficiency. While an Administrative Deficiency may be issued as the result of an RFAD, not all RFADs will result in an Administrative Deficiency being issued.

(b) Staff will consider each RFAD received and proceed as it deems appropriate under the applicable rules including, if the Application in question has a noncompetitive score relative to other Applications in the same Set-Aside or subregion or will not be eligible for an award through the award recommendation methodology as outlined in §11.6(3) of this chapter (related to Competitive HTC Allocation Process), not reviewing the matter further.

(c) If the assertion(s) in the RFAD describe matters that are part of the Application review process, and the RFAD does not contain information not present in the Application, staff will not review or act on it.

(d) The RFAD and any testimony presented to the Board regarding the result of an RFAD may not be used to appeal staff decisions regarding competing Applications (§2306.6715(b)). Any RFAD that questions a staff decision regarding staff's scoring of an Application filed by another Applicant will be disregarded.

(e) Requestors must provide, at the time of filing the request all information that the requestor offers in support of the deficiency. A copy of the request and supporting information must be provided by the requestor directly to the Applicant at the same time it is provided to the Department. Requestors must provide sufficient credible evidence that, if confirmed, would substantiate the deficiency request. Assertions not accompanied by supporting documentation susceptible to confirmation will not be considered. An RFAD that expresses the requestor's opinion will not be considered.

(f) Staff shall provide to the Board a written report summarizing each third party request for administrative deficiency and the manner in which it was addressed. Interested persons may provide testimony on this report before the Board takes any formal action to accept the report. When the Board receives a report on the disposition of RFADs it may, for any staff disposition contained in the report, change the conclusion if it believes the change is necessary to bring the result into compliance with applicable laws and rules as construed by the Board; or if based on public testimony, it believes staff's conclusion should be revisited, it may remand the RFAD to staff for further

consideration, which may result in a reaffirmation, reversal, or modification.

(g) The results of a RFAD may not be appealed by the requestor, and testimony to the Board arguing staff's determination will not be considered unless the requestor can show that staff failed to follow the applicable rule.

(h) A scoring notice or termination notice that results from a RFAD may be appealed by the Applicant as further described in §11.902 of this chapter, relating to Appeals Process.

(i) Information received after the RFAD deadline will not be considered by staff or presented to the Board unless the information is of such a matter as to warrant a termination notice.

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

Filed with the Office of the Secretary of State on December 8, 2025.

TRD-202504463
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 28, 2025
Proposal publication date: September 19, 2025
For further information, please call: (512) 475-3959

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SUBCHAPTER B. SITE AND DEVELOPMENT REQUIREMENTS AND RESTRICTIONS

10 TAC §11.101

STATUTORY AUTHORITY. The adoption of these sections of rule is made pursuant to Tex. Gov't Code §§2306.053 and 2306.67022, which authorize the Department to adopt rules and, specifically, this Qualified Allocation Plan.

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

§11.101. Site and Development Requirements and Restrictions.

(a) Site Requirements and Restrictions. The purpose of this section is to identify specific requirements and restrictions related to a Development Site seeking multifamily funding or assistance from the Department.

(1) Floodplain. New Construction or Reconstruction Developments located within a 100 year floodplain as identified by the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps must develop the site in full compliance with the National Flood Protection Act and all applicable federal and state statutory and regulatory requirements. The Applicant will have to use floodplain maps and comply with regulation as they exist at the time of commencement of construction. Even if not required by such provisions, the Site must be developed so that all finished ground floor elevations are at least one foot above the floodplain and parking and drive areas are no lower than six inches below the floodplain. If there are more stringent federal or local requirements they must also be met. Applicants requesting NHTF funds from the Department must also meet the federal environmental provisions under 24 CFR §93.301(f)(1)(vi). Applicants requesting HOME, HOME-ARP, or NSP PI funds from the Department must meet the federal environmental provisions under 24 CFR Part 58, as in effect at the time of execution of the Contract between the Department and the Owner. If no FEMA Flood Insurance Rate Maps are available for the proposed Development Site, flood zone documentation must be provided from the local government with jurisdiction identifying the 100 year floodplain. Rehabilitation (excluding Reconstruction) Developments with existing and ongoing federal funding assistance from HUD or USDA are exempt from this requirement, to the extent NHTF is not being requested from the Department. All Developments located within a 100 year floodplain must state in the Tenant Rights and Resource Guide that part or all of the Development Site is located in a floodplain, and that it is encouraged that they consider getting appropriate insurance or take necessary precautions. However, where existing and ongoing federal assistance is not applicable such Rehabilitation (excluding Reconstruction) Developments will be allowed in the 100 year floodplain provided the local government has undertaken and can substantiate sufficient mitigation efforts and such documentation is submitted in the Application or the existing structures meet the requirements that are applicable for New Construction or Reconstruction Developments, as certified to by a Third Party engineer.

(2) Undesirable Site Features.

(A) An Undesirable Site Feature will render an Application ineligible unless acceptable mitigation as determined by staff or the Board is undertaken. For Competitive HTC Applications, if staff identifies an undesirable site feature reflected in clause (i) - (x) of subparagraph (E) and it was not disclosed, the Application shall be terminated by staff. If Department staff identifies what it believes would constitute an undesirable site feature not listed in this paragraph or covered under clause (xi) of subparagraph (E), staff may issue an Administrative Deficiency. In the event that staff cannot reasonably conclude whether a feature is considered undesirable, it may defer to the Board for decision.

(B) Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs (VA) and Developments encumbered by a TDHCA LURA the earlier of the first day of the Application Acceptance Period for HTC, Application Acceptance Date for Direct Loan, or date the pre-application is submitted (if applicable) may be granted an exemption by staff; however, depending on the undesirable site feature(s) staff may recommend mitigation still be provided as appropriate. Such an exemption must be requested at the time of or prior to the filing of an Application. Historic Developments that would otherwise qualify under §11.9(e)(6) of this chapter (related to Criteria promoting the efficient use of limited resources and applicant accountability) may be granted an exemption, and such exemption must be requested at the time of or prior to the filing of an Application.

(C) Requests for pre-determinations of Site eligibility prior to pre-application or Application submission will not be binding on full Applications submitted at a later date. For Tax-Exempt Bond Developments where the Department is the Issuer, the Applicant may submit a request for pre-determination at pre-application or for Tax-Exempt Bond Developments utilizing a local issuer a request for a pre-determination may be submitted prior to Application submission. An Applicant should understand that any determination made by staff or the Board at that point in time regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information related to any of the Undesirable Site Features become available while the Application is under review, or the information by which the original determination was made changes in a way that could affect eligibility, then such information will be re-evaluated by staff and may result in an Administrative Deficiency or re-evaluation.

(D) If a state or federal cognizant agency would require a new facility under its jurisdiction to have a minimum separation from

housing, the Department will defer to that agency and require the same separation for a new housing facility near an existing regulated or registered facility. In addition to these limitations, a Development Owner must ensure that the proposed Development Site and all construction thereon comply with all applicable state and federal requirements regarding separation for safety purposes.

(E) The Undesirable Site Features include those described in clauses (i) - (xi) of this subparagraph. The distances are to be measured from the nearest boundary of the Development Site to the nearest boundary of the property or easement containing the undesirable feature, unless otherwise noted below. Where there is a local ordinance that specifies the proximity of such undesirable feature to a multifamily development that has smaller distances than the minimum distances noted below, then such smaller distances may be used and documentation such as a copy of the local ordinance identifying such distances relative to the Development Site must be included in the Application. Pre-existing zoning does not meet the requirement for a local ordinance.

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

(ii) Development Sites located within 300 feet of an active solid waste facility, sanitary landfill facility, waste transfer station, or illegal dumping sites (as such dumping sites are identified by the local municipality);

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

(iv) Development Sites located within 500 feet of active railroad tracks, measured from the closest rail to the boundary of the Development Site, unless:

(I) the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone covering the area within 500 feet of the Development Site;

(II) the Applicant has engaged a qualified Third Party to perform a noise assessment and the Applicant commits to perform sound mitigation in accordance with HUD standards as if they were directly applicable to the Development; or

(III) the railroad in question is commuter or light rail;

(v) Development Sites located within 500 feet of heavy industry (i.e. facilities that require extensive use of land and machinery, produce high levels of external noise such as manufacturing plants, or that maintain fuel storage facilities, to the extent that these qualifying items are consistent with the general characteristics of heavy industry. Gas stations and other similar facilities that are not consistent with the characteristics of heavy industry are not considered an undesirable site feature;

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

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

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

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

(x) Development Sites that are located in a Clear Zone, any Accident Potential Zone, or within any Noise Contour of 65 decibels or greater, as reflected in a Joint Land Use Study for any military Installation, except that if the Development Site is located in a Noise Contour between 65 and 70 decibels, the Development Site will not be considered to have an Undesirable Site Feature if the Applicant has engaged a qualified Third Party to perform a noise assessment and the Applicant commits to perform sound mitigation in accordance with HUD standards as if they were directly applicable to the Development; or

(xi) Any Site deemed unacceptable, which would include, without limitation, those with exposure to an environmental factor that may adversely affect the health and safety of the residents or render the Site inappropriate for housing use and which cannot be adequately mitigated. If staff believe that a Site should be deemed unacceptable under this provision due to information that was not included in the Application, it will provide the Applicant with written notice and an opportunity to respond.

(3) Neighborhood Risk Factors.

(A) A Neighborhood Risk Factor will render an application ineligible unless acceptable mitigation as determined by staff or the board is undertaken. If the Development Site has any of the characteristics described in subparagraph (D) of this paragraph, the Applicant must disclose the presence of such characteristics in the Application submitted to the Department. For Competitive HTC Applications, should staff determine that the Development Site has any of the characteristics described in subparagraph (D) of this paragraph and such characteristics were not disclosed, the Application shall be terminated by staff.

(B) Requests for pre-determinations of Site eligibility prior to pre-application or Application submission will not be binding on full Applications submitted at a later date. For Tax-Exempt Bond Developments where the Department is the Issuer, the Applicant may submit the documentation described under subparagraph (E) of this paragraph at pre-application or for Tax-Exempt Bond Developments utilizing a local issuer a request for a pre-determination may be submitted prior to Application submission. An Applicant should understand that any determination made by staff or the Board at that point in time regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information related to any of the Neighborhood Risk Factors become available while the Tax-Exempt Bond Development or Direct Loan only Application is under review, or the information by which the original determination was made changes in a way that could affect eligibility, then such information will be re-evaluated by staff and staff may issue an Administrative Deficiency.

(C) The presence of any characteristics listed in subparagraph (D) of this paragraph will prompt staff to perform an assessment of the Development Site and neighborhood, which may include a site visit. Mitigation to be considered by staff is identified in subparagraph (E) of this paragraph. Preservation of affordable units alone does not present a compelling reason to support a conclusion of eligibility.

(D) The Neighborhood Risk Factors include those noted in clauses (i) - (ii) of this subparagraph and additional infor-

mation as applicable to the neighborhood risk factor(s) disclosed as provided in subparagraph (E) of this paragraph must be submitted in the Application. In order to be considered an eligible Site despite the presence of Neighborhood Risk Factors, an Applicant must demonstrate actions being taken that would lead staff to conclude that there is a high probability and reasonable expectation the risk factor will be sufficiently mitigated or significantly improved prior to placement in service and that the risk factor demonstrates a positive trend and continued improvement. Conclusions for such reasonable expectation may need to be affirmed by an industry professional, as appropriate, and may be dependent upon the severity of the Neighborhood Risk Factor disclosed.

(i) The Development Site is located within a census tract that has a poverty rate above 40% for individuals (or 55% for Developments in regions 11 and 13). Rehabilitation Developments with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs (VA), and Developments encumbered by a TDHCA LURA re exempt from this Neighborhood Risk Factor.

(ii) The Development Site is New Construction or Reconstruction and is located in a census tract (or for any adjacent census tract with a boundary less than 500 feet from the proposed Development Site that is not separated from the Development Site by a natural barrier such as a river or lake, or an intervening restricted area, such as a military installation) in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com. Rehabilitation developments with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs (VA), and Developments encumbered by a TDHCA LURA are exempt from this Neighborhood Risk Factor.

(E) Information regarding mitigation of neighborhood risk factors should be relevant to the risk factors that are present in the neighborhood. Mitigation must include documentation of efforts underway at the time of Application, and should include the measures described in clauses (i) - (ii) of this subparagraph or such other mitigation as the Applicant determines appropriate to support a finding of eligibility. If staff determines that the Development Site cannot be found eligible and the Applicant appeals that decision to the Board, the Applicant may not present new information at the Board meeting.

(i) Mitigation for Developments in a census tract that has a poverty rate that exceeds 40% may include a resolution from the Governing Body of the appropriate municipality or county containing the Development, acknowledging the high poverty rate and authorizing the Development to move forward. If the Development is located in the ETJ, the resolution would need to come from the county.

(ii) Evidence by the most qualified person that the data and evidence establish that there is a reasonable basis to proceed on the belief that the crime data shows, or will show, a favorable trend such that within the next two years Part I violent crime for that location is expected to be less than 18 per 1,000 persons or the data and evidence reveal that the data reported on neighborhoodscout.com does not accurately reflect the true nature of what is occurring and what is actually occurring does not rise to the level to cause a concern to the Board over the level of Part I violent crime for the location. The data and evidence may be based on violent crime data from the city's police department or county sheriff's department, as applicable based on the location of the Development, for the police beat or patrol area within which the Development Site is located, based on the population of the police beat or patrol area that yields a crime rate below the threshold indicated in this section or that would yield a crime rate below the threshold indicated in this section by the time the Development is placed into service. The instances of violent crimes within the police beat or patrol area that encompass the census tract, calculated based on the population of the census tract, may also be used. The data must include incidents reported during the entire calendar year previous to the year of Application. Violent crimes reported through the date of Application submission may be requested by staff as part of the assessment performed under subparagraph (C) of this paragraph. A written statement from the most qualified person (i.e. Chief of Police or Sheriff (as applicable) or the police officer/detective for the police beat or patrol area containing the proposed Development Site), including a description of efforts by such enforcement agency addressing issues of crime and the results of their efforts may be provided, and depending on the data provided by the Applicant, such written statement may be required, as determined by staff. It is expected that such written statement would also speak to whether there is a reasonable expectation that based on the efforts underway there is crime data that reflects a favorable downward trend in crime rates.

(F) In order for the Development Site to be found eligible, including when mitigation described in subparagraph (E) of this paragraph is not provided in the Application, despite the existence of one or more Neighborhood Risk Factors, the Applicant must explain how the use of Department funds at the Development Site is consistent with the goals in clauses (i) - (iii) of this subparagraph. If the Board grants an Appeal of staff's determination of Site eligibility, the Board shall document the reasons for a determination of eligibility.

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

(ii) Determination that the risk factor(s) that has been disclosed are not of such a nature or severity that should render the Development Site ineligible based on the assessment and mitigation provided under subparagraphs (C) and (D) of this paragraph.

(iii) No mitigation was provided, or in staff's determination the mitigation was considered unsatisfactory and the Applicant has requested a waiver of the presence of Neighborhood Risk Factors on the basis that the Development is necessary to enable the state, a participating jurisdiction, or an entitlement community to comply with its obligation to affirmatively further fair housing, a HUD approved Conciliation Agreement, or a final and non-appealable court order and such documentation is submitted with the disclosure.

(4) Site and Neighborhood Standards (Direct Loan and HOME-ARP only). A New Construction Development, as defined by the applicable federal fund source, requesting federal funds must meet the Site and Neighborhood Standards in 24 CFR §983.57(e)(2) or (3). A Development requesting NHTF funds that meets the federal definition of reconstruction in 24 CFR §93.2 must also meet these standards.

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

(1) Ineligible Developments. A Development shall be ineligible if any of the criteria in subparagraphs (A) - (C) of this paragraph apply.

(A) General Ineligibility Criteria include:

(i) Developments such as hospitals, nursing homes, trailer parks, dormitories (or other buildings that will be predominantly occupied by students) or other facilities that are usually classified as transient housing (as provided in Code §42(i)(3)(B)(iii) and (iv));

(ii) any Development with any building(s) with four or more stories that does not include an elevator. Developments where

topography or other characteristics of the Site require basement splits such that a tenant will not have to walk more than two stories to fully utilize their Unit and all Development amenities, will not require an elevator;

(iii) a Housing Tax Credit Development that provides on-site continual or frequent nursing, medical, or psychiatric services. Refer to IRS Revenue Ruling 98-47 for clarification of assisted living;

(iv) a Development that proposes population limitations that violate §1.15 of this title (relating to Integrated Housing Rule);

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

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

(vii) any New Construction or Reconstruction proposing more than 35.00% efficiency and/or one-Bedroom Units. This requirement will not apply to Elderly or Supportive Housing Developments. For Historic Developments, this requirement will not apply to any units constructed within the Historic structure. For any New Construction or Reconstruction undertaken as part of a Historic Application, those newly constructed or reconstructed Units must meet this standard. The Units that are part of the Historic structure will not be included in the total when determining if the Application meets this requirement.

(viii) Competitive Housing Tax Credit Applications that involve any existing Housing Tax Credit Development that has any building that placed in service on or after January 1, 2006, for its most recent award of Housing Tax Credits.

(ix) Applications that represent a Total Housing Development Cost of $500,000 or more per Unit.

(x) Competitive Housing Tax Credit Applications that scores fewer than 120 total points, inclusive of any scoring reductions.

(B) Ineligibility of Elderly Developments include:

(i) any Elderly Development of two stories or more that does not include elevator service for any Units or Common Areas above the ground floor;

(ii) any Elderly Development with any Units having more than two Bedrooms with the exception of up to three employee Units reserved for the use of the manager, maintenance, or security officer. These employee Units must be specifically designated as such; or

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

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

(2) Development Size Limitations. The minimum Development size is 16 Units. Competitive Housing Tax Credit or Multifamily Direct Loan-only Developments involving New Construction or Adaptive Reuse in Rural Areas are limited to a maximum of 80 total Units. Tax-Exempt Bond Developments involving New Construction or Adaptive Reuse in a Rural Area must meet the Development size limitation and corresponding capture rate requirements in §11.302(i)(1)(C) of this chapter (related to Feasibility Conclusion). Rehabilitation Developments do not have a limitation as to the maximum number of Units.

(3) Rehabilitation Costs. Developments involving Rehabilitation must establish a scope of work that will substantially improve the interiors of all units and exterior deferred maintenance, and meet the minimum Rehabilitation amounts identified in subparagraphs (A) - (C) of this paragraph. Such amounts must be maintained through the issuance of IRS Forms 8609. For Developments with multiple buildings that have varying placed in service dates, the earliest date will be used for purposes of establishing the minimum Rehabilitation amounts. Applications must meet the Rehabilitation amounts identified in subparagraphs (A), (B) or (C) of this paragraph. For Tax-Exempt Bond Developments that include existing USDA funding that is continuing or new USDA funding, staff may consider the cost standard under subparagraph (A) of this paragraph on a case-by-case basis.

(A) For Housing Tax Credit Developments with USDA financing the Rehabilitation will involve at least $25,000 per Unit in Building Costs and Site Work.

(B) For Tax-Exempt Bond Developments, less than 20 years old, based on the placed in service date, the Rehabilitation will involve at least $25,000 per Unit in Building Costs and Site Work. If such Developments are greater than or equal to 20 years old, based on the placed in service date, the Rehabilitation will involve at least $35,000 per Unit in Building Costs and Site Work.

(C) For all other Developments, the Rehabilitation will involve at least $35,000 per Unit in Building Costs and Site Work.

(4) Mandatory Development Amenities. (§2306.187) New Construction, Reconstruction or Adaptive Reuse Units must include all of the amenities in subparagraphs (A) - (O) of this paragraph. Rehabilitation (excluding Reconstruction) Developments must provide the amenities in subparagraphs (D) - (L), (N), and (O) of this paragraph unless stated otherwise. Supportive Housing Developments are not required to provide the amenities in subparagraph (B), (E), (F), (G), (H) or (N) of this paragraph; however, access must be provided to a comparable amenity in a Common Area. All amenities listed below must be at no charge to the residents. Residents must be provided written notice of the applicable required amenities for the Development. The Board may waive one or more of the requirements of this paragraph for Developments that will include Historic Tax Credits, with evidence submitted with the request for amendment that the amenity has not been approved by the Texas Historical Commission or National Park Service, as applicable. Applicants for Multifamily Direct Loans should be aware that certain amenities are not eligible for Direct Loan funding, including without limitation, detached community spaces, furnishings, swimming pools, athletic courts, and playgrounds, as more fully described at §13.3 of this title (relating to General Loan Requirements). Amenities include:

(A) All Units must have connections available using current technology for data and phone;

(B) Laundry connections;

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

(D) Screens on all operable windows;

(E) Disposal (not required for USDA Rehabilitation);

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

(G) Energy-Star or equivalently rated refrigerator;

(H) Oven/Range;

(I) Blinds or window coverings for all windows;

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

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

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

(M) Adequate parking spaces consistent with local code, unless there is no local code, in which case the requirement would be one and a half spaces per Unit for non-Elderly Developments and one space per Unit for Elderly Developments. The minimum number of required spaces must be available to the tenants at no cost. If parking requirements under local code rely on car sharing or similar arrangements, the LURA will require the Owner to provide the service at no cost to the tenants throughout the Affordability Period. If a waiver or variance of local code parking requirements has been requested then evidence to that effect must be included in the Application;

(N) Energy-Star or equivalently rated windows (for Rehabilitation Developments, only if windows are planned to be replaced as part of the scope of work); and

(O) Adequate accessible parking spaces consistent with the requirements of the 2010 ADA Standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" 79 FR 29671, the Texas Accessibility Standards, and if covered by the Fair Housing Act, HUD's Fair Housing Act Design Manual.

(5) Common Amenities.

(A) All Developments must include sufficient common amenities as described in subparagraph (C) of this paragraph to qualify for at least the minimum number of points required in accordance with clauses (i) - (vi) of this subparagraph:

(i) Developments with 16 to 40 Units must qualify for two (2) points;

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

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

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

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

(vi) Developments with 200 or more Units must qualify for eighteen (18) points.

(B) These points are not associated with any selection criteria points. The amenities must be for the benefit of all residents and made available throughout normal business hours and maintained throughout the Affordability Period. Residents must be provided written notice of the elections made by the Development Owner. If fees or deposits in addition to rent are charged for amenities, then the amenity may not be included among those provided to satisfy the requirement. All amenities must meet all applicable accessibility standards, including those adopted by the Department, and where a specific space or size requirement for a listed amenity is not specified then the amenity must be reasonably adequate based on the Development size. Applications for non-contiguous scattered site housing, excluding non-contiguous single family sites, will have the test applied based on the number of Units per individual site and the amenities selected must be distributed proportionately across all sites. A Development composed of non-contiguous single family sites must provide a combination of unit and common amenities to equal the appropriate points under subparagraph (A) of this paragraph for the Development size. In the case of additional phases of a Development any amenities that are anticipated to be shared with the first phase development cannot be claimed for purposes of meeting this requirement for the second phase. The second phase must include enough points to meet this requirement that are provided on the Development Site, regardless of resident access to the amenity in another phase. All amenities must be available to all Units via an accessible route.

(C) The common amenities and respective point values are set out in clauses (i) - (v) of this subparagraph, which are grouped primarily for organizational purposes. Applicants are not required to select a specific number of amenities from each section. An Applicant can only count an amenity once; therefore combined functions (a library which is part of a community room) will only qualify for points under one category:

(i) Community Space for Resident Supportive Services includes:

(I) Except in Applications where more than 10% of the Units in the proposed Development are Supportive Housing SRO Units, an Application may qualify to receive half of the points required under §11.101(b)(5)(A)(i) - (vi) by electing to provide a High Quality Pre-Kindergarten (HQ Pre-K) program and associated educational space at the Development Site. To receive the points the Applicant must commit to all of items (-a-) - (-c-) of this subclause.

(-a-) Space and Design. The educational space for the HQ Pre-K program must be provided on the Development Site and must be a suitable and appropriately designed space for educating children that an independent school district or open-enrollment charter school can utilize to establish and operate a HQ Pre-K program. This space includes at a minimum a bathroom and large closet in the classroom space; appropriate design considerations made for the safety and security of the students; including limited and secure ingress and egress to the classroom space; and satisfaction of the requirements of all applicable building codes for school facilities. The Applicant must provide in the Application a copy of the current school facility code requirements applicable to the Development Site and Owner and Architect certifications that they understand the associated space and design requirements reflected in those code requirements. The Application must also include acknowledgement by all lenders, equity providers and partners that the Application includes election of these points.

(-b-) Educational Provider Agreement. The Applicant must enter into an agreement, addressing all items as described in subitems (-1-) - (-5-) of this item, and provide evidence of such agreement to the Department on or before submission of the Cost Certification. Lack of evidence of such agreement by the deadline will

be cause for rescission of the Carryover Agreement for Competitive HTC Applications.

(-1-) The agreement must be between the Owner and an Educational Provider.

(-2-) The agreement must reflect that at the Development Site the Educational Provider will provide a HQ Pre-K program, in accordance with Texas Education Code Chapter 29, Subchapter E-1, at no cost to residents of the proposed Development and that is available for general public use, meaning students other than those residing at the Development may attend.

(-3-) Such agreement must reflect a provision that the option to operate the HQ Pre-K program in the space at the Development Site will continue to be made available to the school or provider until such time as the school or provider wishes to withdraw from the location. This provision will not limit the Owner's right to terminate the agreement for good cause.

(-4-) Such agreement must set forth the responsibility of each party regarding payment of costs to use the space, utility charges, insurance costs, damage to the space or any other part of the Development, and any other costs that may arise as the result of the operation of the HQ Pre-K program.

(-5-) The agreement must include provision for annual renewal, unless terminated under the provisions of item (-c-) of this subclause.

(-c-) If an Educational Provider who has entered into an agreement becomes defunct or elects to withdraw from the agreement and provision of services at the location, as provided for in subitem (-b-)(-3-) of this subclause, the Owner must notify the Texas Commissioner of Education at least 30 days prior to ending the agreement to seek out any other eligible parties listed in subitem (-b-)(-1-) of this subclause above. If another interested open-enrollment charter school or school district is identified by the Texas Commissioner of Education or the Owner, the Owner must enter into a subsequent agreement with the interested open-enrollment charter school or school district and continue to offer HQ Pre-K services. If another interested provider cannot be identified, and the withdrawing provider certifies to the Department that their reason for ending the agreement is not due to actions of the Owner, the Owner will not be considered to be in violation of its commitment to the Department. If the Owner is not able to find a provider, they must notify the Commissioner annually of the availability of the space.

(II) Multifunctional learning and care center(s) or conference room(s) with the appropriate furnishings to deliver the Resident Supportive Services pertaining to classes or care for children and selected by the Development Owner. The room(s) devoted to meeting this requirement must equal 15 square feet times the total number of Units, but need not exceed 2,000 square feet in total. This space must be separate from any other community space but may include a full kitchen. The room(s) must include storage space, such as closets or cabinetry (4 points).

(III) Multifunctional learning and care center(s) or conference room(s) with the appropriate furnishings to deliver the Resident Supportive Services pertaining to classes or care for adults and selected by the Development Owner. The room(s) devoted to meeting this requirement must equal 10 square feet times the total number of Units, but need not exceed 1,000 square feet in total. This space must be separate from any other community space but may include a full kitchen. The room(s) must include storage space, such as closets or cabinetry (2 points).

(IV) Service provider office in addition to leasing offices (1 point).

(ii) Safety amenities include:

(I) Controlled gate access for entrance and exit areas, intended to provide access that is limited to the Development's tenancy (1 point).

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

(III) Twenty-four hour, seven days a week monitored camera/security system in each building. Monitoring may be on-site or off-site (2 points).

(IV) Twenty-four hour, seven days a week recorded camera / security system in each building (1 point).

(V) The provision of a courtesy patrol service that, at a minimum, answers after-hour resident phone calls regarding noise and crime concerns or apartment rules violations and that can dispatch to the apartment community a courtesy patrol officer in a timely manner (3 points).

(iii) Health/Fitness/Play amenities include:

(I) Accessible walking/jogging path, equivalent to the perimeter of the Development or a length that reasonably achieves the same result, separate from a sidewalk and in addition to required accessible routes to Units or other amenities (1 point).

(II) Furnished fitness center. Equipped with a variety of fitness equipment (at least one item for every 40 Units). Choose from the following: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, stair-climber, dumbbell set, or other similar equipment. Equipment shall be commercial use grade or quality. Fitness center must be located indoors or be a designated room with climate control and allow for after-hours access. (1 point).

(III) Furnished fitness center. Equipped with a variety of fitness equipment (at least one item for every 20 Units). Choose from the following: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, stair-climber, dumbbell set, or other similar equipment. Equipment shall be commercial use grade or quality. Fitness center must be located indoors or be a designated room with climate control and allow for after-hours access. (2 points).

(IV) One Children's Playscape Equipped for five to 12 year olds, or one Tot Lot (2 points). Must be covered with a shade canopy or awning, intended to keep equipment cool, and provide shade and ultraviolet protection. This item can only be selected if subclause (V) of this clause is not selected.

(V) Two Children's Playscapes Equipped for five to 12 year olds, two Tot Lots, or one of each (4 points). Must be covered with a shade canopy or awning, intended to keep equipment cool, and provide shade and ultraviolet protection. This item can only be selected if subclause (IV) of this clause is not selected.

(VI) Horseshoe pit; putting green; shuffleboard court; pool table; ping pong table; or similar equipment in a dedicated location accessible to all residents to play such games (1 point).

(VII) Swimming pool with after-hours access (5 points).

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

(IX) Sport Court or field (including, but not limited to, Tennis, Basketball, Volleyball, Pickleball, Soccer, or Baseball Field) (2 points).

(iv) Design / Landscaping amenities include:

(I) Full perimeter fencing that contains the parking areas and all amenities (excludes guest or general public parking areas) (2 points).

(II) Enclosed community sun porch or covered community porch/patio (1 point).

(III) Dog Park area that is fully enclosed (the perimeter fencing may be used for part of the enclosure) and intended for tenant owned dogs to run off leash (requires that the Development allow dogs) (2 points).

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

(V) Porte-cochere (1 point).

(VI) Lighted pathways along all accessible routes (1 point).

(VII) a resident-run community garden with annual soil preparation and mulch provided by the Owner and access to water (which may be subject to local water usage restrictions) (1 point).

(v) Community Resources amenities include:

(I) Community laundry room with at least one washer and dryer for every 40 Units (2 points).

(II) Barbecue grill and picnic table with at least one of each for every 50 Units (1 point). Grill must be permanently installed (no portable grills).

(III) Business center with workstations and seating internet access, 1 printer and at least one scanner which may be integrated with the printer, and either 2 desktop computers or laptops available to check-out upon request (2 points).

(IV) Furnished Community room (2 points).

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

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

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

(VIII) Community Theater Room equipped with a 52 inch or larger screen or projection with surround sound equipment; DVD player or a streaming service at no cost to residents; and seating (3 points).

(IX) High-speed Wi-Fi with advanced telecommunications capacity as determined under 47 U.S.C. 1302 or more with coverage throughout the clubhouse or community building (1 point).

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

(XI) Bicycle parking that allows for, at a minimum, one bicycle for every five Units, within reasonable proximity to each residential building that allows for bicycles to be secured with lock (lock not required to be provided to tenant) (1 point).

(XII) Package Lockers or secure package room. Automated Package Lockers or secure package room provided at a location within the complex that can be accessed by residents 24/7 and at no charge to the resident. To qualify, there would need to be at least one locker for every eight residential units (2 points).

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

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

(XV) Access to onsite bike sharing services, provided tenants have short-term, autonomous access to community-owned bicycles, with at least one bicycle per 25 Units (1 point).

(XVI) A covered outdoor area with seating to be used as a waiting area for public transportation or a school bus (1 point).

(6) Unit Requirements.

(A) Unit Sizes. Developments proposing New Construction or Reconstruction will be required to meet the minimum sizes of Units as provided in clauses (i) - (v) of this subparagraph. These minimum requirements are not associated with any selection criteria. Developments proposing Rehabilitation (excluding Reconstruction) or Supportive Housing Developments will not be subject to the requirements of this subparagraph. If the Development involves both Rehabilitation and Reconstruction or New Construction, the Reconstruction or New Construction Units must meet these requirements. The requirements are:

(i) four hundred fifty (450) square feet for an Efficiency Unit;

(ii) five hundred fifty (550) square feet for a one Bedroom Unit;

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

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

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

(B) Unit, Development Construction, and Energy and Water Efficiency Features. Housing Tax Credit Applicants may select amenities for the score of an Application under this section, but must maintain the points associated with those amenities by maintaining the amenity selected or providing substitute amenities with equal or higher point values. Tax-Exempt Bond Developments must include enough amenities to meet a minimum of nine (9) points. Direct Loan Applications not layered with Housing Tax Credits must include enough amenities to meet a minimum of five (5) points. The amenity shall be for every Unit at no extra charge to the tenant. The points selected at Application and corresponding list of amenities will be required to be identified in the LURA, and the points selected at Application must be maintained throughout the Affordability Period. Applications involving scattered site Developments must have a specific amenity located within each Unit to count for points. Rehabilitation Developments and Supportive Housing Developments will start with a base score of five (5) points. Rehabilitation Developments that also include New Construction will not start with a base score, and must include enough amenities to meet a minimum of nine (9) points. At least two (2) points must be selected from clause (iii), Energy and Water Efficiency Features, of this subparagraph.

(i) Unit Features include:

(I) Covered entries (0.5 point);

(II) Nine foot ceilings in living room and all Bedrooms (at minimum) (1 point);

(III) Microwave ovens (0.5 point);

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

(V) Storage room or closet, of approximately 9 square feet or greater, separate from and in addition to Bedroom, entryway or linen closets and which does not need to be in the Unit but must be on the Property site (0.5 point);

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

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

(VIII) Built-in (recessed into the wall) shelving unit (0.5 point);

(IX) Breakfast Bar (a space, generally between the kitchen and dining area, that includes an area for seating although actual seating such as bar stools does not have to be provided) (0.5 point);

(X) Walk-in closet in at least one Bedroom (0.5 point);

(XI) 48-inch upper kitchen cabinets (1 point);

(XII) Kitchen island (0.5 points);

(XIII) Kitchen pantry with shelving (may include the washer/dryer unit for Rehabilitation Developments only) (0.5 point);

(XIV) Natural stone or quartz countertops in kitchen and bath (1 point);

(XV) Double vanity in at least one bathroom (0.5 point); and

(XVI) Hard floor surfaces in over 50% of unit NRA (0.5 point).

(ii) Development Construction Features include:

(I) Covered parking (may be garages or carports, attached or freestanding) and include at least one covered space per Unit (1.5 points);

(II) Thirty year roof (0.5 point);

(III) Greater than 30% stucco or masonry (includes stone, cultured stone, and brick but excludes cementitious and metal siding) on all building exteriors; the percentage calculation may exclude exterior glass entirely (2 points);

(IV) Electric Vehicle Charging Station (0.5 points);

(V) An Impact Isolation Class (IIC) rating of at least 55 and a Sound Transmission Class (STC) rating of 60 or higher in all Units, as certified by the architect or engineer of record (3 points); and

(VI) Green Building Features. Points under this item are intended to promote energy and water conservation, operational savings and sustainable building practices. Four (4) points may be selected from only one of the categories described in items (-a-) - (-d-) of this subclause. If the Development involves scattered sites, there must be green building features incorporated into each site in order to qualify for these points.

(-a-) Enterprise Green Communities. The Development must incorporate, at a minimum, all items necessary to obtain Enterprise Green Communities certification applicable to the construction type (i.e. New Construction, Rehabilitation, etc.) as provided in the most recent version of the Enterprise Green Communities Criteria found at http://www.greencommunitiesonline.org.

(-b-) Leadership in Energy and Environmental Design (LEED). The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a LEED Certification, regardless of the rating level achieved (i.e., Certified, Silver, Gold or Platinum).

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

(-d-) 2018 International Green Construction Code.

(iii) Energy and Water Efficiency Features include:

(I) Energy-Star or equivalently rated refrigerator with icemaker (0.5 point);

(II) Energy-Star or equivalently rated laundry equipment (washers and dryers) for each individual Unit; must be front loading washer and dryer in required accessible Units (2 points);

(III) Recessed LED lighting or LED lighting fixtures in kitchen and living areas (1 point);

(IV) Energy-Star or equivalently rated ceiling fans in all Bedrooms (0.5 point);

(V) EPA WaterSense or equivalent qualified toilets in all bathrooms (0.5 point);

(VI) EPA WaterSense or equivalent qualified showerheads and faucets in all bathrooms (0.5 point);

(VII) 15.2 SEER2 HVAC, or in Region 13, an efficient evaporative cooling system. For Rehabilitation (excluding Reconstruction) where such systems are not being replaced as part of the scope of work, a radiant barrier in the attic is provided, (1 point);

(VIII) 16.0 SEER2 HVAC, for New Construction or Rehabilitation (1.5 points);

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

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

(XI) Solar panels installed, with a sufficient number of panels to reach a rated power output of at least 300 watts for each Low-Income Unit. (2 points).

(7) Resident Supportive Services. The resident supportive services include those listed in subparagraphs (A) - (E) of this paragraph, which are grouped primarily for organizational purposes. Applicants are not required to select a specific number of services from each section. Tax Exempt Bond Developments must select a minimum of eight points; Direct Loan Applications not layered with Housing Tax Credits must include enough services to meet a minimum of four points. The points selected and complete list of supportive services will be included in the LURA and the timeframe by which services are offered must be in accordance with §10.619 of this title (relating to Monitoring for Social Services) and maintained throughout the Affordability Period. The Owner may change, from time to time, the services offered; however, the overall points as selected at Applica-

tion must remain the same. A Development Owner may be required to substantiate such service(s) if requested by staff. Should the QAP in subsequent years provide different services than those listed in subparagraphs (A) - (E) of this paragraph, the Development Owner may request an Amendment as provided in §10.405(a)(2) of this chapter (relating to Amendments and Extensions). The services provided should be those that will directly benefit the Target Population of the Development. Residents must be provided written notice of the elections made by the Development Owner. No fees may be charged to the residents for any of the services, there must be adequate space for the intended services and services offered should be accessible to all (e.g. exercises classes must be offered in a manner that would enable a person with a disability to participate). Unless otherwise specified, services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item. These services are intended to be provided by a qualified and reputable provider in the specified industry such that the experience and background of the provider demonstrates sufficient knowledge to be providing the service. In general, on-site leasing staff or property maintenance staff would not be considered a qualified provider. Where applicable, the services must be documented by a written agreement with the provider. Unless otherwise noted in a particular clause, courses and services must be offered by an onsite instructor(s).

(A) Transportation Supportive Services include:

(i) shuttle, at least three days a week, to a grocery store and pharmacy or a major, big-box retailer that includes a grocery store and pharmacy, OR a daily shuttle, during the school year, to and from nearby schools not served by a school bus system for children who live at the Development (3.5 points); and

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

(B) Children Supportive Services include:

(i) provide a High Quality Pre-Kindergarten (HQ Pre-K) program and associated educational space at the Development Site meeting the requirements of paragraph (5)(C)(i)(I) of this subsection. (Half of the points required under this paragraph); and

(ii) Twelve hours of weekly, organized, on-site services provided to K-12 children by a dedicated service coordinator or third-party entity. Services include after-school and summer care and tutoring, recreational activities, character building programs, mentee opportunities, test preparation, and similar activities that promote the betterment and growth of children and young adults (3.5 points).

(C) Adult Supportive Services include:

(i) Four hours of weekly, organized, in-person, hybrid, or virtual classes accessible to participants from a Common Area on site to an adult audience by persons skilled or trained in the subject matter being presented, such as English as a second language classes, computer training, financial literacy courses, homebuyer counseling, health education courses, certification courses, GED preparation classes, resume and interview preparatory classes, general presentations about community services and resources, and any other course, class, or presentation that may equip residents with new skills that they may wish to develop (3.5 points);

(ii) annual income tax preparation (offered by an income tax prep service) or IRS-certified VITA (Volunteer Income Tax Assistance) program (offered by a qualified individual) that also emphasizes how to claim the Earned Income Tax Credit (1 point);

(iii) contracted career training and placement partnerships with local worksource offices, culinary programs, or vocational counseling services; may include resident training programs that train and hire residents for job opportunities inside the development in areas like leasing, tenant services, maintenance, landscaping, or food and beverage operation (2 points);

(iv) external partnerships for provision of weekly substance abuse meetings at the Development Site (1 point);

(v) reporting rent payments to credit bureaus for any resident who affirmatively elects to participate, which will be a requirement of the LURA for the duration of the Affordability Period (2 points); and

(vi) participating in a non-profit healthcare job training and placement service that includes case management support and other need-based wraparound services to reduce barriers to employment and support Texas healthcare institution workforce needs (2 points).

(vii) An eviction prevention program operated by a case manager. The case manager may be an employee of the owner or a third-party social service provider and shall be responsible for no more than 50 cases at a time. On at least a monthly basis, the case manager will obtain contact information and past due balances for households that are at risk of eviction for nonpayment of rent. For households that voluntarily choose to participate, the case manager shall offer an eviction holdoff agreement providing a minimum of 6 months for the household to resolve the past due balance and forgiving any late fees associated with that balance, regardless of whether they have been paid, should the agreement be fulfilled. During the eviction holdoff period, the case manager will offer to meet with the household at least once every other week. The case manager will identify resources in the community that provide emergency rental assistance and other financial support and assist the household in applying for these programs (5 points).

(D) Health Supportive Services include:

(i) food pantry consisting of an assortment of non-perishable food items and common household items (i.e. laundry detergent, toiletries, etc.) accessible to residents at least on a monthly basis or upon request by a resident. While it is possible that transportation may be provided to a local food bank to meet the requirement of this resident service, the resident must not be required to pay for the items they receive at the food bank (2 points);

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

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

(iv) contracted onsite occupational or physical therapy services for Elderly Developments or Developments where the service is provided for Persons with Disabilities and documentation to that effect can be provided for monitoring purposes (2 points).

(E) Community Supportive Services include:

(i) partnership with local law enforcement or local first responders to provide quarterly on-site social and interactive activities intended to foster relationships with residents (such activities could include playing sports, having a cook-out, swimming, card games, etc.) (2 points);

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

(iii) twice monthly arts, crafts, and other recreational activities (e.g. Book Clubs and creative writing classes) (1 point);

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

(v) specific service coordination services offered by a qualified Owner or Developer, qualified provider or through external, contracted parties for seniors, Persons with Disabilities or Supportive Housing (3 points);

(vi) weekly home chore services (such as valet trash removal, assistance with recycling, furniture movement, etc., and quarterly preventative maintenance including light bulb replacement) for Elderly Developments or Developments where the service is provided for Persons with Disabilities and documentation to that effect can be provided for monitoring purposes (2 points);

(vii) any of the programs described under Title IV-A of the Social Security Act (42 U.S.C. §§601, et seq.) which enables children to be cared for in their homes or the homes of relatives; ends the dependence of needy families on government benefits by promoting job preparation, work and marriage; prevents and reduces the incidence of unplanned pregnancies; and encourages the formation and maintenance of two-parent families (1 point);

(viii) a part-time resident services coordinator with a dedicated office space at the Development or a contract with a third-party to provide the equivalent of 15 hours or more of weekly resident supportive services at the Development (2 points); and

(ix) provision, by either the Development Owner or a community partner, of an education tuition- or savings-match program or scholarships to residents who may attend college (2 points).

(8) Development Accessibility Requirements. All Developments must meet all specifications and accessibility requirements as identified in subparagraphs (A) - (F) of this paragraph and any other applicable state or federal rules and requirements. The accessibility requirements are further identified in the Certification of Development Owner as provided in the Application.

(A) The Development shall comply with the accessibility requirements under Federal law and as further defined in Chapter 1, Subchapter B of this title (relating to Accessibility Requirements). (§§2306.6722; 2306.6730).

(B) Regardless of building type, all Units accessed by the ground floor or by elevator (affected units) must comply with the visitability requirements in clauses (i) - (iii) of this subparagraph. Design specifications for each item must comply with the standards of the Fair Housing Act Design Manual. Buildings occupied for residential use on or before March 13, 1991 are exempt from this requirement. If the townhome Units of a Rehabilitation Development do not have a bathroom on the ground floor, the Applicant will not be required to add a bathroom to meet the requirements of clause (iii) of this subparagraph. Visitability requirements include:

(i) All common use facilities must be in compliance with the Fair Housing Design Act Manual;

(ii) To the extent required by the Fair Housing Design Act Manual, there must be an accessible or exempt route from common use facilities to the affected units; and

(iii) Each affected unit must include the features in subclauses (I) - (V) of this clause:

(I) At least one zero-step, accessible entrance;

(II) At least one bathroom or half-bath with toilet and sink on the entry level. The layout of this bathroom or half-bath must comply with one of the specifications set forth in the Fair Housing Act Design Manual;

(III) The bathroom or half-bath must have the appropriate blocking relative to the toilet for the later installation of a grab bar, if ever requested by the tenant of that Unit;

(IV) There must be an accessible route from the entrance to the bathroom or half-bath, and the entrance and bathroom must provide usable width; and

(V) Light switches, electrical outlets, and thermostats on the entry level must be at accessible heights.

(C) The Development Owner is and will remain in compliance with state and federal laws, including but not limited to, fair housing laws, including Chapter 301, Property Code, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), the Fair Housing Amendments Act of 1988 (42 U.S.C. §§3601 et seq.); the Civil Rights Act of 1964 (42 U.S.C. §§2000a et seq.); the Americans with Disabilities Act of 1990 (42 U.S.C. §§12101 et seq.); the Rehabilitation Act of 1973 (29 U.S.C. §§701 et seq.); Fair Housing Accessibility; the Texas Fair Housing Act; and that the Development is designed consistent with the Fair Housing Act Design Manual produced by HUD, and the Texas Accessibility Standards. (§2306.257; §2306.6705(7))

(D) All Applications proposing Rehabilitation (including Reconstruction) will be treated as substantial alteration, in accordance with Chapter 1, Subchapter B of this title (relating to Section 504 of the Rehabilitation Act of 1973 and the Fair Housing Act).

(E) For all Developments other than Direct Loan Developments, for the purposes of determining the appropriate distribution of accessible Units across Unit Types, assuming all the Units have similar features only the number of Bedrooms and Full Bathrooms will be used to define the Unit Type, but accessible Units must have an equal or greater square footage than the square footage offered in the smallest non-accessible Unit with the same number of Bedrooms and Full Bathrooms. For Direct Loan Developments, for purposes of determining the appropriate distribution of accessible Units across Unit Types, the definition of Unit Type will be used. However, a single story Unit may be substituted for a townhome Unit, if the single story Unit contains the same number of Bedrooms and Full Bathrooms/Half Bathrooms (as applicable), and has an equal or greater square footage.

(F) Alternative methods of calculating the number of accessible Units required in a Development must be approved by the Department prior to award or allocation.

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

Filed with the Office of the Secretary of State on December 8, 2025.

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

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SUBCHAPTER C. APPLICATION SUBMISSION REQUIREMENTS, INELIGIBILITY CRITERIA, BOARD DECISIONS AND WAIVER OF RULES

10 TAC §§11.201 - 11.207

STATUTORY AUTHORITY. The adoption of these sections of rule is made pursuant to Tex. Gov't Code §§2306.053 and 2306.67022, which authorize the Department to adopt rules and, specifically, this Qualified Allocation Plan.

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

§11.201. Procedural Requirements for Application Submission.

This subchapter establishes the procedural requirements for Application submission. Only one Application may be submitted for a Development Site in an Application Round. While the Application Acceptance Period is open or prior to the Application deadline, an Applicant may withdraw an Application and subsequently file a new Application utilizing the original pre-application fee (as applicable) that was paid as long as no substantive evaluation was performed by the Department and the re-submitted Application relates to the same Development Site, consistent with §11.9(e)(3) of this chapter (relating to Criteria promoting the efficient use of limited resources and applicant accountability). Withdrawal of an Application is permanent. Applicants are subject to the schedule of fees as set forth in §11.901 of this chapter (relating to Fee Schedule).

(1) General Requirements.

(A) An Applicant requesting funding from the Department must submit an Application in order to be considered for an award. An Application must be complete (including all required exhibits and supporting materials) and submitted by the required program deadline. If an Application, including the corresponding Application fee as described in §11.901 of this chapter, is not submitted to the Department on or before the applicable deadline, the Applicant will be deemed not to have made an Application; provided, however, that errors in the calculation of applicable fees may be cured via an Administrative Deficiency. The deficiency period for curing fee errors will be 5:00 p.m. on the third business day following the date of the deficiency notice and may not be extended. Failure to cure such an error timely will be grounds for termination.

(B) Applying for multifamily funds from the Department is a technical process that must be followed completely. As a result of the competitive nature of some funding sources, an Applicant should proceed on the assumption that deadlines are fixed and firm with respect to both date and time and cannot be waived except where authorized and for truly extraordinary circumstances, such as the occurrence of a significant natural disaster that makes timely adherence impossible. If checks or original Carryover Allocation Agreements are physically delivered to the Department, it is the Applicant's responsibility to be within the Department's doors by the appointed deadline. All Applications and all related materials are to be delivered electronically pursuant to the *Multifamily Programs Procedures Manual.* Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Applicants must ensure that all documents are legible, properly organized and tabbed, and that materials are fully readable by the Department.

(C) The Applicant must timely upload a PDF copy and Excel copy of the complete Application to the Department's secure web transfer server. The PDF copy and Excel copy of the Application must match. If variations exist between the two copies, an Administrative Deficiency will be issued for the Applicant to identify which document to rely on. Each copy must be in a single file and individually bookmarked as further described in the *Multifamily Programs Procedures Manual*. Additional files required for Application submission outside the Uniform Application must also be uploaded to the secure web transfer server. It is the responsibility of the Applicant to confirm the upload to the Department's secure web transfer server was successful and to do so in advance of the deadline. If an Applicant can view the files that were uploaded, then that shall serve as an indication that the Application was uploaded and received by the Department. Staff, may, as a courtesy, confirm that the Application files were uploaded, but shall not be obligated or required to confirm such submission. Where there are instances of computer problems, mystery glitches, etc. that prevent the Application from being received by the Department prior to the deadline, the Application may be terminated.

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

(2) Filing of Application for Tax-Exempt Bond Developments. Applications must be submitted to the Department as described in either subparagraph (A) or (B) of this paragraph. Applications will be required to satisfy the requirements of this chapter and applicable Department rules that coincide with the year the Certificate of Reservation is issued. Those Applications that receive a Traditional Carryforward Designation will be subject to the QAP and applicable Department rules in place at the time the Application is received by the Department, unless determined otherwise by staff. Regardless of the timing associated with notification by the TBRB that an application is next in line to receive a Certificate of Reservation and the corresponding deadline to submit the Application pursuant to 34 TAC §190.3(b)(13), it is the Department's expectation that the requirements in this chapter are adhered to, and that care and attention are given to the compilation of the Application, or the Application may be terminated. Depending on the timing associated with the release of the online Multifamily Management System, in lieu of submitting the Application as described herein for Priority 1 and 2 applications, staff may allow an Applicant to submit an Intent to Apply for 4% Housing Tax Credits form, and the required Application Fee, to meet the requirement to have the Certificate of Reservation issued by the TBRB.

(A) Lottery Applications. At the option of the bond issuer, an Applicant may participate in the TBRB lottery for private activity bond volume cap. Applicants should refer to the TBRB website or discuss with their issuer or TBRB staff, the deadlines regarding lottery participation and the timing for the issuance of the Certificate of Reservation based on lottery results. Depending on the Priority designation of the application filed with TBRB, the Application submission requirements to the Department under clauses (i) - (iii) of this subparagraph must be met. For those that participate in the Lottery but are not successful (i.e. a Certificate of Reservation will not be issued in January, but at some other time), the Application may not be submitted until a Certificate of Reservation has been issued (i.e. Priority 3 applications) or TBRB has sent an email stating the application is next in line (i.e. Priority 0, Priority 1 or Priority 2), but the Certificate of Reservation cannot be issued until the Application is submitted.

(i) Priority 0 applications for supplemental bond allocations: If an Applicant is seeking additional private activity bond volume cap pursuant to Tex. Gov't Code §1372.0321(a), upon notice from the TBRB that the Application is next in line to receive a Certificate of Reservation, a complete Application will not be required to be

submitted and staff will notify TBRB accordingly. However, if there are changes to the Development that are different from what the Department originally approved that would constitute an amendment under §10.405 of this title (relating to Amendments and Extensions) a request for an Amendment must be submitted to the Department. Staff will not re-issue the Determination Notice associated with supplemental bond allocations.

(ii) Priority 1 or 2 applications: If the Certificate of Reservation will be issued in January, the Applicant may submit the complete Application, including all required Third Party Reports, accompanied by the Application Fee described in §11.901 of this chapter, within the timeframe allowed under the TBRB notice. Alternatively, upon notification from TBRB that an Applicant is next in line to receive a Reservation the Applicant may choose to only submit the complete Application (excluding all required Third Party Reports), for purposes of meeting TBRB requirements to have the Certificate of Reservation issued. In this case, the Application will not be scheduled for a Board meeting or target date for the issuance of the Determination Notice, as applicable, until such time the Third Party Reports have been submitted, which should be on the fifth of the month. The Application may be scheduled for a Board meeting at which the decision to have the Determination Notice issued would be made, or the target date for the issuance of the Determination Notice, as applicable, approximately 90 days following the submission of such Third Party Reports. If the fifth day falls on a weekend or holiday, the submission deadline shall be on the next business day. For Third Party Reports that are submitted after the fifth of the month, it will be staff's discretion as to which Board meeting the Application will be presented, or target date for the issuance of the Determination Notice, as applicable. The Application must be submitted using the Uniform Application released by the Department for the upcoming program year.

(iii) Priority 3 applications: Once the Certificate of Reservation has been issued, the same Application submission requirements as indicated in clause (ii) of this subparagraph apply. Specifically, an Applicant may submit the Application including or excluding the Third Party Reports, however, only after the Application is considered complete (i.e. Application Fee and all Third Party Reports) will staff schedule the Application for a Board meeting or target date for the issuance of the Determination Notice. The timing of when a Priority 3 Application is submitted to the Department is up to the Applicant and if not submitted on the fifth of the month, it will be staff's discretion as to which Board meeting the Application will be presented, or target date for the administrative issuance of the Determination Notice, as applicable.

(B) Non-Lottery Applications or Applications Not Successful in Lottery.

(i) Applications designated as Priority 1 or 2 by the TBRB must submit the Application Fee described in §11.901 of this chapter and the complete Application, with the exception of the Third Party Reports, before the Certificate of Reservation can be issued by the TBRB. The Third Party Reports, if not submitted with the Application to meet the TBRB submission requirement, must then be submitted on the fifth day of the month and the Application may be scheduled for a Board meeting at which the decision to have the Determination Notice issued would be made, or the target date for the administrative issuance of the Determination Notice, as applicable, approximately 90 days following such submission deadline. If the fifth day falls on a weekend or holiday, the submission deadline shall be on the next business day. If the Third Party Reports are submitted on a date other than the fifth of the month, it will be at staff's discretion as to which Board meeting the Application will be presented, or what will be the target date for the administrative issuance of the Determination Notice, as applicable. Applicants may not submit the Application until staff receives notice from TBRB that the application is next in line to receive a Certificate of Reservation; or

(ii) An Application designated as Priority 3 will not be accepted until after the TBRB has issued a Certificate of Reservation and may be submitted on the fifth day of the month. Priority 3 Application submissions must be complete, including all Third Party Reports and the required Application Fee described in §11.901 of this chapter, before they will be considered accepted by the Department and meeting the submission deadline for the applicable Board meeting date or administrative issuance of the Determination Notice, as applicable.

(C) Generally, the Department will require at least 90 days to review an Application unless staff can complete its evaluation in sufficient time for earlier consideration. If the Application is layered with other Department funds the Department will require at least 120 days to complete its evaluation. If, at the time of Application submission, other Department funding is over-subscribed, the submitted Application cannot include a request for such funds. An Applicant should expect this timeline to apply regardless of whether the Board will need to approve the issuance of the Determination Notice or it is determined that staff can issue the Determination Notice administratively for a particular Application. Applicants should be aware that unusual financing structures, portfolio transactions, the need to resolve Administrative Deficiencies and changes made by an Applicant after the Application has been reviewed by staff may require additional time to review. In instances where an Application necessitates more staff time to review than normal, where an Application is suspended due to the inability to resolve Administrative Deficiencies by the original deadline, or an extension to respond to an Administrative Deficiency is requested, staff is not obligated to ensure the Application meets the original target date for a Board Meeting or administrative issuance of a Determination Notice, as applicable. Moreover, such review period may be longer depending on the volume of Applications under review and statutory program timing constraints associated with such Applications. The prioritization of Applications will be subject to the review priority established in paragraph (5) of this section.

(D) Withdrawal of Certificate of Reservation. Applications under review by the Department that have the Certificate of Reservation withdrawn and for which a new Certificate of Reservation is not expected to be issued within a reasonable amount of time, as determined by staff, the Department will consider the Application withdrawn and the Applicant will be provided notice to that effect. Once a new Certificate of Reservation is issued, it will be at the Department's discretion to determine whether the existing Application can still be utilized for purposes of review or if a new Application, including payment of another Application Fee, must be submitted. The Department will not prioritize the processing of the new Application over other Applications under review once a new Certificate of Reservation is issued, regardless of the stage of review the Application was in prior to the withdrawal of the Certificate of Reservation, or that it maintain the originally selected Board meeting or targeted administrative issuance date for the Determination Notice, as applicable.

(E) Direct Loan Applications must be submitted in accordance with the requirements in this chapter, §13.5 (relating to the Application and Award Process), and the applicable Notice of Funding Availability (NOFA).

(F) The Department has contracted with a third party for the development of an online Multifamily Management System (MMS), which may enable for the online submission of Applications. The Department may invite a limited number of Applicants to submit Applications through that system. Should that occur, staff may provide reasonable relief from non-statutory deadlines and other requirements

of this chapter to facilitate that testing. No advantage will be provided to Applicants that participate in this testing.

(3) Withdrawal of Application. An Applicant may withdraw an Application prior to or after receiving an award of funding by submitting to the Department written notice of the withdrawal. To the extent a Direct Loan award is returned after Board approval, penalties may be imposed on the Applicant and Affiliates in accordance with §13.11(a) of this title (relating to Post Award Requirements).

(4) Competitive Evaluation Process. Applications believed likely to be competitive will undergo a program review for compliance with submission requirements and selection criteria, as applicable. In general, Application reviews by the Department shall be conducted based upon the likelihood that an Application will be competitive for an award based upon the region, set-aside, self score, received date, or other ranking factors. Thus, non-competitive or lower scoring Applications may never be reviewed. The Director of Multifamily Finance will identify those Applications that will receive a full program review based upon a reasonable assessment of each Application and its relative position to other Applications, but no Application with a competitive ranking shall be skipped or otherwise overlooked. This initial assessment may be a high level assessment, not a full assessment. The Real Estate Analysis division shall underwrite Applications that received a full program review and remain competitive to determine financial feasibility and an appropriate funding amount. In making this determination, the Department will use §11.302 of this chapter (relating to Underwriting Rules and Guidelines) and §13.6 of this title (relating to Multifamily Direct Loan Rule) as applicable. The Department may have an external party perform all or part of the underwriting evaluation and components thereof to the extent it determines appropriate. The expense of any external underwriting shall be paid by the Applicant prior to the commencement of the aforementioned evaluation pursuant to §11.901(5) of this chapter (relating to Fee Schedule, Appeals and other Provisions). The reviews by the Multifamily Finance Division and the Real Estate Analysis Division will be conducted to meet the requirements of the Program or NOFA under which the Application was submitted. Applications will undergo a previous participation review in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation) and a Development Site may be evaluated by the Department or its agents through a physical site inspection or site visit, (which may include neighboring areas), independent of or concurrent with a site visit that may be performed in conjunction with §11.101(a)(3) (relating to Neighborhood Risk Factors). The Department may provide a scoring notice reflecting such score to the Applicant which will trigger appeal rights and corresponding deadlines pursuant to Tex. Gov't Code §2306.6715 and §11.902 of this chapter (relating to Appeals Process). For an Application for which the selection criteria are reviewed, the scoring notice for the Application will be sent to the Applicant no later than 21 days prior to the final Board approval of awards.

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

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

(i) for Tax-Exempt Bond Developments, the issuance date of the Certificate of Reservation issued by the TBRB; or in instances where there is a Traditional Carryforward Designation associated with an Application the Department will utilize the date the complete HTC Application associated with the Traditional Carryforward Designation is submitted to the Department;

(ii) for all other Developments, the date the Application is considered received by the Department; and

(iii) notwithstanding the foregoing, after July 31 of the current program year, a Tax-Exempt Bond Development with a Certificate of Reservation from the TBRB will take precedence over any Housing Tax Credit Application from the current Application Round on the waiting list.

(B) General Review Priority. Order of reviews of Applications under various multifamily programs will be established based on Department staff's consideration of any statutory timeframes associated with a program or Application in relation to the volume of Applications being processed.

(6) Deficiency Process. The purpose of the deficiency process is to allow an Applicant to provide clarification, explanation, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in an efficient and effective review of the Application. The deficiency process does not require staff to request information from the Applicant in order to complete the Application. Applicants are encouraged to utilize manuals or other materials produced by staff, as additional guidance in conjunction with the rules to provide appropriate support for each item substantiating a claim or representation, such as claims for points, qualification for set-asides, or meeting of threshold and eligibility requirements. Because the review of an Application occurs in several phases, deficiency notices may be issued during any of these phases. Staff will send the deficiency notice via an e-mail to the Applicant and one other contact party if identified in the Application. It is the Applicant's responsibility to ensure that e-mails sent from TDHCA staff to the Applicant or contact are not electronically blocked or redirected by a security feature as they will be considered to be received once they are sent. The time period for responding to a deficiency notice commences on the first business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period and may also be sent in response to reviews on post-award submissions. Responses are required to be submitted electronically as a PDF or multiple PDF files and must be uploaded to the Application's ServU http file. Emailed responses will not be accepted. A review of the response provided by the Applicant may reveal that issues initially identified as an Administrative Deficiency are actually determined to be beyond the scope of an Administrative Deficiency process, meaning they are Material Deficiencies not susceptible to being resolved. Department staff may in good faith provide an Applicant confirmation that an Administrative Deficiency response has been received or that such response is satisfactory. Communications from staff that the response was satisfactory do not establish any entitlement to points, eligibility status, or to any presumption of having fulfilled any requirements. Final determinations regarding the sufficiency of documentation submitted to cure a Deficiency as well as the distinction between material and non-material missing information are reserved for the Department staff and Board.

(A) It is critical that the use of the deficiency process not unduly slow the review process, and since the process is intended to clarify or explain matters or obtain at the Department's request missing information, there is an expectation that a party responding to an Administrative Deficiency will be able to respond immediately. It is the responsibility of a person who receives a deficiency to address the matter in a timely manner so that staff has the ability to review the response by the close of business on the date by which resolution must be complete and the deficiency fully resolved. Merely submitting ma-

terials prior to that time places the responsibility on the responding party that if the materials do not fully resolve the matter there may be adverse consequences such as point deductions, suspension, or termination. Extensions relating to Administrative Deficiency deadlines may only be extended up to five days if documentation needed to resolve the item is needed from a Third Party, the documentation involves Third Party signatures needed on certifications in the Application, or an extension is requested as a reasonable accommodation. A Deficiency response may not contain documentation that did not exist prior to submission of the pre-application or Full Application, as applicable, except as specifically allowed by 10 TAC §11.1(d)(2).

(B) Deficiencies for Competitive HTC Applications. Unless an extension has been timely requested and granted prior to the deadline, if a deficiency is not fully resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice, then five (5) points shall be deducted from the selection criteria score for each additional day the deficiency remains unresolved. Points deducted for failure to timely respond to a deficiency will not impact the Pre-Application score. If deficiencies are not resolved by 5:00 p.m. on the seventh business day following the date of the deficiency notice, then the Application shall be terminated, subject to the Applicant's right to appeal. An Applicant may not change or supplement any part of an Application in any manner after the filing deadline or while the Application is under consideration for an award, and may not add any set-asides, increase the requested credit amount, revise the Unit mix (both income levels and Bedroom mixes), or adjust their self-score except in response to a direct request from the Department to do so as a result of an Administrative Deficiency. (§2306.6708(b); §2306.6708) Applicants may not use the Deficiency Process to increase a scoring item's points or to change any aspect of the proposed Development, financing structure, or other element of the Application. To the extent that the review of deficiency documentation or the imposing of point reductions for late responses alters the score assigned to the Application, such score will be reflected in the updated application log published on the Department's website or a Scoring Notice may be issued.

(C) Deficiencies for Tax-Exempt Bond Developments. Unless an extension has been requested prior to the deadline, deficiencies must be resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice. Applications with unresolved deficiencies after 5:00 p.m. on the fifth business day following the date of the deficiency notice will be suspended from further processing and the Applicant will be provided with notice to that effect. If, on the fifth business day following the date of the suspension notice, there are deficiencies that remain unresolved, the Application will be terminated and the Applicant will be provided notice to that effect. If an Applicant appeals a staff termination to the Board, Board decisions on terminations are final and an Applicant will not be allowed to re-apply under the same Certificate of Reservation due to the limited timeframe allowed under the existing Reservation.

(D) Deficiencies for Direct Loan-only Applications. Deficiencies must be resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice. Applications with unresolved deficiencies after 5:00 p.m. on the fifth business day following the date of the deficiency notice will be suspended from further processing and the Applicant will be provided with notice to that effect. If, on the fifth business day following the date of the suspension notice, there are deficiencies that remain unresolved, the Application may be terminated and the Applicant will be provided notice to that effect. For purposes of priority under the Direct Loan set-asides, if the outstanding item(s) are resolved during the suspension period, the date by which the final deficient item is submitted shall be the new Application Acceptance Date pursuant to §13.5(c) of this title (relating to Multifamily Direct Loan Rule). Applicants should be prepared for additional time needed for completion of staff reviews as described in paragraph (2)(B) of this section. Should an Applicant still desire to move forward with the Development after Termination, a completely new Application must be submitted, along with a new Application Fee, as applicable, pursuant to rule. All of the deficiencies noted in the original deficiency notice must be incorporated into the re-submitted Application, which will have a new Application Acceptance Date.

(7) Limited Reviews. If, after the submission of the Application, an Applicant identifies an error in the Application that could likely be the subject of a Deficiency, the Applicant may request a limited review of the specific and limited issues in need of clarification or correction. The issue may not relate to the score of an Application. This limited review may only cover the specific issue and not the entire Application. If the limited review results in the identification of an issue that requires correction or clarification, staff will request such through the Deficiency process as stated in paragraph (6) of this section, if deemed appropriate. A limited review is intended to address:

(A) Clarification of issues that Department staff would have difficulty identifying due to the omission of information that the Department may have access to only through Applicant disclosure, such as a prior removal from a tax credit transaction or participation in a Development that is not identified in the previous participation portion of the Application; or

(B) Technical correction of non-material information that would cause an Application deemed non- competitive to be deemed competitive and, therefore, subject to a staff review. For example, failure to mark the Nonprofit Set-Aside in an Application that otherwise included complete submission of documentation for participation in the Nonprofit Set-Aside.

(8) Challenges to Opposition. Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local Governmental Entity having jurisdiction or oversight over the finding or determination. If any such comment is challenged, the challenger must declare the basis for the challenge and submit such challenge by the Challenges to Neighborhood Organization Opposition Delivery Date as identified in §11.2 of this chapter and no later than May 1 of the current year for Competitive HTC Applications. The Neighborhood Organization expressing opposition will be given seven calendar days to provide any information related to the issue of whether their assertions are contrary to the findings or determinations of a local Governmental Entity. All such materials and the analysis by staff will be provided to a fact finder, chosen by the Department, for review and a determination. The fact finder will not make determinations as to the accuracy of the statements presented, but only regarding whether the statements are contrary to findings or determinations of a local Governmental Entity. The fact finder's determination will be final and may not be waived or appealed.

§11.202. Ineligible Applicants and Applications.

The purpose of this section is to identify those situations in which an Application or Applicant may be considered ineligible for Department funding and subsequently terminated. Such matters may be brought to the attention of staff by anyone, including members of the general public. The items listed in this section include those requirements in Code, §42, Tex. Gov't Code, Chapter 2306, and other criteria considered important by the Department, and does not represent an exhaustive list of ineligibility criteria that may otherwise be identified in applicable rules, federal statutes or regulations, or a specific program NOFA. The Application may include, or Department staff may request, documen-

tation or verification of compliance with any requirements related to the eligibility of an Applicant, Application, Development Site, or Development. One or more of the matters enumerated in paragraph (1) of this section may also serve as a basis for debarment, or the assessment of administrative penalties, and nothing herein shall limit the Department's ability to pursue any such matter. Failure to provide disclosure may be cause for termination.

(1) Applicants. An Applicant may be considered ineligible if any of the criteria in subparagraphs (A) - (N) of this paragraph apply to those identified on the organizational chart for the Applicant, Developer and Guarantor. An Applicant is ineligible if the Applicant, Developer, or Guarantor:

(A) Has been or is barred, suspended, or terminated from participation in a state or Federal program, including those listed in the U.S. government's System for Award Management (SAM); (§2306.0504)

(B) Has been convicted of a state or federal felony crime involving fraud, bribery, theft, misrepresentation of material fact, misappropriation of funds, or other similar criminal offenses within 15 years preceding the received date of Application or Pre-Application submission (if applicable);

(C) Is, at the time of Application, subject to an order in connection with an enforcement or disciplinary action under state or federal securities law or by FINRA; subject to a federal tax lien (other than a contested lien for which provision has been made); or the subject of a proceeding in which a Governmental Entity has issued an order to impose penalties, suspend funding, or take adverse action based on an allegation of financial misconduct or uncured violation of material laws, rules, or other legal requirements governing activities considered relevant by the Governmental Entity;

(D) Has materially breached a contract with a public agency, and, if such breach is permitted to be cured under the contract, has been given notice of the breach and a reasonable opportunity to cure, and failed to cure that breach within the time specified in the notice of breach;

(E) Has misrepresented to a subcontractor the extent to which the Developer has benefited from contracts or financial assistance that has been awarded by a public agency, including the scope of the Developer's participation in contracts with the agency, and the amount of financial assistance awarded to the Developer by the agency;

(F) Has been found by the Board to be ineligible based on a previous participation review performed in accordance with Chapter 1 Subchapter C of this title (relating to Previous Participation Review);

(G) Is delinquent in any loan, fee, or escrow payments to the Department in accordance with the terms of the loan, as amended, or is otherwise in default with any provisions of such loans, and for which no repayment plan has been approved by the Department;

(H) Has failed to cure any past due fees owed to the Department within the time frame provided by notice from the Department and at least 10 days prior to the Board meeting at which the decision for an award is to be made;

(I) Would be prohibited by a state or federal revolving door or other standard of conduct or conflict of interest statute, including Tex. Gov't Code §2306.6733, or a provision of Tex. Gov't Code, Chapter 572, from participating in the Application in the manner and capacity they are participating;

(J) Has, without prior approval from the Department, had previous Contracts or Commitments that have been partially or fully Deobligated during the 12 months prior to the submission of the Application, and through the date of final allocation due to a failure to meet contractual obligations, and the Person is on notice that such Deobligation results in ineligibility under this chapter;

(K) Has provided false or misleading documentation or made other intentional or negligent material misrepresentations or omissions in or in connection with an Application (and certifications contained therein), Commitment or Determination Notice, or Direct Loan Contract for a Development;

(L) Was the Owner or Affiliate of the Owner of a Department assisted rental Development for which the federal affordability requirements were prematurely terminated and the affordability requirements have not been re-affirmed or Department funds repaid;

(M) Fails to disclose, in the Application, any Principal or any entity or Person in the Development ownership structure who was or is involved as a Principal in any other affordable housing transaction, that has terminated voluntarily or involuntarily within the past 10 years, or plans to or is negotiating to terminate, their relationship with any other affordable housing development. The disclosure must identify the person or persons and development involved, the identity of each other development, and contact information for the other Principals of each such development, a narrative description of the facts and circumstances of the termination or proposed termination, and any appropriate supporting documents. An Application may be referred to the Board for a determination of a person's fitness to be involved as a Principal with respect to an Application, which may include a staff recommendation, using the factors described in clauses (i) - (v) of this subparagraph as considerations:

(i) the amount of resources in a Development and the amount of the benefit received from the Development;

(ii) the legal and practical ability to address issues that may have precipitated the termination or proposed termination of the relationship;

(iii) the role of the person in causing or materially contributing to any problems with the success of the development;

(iv) the person's compliance history, including compliance history on other developments; and

(v) any other facts or circumstances that have a material bearing on the question of the person's ability to be a compliant and effective participant in their proposed role as described in the Application;

(N) Fails to disclose in the Application any voluntary compliance agreement or similar agreement with any governmental agency that is the result of negotiation regarding noncompliance of any affordable housing Development with any requirements. Any such agreement impacting the proposed Development or any other affordable housing Development controlled by the Applicant must be disclosed; or

(O) Controls an existing Housing Tax Credit Development that has been approved by staff or the Governing Board for return and reallocation of tax credits under any option established at 10 TAC §11.6 two or more times and that has not yet commenced construction. Controlling multiple existing Housing Tax Credits Developments that have been approved under 10 TAC §11.6 one time each will not trigger this ineligibility criteria. For Applications that are only requesting Competitive Housing Tax Credits, an ineligible Applicant under this subparagraph may submit an Application by the Full Application Delivery Date and be considered eligible if the disqualifying Development has commenced construction as of the May meeting of the Governing

Board or May 31st, whichever is sooner. Any ineligible Applicant under this subparagraph that chooses to submit a Competitive Housing Tax Credit Application assumes the risk of doing so, and staff will not recommend to the Board any waiver in the event that the disqualifying Development does not commence construction in time for the Applicant to become eligible.

(2) Applications. An Application shall be ineligible if any of the criteria in subparagraphs (A) - (C) of this paragraph apply to the Application:

(A) A violation of Tex. Gov't Code §2306.1113, exists relating to Ex Parte Communication. An ex parte communication occurs when an Applicant or Person representing an Applicant initiates substantive contact (i.e. any contact other than permitted social contact) with a board member, or vice versa, in a setting other than a duly posted and convened public meeting, in any manner not specifically permitted by Tex. Gov't Code §2306.1113(b). Such action is prohibited. For Applicants seeking funding after initial awards have been made, such as waiting list Applicants, the ex parte communication prohibition remains in effect so long as the Application remains eligible for funding. The ex parte provision does not prohibit the Board from participating in social events at which a Person with whom communications are prohibited may, or will be present; provided that no matters related to any Application being considered by the Board may be discussed;

(B) The Application is submitted after the Application submission deadline (time or date); is missing multiple parts of the Application; or has a Material Deficiency; or

(C) For any Development utilizing Housing Tax Credits or Tax-Exempt Bonds:

(i) at the time of Application or at any time during the two-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments any time during the two-year period preceding the date the Application is submitted to the Department), the Applicant or a Related Party is or has been a person covered by Tex. Gov't Code §2306.6703(a)(1);

(ii) if the Application is represented or communicated about by a Person that would prompt the violations covered by Tex. Gov't Code §2306.6733; or

(iii) the Applicant proposes to replace in less than 15 years any private activity bond financing of the Development described by the Application, unless the exceptions in Tex. Gov't Code §2306.6703(a)(2) are met.

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

A certification, as provided in the Application, that the Applicant met the requirements and deadlines identified in paragraphs (1) - (3) of this section must be submitted with the Application. For Applications utilizing Competitive Housing Tax Credits, notifications generally must not be older than three months from the first day of the Application Acceptance Period. For Tax-Exempt Bond Developments and Direct Loan Applications, notifications generally must not be older than three months prior to the date the complete Application is submitted. If notifications were made in order to satisfy requirements of pre-application submission (if applicable to the program) for the same Application, then no additional notification is required at Application. Should the jurisdiction of the official holding any position or role described in paragraph (2) of this section change between the submission of a pre-application and the submission of an Application in a manner that results in the Development being within a new jurisdiction, Applicants are required to notify the new entity no later than the Full Application Delivery Date.

(1) Neighborhood Organization Notifications.

(A) The Applicant must identify and notify all Neighborhood Organizations on record with the county or the state as of 30 days prior to the beginning of the Application Acceptance Period and whose boundaries include the entire proposed Development Site. As used in this section, "on record with the state" means on record with the Secretary of State.

(B) The Applicant must list, in the certification form provided in the pre-application and Application, all Neighborhood Organizations on record with the county or state as of 30 days prior to the beginning of the Application Acceptance Period and whose boundaries include the proposed Development Site.

(2) Notification Recipients. No later than the date the Application is submitted, notification must be sent to all of the entities identified in subparagraphs (A) - (H) of this paragraph. Developments located in an Extra Territorial Jurisdiction (ETJ) of a city are required to notify both city and county officials. The notifications may be sent by e-mail, fax or mail with return receipt requested or similar tracking mechanism. A template for the notification is included in the Application Notification Template provided in the Application. Evidence of notification is required in the form of a certification provided in the Application. The Applicant is required to retain proof of delivery in the event it is requested by the Department. Evidence of proof of delivery is demonstrated by a signed receipt for mail or courier delivery and confirmation of receipt by recipient for fax and e-mail. Officials to be notified are those in office at the time the Application is submitted; however, a mailed notification that is addressed to the entity or officeholder rather than a specific person is acceptable so long as it is mailed to the correct address and otherwise meets all requirements. Note that between the time of pre-application (if made) and full Application, the boundaries of their jurisdictions may change. Meetings and discussions do not constitute notification. Recipients include:

(A) Neighborhood Organizations on record with the state or county as of 30 days prior to the beginning of the Application Acceptance Period whose boundaries include the entire Development Site;

(B) Superintendent of the school district in which the Development Site is located;

(C) Presiding officer of the board of trustees of the school district in which the Development Site is located;

(D) Mayor of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

(E) All elected members of the Governing Body of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

(F) Presiding officer of the Governing Body of the county in which the Development Site is located;

(G) All elected members of the Governing Body of the county in which the Development Site is located; and

(H) State Senator and State Representative of the districts whose boundaries include the Development Site.

(3) Contents of Notification.

(A) The notification must include, at a minimum, all information described in clauses (i) - (ix) of this subparagraph:

(i) the Applicant's name, address, individual contact name, and phone number;

(ii) the Development name, address, city and county;

(iii) a statement indicating the program(s) to which the Applicant is applying with the Texas Department of Housing and Community Affairs;

(iv) whether the Development proposes New Construction, Reconstruction, Adaptive Reuse or Rehabilitation;

(v) the physical type of Development being proposed (e.g. single family homes, duplex, apartments, high-rise etc.);

(vi) the total number of Units proposed and total number of Low-Income Units proposed;

(vii) the residential density of the Development, i.e., the number of Units per acre;

(viii) information on how and when an interested party or Neighborhood Organization can provide input to the Department; and

(ix) Information on any proposed property tax exemption.

(B) The notification may not contain any false or misleading statements. Without limiting the generality of the foregoing, the notification may not create the impression that the proposed Development will target, provide a preference, or serve a Target Population exclusively, unless such population limitation, targeting, or preference is documented in the Application, and is or will be in full compliance with all applicable state and federal laws, including state and federal fair housing laws; and

(C) Notifications or any other communications may not contain any statement that violates Department rules, statute, code, or federal requirements.

§11.204. Required Documentation for Application Submission.
The purpose of this section is to identify the threshold documentation that is required at the time of Application submission, unless specifically indicated or otherwise required by Department rule. Unless stated otherwise, all documentation identified in this section must not be dated more than six (6) months prior to the close of the Application Acceptance Period or the date of Application submission as applicable to the program.

(1) Certification, Acknowledgement, and Consent of Development Owner. A certification of the information in this subchapter as well as Subchapter B of this chapter must be executed by the Development Owner and addresses the specific requirements associated with the Development. The Person executing the certification is responsible for ensuring all individuals referenced therein are in compliance with the certification and that they have given it with all required authority and with actual knowledge of the matters certified.

(A) The Development will adhere to the Texas Property Code relating to security devices and other applicable requirements for residential tenancies, and will adhere to local building codes or, if no local building codes are in place, then to the most recent version of the International Building Code.

(B) This Application and all materials submitted to the Department constitute records of the Department subject to Tex. Gov't Code, Chapter 552. Any person signing the Certification acknowledges that they have the authority to release all materials for publication on the Department's website, that the Department may publish them on the Department's website and release them in response to a request for public information, and make other use of the information as authorized by law.

(C) All representations, undertakings and commitments made by Applicant in the Application process expressly constitute conditions to any Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment for such Development which the Department may issue or award, and the violation of any such condition shall be sufficient cause for the cancellation and rescission of such Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment by the Department. If any such representations, undertakings and commitments concern or relate to the ongoing features or operation of the Development, they shall be enforceable even if not reflected in the Land Use Restriction Agreement. All such representations, undertakings and commitments are also enforceable by the Department and the residents of the Development, including enforcement by administrative penalties for failure to perform (consistent with Chapter 2, Subchapter C of this title, relating to Administrative Penalties), in accordance with the Land Use Restriction Agreement.

(D) The Development Owner has read and understands the Department's fair housing educational materials posted on the Department's website as of the beginning of the Application Acceptance Period.

(E) The Applicant will attempt to ensure that at least 30% of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses as further described in Tex. Gov't Code §2306.6734.

(F) The Development Owner will specifically market to veterans through direct marketing or contracts with veteran's organizations and will specifically market to the public housing authority (PHA) waitlists for any PHA in the city and/or county the Development is located within and the PHA of any City within 5 miles of the Development. The Development Owner will be required to identify how they will specifically market to veterans and the PHA waiting lists and report to the Department in the annual housing report on the results of the marketing efforts to veterans and PHA waiting lists. Exceptions to this requirement must be approved by the Department.

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

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

(I) The Development Owner acknowledges that all Applications are subject to a review for compliance with applicable accessibility standards, including those proposing the Rehabilitation of an existing Development.

(2) Applicant Eligibility Certification. A certification of the information in this subchapter as well as Subchapter B of this chapter must be executed by any individuals required to be listed on the organizational chart and also meeting the definition of Control. The certification must identify the various criteria relating to eligibility requirements associated with multifamily funding from the Department, including but not limited to the criteria identified under §11.202 of this chapter (relating to Ineligible Applicants and Applications).

(3) Engineer/Architect Certification Form. The certification, addressing all of the accessibility requirements applicable to the Development Site, must be executed by the Development engineer or accredited architect after careful review of the Department's accessibility requirements, and including Tex. Gov't Code §2306.6722 and §2306.6730.

(4) Notice, Hearing, and Resolution for Tax-Exempt Bond Developments. In accordance with Tex. Gov't Code, §2306.67071,

the following actions must take place with respect to the filing of an Application and any Department consideration for a Tax-Exempt Bond Development.

(A) Prior to submission of an Application to the Department, an Applicant must provide notice of the intent to file the Application in accordance with §11.203 of this chapter (relating to Public Notifications (§2306.6705(9)).

(B) The Governing Body of a municipality must hold a hearing if the Development Site is located within a municipality or the extra territorial jurisdiction (ETJ) of a municipality. The Governing Body of a county must hold a hearing unless the Development Site is located within a municipality. For Development Sites located in an ETJ the county and municipality must hold hearings; however, the county and municipality may arrange for a joint hearing. The purpose of the hearing(s) must be to solicit public input concerning the Application or Development and the hearing(s) must provide the public with such an opportunity. The Applicant may be asked to substantively address the concerns of the public or local government officials.

(C) An Applicant must submit to the Department a resolution of no objection from the applicable Governing Body. Such resolution(s) must specifically identify the Development whether by legal description, address, Development name, Application number or other verifiable method. For an Application with a Development Site that is:

(i) within a municipality, the Applicant must submit a resolution from the Governing Body of that municipality;

(ii) within the ETJ of a municipality, the Applicant must submit both:

(I) A resolution from the Governing Body of that municipality; and

(II) A resolution from the Governing Body of the county; or

(iii) within a county and not within a municipality or the ETJ of a municipality, a resolution from the Governing Body of the county.

(D) For purposes of meeting the requirements of subparagraph (C) of this paragraph, the resolution(s) must be submitted no later than the Resolutions Delivery Date described in §11.2(b) of this chapter (relating to Tax-Exempt Bond Dates and Deadlines). An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Applicants should ensure that the resolutions all have the appropriate references and certifications or the resolution may be determined by staff to be invalid. The representations regarding the Development made to the applicable Governing Body to obtain the resolution must remain accurate, as reflected in the submitted Application. If material aspects of the Development have changed from when the Governing Body adopted the resolution, it is incumbent upon the Applicant to obtain a new resolution in order to satisfy this requirement. No resolutions older than four years will be accepted. The resolution(s) must certify that:

(i) notice has been provided to the Governing Body in accordance with Tex. Gov't Code §2306.67071(a);

(ii) the Governing Body has had sufficient opportunity to obtain a response from the Applicant regarding any questions or concerns about the proposed Development;

(iii) the Governing Body has held a hearing at which public comment may be made on the proposed Development in accordance with Tex. Gov't Code §2306.67071(b); and

(iv) after due consideration of the information provided by the Applicant and public comment, the Governing Body does not object to the proposed Application.

(5) Designation as Rural or Urban.

(A) Each Application must identify whether the Development Site is located in an Urban Area or Rural Area of a Uniform State Service Region. The Department shall make available a list of Places meeting the requirements of Tex. Gov't Code §2306.004(28-a)(A) and (B), for designation as a Rural Area and those that are an Urban Area in the Site Demographics Characteristics Report. Some Places are municipalities. For any Development Site located in the ETJ of a municipality and not in a Place, the Application shall have the Rural Area or Urban Area designation of the municipality whose ETJ within which the Development Site is located. For any Development Site not located within the boundaries of a Place or the ETJ of a municipality, the applicable designation is that of the closest Place.

(B) Certain areas located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area can request a Rural designation from the Department for purposes of receiving an allocation Housing Tax Credits (§2306.6740). In order to apply for such a designation, a letter must be submitted from a duly authorized official of the political subdivision or census designated place addressing the factors outlined in clauses (i) - (vi) of this subparagraph. Photographs and other supporting documentation are strongly encouraged. In order for the area to be designated Rural by the Department for the current Application Round, such requests must be made no later than December 15 of the previous year. If staff is able to confirm the findings outlined in the request, the Rural designation will be granted without further action and will remain in effect until such time that the population as described in clause (i) of this subparagraph exceeds 25,000. In the event that staff is unable to confirm the information contained in the request, the Applicant will be given an opportunity to supplement their case. If, after receiving any supplemental information, staff still cannot confirm the rural nature of the Application, a recommendation for denial will be presented to the Board. The factors include:

(i) the population of the political subdivision or census designated place does not exceed 25,000;

(ii) the characteristics of the political subdivision or census designated place and how those differ from the characteristics of the area(s) with which it shares a contiguous boundary;

(iii) the percentage of the total border of the political subdivision or census designated place that is contiguous with other political subdivisions or census designated places designated as urban. For purposes of this assessment, less than 50% contiguity with urban designated places is presumptively rural in nature;

(iv) the political subdivision or census designated place contains a significant number of unimproved roads or relies on unimproved roads to connect it to other places;

(v) the political subdivision or census designated place lacks major amenities commonly associated with urban or suburban areas; and

(vi) the boundaries of the political subdivision or census designated place contain, or are surrounded by, significant areas of undeveloped or agricultural land. For purposes of this assessment, significant being more than one-third of the total surface area of political subdivision/census designated place, or a minimum of 1,000 acres immediately contiguous to the border.

(6) Financing Requirements.

(A) Non-Department Debt Financing. Interim and permanent financing sufficient to fund the proposed Total Housing Development Cost less any other funds requested from the Department must be included in the Application. For any Development that is a part of a larger development plan on the same site, the Department may request and evaluate information related to the other components of the development plan in instances in which the financial viability of the Development is in whole or in part dependent upon the other portions of the development plan. Any local, state or federal financing identified in this section which restricts household incomes at any level that is lower than restrictions required or elected in accordance with this Chapter or Chapter 13 of this title (relating to Multifamily Direct Loan) must be identified in the rent schedule and the local, state or federal income restrictions must include corresponding rent levels in accordance with Code §42(g) if the Development will receive housing tax credits. Financing amounts must be consistent throughout the Application and acceptable documentation shall include those described in clauses (i) - (iv) of this subparagraph.

(i) Financing is in place as evidenced by:

(I) a valid and binding loan agreement; and

(II) a valid recorded deed(s) of trust lien on the Development in the name of the Development Owner as grantor in favor of the party providing such financing.

(ii) Term sheets for interim and permanent loans issued by a lending institution or mortgage company must:

(I) be current, non-expired, and have been signed or otherwise acknowledged by the lender;

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

(III) for a permanent loan, include a minimum loan term of 15 years with at least a 30 year amortization or for non-amortizing loan structures a term of not less than 30 years;

(IV) include either a committed and locked interest rate, or the lender estimated underwritten interest rate;

(V) include the "up to" principal amount of the loan; and

(VI) include and address any other material terms and conditions applicable to the financing. The term sheet may be conditional upon the completion of specified due diligence by the lender and upon the award of tax credits, if applicable;

(iii) For Developments proposing to refinance an existing USDA Section 514, 515, or 516 loan, a letter from the USDA confirming the outstanding loan balance on a specified date and confirming that the Preliminary Assessment Tool has been submitted by the Applicant to USDA. The loan amount that is reported on the Schedule of Sources (tab 31 in the MF Uniform Application) and that is used to determine the acquisition cost must be the Applicant's estimate of the projected outstanding loan balance at the time of closing as calculated on the USDA Principal Balance Amortization exhibit.

(iv) For Direct Loan Applications or Tax-Exempt Bond Developments with TDHCA as the issuer that utilize FHA financing, the Application shall include the applicable pages from the HUD Application for Multifamily Housing Project. If the HUD Application has not been submitted at the time the Application is submitted then a statement to that effect should be included in the Application along with an estimated date for submission. Applicants should be aware that staff's underwriting of an Application will not be finalized and presented to the Board until staff has evaluated the HUD Application relative to the Application.

(B) Gap Financing. Any anticipated federal, state, local or private gap financing, whether soft or hard debt, must be identified and described in the Application. Applicants must provide evidence that an application for such gap financing has been made to an available fund source. Acceptable documentation may include a letter from the funding entity confirming receipt of an application or a term sheet from the lending agency which clearly describes the amount and terms of the financing. Other Department funding requested with Housing Tax Credit Applications must be on a concurrent funding period with the Housing Tax Credit Application, and no term sheet is required for such a request. A term loan request must comply with the applicable terms of the NOFA under which an Applicant is applying.

(C) Owner Contributions. If the Development will be financed in part with a capital contribution or debt by the General Partner, Managing General Partner, any other partner or investor that is not a partner providing the syndication equity, a Guarantor or a Principal in an amount that exceeds 5% of the Total Housing Development Cost, a letter from a Third Party CPA must be submitted that verifies the capacity of the contributor to provide the capital from funds that are not otherwise committed or pledged. Additionally, a letter from the contributor's bank(s) or depository(ies) must be submitted confirming sufficient funds are readily available to the contributor. The contributor must certify that the funds are and will remain readily available at Commitment and until the required investment is completed. Regardless of the amount, all capital contributions other than syndication equity will be deemed to be a part of, and therefore added to, the Deferred Developer Fee for feasibility purposes under §11.302(i)(2) of this chapter (relating to Underwriting Rules and Guidelines) or where scoring is concerned, unless the contribution is a seller note equal to or less than the acquisition price of the subject Development, the Development is a Supportive Housing Development, the Development is not supported with Housing Tax Credits, or the ownership structure includes a nonprofit organization with a documented history of fundraising sufficient to support the development of affordable housing.

(D) Equity Financing. (§2306.6705(2) and (3)) If applicable to the program, the Application must include a term sheet from a syndicator that, at a minimum, includes:

(i) an estimate of the amount of equity dollars expected to be raised for the Development;

(ii) the amount of Housing Tax Credits requested for allocation to the Development Owner;

(iii) pay-in schedules;

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

(E) Financing Narrative. (§2306.6705(1)) A narrative should be submitted that describes any special, complex, or unique aspects of the financing plan for the Development, including as applicable any operating subsidies, project-based assistance, replacement reserves, or interest rate swaps; and the status (dates and deadlines) for applications, approvals and closings, etc. associated with the term sheets for soft or other government sources, including the funding source; and any refinancing or loan assumptions for USDA loans, etc. For Applicants requesting Direct Loan funds and 9% LIHTC, Match, as applicable, must be documented with a letter from the anticipated provider of Match indicating the provider's willingness and ability to make a financial commitment should the Development receive an award of Direct Loan funds.

(7) Operating and Development Cost Documentation.

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

(B) Utility Allowances. This exhibit, as provided in the Application, must be submitted along with documentation from the source of the utility allowance estimate used in completing the Rent Schedule provided in the Application. This exhibit must clearly indicate which utility costs are included in the estimate and must comply with the requirements of §10.614 of this title (relating to Utility Allowances), including deadlines for submission. Where the Applicant uses any method that requires Department review, documentation indicating that the requested method has been granted by the Department must be included in the Application. Applicants that are uncertain about the applicability of a Utility Allowance to the proposed Development are encouraged to contact the Department as early as possible prior to submitting the Application for guidance.

(C) Operating Expenses. This exhibit, as provided in the Application, must be submitted indicating the anticipated operating expenses associated with the Development. Any expenses noted as "other" in any of the categories must include a description. "Miscellaneous" or other nondescript designations are not acceptable.

(D) Rent Schedule. This exhibit, as provided in the Application, must meet the requirements of clauses (i) - (vi) of this subparagraph. The income and corresponding rent restrictions will be reflected in the LURA for the duration of the Affordability Period and for Tax-Exempt Bond Developments, in accordance with the Applicant's election under Tex. Gov't Code §1372.0321. The requirements are:

(i) indicate the type of Unit restriction based on the Unit's rent and income restrictions;

(ii) reflect the rent and utility limits available at the time the Application is submitted;

(iii) reflect gross rents that cannot exceed the maximum rent limits unless documentation of project-based rental assistance is provided and rents are consistent with such assistance and applicable legal requirements;

(iv) have a Unit mix and net rentable square footages that are consistent with the site plan and architectural drawings;

(v) if applying for Direct Loan funds:

(I) Direct Loan-restricted Units will generally be designated "floating" unless specifically disallowed under the program specific rules or as specifically allowed in a NOFA;

(II) if HOME, TCAP RF, and/or NSP PI are the anticipated fund source, the Application must have at least 90% of the Direct Loan-restricted Units be available to households or families whose incomes do not exceed 60% of the Area Median Income;

(III) in which HOME or TCAP RF are the anticipated fund source have at least 20% of the Direct Loan-restricted Units available to households or families whose incomes do not exceed 50% of the Area Median Income;

(IV) in which NHTF is the anticipated fund source, have 100% of the Direct Loan-restricted Units available to households or families whose incomes do not exceed the greater of 30% of the Area Median Income or whose income is at or below the poverty line;

(V) in which NSP PI is the anticipated fund source, have at least 25% of the Direct Loan-restricted Units available to households or families whose incomes do not exceed 50% of the Area Median Income;

(VI) in which HOME-ARP is the anticipated fund source, during the State Affordability Period have at least 20% of the Direct Loan-restricted Units for households and families whose incomes do not exceed 60% of the Area Median Income and 100% of the Direct Loan-restricted Units for households and families whose incomes do not exceed 80% of the Area Median Income; and

(vi) if proposing to elect income averaging, Units restricted by any fund source other than housing tax credits must be specifically identified, and all restricted Units, regardless of fund source, must be included in the average calculation.

(E) Development Costs. This exhibit, as provided in the Application, must include the contact information for the person providing the cost estimate and must meet the requirements of clauses (i) and (ii) of this subparagraph. For Applications that include a scope of work that contains a combination of new construction and rehabilitation activities, the Application must include a separate development cost schedule exhibit for only the costs attributed to the portion of rehabilitation activities.

(i) Applicants must provide a detailed cost breakdown of projected Site Work costs (excluding site amenities), if any, prepared by a Third Party engineer. If Site Work costs (excluding site amenities) exceed $20,000 per Unit and are included in Eligible Basis, a letter must be provided from a certified public accountant allocating which portions of those site costs should be included in Eligible Basis.

(ii) If costs for Off-Site Construction are included in the budget as a line item, or embedded in the site acquisition contract, or referenced in the utility provider letters, then an Off-Site Cost Breakdown prepared by a Third Party engineer must be provided. The certification from a Third Party engineer must describe the necessity of the off-site improvements, including the relevant requirements of the local jurisdiction with authority over building codes and the source of their cost estimate. If any Off-Site Construction costs are included in Eligible Basis, a letter must be provided from a certified public accountant allocating which portions of those costs should be included in Eligible Basis. If off-site costs are included in Eligible Basis based on PLR 200916007, a statement of findings from a CPA must be provided which describes the facts relevant to the Development and affirmatively certifies that the fact pattern of the Development matches the fact pattern in PLR 200916007.

(F) Rental Assistance/Subsidy. (§2306.6705(4)) If rental assistance, an operating subsidy, an annuity, or an interest rate reduction payment is proposed to exist or continue for the Development, any related contract or other agreement securing those funds. Such documentation shall, at a minimum, identify the source and annual amount of the funds, the number of units receiving the funds, and the term and expiration date of the contract or other agreement.

(G) Occupied Developments. The items identified in clauses (i) - (vi) of this subparagraph must be submitted with any Application where any structure on the Development Site is occupied at any time after the Application Acceptance Period begins or if the Application proposes the demolition of any housing occupied at any time after the Application Acceptance Period begins. If the Application includes a request for Direct Loan funds, Applicants must follow the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) and other HUD requirements including Section 104(d) of the Housing and Community Development Act. HUD Handbook 1378 provides guidance and template documents.

Failure to follow URA or 104(d) requirements will make the proposed Development ineligible for Direct Loan funds and may lead to penalty under §13.11(b) of this title (relating to Multifamily Direct Loan Rule). If one or more of the items described in clauses (i) - (vi) of this subparagraph is not applicable based upon the type of occupied structures on the Development Site, the Applicant must provide an explanation of such non- applicability. Applicant must submit:

(i) The items identified in subclause (I) below. If (I) cannot be submitted, explain the reason and submit (II). Proceed in this manner through subclause (IV):

(I) Historical monthly operating statements of the Existing Residential Development for 12 consecutive months ending not more than three months from the first day of the Application Acceptance Period; or

(II) The two most recent consecutive annual operating statement summaries; or

(III) The most recent consecutive six months of operating statements and the most recent available annual operating summary; or

(IV) All monthly or annual operating summaries available; and

(ii) a rent roll not more than six months old as of the first day the Application Acceptance Period that discloses the terms and rate of the lease, rental rates offered at the date of the rent roll, Unit mix, and any vacant units;

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

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

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

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

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

(A) For all Developments a site plan must be submitted that includes the items identified in clauses (i) - (xii) of this subparagraph:

(i) states the size of the site on its face;

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

(iii) includes a table matrix specifying the square footage of Common Area space on a building by building basis;

(iv) identifies all residential and common buildings in place on the Development Site and labels them consistently with the Rent Schedule and Building/Unit Type Configuration forms provided in the Application;

(v) shows the locations (by Unit and floor) of mobility and hearing/visual accessible Units (unless included in residential building floor plans);

(vi) clearly delineates the flood plain boundary lines or states there is no floodplain;

(vii) indicates placement of detention/retention pond(s) or states there are no detention ponds;

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

(ix) indicates the location and number of parking spaces, garages, and carports;

(x) indicates the location and number of accessible parking spaces, garages, and carports, including van accessible spaces;

(xi) includes information regarding local parking requirements; and

(xii) indicates compliant accessible routes or if a route is not accessible a cite to the provision in the Fair Housing Design Manual providing for its exemption.

(B) Building floor plans must be submitted for each building type. Building floor plans must include the locations of the accessible Units and must also include square footage calculations for balconies, breezeways, corridors and any other areas not included in net rentable area.

(C) Unit floor plans for each Unit Type must be included in the Application and must include the square footage. Unit floor plans must be submitted for the accessible Units. Applications for Adaptive Reuse are only required to include Unit floor plans for each distinct floor plan such as one-Bedroom, or two-Bedroom, and for all floor plans that vary in Net Rentable Area by 10% from the typical floor plan.

(D) Elevations must be submitted for each side of each building type (or include a statement that all other sides are of similar composition as the front) and include a percentage estimate of the exterior composition and proposed roof pitch. Applications for Rehabilitation may submit photographs if the Unit configurations are not being altered and post-renovation drawings must be submitted if Unit configurations are proposed to be altered.

(9) Site Control.

(A) Evidence that the Development Owner has Site Control must be submitted. If the evidence is not in the name of the Development Owner, then an Affiliate of the Development Owner must have Site Control that allows for an ability to assign the Site Control to the Development Owner. All of the sellers of the proposed Property for the 36 month period prior to the first day of the Application Acceptance Period and their relationship, if any, to members of the Development Team must be identified at the time of Application. The Department may request documentation at any time after submission of an Application of the Development Owner's ability to compel title of any Affiliated property acquisition(s) and the Development Owner must be able to promptly provide such documentation or the Application, award, or Commitment may be terminated. The Department acknowledges and understands that the Property may have one or more encumbrances at the time of Application submission and the Department will take into account whether any such encumbrance is reasonable within the legal and financial ability of the Development Owner to address without delaying development on the timeline contemplated in the Application. To meet the requirements of subparagraph (B) of this paragraph, Tax-Exempt Bond Developments that

do not include a request for Direct Loan or include the Department as the bond issuer, must certify in the Application that the Site Control submitted with the TBRB application for the Certificate of Reservation to be issued is still valid. Tax-Exempt Bond Developments involving Acquisition and Rehabilitation or identity of interest land acquisitions must submit Site Control documents in order to verify the site acquisition cost as required in §11.302 of this chapter.

(B) In order to establish Site Control, one of the items described in clauses (i) - (iii) of this subparagraph must be provided. In the case of land donations, Applicants must demonstrate that the entity donating the land has Site Control as evidenced through one of the items described in clauses (i) - (iii) of this subparagraph or other documentation acceptable to the Department. Site Control items include:

(i) a recorded warranty deed vesting indefeasible title in the Development Owner or, if transferrable to the Development Owner, an Affiliate of the Owner, with corresponding executed settlement statement (or functional equivalent for an existing lease with at least 45 years remaining); or

(ii) a contract or option for lease with a minimum term of 45 years that includes a price; address or legal description; proof of consideration in the form specified in the contract; and expiration date; or

(iii) a contract for sale or an option to purchase that includes a price; address or legal description; proof of consideration in the form specified in the contract; and expiration date.

(C) If the acquisition can be characterized as an identity of interest transaction, as described in §11.302 of this chapter (relating to Underwriting Rules and Guidelines), then the documentation required as further described therein must be submitted in addition to that of subparagraph (B) of this paragraph.

(D) If ingress and egress to a public right of way are not part of the Property described in the site control documentation, the Applicant must provide evidence of an easement, leasehold, or similar documented access, along with evidence that the fee title owner of the property agrees that the LURA may extend to the access easement by the time of Commitment, Determination Notice or Contract (as applicable).

(E) If control of the entire proposed Development Site requires that a plat or right of way be vacated to remove a right of way or similar dedication, evidence that the vacation/re-platting process has started must be included in the Application, and evidence of control of the entire Development Site must be provided by the time of Commitment or Contract (as applicable).

(10) Zoning. (§2306.6705(5)) Acceptable evidence of zoning for all Developments must include one of subparagraphs (A) - (D) of this paragraph. In instances where annexation of a Development Site occurs while the Application is under review, the Applicant must submit evidence of appropriate zoning with the Commitment or Determination Notice. Letters evidencing zoning status must be no more than 6 months old at Application submission, except where such evidence is for an area where there is no zoning and such letters must be updated annually by the political subdivision.

(A) No Zoning Ordinance in Effect. The Application must include a letter from a local government official with appropriate jurisdiction stating that the Development is located within the boundaries of a political subdivision that has no zoning. This requirement does not apply to a Development Site located entirely in the unincorporated area of a county, and not within the ETJ of a municipality.

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

(C) Requesting a Zoning Change, or a Specific or Special Use Permit. The Application must include evidence in the form of a letter from a local government official with jurisdiction over zoning matters that the Applicant or Affiliate has made formal application for a required zoning change and that the jurisdiction has received a release whereby the Applicant has agreed to hold the political subdivision and all other parties harmless in the event the appropriate zoning is not granted. Documentation of final approval of appropriate zoning, including any necessary specific or special use permits,must be submitted to the Department with the Commitment or Determination Notice.

(D) Zoning for Rehabilitation Developments. In an area with zoning, the Application must include documentation of current zoning. If the Property is currently conforming but with an overlay that would make it a non-conforming use as presently zoned, the Application must include a letter from a local government official with appropriate jurisdiction which addresses the items in clauses (i) - (v) of this subparagraph:

(i) a detailed narrative of the nature of non-conformance;

(ii) the applicable destruction threshold;

(iii) that it will allow the non-conformance;

(iv) Owner's rights to reconstruct in the event of damage; and

(v) penalties for noncompliance.

(11) Title Commitment/Policy. A title commitment or title policy must be submitted that includes a legal description that is consistent with the Site Control. If the title commitment or policy is dated more than six months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications, then a letter from the title company indicating that nothing further has transpired during the six-month period on the commitment or policy must be submitted. Tax-Exempt Bond Developments that do not include a request for Direct Loan or include the Department as the bond issuer are exempt from this requirement.

(A) The title commitment must list the name of the Development Owner as the proposed insured and list the seller or lessor as the current owner of the Development Site.

(B) The title policy must show that the ownership (or leasehold) of the Development Site is vested in the name of the Development Owner.

(12) Ownership Structure and Previous Participation.

(A) The Department assumes that the Applicant will be able to form any one or more business entities, such as a limited partnership, that are to be engaged in the ownership of a Development as represented in the Application, and that all necessary rights, powers, and privileges including, but not limited to, Site Control will be transferable to that entity. The formation of the ownership entity, qualification to do business (if needed), and transfer of any such rights, powers, and privileges must be accomplished as required in this chapter and Chapters 12 and 13, as applicable.

(B) Organizational Charts. A chart must be submitted that clearly illustrates the organizational structure of the proposed Development Owner and of any Developer and Guarantor, identifying all Principals thereof and providing the names and ownership percentages

of all Persons having an ownership interest in the Development Owner, Developer and Guarantor, as applicable, whether directly or through one or more subsidiaries, whether or not they have Control. Persons having Control over the Development should be specifically identified on the chart. Individual board members and executive directors of nonprofit entities, governmental bodies, and corporations, as applicable, must be included in this exhibit and trusts must list all beneficiaries that have the legal ability to control or direct activities of the trust and are not just financial beneficiaries. Notwithstanding the foregoing, in the case of Housing Tax Credit Applications only if the entity is owned by a fund regulated by the U.S. Securities and Exchange Commission, no Natural Person is required to be listed or sign any applications The List of Organizations form, as provided in the Application, must include all Persons identified on the organizational charts, and further identify which of those Persons listed exercise Control of the Development.

(C) Previous Participation. Evidence must be submitted that each entity shown on the organizational charts described in subparagraph (B) of this paragraph and each individual who exercises Control over the Development has provided a copy of the completed previous participation information to the Department. Individual Principals of such entities identified on the organizational chart and on the List of Organizations form, must provide the previous participation information, unless excluded from such requirement pursuant to Chapter 1 Subchapter C of this title (relating to Previous Participation Review). The information must include a list of all Developments that are, or were, previously under ownership or Control of the Applicant or each Principal, including any Person providing the required experience. All participation in any Department funded or monitored activity, including non-housing activities, as well as Housing Tax Credit developments or other programs administered by other states using state or federal programs must be disclosed. The individuals providing previous participation information must authorize the parties overseeing such assistance to release compliance histories to the Department.

(D) Direct Loan and 811 PRA. In addition to the information required in (B) and (C) of this subparagraph, if the Applicant is applying for Direct Loan funds or claiming points for serving tenants with special housing needs through participation in 811 PRA then the Applicant must also include the definitions of Person, Affiliate, Principal, and Control found in 2 CFR Part 180 and 2424, when completing the organizational chart and the Previous Participation information. In addition, for 811 PRA, if claiming points for an Existing Development(s) the organizational chart for the Existing Development(s) must also be included in the Application.

(13) Nonprofit Ownership. Applications that involve a §501(c)(3) or (4) nonprofit, housing finance corporation or public facility corporation as the General Partner or Owner shall submit the documentation identified in subparagraph (A) or (B) of this paragraph, as applicable. Additionally, a resolution approved at a regular meeting of the majority of the board of directors of the nonprofit, indicating their awareness of the organization's participation in each specific Application, and naming all members of the board and employees who may act on its behalf, must be provided. For Tax-Exempt Bond Developments, if the bond issuer is the sole member of the General Partner, a copy of the executed inducement resolution will meet the resolution requirement in this paragraph.

(A) Competitive HTC Applications for the Nonprofit Set-Aside. Applications for Competitive Housing Tax Credits involving a §501(c)(3) or (4) nonprofit General Partner and which meet the Nonprofit Set-Aside requirements, must submit all of the documents described in clauses (i) to (v) of this subparagraph and indicate the nonprofit status on the carryover documentation and IRS Forms 8609. (§2306.6706) Applications that include an affirmative election to not be treated under the Nonprofit Set-Aside and a certification that they do not expect to receive a benefit in the allocation of tax credits as a result of being Affiliated with a nonprofit, only need to submit the documentation in subparagraph (B) of this paragraph. Required documents include:

(i) An IRS determination letter which states that the nonprofit organization has been determined by the Internal Revenue Service to be tax-exempt under §501(c)(3) or (4) of the Code;

(ii) The Nonprofit Participation exhibit as provided in the Application, including a list of the names and contact information for all board members, directors, and officers;

(iii) A Third Party legal opinion stating:

(I) That the nonprofit organization is not Affiliated with or Controlled by a for-profit organization and the basis for that opinion;

(II) That the nonprofit organization is eligible, as further described, for a Housing Credit Allocation from the Nonprofit Set-Aside pursuant to Code, §42(h)(5) and the basis for that opinion;

(III) That one of the exempt purposes of the nonprofit organization is to provide low-income housing;

(IV) That the nonprofit organization prohibits a member of its board of directors, other than a chief staff member serving concurrently as a member of the board, from receiving material compensation for service on the board. If the Application includes a request for Community Housing Development Corporation (CHDO) funds, no member of the board may receive compensation, including the chief staff member;

(V) That the Qualified Nonprofit Development will have the nonprofit entity or its nonprofit Affiliate or subsidiary be the Developer or co-Developer as evidenced in the development agreement; and

(VI) That the nonprofit organization has the ability to do business as a nonprofit in Texas;

(iv) a copy of the nonprofit organization's most recent financial statement as prepared by a Certified Public Accountant; and

(v) evidence in the form of a certification that a majority of the members of the nonprofit organization's board of directors principally reside:

(I) in this state, if the Development is located in a Rural Area; or

(II) not more than ninety (90) miles from the Development, if the Development is not located in a Rural Area.

(B) All Other Applications. Applications that involve a §501(c)(3) or (4) nonprofit, housing finance corporation or public facility corporation as the General Partner or Owner must submit an IRS determination letter which states that the nonprofit organization has been determined by the Internal Revenue Service to be tax-exempt under §501(c)(3) or (4) of the Code; and the Nonprofit Participation exhibit as provided in the Application. If the Application involves a nonprofit that is not exempt from taxation under §501(c)(3) or (4) of the Code, then they must disclose in the Application the basis of their nonprofit status. Housing finance corporations or public facility corporations that do not have such IRS determination letter shall submit documentation evidencing creation under their respective chapters of the Texas Local Government Code and corresponding citation for an exemption from taxation.

(14) Feasibility Report. This report, compiled by the Applicant or Third Party Consultant, and prepared in accordance with this paragraph, which reviews site conditions and development requirements of the Development and Development Site, is required and must meet all of the criteria provided in subparagraphs (A) to (F) of this paragraph. For Acquisition and Rehabilitation Applications that are only requesting 9% Housing Tax Credits, or 4% Housing Tax Credits for which the Department is not the bond issuer, only subparagraph (D) of this paragraph is required to be submitted. If an Application involves Acquisition and Rehabilitation along with other activities, the Feasibility Report is required for the entire Development. Tax-Exempt Bond Developments where the Department is the bond issuer, or Direct Loan Applications, a report that meets all of the criteria provided in subparagraphs (A) to (F) of this paragraph must be submitted.

(A) For all Applications, careful focus and attention should be made regarding any atypical items materially impacting costs or the successful and timely execution of the Development plan. The report must also include the following statement, "any person signing this Report acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law."

(B) An Executive Summary must provide a narrative overview of the Development in sufficient detail that would help a reviewer of the Application better understand the site, the site plan, off site requirements (including discussion of any seller contributions or reimbursements), any other unique development requirements, and their impact on Site Work and Off- Site Construction costs. It should specifically describe any atypical or unusual factors that will impact site design or costs, including but not limited to: Critical Water Quality Zones, habitat protection requirements, construction for environmental conditions (wind, hurricane, flood), and local design restrictions.

(C) The Report should contain a general statement regarding the level of due diligence that has been done relating to site development (including discussions with local government development offices). Where ordinances or similar information is required, provide website links rather than copies of the ordinance. Additionally, it should contain:

(i) a summary of zoning requirements;

(ii) subdivision requirements;

(iii) property identification number(s) and millage rates for all taxing jurisdictions;

(iv) development ordinances;

(v) fire department requirements;

(vi) site ingress and egress requirements; and

(vii) building codes, and local design requirements impacting the Development.

(D) Survey as defined by the Texas Society of Professional Surveyors in their Manual of Practice for Land Surveying in Texas (Category 1A - Land Title Survey or Category 1B - Standard Land Boundary Survey). Surveys (excluding those for Rehabilitation Developments) may not be older than 24 months from the beginning of the Application Acceptance Period.

(E) Preliminary site plan for New Construction or Adaptive Reuse Developments prepared by the civil engineer with a statement that the plan materially adheres to all applicable zoning, site development, and building code ordinances. The site plan must identify all structures, site amenities, parking spaces and driveways, topography (using either existing seller topographic survey or U.S. Geological Survey (USGS)/other database topography), site drainage and detention, water and waste water utility tie-ins, general placement of retaining walls, set- back requirements, and any other typical or locally required items. Off-site improvements required for utilities, detention, access or other requirement must be shown on the site plan or ancillary drawings.

(F) Architect or civil engineer prepared statement describing the entitlement, site development permitting process and timing, building permitting process and timing, and an itemization specific to the Development of total anticipated impact, site development permit, building permit, and other required fees.

§11.205. Required Third Party Reports.

The Environmental Site Assessment, Scope and Cost Review, Appraisal (if applicable), and the Market Analysis must be submitted no later than the Third Party Report Delivery Date as identified in §11.2(b) of this chapter (relating to Tax-Exempt Bond and Direct Loan Development Dates and Deadlines). For Competitive HTC Applications, the Environmental Site Assessment, Scope and Cost Review, Appraisal (if applicable), and the Primary Market Area map (with definition based on census tracts, and site coordinates in decimal degrees, area of PMA in square miles, and list of census tracts included) must be submitted no later than the Full Application Delivery Date as identified in §11.2(a) of this chapter (relating to Competitive HTC Deadlines Program Calendar) and the Market Analysis must be submitted no later than the Market Analysis Delivery Date as identified in §11.2(a) of this chapter. For Competitive HTC Applications, if the reports, in their entirety, are not received by the deadline, the Application may be terminated. An electronic copy of the report in the format of a single file containing all information and exhibits clearly labeled with the report type, Development name and Development location are required. All Third Party reports must be prepared in accordance with Subchapter D of this chapter (relating to Underwriting and Loan Policy). The Department may request additional information from the report provider or revisions to the report as needed. In instances of non-response by the report provider, the Department may substitute in-house analysis. The Department is not bound by any opinions expressed in the report.

(1) Environmental Site Assessment. This report, required for all Developments and prepared in accordance with the requirements of §11.305 of this chapter (relating to Environmental Site Assessment Rules and Guidelines), must not be dated more than 12 months prior to the date of Application submission for non-Competitive Applications, or the first day of the Application Acceptance Period for Competitive HTC Applications. If this timeframe is exceeded, then a letter or updated report must be submitted, dated not more than six months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications from the Person or organization which prepared the initial assessment confirming that the site has been re-inspected and reaffirming the conclusions of the initial report or identifying the changes since the initial report.

(A) Existing Developments funded by USDA will not be required to supply this information; however, it is the Applicant's responsibility to ensure that the Development is maintained in compliance with all state and federal environmental hazard requirements.

(B) If the report includes a recommendation that an additional assessment be performed, then a statement from the Applicant must be submitted with the Application indicating that those additional assessments and recommendations will be performed prior to closing. If the assessments require further mitigating recommendations, then evidence indicating that the mitigating recommendations have been carried out must be submitted at cost certification.

(2) Market Analysis. The Market Analysis, required for all Developments and prepared in accordance with the requirements of §11.303 of this chapter (relating to Market Analysis Rules and Guidelines), must not be dated more than six months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications. If the report is older than six months, but not more than 12 months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications, the Qualified Market Analyst that prepared the report may provide a statement that reaffirms the findings of the original Market Analysis. The statement may not be dated more than six months prior to the date of Application submission, or Application Acceptance Date for Direct Loan Applications, or the first day of the Application Acceptance Period for Competitive HTC Applications and must be accompanied by the original Market Analysis.

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

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

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

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

(B) The report must be prepared by a disinterested Qualified Market Analyst approved by the Department in accordance with the approval process outlined in §11.303 of this chapter.

(C) Applications with USDA financing proposing Rehabilitation with residential structures at or above 80% occupancy at the time of Application submission, the appraisal, required for Rehabilitation Developments and Identity of Interest transactions prepared in accordance with §11.304 of this chapter (relating to Appraisal Rules and Guidelines), will satisfy the requirement for a Market Analysis; however, the Department may request additional information as needed. (§2306.67055; §42(m)(1)(A)(iii))(D). It is the responsibility of the Applicant to ensure that this analysis forms a sufficient basis for the Applicant to be able to use the information obtained to ensure that the Development will comply with fair housing laws.

(3) Scope and Cost Review (SCR). This report, required for Rehabilitation (excluding Reconstruction) and Adaptive Reuse Developments and prepared in accordance with the requirements of §11.306 of this chapter (relating to Scope and Cost Review Guidelines), must not be dated more than six months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications. If the report is older than six months, but not more than 12 months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications, the report provider may provide a statement that reaffirms the findings of the original SCR. The statement may not be dated more than six months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications and must be accompanied by the original SCR. For Developments which require a capital needs assessment from USDA the capital needs assessment may be substituted for the SCR and may be more than six months old, as long as USDA has confirmed in writing that the existing capital needs assessment is still acceptable and it meets the requirements of §11.306 of this chapter. All Rehabilitation Developments financed with Direct Loans must also submit a capital needs assessment estimating the useful life of each major system. This assessment must include a comparison between the local building code and the International Existing Building Code of the International Code Council. The report must be accompanied by the Department's SCR Supplement in the form of an excel workbook as published on the Department's website. For Rehabilitation (excluding Reconstruction) and Adaptive Reuse Tax-Exempt Bond Developments that do not include a request for Direct Loan or where the Department is not the bond issuer, a Scope and Cost Review prepared by a Third Party is not required. The application must include a Scope of Work Narrative as described in §11.306(j) of this chapter (relating to Scope and Cost Review Guidelines).

(4) Appraisal. This report prepared in accordance with the requirements of §11.304 of this chapter (relating to Appraisal Rules and Guidelines), is required for any Application claiming any portion of the building acquisition in Eligible Basis, and Identity of Interest transactions pursuant to Subchapter D of this chapter. The Appraisal must not be dated more than six months prior to the date of Application submission, the Application Acceptance Date for Direct Loan Applications, or the first day of the Application Acceptance Period for Competitive HTC Applications. For Developments that require an appraisal from USDA, the appraisal may be more than six months old, as long as USDA has confirmed in writing that the existing appraisal is still acceptable. Notwithstanding the foregoing, if the Application contains a Market Analysis and the appraisal is not required to fulfill purposes other than establishing the value of land or buildings, an appraisal is not required if no acquisition costs are entered in the development cost schedule.

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

The Board's decisions regarding awards or the issuance of Determination Notices, if applicable, shall be based upon the Department's staff and the Board's evaluation of the proposed Developments' consistency with, and fulfillment of, the criteria and requirements set forth in this chapter, Chapter 13 of this title (relating to the Multifamily Direct Loan Rule) and other applicable Department rules and other applicable state, federal and local legal requirements, whether established in statute, rule, ordinance, NOFA, official finding, or court order. The Board shall document the reasons for each Application's selection, including any discretionary factors used in making its determination, including good cause, and the reasons for any decision that conflicts with the recommendations made by Department staff. Good cause includes the Board's decision to apply discretionary factors where authorized. The Department reserves the right to reduce the amount of funds requested in an Application, condition the Housing Tax Credit or Direct Loan recommendation, or terminate the Application based on the Applicant's inability to demonstrate compliance with program requirements.

§11.207. Waiver of Rules.

An Applicant may request a waiver from the Board in writing at or prior to the submission of the pre-application (if applicable) or the Application or subsequent to an award. Waiver requests on Competitive HTC Applications will not be accepted between submission of the Application and any award for the Application. Staff may identify and initiate a waiver request to remedy an error in the QAP or other Multifamily rules, provide necessary relief in response to a natural disaster, or address facets of an Application or Development that have not been contemplated. The Applicant must submit plans for mitigation or alternative solutions with the waiver request. Any such request for waiver submitted by an Applicant must be specific to an actual proposed Development and must be submitted to the Department in the format required in the Multifamily Programs Procedures Manual. Any waiver,

if granted, shall apply solely to the Application and shall not constitute a general modification or waiver of the rule involved. All waiver requests must meet the requirements of paragraphs (1) and (2) of this section.

(1) A waiver request made at or prior to pre-application or Application must establish that the need for the waiver is not within the control of the Applicant or is due to an overwhelming need. A recommendation for a waiver may be subject to the Applicant's provision of alternative design elements or amenities of a similar nature or that serve a similar purpose. Waiver requests for items that were elected to meet scoring criteria or where the Applicant was provided a menu of options to meet the requirement will not be considered to satisfy this paragraph, unless the Applicant demonstrates that all potential options have been exhausted.

(2) The waiver request must establish how, by granting the waiver, it better serves the policies and purposes articulated in Tex. Gov't Code §§2306.001, 2306.002, 2306.359, and 2306.6701, (which are general in nature and apply to the role of the Department and its programs, including the Housing Tax Credit program) than not granting the waiver.

(3) The Board may not grant a waiver to provide directly or implicitly any Forward Commitments, unless due to extenuating and unforeseen circumstances as determined by the Board. The Board may not waive any requirement contained in statute. The Board may grant a waiver that is in response to a natural, federally declared disaster that occurs after the adoption of the Qualified Allocation Plan to the extent authorized by a governor declared disaster proclamation suspending statutory or regulatory requirements.

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

Filed with the Office of the Secretary of State on December 8, 2025.

TRD-202504465
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 28, 2025
Proposal publication date: September 19, 2025
For further information, please call: (512) 475-3959

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SUBCHAPTER D. UNDERWRITING AND LOAN POLICY

10 TAC §§11.301 - 11.306

STATUTORY AUTHORITY. The adoption of these sections of rule is made pursuant to Tex. Gov't Code §§2306.053 and 2306.67022, which authorize the Department to adopt rules and, specifically, this Qualified Allocation Plan.

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

§11.301. General Provisions.

This subchapter applies to the underwriting, Market Analysis, appraisal, Environmental Site Assessment, Direct Loan, and Scope and Cost Review standards employed by the Department. This subchapter provides rules for the underwriting review of an affordable housing Development's financial feasibility and economic viability that ensures the most efficient allocation of resources while promoting and preserving the public interest in ensuring the long-term health of an awarded Application and the Department's portfolio. In addition, this subchapter guides staff in making recommendations to the Executive Director and the Board to help ensure procedural consistency in the determination of Development feasibility (Texas Government Code §§2306.081(c), 2306.185, and 2306.6710(d)). Due to the unique characteristics of each Development, the interpretation of the rules and guidelines described in this subchapter is subject to the discretion of the Department and final determination by the Board.

§11.302. Underwriting Rules and Guidelines.

(a) General Provisions.

(1) Pursuant to Tex. Gov't Code §2306.148 and §2306.185(b), the Board is authorized to adopt underwriting standards as set forth in this section. Furthermore, for Housing Credit Allocation, Code §42(m)(2), requires the tax credits allocated to a Development not to exceed the amount necessary to assure feasibility. Additionally, 24 CFR Parts 92 and 93, as further described in CPD Notices 15-11 and 21-10 require the Department to adopt rules and standards to determine the appropriate Multifamily Direct Loan feasibility. The rules adopted pursuant to the Tex. Gov't Code and the Code are developed to result in an Underwriting Report (Report) used by the Board in decision making with the goal of assisting as many Texans as possible by providing no more financing than necessary based on an independent analysis of Development feasibility. The Report generated in no way guarantees or purports to warrant the actual performance, feasibility, or viability of the Development.

(2) Oversourcing of Funds. The total amount of Department-allocated funds combined with any additional soft funds that are specifically provided for the financing of affordable housing from other units of government may not exceed the total cost of all non-market Units at the development, calculated on a per-unit basis. For purposes of this subsection, soft funds include any grants, below-market interest rate loans, or similar funds with a total cost to the Applicant that is below commercial-rate financing, but does not include payable loans provided at commercial rates with deferred payments. If the Department determines that a Development is oversourced in accordance with this subsection, the Applicant will be required to reduce the soft funds provided by other units of government so as to no longer be oversourced.

(b) Report Contents. The Report provides a synopsis and reconciliation of the Application information submitted by the Applicant. For the purpose of this subchapter the term Application includes additional documentation submitted after the initial award of funds that is relevant to any subsequent reevaluation. The Report contents will be based upon information that is provided in accordance with and within the timeframes set forth in this chapter, Chapters 11, 12, or 13, or in a Notice of Funds Availability (NOFA), as applicable.

(c) Recommendations in the Report. The conclusion of the Report, if being recommended, includes a recommended award of funds or Housing Credit Allocation Amount and states any feasibility or other conditions to be placed on the award. The award amount is based on the lesser of the amounts determined using the methods in paragraphs (1) - (3) of this subsection:

(1) Program Limit Method. For Housing Credit Allocations, this method is based upon calculation of Eligible Basis after applying all cost verification measures and program limits as described in this section. The Applicable Percentage used is defined in §11.1(d) of this chapter (relating to Definitions). For Department programs other than Housing Tax Credits, this method is based upon calculation of the funding limit in current program rules or NOFA at the time of underwriting.

(2) Gap Method. This method evaluates the amount of funds needed to fill the gap created by Total Housing Development Cost less total non-Department-sourced funds or Housing Tax Credits. In making this determination, the Underwriter resizes any anticipated Deferred Developer Fee downward (but not less than zero) before reducing the amount of Department funds or Housing Tax Credits. In the case of Housing Tax Credits, the syndication proceeds needed to fill the gap in permanent funds are divided by the syndication rate to determine the amount of Housing Tax Credits. In making this determination and based upon specific conditions set forth in the Report, the Underwriter may assume adjustments to the financing structure (including treatment of a Cash Flow loan as if fully amortizing over its term) or make adjustments to any Department financing, such that the cumulative Debt Coverage Ratio (DCR) conforms to the standards described in this section. For Housing Tax Credit Developments at cost certification, timing adjusters may be considered as a reduction to equity proceeds for this purpose. Timing adjusters must be consistent with and documented in the original partnership agreement (at admission of the equity partner) but relating to causes outside of the Developer's or Owner's control. The equity partner must provide a calculation of the amount of the adjuster to be used by the Underwriter.

(3) The Amount Requested. The amount of funds that is requested by the Applicant. For Housing Tax Credit Developments (exclusive of Tax-Exempt Bond Developments) this amount is limited to the amount requested in the original Application documentation.

(d) Operating Feasibility. The operating feasibility of a Development funded by the Department is tested by analyzing its Net Operating Income (NOI) to determine the Development's ability to pay debt service and meet other financial obligations throughout the Affordability Period. NOI is determined by subtracting operating expenses, including replacement reserves and taxes, from rental and other income sources.

(1) Income. In determining the first year stabilized pro forma, the Underwriter evaluates the reasonableness of the Applicant's income pro forma by determining the appropriate rental rate per unit based on subsidy contracts, program limitations including but not limited to Utility Allowances, actual rents supported by rent rolls and Market Rents and other market conditions. Miscellaneous income, vacancy and collection loss limits as set forth in subparagraphs (B) and (C) of this paragraph, respectively, are used unless well-documented support is provided and independently verified by the Underwriter.

(A) Rental Income. The Underwriter will review the Applicant's proposed rent schedule and determine if it is consistent with the representations made throughout the Application. The Underwriter will independently calculate a Pro Forma Rent for comparison to the Applicant's estimate in the Application.

(i) Market Rents. The Underwriter will use the Market Analyst's conclusion of Market Rent if reasonably justified and supported by the attribute adjustment matrix of Comparable Units as described in §11.303 of this chapter (relating to Market Analysis Rules and Guidelines). Independently determined Market Rents by the Underwriter may be used based on rent information gained from direct contact with comparable properties, whether or not used by the Market Analyst and other market data sources. For a Development that contains less than 15% unrestricted units, the Underwriter will limit the Pro Forma Rents to the lesser of Market Rent or the Gross Program Rent at 80% AMI.

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

(iii) Contract Rents. The Underwriter will review rental assistance contracts to determine the Contract Rents currently applicable to the Development. Documentation supporting the likelihood of continued rental assistance is also reviewed. The Underwriter will take into consideration the Applicant's intent to request a Contract Rent increase. At the discretion of the Underwriter, the Applicant's proposed rents may be used as the Pro Forma Rent, with the recommendations of the Report conditioned upon receipt of final approval of such an increase. Tenant-based vouchers or tenant-based rental assistance are not included as Income.

(iv) Utility Allowances. The Utility Allowances used in underwriting must be in compliance with all applicable federal guidance, and §10.614 of this title (relating to Utility Allowances). Utility Allowances must be calculated for individually metered tenant paid utilities.

(v) Net Program Rents. Gross Program Rent less Utility Allowance.

(vi) Actual Rents for existing Developments will be reviewed as supported by a current rent roll. For Unstabilized Developments, actual rents will be based on the most recent units leased with occupancy and leasing velocity considered. Actual rents may be adjusted by the Underwriter to reflect lease-up concessions and other market considerations.

(vii) Collected Rent. Represents the monthly rent amount collected for each Unit Type. For rent- assisted units, the Contract Rent is used. In absence of a Contract Rent, the lesser of the Net Program Rent, Market Rent or actual rent is used.

(B) Miscellaneous Income. All ancillary fees and miscellaneous secondary income, including but not limited to, late fees, storage fees, laundry income, interest on deposits, carport and garage rent, washer and dryer rent, telecommunications fees, and other miscellaneous income, are anticipated to be included in a $5 to $30 per Unit per month range. Projected income from tenant-based rental assistance will not be considered. Exceptions may be made at the discretion of the Underwriter and must be supported by either the normalized operating history of the Development or other existing comparable properties within the same market area.

(i) The Applicant must show that a tenant will not be required to pay the additional fee or charge as a condition of renting a Unit and must show that the tenant has a reasonable alternative.

(ii) The Applicant's operating expense schedule should reflect an itemized offsetting line-item associated with miscellaneous income derived from pass-through utility payments, pass-through water, sewer and trash payments, and cable fees.

(iii) Collection rates of exceptional fee items will generally be heavily discounted.

(iv) If an additional fee is charged for the optional use of an amenity, any cost associated with the construction, acquisition, or development of the hard assets needed to produce the amenity must be excluded from Eligible Basis.

(C) Vacancy and Collection Loss. The Underwriter uses a normalized vacancy rate of 7.5% (5% vacancy plus 2.5% for collection loss). 100% project-based rental subsidy developments

(not including employee-occupied units) may be underwritten at a combined 5% vacancy rate.

(D) Effective Gross Income (EGI). EGI is the total of Collected Rent for all Units plus Miscellaneous Income less Vacancy and Collection Loss. If the Applicant's pro forma EGI is within 5% of the EGI independently calculated by the Underwriter, the Applicant's EGI is characterized as reasonable in the Report; however, for purposes of calculating the underwritten DCR the Underwriter's pro forma will be used unless the Applicant's pro forma meets the requirements of paragraph (3) of this subsection.

(2) Expenses. In determining the first year stabilized operating expense pro forma, the Underwriter evaluates the reasonableness of the Applicant's expense estimate based upon the characteristics of each Development, including the location, utility structure, type, the size and number of Units, and the Applicant's management plan. Historical, stabilized and certified financial statements of an existing Development or Third Party quotes specific to a Development will reflect the strongest data points to predict future performance. The Underwriter may review actual operations on the Applicant's other properties monitored by the Department, if any, or review the proposed management company's comparable properties. The Department's database of properties located in the same market area or region as the proposed Development also provides data points; expense data from the Department's database is available on the Department's website. Data from the Institute of Real Estate Management's (IREM) most recent Conventional Apartments-Income/Expense Analysis book for the proposed Development's property type and specific location or region may be referenced. In some cases local or project-specific data such as PHA Utility Allowances and property tax rates are also given significant weight in determining the appropriate line item expense estimate. Estimates of utility savings from green building components, including on-site renewable energy, must be documented by an unrelated contractor or component vendor.

(A) General and Administrative Expense. (G&A)--Accounting fees, legal fees, advertising and marketing expenses, office operation, supplies, and equipment expenses. G&A does not include partnership related expenses such as asset management, accounting or audit fees. Costs of tenant services are not included in G&A.

(B) Management Fee. Fee paid to the property management company to oversee the operation of the Property and is most often based upon a percentage of EGI as documented in an existing property management agreement or proposal. The Underwriter will use the Applicant's proposed Management Fee if it is within the range of 4% to 6% of EGI. A proposed fee outside of this range must be documented.

(C) Payroll Expense. Compensation, insurance benefits, and payroll taxes for on-site office, leasing and maintenance staff. Payroll does not include Third-Party security or tenant services contracts. Staffing specific to tenant services, security or other staffing not related to customary property operations should be itemized and included in other expenses or tenant services expense.

(D) Repairs and Maintenance Expense. Materials and supplies for the repairs and maintenance of the Development including Third-Party maintenance contracts. This line-item does not include costs that are customarily capitalized that would result from major replacements or renovations.

(E) Utilities Expense. Gas and electric energy expenses paid by the Development. Estimates of utility savings from green building components, including on-site renewable energy, must be documented by an unrelated contractor or component vendor.

(F) Water, Sewer, and Trash Expense (WST). Includes all water, sewer and trash expenses paid by the Development.

(G) Insurance Expense. Cost of Insurance coverage for the buildings, contents, and general liability, but not health or workman's compensation insurance.

(H) Property Tax. Includes real property and personal property taxes but not payroll taxes.

(i) An assessed value will be calculated based on the capitalization rate published by the county taxing authority. If the county taxing authority does not publish a capitalization rate, a capitalization rate of 10% or a comparable assessed value may be used.

(ii) Other assessed values or property tax estimates may be used based on development specific factors as determined by the Underwriter.

(iii) If the Applicant proposes a property tax exemption or Payment in Lieu of Taxes (PILOT) agreement the Applicant must provide documentation in accordance with §10.402(d) of this title (relating to Documentation Submission Requirements at Commitment of Funds). At the underwriter's discretion, such documentation may be required prior to Commitment or Determination Notice if deemed necessary.

(I) Replacement Reserves. Periodic deposits to a reserve account to pay for the future replacement or major repair of building systems and components (generally items considered capitalized costs). The Underwriter will use a minimum reserve of $250 per Unit for New Construction and Reconstruction Developments and $300 per Unit for all other Developments. The Underwriter may require an amount above $300 for the Development based on information provided in the Scope and Cost Review (SCR) or, for existing USDA developments, an amount approved by USDA. The Applicant's assumption for reserves may be adjusted by the Underwriter if the amount provided by the Applicant is insufficient to fund capital needs as documented by the SCR during the first fifteen (15) years of the long term pro forma. Higher reserves may be used if documented by a primary lender or syndicator.

(J) Other Operating Expenses. The Underwriter will include other reasonable, customary and documented property-level operating expenses such as audit fees, security expense, telecommunication expenses (tenant reimbursements must be reflected in EGI) and TDHCA's compliance fees. For Developments financed by USDA, a Return to Owner (RTO) may be included as an operating expense in an amount consistent with the maximum approved by USDA or an amount determined by the Underwriter. This category does not include depreciation, interest expense, lender or syndicator's asset management fees, or other ongoing partnership fees.

(K) Resident Services. Resident services are not included as an operating expense or included in the DCR calculation unless:

(i) There is a documented financial obligation on behalf of the Owner with a unit of state or local government to provide resident supportive services at a specified dollar amount. The state or local government documentation must be provided in the Application and the dollar amount of the financial obligation must be included in the DCR calculation on the 15-year pro forma at Application. ; or

(ii) The Applicant demonstrates a history of providing comparable supportive services and expenses at existing affiliated properties within the local area.; and

(iii) On-site staffing or pro ration of staffing for coordination of services only, and not the provision of services, can be included as a supportive services expense.

(L) Total Operating Expenses. The total of expense items described in subparagraphs (A) - (K) of this paragraph (relating to Operating Feasibility). If the Applicant's total expense estimate is within 5% of the final total expense figure calculated by the Underwriter, the Applicant's figure is characterized as reasonable in the Report; however, for purposes of calculating DCR, the Underwriter's independent calculation will be used unless the Applicant's first year stabilized pro forma meets the requirements of paragraph (3) of this subsection.

(3) Net Operating Income (NOI). The difference between the EGI and total operating expenses. If the Applicant's first year stabilized NOI figure is within 5% of the NOI calculated by the Underwriter, the Applicant's NOI is characterized as reasonable in the Report; however, for purposes of calculating the first year stabilized pro forma DCR, the Underwriter's calculation of NOI will be used unless the Applicant's first year stabilized EGI, total operating expenses, and NOI are each within 5% of the Underwriter's estimates. For Housing Tax Credit Developments at cost certification, actual NOI will be used as adjusted for stabilization of rents and extraordinary lease-up expenses. Permanent lender and equity partner stabilization requirements documented in the loan and partnership agreements will be considered in determining the appropriate adjustments and the NOI used by the Underwriter. For Tax-Exempt Bond Developments that do not include a request for Direct Loan or where the Department is not the bond issuer, the Underwriter will not develop independent estimates of EGI, Total Operating Expenses, or NOI. The Applicant's NOI will generally be characterized as reasonable, subject to review for compliance with Underwriting Rules and Guidelines.

(4) Debt Coverage Ratio. DCR is calculated by dividing NOI by the sum of the debt service payments on all permanent or foreclosable lien(s) with scheduled and periodic payment requirements, including any required debt service on a Direct Loan subject to the applicable Notice of Funding Availability (NOFA) or other program requirements, and any on-going loan related fees such as credit enhancement fees or loan servicing fees. If executed loan documents do not exist, loan terms including principal and interest payments are calculated based on the terms indicated in the most current term sheet(s). Otherwise, actual terms indicated in the executed loan documents will be used. Unusual or non-traditional financing structures may also be considered.

(A) Interest Rate. The rate documented in the term sheet(s) or loan document(s) will be used for debt service calculations. Term sheets indicating a variable interest rate must provide the base rate index or methodology for determining the variable rate index and any component rates comprising an all-in interest rate. The term sheet(s) must state the lender's underwriting interest rate assumption, or the Applicant must submit a separate statement from the lender with an estimate of the interest rate as of the date of such statement. At initial underwriting, the Underwriter may adjust the underwritten interest rate assumption based on market data collected on similarly structured transactions or rate index history. Private Mortgage Insurance premiums and similar fees are not included in the interest rate but calculated on outstanding principal balance and added to the total debt service payment.

(B) Amortization Period. For purposes of calculating DCR, the permanent lender's amortization period will be used if not less than 30 years and not more than 40 years. Up to 50 years may be used for federally sourced or insured loans. For permanent lender debt with amortization periods less than 30 years, 30 years will be used. For permanent lender debt with amortization periods greater than 40 years, 40 years will be used. For non-Housing Tax Credit transactions a lesser amortization period may be used if the Direct Loans will be fully amortized over the same period as the permanent lender debt.

(C) Repayment Period. For purposes of projecting the DCR over a 30 year period for Developments with permanent financing structures with balloon payments in less than 30 years, the Underwriter will carry forward debt service based on a full amortization at the interest rate stated in the term sheet(s).

(D) Acceptable Debt Coverage Ratio Range. Except as set forth in clauses (i) or (ii) of this subparagraph, the acceptable first year stabilized pro forma DCR must be between a minimum of 1.15 and a maximum of 1.35 (maximum of 1.50 for Housing Tax Credit Developments at cost certification).

(i) If the DCR is less than the minimum, the recommendations of the Report may be based on a reduction to debt service and the Underwriter will make adjustments to the financing structure in the priority order presented in subclauses (I) - (IV) of this clause subject to Direct Loan NOFA requirements and program rules:

(I) A reduction to the interest rate of a Direct Loan;

(II) An increase in the amortization period of a Direct Loan;

(III) A reduction in the principal amount of a Direct Loan; and

(IV) An assumed reduction in the permanent loan amount for non-Department funded loans based upon the rates and terms in the permanent loan term sheet(s) as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph.

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

(I) an increase to the interest rate of a Direct Loan up to the lesser of the maximum interest rate pursuant to a Direct Loan NOFA or the interest rate on any senior permanent debt or if no senior permanent debt a market rate determined by the Underwriter based on current market interest rates;

(II) or a decrease in the amortization period on a Direct Loan but not less than 30 years; and

(III) an assumed increase in the permanent loan amount for non-Department proposed financing based upon the rates and terms in the permanent loan term sheet as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph.

(iii) For Housing Tax Credit Developments, a reduction in the recommended Housing Credit Allocation Amount may be made based on the Gap Method described in subsection (c)(2) of this section as a result of an increased debt assumption, if any.

(iv) In order to comply with TDHCA's agreement with HUD, Developments financed with a Direct Loan subordinate to FHA financing will have to meet a combined DCR of 1.0 using 75% of surplus cash after the senior debt service is deducted from Net Operating Income (NOI). To calculate the combined DCR:
(FHA senior debt service + ((1st year NOI - FHA senior debt service)*75%))) / (FHA senior debt service + amortized MDL debt service)

A mathematical example is provided in the Multifamily Procedures Manual.

(v) The Underwriter may limit total debt service that is senior to a Direct Loan to produce an acceptable DCR on the Direct Loan and may limit total debt service if the Direct Loan is the senior primary debt.

(5) Long Term Pro forma. The Underwriter will create a 30-year operating pro forma using the criteria provided in subparagraphs (A) to (C) of this paragraph:

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

(B) A 2% annual growth factor is utilized for income and a 3% annual growth factor is utilized for operating expenses except for management fees that are calculated based on a percentage of each year's EGI.

(C) Adjustments may be made to the long term pro forma if satisfactory support documentation is provided by the Applicant or as independently determined by the Underwriter.

(e) Total Housing Development Costs. The Department's estimate of the Total Housing Development Cost will be based on the Applicant's Development cost schedule to the extent that costs can be verified to a reasonable degree of certainty with documentation from the Applicant and tools available to the Underwriter. For New Construction Developments, the Underwriter's total cost estimate will be used unless the Applicant's Total Housing Development Cost is within 5% of the Underwriter's estimate. The Department's estimate of the Total Housing Development Cost for Rehabilitation Developments or Adaptive Reuse Developments will be based on the estimated cost provided in the SCR for the scope of work as defined by the Applicant and §11.306(a)(5) of this chapter (relating to SCR Guidelines); the Underwriter may make adjustments to the SCR estimated costs. If the Applicant's cost estimate is utilized and the Applicant's line item costs are inconsistent with documentation provided in the Application or program rules, the Underwriter may make adjustments to the Applicant's Total Housing Development Cost. For Competitive Housing Tax Credit Applications, the Underwriter will adjust an Applicant's cost schedule line item to meet program rules. Underwriter will not make subsequent adjustments to the application to meet feasibility requirements as a result of the initial adjustment required to meet program rules.

(1) Acquisition Costs. All appraised values must be based on as-is values at the time of Application as further stated in §11.304 of this chapter (relating to Appraisal Rules and Guidelines).

(A) Land, Acquisition and Rehabilitation, Reconstruction, and Adaptive Reuse Acquisition.

(i) For a non-identity of interest acquisition with no building acquisition cost in basis or when the acquisition is not part of the Direct Loan eligible cost and not subject to the appraisal requirements in the Uniform Relocation Assistance and Act of 1970, the underwritten acquisition cost will be the amount(s) reflected in the Site Control document(s) for the Property. At Cost Certification, the acquisition cost used will be the actual amount paid as verified by the settlement statement.

(ii) For an identity of interest acquisition or when required by the Uniform Relocation Assistance and Acquisition Act of 1970 the underwritten acquisition cost will be the lesser of the amount reflected in the Site Control documents for the property or the appraised value as determined by an appraisal that meets the requirements of §11.304 of this chapter (relating to Appraisal Rules and Guidelines). An appraisal is not required if the land or buildings are donated to the proposed Development, and no costs of acquisition appear on the Development Cost Schedule. For an identity of interest transaction where the most recent arms-length transaction occurred within five years of the application submission date, the settlement statement for the most recent third party acquisition must be included with the site control documents.

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

(I) is the current owner in whole or in part of the Property as of the first date of the Application Acceptance Period or the Application Acceptance Date for Direct Loans; or

(II) has or had within the prior 36 months the legal or beneficial ownership of the property or any portion thereof or interest therein regardless of ownership percentage, control or profit participation prior to the first day of the Application Acceptance Period or in the case of a tax-exempt bond or 4% tax credit application the Application Date.

(iii) TDHCA prohibits cash-out to a related-party seller in an identity of interest transaction for Competitive Housing Tax Credit Applications (This section does not apply to Existing Developments funded by USDA, or those that include a Non-Profit, a Housing Authority, or an instrumentality of a Housing Authority in the ownership structure). For purposes of this paragraph, cash-out is defined as the lesser of the amount reflected in the Site Control documents for the property or the as-is restricted appraised value as determined by an appraisal that meets the requirements of §11.304 of this chapter, minus the payoff of any third-party debt unrelated to the seller, related-party notes that are in place specifically for substantiated capital expenditures or acquisition costs, and the principal balance of any seller note to remain in place post-acquisition. Holding costs and operating expenses, such as broker fees, property taxes, deferred maintenance, or deferred management fees, shall not be considered in calculating or justifying seller cash-out.

At Application, amortization schedules and projected loan balances at closing for all existing unrelated third-party debt are required to substantiate the calculation of cash-out and to support Department underwriting. All seller notes in identity of interest transactions must comply with the following requirements:

(I) The term sheet and note must be cash-flow contingent, with no required payments unless surplus cash is available;

(II) The term sheet and note must have no debt coverage ratio (DCR) requirements for payment eligibility;

(III) The term sheet and LPA must state that the seller note is paid after deferred developer fee.

(iv) For all identity of interest acquisitions, the cost used at cost certification will be limited to the acquisition cost underwritten in the initial Underwriting of the Application.

(v) In cases where more land will be acquired (by the Applicant or a Related Party) than will be utilized as the Development Site and the remainder acreage is not accessible for use by tenants or dedicated as permanent and maintained green space, the value ascribed to the proposed Development Site will be prorated based on acreage from the total cost reflected in the Site Control document(s) or the appraisal, if an appraisal is required. An appraisal containing segregated values for the total acreage to be acquired, the acreage for the Development Site and the remainder acreage may be used by the Underwriter in making a proration determination based on relative value.

The Underwriter will not utilize a prorated value greater than the total amount in the Site Control document(s).

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

(C) Eligible Basis on Acquisition of Buildings. Building acquisition cost included in Eligible Basis is limited to the appraised value of the buildings, exclusive of land value, as determined by an appraisal that meets the requirements of §11.304 of this chapter (relating to Appraisal Rules and Guidelines). If the acquisition cost in the Site Control documents is less than the appraised value, Underwriter will utilize the land value from the appraisal and adjust the building acquisition cost accordingly.

(2) Off-Site Costs. The Underwriter will only consider costs of Off-Site Construction that are well documented and certified to by a Third Party engineer on the required Application forms with supporting documentation.

(3) Site Work Costs. The Underwriter will only consider costs of Site Work, including site amenities, that are well documented and certified to by a Third Party engineer on the required Application forms with supporting documentation.

(4) Building Costs.

(A) New Construction and Reconstruction. The Underwriter will use the Marshall and Swift Residential Cost Handbook, other comparable published Third-Party cost estimating data sources, historical final cost certifications of previous Housing Tax Credit developments and other acceptable cost data available to the Underwriter to estimate Building Cost. Generally, the "Average Quality" multiple, townhouse, or single family costs, as appropriate, from the Marshall and Swift Residential Cost Handbook or other comparable published Third-Party data source, will be used based upon details provided in the Application and particularly building plans and elevations. Costs for multi- level parking structures must be supported by a cost estimate from a Third Party contractor with demonstrated experience in structured parking construction. The Underwriter will consider amenities, specifications and development types not included in the Average Quality standard. The Underwriter may consider a sales tax exemption for nonprofit General Contractors.

(B) Rehabilitation and Adaptive Reuse.

(i) The Applicant must provide a scope of work and narrative description of the work to be completed. The narrative should speak to all Off-Site Construction, Site Work, and building components including finishes and equipment, and development amenities. The narrative should be in sufficient detail so that the reader can understand the work and it must generally be arranged consistent with the line-items on the SCR Supplement and must also be consistent with the Development Cost Schedule of the Application.

(ii) The Underwriter will use cost data provided on the SCR Supplement if adequately described and substantiated in the SCR report as the basis for estimating Total Housing Development Costs.

(5) Contingency. Total contingency, including any soft cost contingency, will be limited to a maximum of 7% of Building Cost plus Site Work and Off-Site Construction for New Construction and Reconstruction Developments, and 10% of Building Cost plus Site Work and Off-Site Construction for Rehabilitation and Adaptive Reuse Developments. For Housing Tax Credit Developments, the percentage is applied to the sum of the eligible Building Cost, eligible Site Work costs and eligible Off-Site Construction costs in calculating the eligible contingency cost.

(6) General Contractor Fee. General Contractor fees include general requirements, contractor overhead, and contractor profit. General requirements include, but are not limited to, on-site supervision or construction management, off-site supervision and overhead, jobsite security, equipment rental, storage, temporary utilities, and other indirect costs. General Contractor fees are limited to a total of 14% on Developments with Hard Costs of $3 million or greater, the lesser of $420,000 or 16% on Developments with Hard Costs less than $3 million and greater than $2 million, and the lesser of $320,000 or 18% on Developments with Hard Costs at $2 million or less. Any contractor fees to Affiliates or Related Party subcontractors regardless of the percentage of the contract sum in the construction contract (s) will be treated collectively with the General Contractor Fee limitations. Any fees paid to an organization to achieve a sales tax exemption will be included in the General Contactor Fee. Any General Contractor fees above this limit will be excluded from Total Housing Development Costs. For Housing Tax Credit Developments, the percentages are applied to the sum of the Eligible Hard Costs in calculating the eligible contractor fees. For Developments also receiving financing from USDA, the combination of builder's general requirements, builder's overhead, and builder's profit should not exceed the lower of TDHCA or USDA requirements. Additional fees for ineligible costs will be limited to the same percentage of ineligible Hard Costs but will not be included in Eligible Basis.

(7) Developer Fee.

(A) For Housing Tax Credit Developments, the Developer Fee included in Eligible Basis cannot exceed 15% of the project's eligible costs, less Developer Fee, for Developments proposing 50 Units or more and 20% of the project's eligible costs, less Developer Fee, for Developments proposing 49 Units or less. If the Development is an additional phase, proposed by any Principal of the existing tax credit Development, the Developer Fee may not exceed 15%, regardless of the number of Units.

(B) For Housing Tax Credit Developments, any additional Developer Fee claimed for ineligible costs will be limited to the same percentage but applied only to ineligible Hard Costs. Any Developer Fee above this limit will be excluded from Total Housing Development Costs. All fees to Affiliates or Related Parties for work or guarantees determined by the Underwriter to be typically completed or provided by the Developer or Principal(s) of the Developer will be considered part of Developer Fee. All costs for general and administrative expenses for the Developer, including, but not limited to, travel, dining, and courier fees will be considered part of the Developer Fee.

(C) For Housing Tax Credit Developments, Eligible Developer Fee is multiplied by the appropriate Applicable Percentage depending on whether it is attributable to acquisition or rehabilitation basis.

(D) For non-Housing Tax Credit Developments, the percentage can be up to 7.5%, but is based upon Total Housing Development Cost less the sum of the fee itself, land costs, the costs of permanent financing, excessive construction period financing described in paragraph (8) of this subsection, reserves, and any identity of interest acquisition cost.

(8) Financing Costs. All fees required by the construction lender, permanent lender and equity partner must be indicated in the term sheets. Eligible construction period interest is limited to the lesser of actual eligible construction period interest, or the interest on one year's fully drawn construction period loan funds at the construction period interest rate indicated in the term sheet(s). For tax-exempt bond

transactions up to 24 months of interest may be included. Any excess over this amount will not be included in Eligible Basis. Construction period interest on Related Party or Affiliate construction loans is only included in Eligible Basis with documentation satisfactory to the Underwriter that the loan will be at a market interest rate, fees and loan terms and the Related Party lender can demonstrate that it is routinely engaged in construction financing to unrelated parties.

(9) Reserves. Except for the underwriting of a Housing Tax Credit Development at cost certification, the Underwriter will utilize the amount presented in the Applicant's Development Cost Schedule up to twelve months of stabilized operating expenses plus debt service (up to twenty-four months for USDA or HUD-financed rehabilitation transactions). Reserve amounts exceeding these limits will be excluded from Total Housing Development Costs. Pursuant to §10.404(c) of this title (relating to Operative Reserve Accounts), and for the underwriting of a Housing Tax Credit Development at cost certification, operating reserves that will be maintained for a minimum period of five years and documented in the Owner's partnership agreement or the permanent lender's loan documents will be included as a development cost.

(10) Soft Costs. Eligible soft costs are generally costs that can be capitalized in the basis of the Development for tax purposes. The Underwriter will evaluate and apply the allocation of these soft costs in accordance with the Department's prevailing interpretation of the Code. Generally, the Applicant's costs are used; however the Underwriter will use comparative data and Third Party CPA certification as to the capitalization of the costs to determine the reasonableness of all soft costs. This includes any one-time fees or payments, excluding any upfront ground lease payments, to a Housing Finance Corporation, Public Finance Corporation, Housing Authority, or Non-Profit that is part of the project ownership structure or is otherwise involved in the project to qualify for a property tax exemption. For Tax-Exempt Bond Developments that do not include a request for Direct Loan or where the Department is not the bond issuer, the Underwriter will not develop independent estimates for Building Cost or Soft Costs. The Applicant's Total Housing Development Cost and Total Eligible Cost will generally be characterized as reasonable, subject to review for compliance with Underwriting Rules and Guidelines.

(11) Additional Tenant Amenities. For Housing Tax Credit Developments and after submission of the cost certification package, the Underwriter may consider costs of additional building and site amenities (suitable for the Target Population being served) proposed by the Owner in an amount not to exceed 1.5% of the originally underwritten Hard Costs. The additional amenities must be included in the LURA.

(f) Development Team Capacity and Development Plan.

(1) The Underwriter will evaluate and report on the overall capacity of the Development Team by reviewing aspects, including but not limited to those identified in subparagraphs (A) - (D) of this paragraph:

(A) Personal credit reports for development sponsors, Developer Fee recipients and those individuals anticipated to provide guarantee(s) in cases when warranted. The Underwriter may evaluate the credit report and identify any bankruptcy, state or federal tax liens or other relevant credit risks for compliance with eligibility and debarment requirements as found in Chapter 2 of this title (relating to Enforcement);

(B) Quality of construction, Rehabilitation, and ongoing maintenance of previously awarded housing developments by review of construction inspection reports, compliance on-site visits, findings of NSPIRE violations and other information available to the Underwriter;

(C) For Housing Tax Credit Developments, repeated or ongoing failure to timely submit cost certifications, requests for and clearance of final inspections, and timely response to deficiencies in the cost certification process; and

(D) Adherence to obligations on existing or prior Department funded developments with respect to program rules and documentation.

(2) While all components of the Development plan may technically meet the other individual requirements of this section, a confluence of serious concerns and unmitigated risks identified during the underwriting process may result in an Application being determined to be infeasible by the Underwriter. Any recommendation made under this subsection to deny an Application for a Grant, Direct Loan or Housing Credit Allocation is subject to Appeal as further provided for in §11.902 of this chapter (relating to Appeals).

(g) Other Underwriting Considerations. The Underwriter will evaluate additional feasibility elements as described in paragraphs (1) - (4) of this subsection.

(1) Interim Operating Income. Interim operating income listed as a source of funds must be supported by a detailed lease-up schedule and analysis.

(2) Floodplains. The Underwriter evaluates the site plan, floodplain map, survey and other information provided to determine if any of the buildings, drives, or parking areas reside within the 100-year floodplain. If such a determination is made by the Underwriter, the Report will include a condition that:

(A) The Applicant must pursue and receive a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR-F); or

(B) The Applicant must identify the cost of flood insurance for the buildings within the 100-year floodplain and certify that the flood insurance will be obtained; and

(C) The Development must be proposed to be designed to comply with the QAP, Program Rules and NOFA, and applicable Federal or state requirements.

(3) Proximity to Other Developments. The Underwriter will identify in the Report any Developments funded or known and anticipated to be eligible for funding within one linear mile of the subject. Distance is measured in a straight line from nearest boundary point to nearest boundary point.

(4) Direct Loans. In accordance with the requirements of 24 CFR §§92.250 and 93.300(b), a request for a Direct Loan will not be recommended for approval if the DCR exceeds 1.50 any year during the longer of the term of the Direct Loan or the Federal Affordability Period, unless the Applicant elects to commit 25% of annual Cash Flow to a special reserve account, in accordance with §10.404(d) of this title, for any year the DCR is over 1.50. Annual Cash Flow will be calculated after deducting any payment due to the Developer on a deferred developer fee loan and any scheduled payments on cash flow loans. The Department will calculate the total special reserve amount based on the Cash Flow at Direct Loan Closing underwriting. The deposits into the special reserve account must be made annually from 25% of remaining annual cash flow until the total special reserve amount is reached. Alternatively, Applicant may request the Direct Loan interest rate be increased by Underwriter at Direct Loan Closing underwriting if financially feasibility is still met. If the Direct Loan is not recommended for approval, the remaining feasibility considerations under this section will be based on a revised sources schedule that does not contain the Direct Loan. This standard will also be used when the Development Owner is seeking approval for a request for a subordination

agreement or a refinance, except the total special reserve amount will be based on the Cash Flow reflected in the underwriting at that time. A special reserve account is not eligible for Developments layered with FHA financing that is subject to HUD's Multifamily Accelerated Processing Guide.

(h) Work Out Development. Developments that are underwritten subsequent to Board approval in order to refinance or gain relief from restrictions may be considered infeasible based on the guidelines in this section, but may be characterized as "the best available option" or "acceptable available option" depending on the circumstances and subject to the discretion of the Underwriter as long as the option analyzed and recommended is more likely to achieve a better financial outcome for the property and the Department than the status quo.

(i) Feasibility Conclusion. A Development will be characterized as infeasible if paragraph (1) or (2) of this subsection applies. The Development will be characterized as infeasible if one or more of paragraphs (3) or (4) of this subsection, applies unless paragraph (5)(B) of this subsection also applies.

(1) Gross Capture Rate, AMGI Band Capture Rates, and Individual Unit Capture Rate. The method for determining capture rates for a Development is defined in §11.303 of this chapter (relating to Market Analysis Rules and Guidelines). The Underwriter will verify the conclusions of the capture rates and may, at their discretion, use independently acquired demographic data to calculate demand and may make a determination of the capture rates based upon an analysis of the Sub-market. The Development:

(A) Is characterized as an Elderly Development and the Gross Capture Rate or any AMGI bad capture rate exceeds 10%; or

(B) Is outside a Rural Area and targets the general population, and the Gross Capture Rate or any AMGI band capture rate exceeds 10% (or 15% for Tax-Exempt Bond Developments located in an MSA (as defined in the HTC Site Demographics Characteristics Report) with a population greater than one million if the average physical occupancy is 92.5% or greater for all stabilized affordable housing developments located within a 20 minute drive time, as supported by the Market Analyst, from the subject Development); or

(C) Is in a Rural Area and targets the general population, and:

(i) contains Housing Tax Credit Units of 120 or less, and the Gross Capture Rate or any AMGI band capture rate exceeds 30%; or

(ii) contains more than 120 Housing Tax Credit Units, and the Gross Capture Rate or any AMGI band capture rate exceeds 10%; or

(D) Is Supportive Housing and the Gross Capture Rate or any AMGI band capture rate exceeds 30%; or

(E) Has an Individual Unit Capture Rate for any Unit Type greater than 65%; and

(F) Developments meeting the requirements of subparagraph (A), (B), (C), (D) or (E) of this paragraph may avoid being characterized as infeasible if clause (i) or (ii) of this subparagraph apply:

(i) Replacement Housing. The proposed Development is comprised of affordable housing which replaces previously existing affordable housing within the Primary Market Area as defined in §11.303 of this chapter (relating to Market Analysis Rules and Guidelines) on a Unit for Unit basis, and gives the displaced tenants of the previously existing affordable housing a leasing preference; or

(ii) Existing Housing. The proposed Development is comprised of existing affordable housing, whether defined by an existing land use and rent restriction agreement or if the subject rents are at or below 50% AMGI rents, which is at least 50% occupied and gives displaced existing tenants a leasing preference as stated in a relocation plan.

(2) Deferred Developer Fee. Applicants requesting an allocation of tax credits where the estimated Deferred Developer Fee, based on the underwritten capitalization structure, is not repayable from Cash Flow within the first 15 years of the long term pro forma as described in subsection (d)(5) of this section.

(3) Initial Feasibility.

(A) Except when underwritten at cost certification, the first year stabilized pro forma operating expense divided by the first year stabilized pro forma Effective Gross Income is greater than 68% for Rural Developments 36 Units or less, and 65% for all other Developments.

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

(4) Long Term Feasibility. The Long Term Pro forma reflects:

(A) A Debt Coverage Ratio below 1.15 at any time during years two through fifteen; or

(B) Negative Cash Flow at any time throughout the term of a Direct Loan, or at any time during years two through fifteen for applications that do not include a request for a Direct Loan.

(5) Exceptions. The infeasibility conclusions will not apply if:

(A) The Executive Director of the Department finds that documentation submitted by the Applicant at the request of the Underwriter will support unique circumstances that will provide mitigation.

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

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

(ii) will receive rental assistance for at least 50% of the Units in association with USDA financing;

(iii) will be characterized as public housing as defined by HUD for at least 50% of the Units;

(iv) meets the requirements under §11.1(d)(124)(E)(i) of this chapter (relating to the Definition of Supportive Housing); or

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

§11.303. Market Analysis Rules and Guidelines.

(a) General Provision. A Market Analysis prepared for the Department must evaluate the need for decent, safe, and sanitary housing at rental rates or sales prices that eligible tenants can afford. The anal-

ysis must determine the feasibility of the subject Development rental rates or sales price, and state conclusions as to the impact of the Development with respect to the determined housing needs. The Market Analysis must include a statement that the report preparer has read and understood the requirements of this section. The Market Analysis must also include a statement that the person or company preparing the Market Analysis is a disinterested party and will not materially benefit from the Development in any other way than receiving a fee for performing the Market Analysis, and that the fee is in no way contingent upon the outcome of the Market Analysis. The report must also include the following statement, "any person signing this Report acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law."

(b) Self-Contained. A Market Analysis prepared for the Department must allow the reader to understand the market data presented, the analysis of the data, and the conclusions derived from such data. All data presented should reflect the most current information available and the report must provide a parenthetical (in-text) citation or footnote describing the data source. The analysis must clearly lead the reader to the same or similar conclusions reached by the Market Analyst. All steps leading to a calculated figure must be presented in the body of the report.

(c) Market Analyst Qualifications. A Market Analysis submitted to the Department must be prepared and certified by an approved Qualified Market Analyst. (§2306.67055) The Department will maintain an approved Market Analyst list based on the guidelines set forth in paragraphs (1) - (2) of this subsection.

(1) The approved Qualified Market Analyst list will be updated and published annually on or about November 1st. If not listed as an approved Qualified Market Analyst by the Department, a Market Analyst may request approval by submitting items in subparagraphs (A) - (F) of this paragraph at least 30 calendar days prior to the first day of the competitive tax credit Application Acceptance Period or 30 calendar days prior to submission of any other application for funding for which the Market Analyst must be approved. An already approved Qualified Market Analyst will remain on the list so long as at least one (1) Market Analysis has been submitted to the Department in the previous 12 months or items (A), (B), (C) and (E) are submitted prior to October 1st. Otherwise, the Market Analyst will automatically be removed from the list. Submission items include:

(A) Franchise Tax Account Status from the Texas Comptroller of Public Accounts (not applicable for sole proprietorships);

(B) A current organization chart or list reflecting all members of the firm who may author or sign the Market Analysis. A firm with multiple offices or locations must indicate all members expected to be providing Market Analysis;

(C) Resumes for all members of the firm or subcontractors who may author or sign the Market Analysis;

(D) General information regarding the firm's experience including references, the number of previous similar assignments and timeframes in which previous assignments were completed;

(E) Certification from an authorized representative of the firm that the services to be provided will conform to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the Application Round in which each Market Analysis is submitted; and

(F) A sample Market Analysis that conforms to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the year in which the sample Market Analysis is submitted.

(2) During the underwriting process each Market Analysis will be reviewed and any discrepancies with the rules and guidelines set forth in this section may be identified and require timely correction. Subsequent to the completion of the Application Round and as time permits, staff or a review appraiser will re-review a sample set of submitted market analyses to ensure that the Department's Market Analysis Rules and Guidelines are met. If it is found that a Market Analyst has not conformed to the Department's Market Analysis Rules and Guidelines, as certified to, the Market Analyst will be notified of the discrepancies in the Market Analysis and will be removed from the approved Qualified Market Analyst list.

(A) In and of itself, removal from the list of approved Market Analysts will not invalidate a Market Analysis commissioned prior to the removal date and at least 90 days prior to the first day of the applicable Application Acceptance Period.

(B) To be reinstated as an approved Qualified Market Analyst, the Market Analyst must amend the previous report to remove all discrepancies or submit a new sample Market Analysis that conforms to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the year in which the updated or new sample Market Analysis is submitted.

(d) Market Analysis Contents. A Market Analysis for a rental Development prepared for the Department must be organized in a format that follows a logical progression and must include, at minimum, items addressed in paragraphs (1) - (13) of this subsection.

(1) Title Page. Include Development address or location, effective date of analysis, date report completed, name and address of person authorizing report, and name and address of Market Analyst.

(2) Letter of Transmittal. The date of the letter must be the date the report was completed. Include Development's address or location, description of Development, statement as to purpose and scope of analysis, reference to accompanying Market Analysis report with effective date of analysis and summary of conclusions, date of Property inspection, name of persons inspecting subject Property, and signatures of all Market Analysts authorized to work on the assignment. Include a statement that the report preparer has read and understood the requirements of this section.

(3) Table of Contents. Number the exhibits included with the report for easy reference.

(4) Market Analysis Summary. Include the Department's Market Analysis Summary exhibit.

(5) Assumptions and Limiting Conditions. Include a description of all assumptions, both general and specific, made by the Market Analyst concerning the Property.

(6) Identification of the Real Estate. Provide a statement to acquaint the reader with the Development. Such information includes street address, tax assessor's parcel number(s), and Development characteristics.

(7) Statement of Ownership. Disclose the current owners of record and provide a three year history of ownership for the subject Development.

(8) Primary Market Area. A limited geographic area from which the Development is expected to draw most of its demand. The size and shape of the PMA should be reflective of proximity to employment centers, services and amenities and contain the most significant areas from which to draw demand. All of the Market Analyst's con-

clusions specific to the subject Development must be based on only one PMA definition. The Market Analyst must adhere to the methodology described in this paragraph when determining the market area. (§2306.67055)

(A) The PMA will be defined by the Market Analyst as:

(i) geographic size based on a base year population no larger than necessary to provide sufficient demand but no more than 100,000 people;

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

(iii) the population of the PMA may exceed 100,000 if the amount over the limit is contained within a single census tract.

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

(i) a detailed narrative specific to the PMA explaining:

(I) How the boundaries of the PMA were determined with respect to census tracts chosen and factors for including or excluding certain census tracts in proximity to the Development;

(II) Whether a more logical market area within the PMA exists but is not definable by census tracts and how this subsection of the PMA supports the rationale for the defined PMA;

(III) What are the specific attributes of the Development's location within the PMA that would draw prospective tenants from other areas of the PMA to relocate to the Development;

(IV) What are the specific attributes, if known, of the Development itself that would draw prospective tenants currently residing in other areas of the PMA to relocate to the Development;

(V) If the PMA crosses county lines, discuss the different income and rent limits in each county and how these differing amounts would affect the demand for the Development;

(VI) For rural Developments, discuss the relative draw (services, jobs, medical facilities, recreation, schools, etc.) of the Development's immediate local area (city or populous area if no city) in comparison to its neighboring local areas (cities, or populous areas if no cities), in and around the PMA. A rural PMA should not include significantly larger more populous areas unless the analyst can provide substantiation and rationale that the tenants would migrate to the Development's location from the larger cities;

(VII) Discuss and quantify current and planned single-family and non-residential construction (include permit data if available); and

(VIII) Other housing issues in general, if pertinent;

(ii) a complete demographic report for the defined PMA;

(iii) a scaled distance map indicating the PMA boundaries showing relevant U.S. census tracts with complete 11-digit identification numbers in numerical order with labels as well as the location of the subject Development and all comparable Developments. The map must indicate the total square miles of PMA; and

(iv) a proximity table indicating distance from the Development to employment centers, medical facilities, schools, entertainment and any other amenities relevant to the potential residents and include drive time estimates.

(C) Comparable Units. Identify developments in the PMA with Comparable Units. In PMAs lacking sufficient rent comparables, it may be necessary for the Market Analyst to collect data from markets with similar characteristics and make quantifiable and qualitative location adjustments. Provide a data sheet for each comparable development consisting of:

(i) development name;

(ii) address;

(iii) year of construction and year of Rehabilitation, if applicable;

(iv) property condition;

(v) Target Population;

(vi) unit mix specifying number of Bedrooms, number of baths, Net Rentable Area including:

(I) monthly rent and Utility Allowance; or

(II) sales price with terms, marketing period and date of sale;

(vii) description of concessions;

(viii) list of unit amenities;

(ix) utility structure;

(x) list of common amenities;

(xi) narrative comparison of its proximity to employment centers and services relative to targeted tenant population of the subject property; and

(xii) for rental developments only, the occupancy and turnover.

(9) Market Information.

(A) Identify the number of units for each of the categories in clauses (i) - (vi) of this subparagraph, if applicable:

(i) total housing;

(ii) all multi-family rental developments, including unrestricted and market-rate developments, whether existing, under construction or proposed;

(iii) Affordable housing;

(iv) Comparable Units;

(v) Unstabilized Comparable Units; and

(vi) proposed Comparable Units.

(B) Occupancy. The occupancy rate indicated in the Market Analysis may be used to support the overall demand conclusion for the proposed Development. State the overall physical occupancy rate for the proposed housing tenure (renter or owner) within the defined market areas by:

(i) number of Bedrooms;

(ii) quality of construction (class);

(iii) Target Population; and

(iv) Comparable Units.

(C) Absorption. State the absorption trends by quality of construction (class) and absorption rates for Comparable Units.

(D) Demographic Reports must include:

(i) All demographic reports must include population and household data for a five year period with the year of Application submission as the base year;

(ii) All demographic reports must provide sufficient data to enable calculation of income-eligible, age-, size-, and tenure-appropriate household populations;

(iii) For Elderly Developments, all demographic reports must provide a detailed breakdown of households by age and by income; and

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

(E) Demand. Provide a comprehensive evaluation of the need for the proposed housing for the Development as a whole and each Unit Type by number of Bedrooms proposed and rent restriction category within the defined market areas using the most current census and demographic data available.

(i) Demographics. The Market Analyst should use demographic data specific to the characteristics of the households that will be living in the proposed Development. For example, the Market Analyst should use demographic data specific to the elderly populations (and any other qualifying residents for Elderly Developments) to be served by an Elderly Development, if available, and should avoid making adjustments from more general demographic data. For HOME-ARP, demand for Qualifying Populations must be identified in accordance with Section VI B.10.a.ii of CPD Notice 21-10. If adjustment rates are used based on more general data for any of the criteria described in subclauses (I) - (V) of this clause, they should be clearly identified and documented as to their source in the report.

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

(II) Target. If applicable, adjust the household projections for the qualifying demographic characteristics such as the minimum age of the population to be served by the proposed Development.

(III) Household Size-Appropriate. Adjust the household projections or target household projections, as applicable, for the appropriate household size for the proposed Unit Type by number of Bedrooms proposed and rent restriction category based on 2 persons per Bedroom or one person for Efficiency Units.

(IV) Income Eligible. Adjust the household size appropriate projections for income eligibility based on the income bands for the proposed Unit Type by number of Bedrooms proposed and rent restriction category with:

(-a-) the lower end of each income band calculated based on the lowest gross rent proposed divided by 40% for the general population and 50% for elderly households; and

(-b-) the upper end of each income band equal to the applicable gross median income limit for the largest appropriate household size based on 2 persons per Bedroom (round up) or one person for Efficiency Units.

(V) Tenure-Appropriate. Adjust the income-eligible household projections for tenure (renter or owner). If tenure appropriate income eligible target household data is available, a tenure appropriate adjustment is not necessary.

(ii) Gross Demand. Gross Demand is defined as the sum of Potential Demand from the PMA, Demand from Other Sources, and External Demand.

(iii) Potential Demand. Potential Demand is defined as the number of income-eligible, age-, size-, and tenure-appropriate target households in the designated market area at the proposed placed in service date.

(I) Maximum eligible income is equal to the applicable gross median income limit for the largest appropriate household size.

(II) For Developments targeting the general population:

(-a-) minimum eligible income is based on a 40% rent to income ratio;

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

(-c-) the tenure-appropriate population for a rental Development is limited to the population of renter households.

(III) For Developments consisting solely of single family residences on separate lots with all Units having three or more Bedrooms:

(-a-) minimum eligible income is based on a 40% rent to income ratio;

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

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

(IV) For Elderly Developments:

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

(-b-) Gross Demand includes all household sizes and both renter and owner households within the age range (and any other qualifying characteristics) to be served by the Elderly Development.

(V) For Supportive Housing:

(-a-) minimum eligible income is $1; and

(-b-) households meeting the occupancy qualifications of the Development (data to quantify this demand may be based on statistics beyond the defined PMA but not outside the historical service area of the Applicant).

(VI) For Developments with rent assisted units (Project Based Vouchers, Project-Based Rental Assistance, Public Housing Units):

(-a-) minimum eligible income for the assisted units is $1; and

(-b-) maximum eligible income for the assisted units is the minimum eligible income of the corresponding affordable unit.

(iv) For External Demand, assume an additional 10% of Potential Demand from the PMA to represent demand coming from outside the PMA.

(v) For Demand from Other Sources:

(I) the source of additional demand and the methodology used to calculate the additional demand must be clearly stated;

(II) consideration of Demand from Other Sources is at the discretion of the Underwriter;

(III) Demand from Other Sources must be limited to households that are not included in Potential Demand; and

(IV) if households with Section 8 vouchers are identified as a source of demand, the Market Study must include:

(-a-) documentation of the number of vouchers administered by the local Housing Authority; and

(-b-) a complete demographic report for the area in which the vouchers are distributed.

(F) Employment. Provide a comprehensive analysis of employment trends and forecasts in the Primary Market Area. Analysis must discuss existing or planned employment opportunities with qualifying income ranges.

(10) Conclusions. Include a comprehensive evaluation of the subject Property, separately addressing each housing type and specific population to be served by the Development in terms of items in subparagraphs (A) - (J) of this paragraph. All conclusions must be consistent with the data and analysis presented throughout the Market Analysis.

(A) Unit Mix. Provide a best possible unit mix conclusion based on the occupancy rates by Bedroom type within the PMA and target, income-eligible, size-appropriate and tenure-appropriate household demand by Unit Type and income type within the PMA.

(B) Rents. Provide a separate Market Rent conclusion for each proposed Unit Type by number of Bedrooms and rent restriction category. Conclusions of Market Rent below the maximum Net Program Rent limit must be well documented as the conclusions may impact the feasibility of the Development under §11.302(i) of this chapter (relating to Feasibility Conclusion). In support of the Market Rent conclusions, provide a separate attribute adjustment matrix for each proposed Unit Type by number of Bedrooms and rental restriction category. For HOME-ARP, Units for Qualified Populations will be underwritten at $0 income, unless the Unit has project-based rental assistance or subsidy, or is supported by a capitalized operating reserve agreement.

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

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

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

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

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

(vi) Total adjustments in excess of 25% indicate the Units are not comparable for the purposes of determining Market Rent conclusions.

(C) Effective Gross Income. Provide rental income, secondary income, and vacancy and collection loss projections for the subject derived independent of the Applicant's estimates.

(D) For Demand:

(i) state the Gross Demand for each Unit Type by number of Bedrooms proposed and rent restriction category (e.g. one-Bedroom Units restricted at 50% of AMGI; two-Bedroom Units restricted at 60% of AMGI);

(ii) state the Gross Demand for the proposed Development as a whole. If some households are eligible for more than one Unit Type due to overlapping eligible ranges for income or household size, Gross Demand should be adjusted to avoid including households more than once; and

(iii) state the Gross Demand generated from each AMGI band. If some household incomes are included in more than one AMGI band, Gross Demand should be adjusted to avoid including households more than once.

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

(i) the proposed subject Units to be absorbed;

(ii) Comparable Units in previously approved Developments in the PMA that have not achieved 90% occupancy for a minimum of 90 days. Approved Developments should be determined by:

(I) the HTC Property Inventory that is published on the Department's website as of December 31, 2024, for competitive housing tax credit Applications;

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

(iii) Unstabilized Comparable Units that are located in close proximity to the subject PMA if they are likely to share eligible demand or if the PMAs have overlapping census tracts. Underwriter may require Market Analyst to run a combined PMA including eligible demand and Relevant Supply from the combined census tracts; the Gross Capture Rate generated from the combined PMA must meet the feasibility criteria as defined in §11.302(i) (relating to Feasibility Conclusion).

(F) Gross Capture Rate. The Gross Capture Rate is defined as the Relevant Supply divided by the Gross Demand. Refer to §11.302(i) of this chapter (relating to Feasibility Conclusion).

(G) Individual Unit Capture Rate. For each Unit Type by number of Bedrooms and rent restriction categories, the individual unit capture rate is defined as the Relevant Supply of proposed and Unstabilized Comparable Units divided by the eligible demand for that Unit. Some households are eligible for multiple Unit Types. In order to calculate individual unit capture rates, each household is included in the capture rate for only one Unit Type.

(H) Capture Rate by AMGI Band. For each AMGI band (30%, 40%, 50%, 60%, and also 20%, 70%, and 80% if the Applicant will make the Income Average election), the capture rate by AMGI band is defined as Relevant Supply of proposed and Unstabilized Comparable Units divided by the eligible demand from that AMGI band. Some households are qualified for multiple income bands. In order to calculate AMGI band rates, each household is included in the capture rate for only one AMGI band.

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

(J) Market Impact. Provide an assessment of the impact the subject Development, as completed, will have on existing Developments supported by Housing Tax Credits in the Primary Market. (§2306.67055)

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

(12) Appendices. Any Third Party reports including demographics relied upon by the Market Analyst must be provided in appendix form. A list of works cited including personal communications also must be provided, and the Modern Language Association (MLA) format is suggested.

(13) Qualifications. Current Franchise Tax Account Status from the Texas Comptroller of Public Accounts (not applicable for sole proprietorships) and any changes to items listed in subsection (c)(1)(B) and (C) of this section (relating to Market Analyst Qualifications).

(e) The Department reserves the right to require the Market Analyst to address such other issues as may be relevant to the Department's evaluation of the need for the subject Development and the provisions of the particular program guidelines.

(f) In the event that the PMA for a subject Development overlaps the PMA's of other proposed or Unstabilized comparable Developments, the Underwriter may perform an extended Sub-Market Analysis considering the combined PMA's and all proposed and Unstabilized Units in the extended Sub-Market Area; the Gross Capture Rate from such an extended Sub-Market Area analysis may be used by the Underwriter as the basis for a feasibility conclusion.

(g) All Applicants shall acknowledge, by virtue of filing an Application, that the Department shall not be bound by any such opinion or Market Analysis, and may substitute its own analysis and underwriting conclusions for those submitted by the Market Analyst.

§11.304. Appraisal Rules and Guidelines.

(a) General Provision.

(1) An appraisal prepared for the Department must conform to the Uniform Standards of Professional Appraisal Practice (USPAP) as adopted by the Appraisal Standards Board of the Appraisal Foundation. The appraisal must be prepared by a general certified appraiser by the Texas Appraisal Licensing and Certification Board. The appraisal must include a statement that the report preparer has read and understood the requirements of this section. The appraisal must include a statement that the person or company preparing the appraisal, or reviewing the appraisal, is a disinterested party and will not materially benefit from the Development in any other way than receiving a fee for performing the appraisal and that the fee is in no way contingent upon the outcome of the appraisal.

(2) If an appraisal is required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, the appraisal must also meet the requirements of 49 CFR Part 24 and HUD Handbook 1378. (b) Self-Contained. An appraisal prepared for the Department must describe sufficient and adequate data and analyses to support the final opinion of value. The final value(s) must be reasonable, based on the information included. Any Third Party reports relied upon by the appraiser must be verified by the appraiser as to the validity of the data and the conclusions.

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

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

(1) Title Page. Include a statement identifying the Department as the client, acknowledging that the Department is granted full authority to rely on the findings of the report, and name and address of person authorizing report. The title page must also include the following statement, "any person signing this Report acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law."

(2) Letter of Transmittal. Include reference to accompanying appraisal report, reference to all person(s) that provided significant assistance in the preparation of the report, date of report, effective date of appraisal, date of property inspection, name of person(s) inspecting the property, tax assessor's parcel number(s) of the site, estimate of marketing period, and signatures of all appraisers authorized to work on the assignment including the appraiser who inspected the property. Include a statement indicating the report preparer has read and understood the requirements of this section.

(3) Table of Contents. Number the exhibits included with the report for easy reference.

(4) Disclosure of Competency. Include appraiser's qualifications, detailing education and experience.

(5) Statement of Ownership of the Subject Property. Discuss all prior sales of the subject Property which occurred within the past three years. Any pending agreements of sale, options to buy, or listing of the subject Property must be disclosed in the appraisal report.

(6) Property Rights Appraised. Include a statement as to the property rights (e.g., fee simple interest, leased fee interest, leasehold, etc.) being considered. The appropriate interest must be defined in terms of current appraisal terminology with the source cited.

(7) Site/Improvement Description. Discuss the site characteristics including subparagraphs (A) - (E) of this paragraph.

(A) Physical Site Characteristics. Describe dimensions, size (square footage, acreage, etc.), shape, topography, corner influence, frontage, access, ingress-egress, etc. associated with the Development Site. Include a plat map or survey.

(B) Floodplain. Discuss floodplain (including flood map panel number) and include a floodplain map with the subject Property clearly identified.

(C) Zoning. Report the current zoning and description of the zoning restrictions and any deed restrictions, where applicable, and type of Development permitted. Any probability of change in zoning should be discussed. A statement as to whether or not the improvements conform to the current zoning should be included. A statement addressing whether or not the improvements could be rebuilt if damaged or destroyed, should be included. If current zoning is not consistent with the highest and best use, and zoning changes are reasonable to expect, time and expense associated with the proposed zoning change should be considered and documented. A zoning map should be included.

(D) Description of Improvements. Provide a thorough description and analysis of the improvements including size (Net Rentable Area, gross building area, etc.), use (whether vacant, occupied by owner, or being rented), number of residents, number of stories, number of buildings, type/quality of construction, condition, actual age, effective age, exterior and interior amenities, items of deferred maintenance, energy efficiency measures, etc. All applicable forms of depreciation should be addressed along with the remaining economic life.

(E) Environmental Hazards. It is recognized appraisers are not experts in such matters and the impact of such deficiencies may not be quantified; however, the report should disclose any potential environmental hazards (such as discolored vegetation, oil residue,

asbestos-containing materials, lead- based paint etc.) noted during the inspection.

(8) Highest and Best Use. Market Analysis and feasibility study is required as part of the highest and best use. The highest and best use analysis should consider paragraph (7)(A) - (E) of this subsection as well as a supply and demand analysis.

(A) The appraisal must inform the reader of any positive or negative market trends which could influence the value of the appraised Property. Detailed data must be included to support the appraiser's estimate of stabilized income, absorption, and occupancy.

(B) The highest and best use section must contain a separate analysis "as if vacant" and "as improved" (or "as proposed to be improved/renovated"). All four elements (legally permissible, physically possible, feasible, and maximally productive) must be considered.

(9) Appraisal Process. It is mandatory that all three approaches, Cost Approach, Sales Comparison Approach and Income Approach, are considered in valuing the Property. If an approach is not applicable to a particular property an adequate explanation must be provided. A land value estimate must be provided if the Cost Approach is not applicable.

(A) Cost Approach. This approach should give a clear and concise estimate of the cost to construct the subject improvements. The source(s) of the cost data should be reported.

(i) Cost comparables are desirable; however, alternative cost information may be obtained from Marshall & Swift Valuation Service or similar publications. The section, class, page, etc. should be referenced. All soft costs and entrepreneurial profit must be addressed and documented.

(ii) All applicable forms of depreciation must be discussed and analyzed. Such discussion must be consistent with the description of the improvements.

(iii) The land value estimate should include a sufficient number of sales which are current, comparable, and similar to the subject in terms of highest and best use. Comparable sales information should include address, legal description, tax assessor's parcel number(s), sales price, date of sale, grantor, grantee, three year sales history, and adequate description of property transferred. The final value estimate should fall within the adjusted and unadjusted value ranges. Consideration and appropriate cash equivalent adjustments to the comparable sales price for subclauses (I) - (VII) of this clause should be made when applicable:

(I) Property rights conveyed;

(II) Financing terms;

(III) Conditions of sale;

(IV) Location;

(V) Highest and best use;

(VI) Physical characteristics (e.g., topography, size, shape, etc.); and

(VII) Other characteristics (e.g., existing/proposed entitlements, special assessments, etc.).

(B) Sales Comparison Approach. This section should contain an adequate number of sales to provide the Underwriter with a description of the current market conditions concerning this property type. Sales data should be recent and specific for the property type being appraised. The sales must be confirmed with buyer, seller, or an individual knowledgeable of the transaction.

(i) Sales information should include address, legal description, tax assessor's parcel number(s), sales price, financing considerations and adjustment for cash equivalency, date of sale, recordation of the instrument, parties to the transaction, three year sale history, complete description of the Property and property rights conveyed, and discussion of marketing time. A scaled distance map clearly identifying the subject and the comparable sales must be included.

(ii) The method(s) used in the Sales Comparison Approach must be reflective of actual market activity and market participants.

(I) Sale Price/Unit of Comparison. The analysis of the sale comparables must identify, relate, and evaluate the individual adjustments applicable for property rights, terms of sale, conditions of sale, market conditions, and physical features. Sufficient narrative must be included to permit the reader to understand the direction and magnitude of the individual adjustments, as well as a unit of comparison value indicator for each comparable.

(II) Net Operating Income/Unit of Comparison. The Net Operating Income statistics for the comparables must be calculated in the same manner. It should be disclosed if reserves for replacement have been included in this method of analysis. At least one other method should accompany this method of analysis.

(C) Income Approach. This section must contain an analysis of both the actual historical and projected income and expense aspects of the subject Property.

(i) Market Rent Estimate/Comparable Rental Analysis. This section of the report should include an adequate number of actual market transactions to inform the reader of current market conditions concerning rental Units. The comparables must indicate current research for this specific property type. The comparables must be confirmed with the landlord, tenant or agent and individual data sheets must be included. The individual data sheets should include property address, lease terms, description of the property (e.g., Unit Type, unit size, unit mix, interior amenities, exterior amenities, etc.), physical characteristics of the property, and location of the comparables. Analysis of the Market Rents should be sufficiently detailed to permit the reader to understand the appraiser's logic and rationale. Adjustment for lease rights, condition of the lease, location, physical characteristics of the property, etc. must be considered.

(ii) Comparison of Market Rent to Contract Rent. Actual income for the subject along with the owner's current budget projections must be reported, summarized, and analyzed. If such data is unavailable, a statement to this effect is required and appropriate assumptions and limiting conditions should be made. The Contract Rents should be compared to the market-derived rents. A determination should be made as to whether the Contract Rents are below, equal to, or in excess of market rates. If there is a difference, its impact on value must be qualified.

(iii) Vacancy/Collection Loss. Historical occupancy data and current occupancy level for the subject should be reported and compared to occupancy data from the rental comparables and overall occupancy data for the subject's Primary Market.

(iv) Expense Analysis. Actual expenses for the subject, along with the owner's projected budget, must be reported, summarized, and analyzed. If such data is unavailable, a statement to this effect is required and appropriate assumptions and limiting conditions should be made. Historical expenses should be compared to comparables expenses of similar property types or published survey data (such as IREM, BOMA, etc.). Any expense differences should be reconciled.

Include historical data regarding the subject's assessment and tax rates and a statement as to whether or not any delinquent taxes exist.

(v) Capitalization. The appraiser should present the capitalization method(s) reflective of the subject market and explain the omission of any method not considered in the report.

(I) Direct Capitalization. The primary method of deriving an overall rate is through market extraction. If a band of investment or mortgage equity technique is utilized, the assumptions must be fully disclosed and discussed.

(II) Yield Capitalization (Discounted Cash Flow Analysis). This method of analysis should include a detailed and supportive discussion of the projected holding/investment period, income and income growth projections, occupancy projections, expense and expense growth projections, reversionary value and support for the discount rate.

(10) Value Estimates. All appraised values must be based on as-is values at the time of Application. Reconciliation of final value estimates is required. The Underwriter may request additional valuation information based on unique existing circumstances that are relevant for deriving the market value of the Property.

(A) All appraisals shall contain a separate estimate of the "as vacant" market value of the underlying land, based upon current sales comparables. The "as vacant" value assumes that there are no improvements on the property and therefore demolition costs should not be considered. The appraiser should consider the fee simple or leased fee interest as appropriate.

(B) For existing Developments with any project-based rental assistance that will remain with the property after the acquisition, the appraisal must include an "as-is as-currently-restricted value at current contract rents." For public housing converting to project-based rental assistance, the appraiser must provide a value based on the future restricted rents. The value used in the analysis may be based on the unrestricted market rents if supported by the appraisal. Regardless of the rents used in the valuation, the appraiser must consider any other on-going restrictions that will remain in place even if not affecting rents. If the rental assistance has an impact on the value, such as use of a lower capitalization rate due to the lower risk associated with rental rates or occupancy rates on project-based developments, this must be fully explained and supported to the satisfaction of the Underwriter.

(C) For existing Developments with rent restrictions, the appraisal must include the "as-is as-restricted" value. In particular, the value must be based on the current restricted rents when deriving the value based on the income approach.

(D) For all other existing Developments, the appraisal must include the "as-is" value.

(E) For any Development with favorable financing from a government entity (generally below market debt) that will remain in place and transfer to the new owner, the appraisal must include a separate value for the existing favorable financing with supporting information. 25% of the appraised favorable financing value will be allocated to land value and 75% will be allocated to building value, unless the below market financing was used for rehabilitation only, in which case the favorable financing will be attributed 100% to the building. Applicant's allocation of favorable financing should be clearly explained.

(F) If required the appraiser must include a separate assessment of personal property, furniture, fixtures, and equipment (FF&E) or intangible items. If personal property, FF&E, or intangible items are not part of the transaction or value estimate, a statement to such effect should be included.

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

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

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

§11.305. Environmental Site Assessment Rules and Guidelines.

(a) General Provisions. The Environmental Site Assessments (ESA) prepared for the Department must be conducted and reported in conformity with the standards of the American Society for Testing and Materials (ASTM). The initial report must conform with the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E1527-13 or any subsequent standards as published). Any subsequent reports should also conform to ASTM standards and such other recognized industry standards as a reasonable person would deem relevant in view of the Property's anticipated use for human habitation. The ESA shall be conducted by a Third Party environmental professional at the expense of the Applicant, and addressed to the Department as a User of the report (as defined by ASTM standards). Copies of reports provided to the Department which were commissioned by other financial institutions must either address Texas Department of Housing and Community Affairs as a co-recipient of the report or letters from both the provider and the recipient of the report may be submitted extending reliance on the report to the Department. The ESA report must also include a statement that the person or company preparing the ESA report will not materially benefit from the Development in any other way than receiving a fee for performing the ESA, and that the fee is in no way contingent upon the outcome of the assessment. The report must also include the following statement, "any person signing this Report acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law." The ESA report must contain a statement indicating the report preparer has read and understood the requirements of this section.

(b) In addition to ASTM requirements, the report must:

(1) State if a noise study is recommended for a property in accordance with current HUD guidelines and identify its proximity to industrial zones, major highways, active rail lines, civil and military airfields, or other potential sources of excessive noise;

(2) Provide a copy of a current survey, if available, or other drawing of the site reflecting the boundaries and adjacent streets, all improvements on the site, and any items of concern described in the body of the ESA or identified during the physical inspection;

(3) Provide a copy of the current FEMA Flood Insurance Rate Map showing the panel number and encompassing the site with the site boundaries precisely identified and superimposed on the map;

(4) If the subject Development Site includes any improvements or debris from pre-existing improvements, state if testing for Lead Based Paint or asbestos containing materials would be required

pursuant to local, state, and federal laws, or recommended due to any other consideration;

(5) State if testing for lead in the drinking water would be required pursuant to local, state, and federal laws, or recommended due to any other consideration such as the age of pipes and solder in existing improvements. For all Rehabilitation Developments, the ESA provider must state whether the on-site plumbing is a potential source of lead in drinking water;

(6) Assess the potential for the presence of Radon on the Development Site, and recommend specific testing if necessary;

(7) Identify and assess the presence of oil, gas or chemical pipelines, processing facilities, storage facilities or other potentially hazardous explosive activities (does not include liquified petroleum gas containers with a capacity of less than 125 gallons on-site or within 0.25 miles of the site that could potentially adversely impact the Development. Location of these items must be shown on a drawing or map in relation to the Development Site and all existing or future improvements. The drawing must depict any blast zones (in accordance with HUD guidelines) and include HUD blast zone calculations; and

(8) Include a vapor encroachment screening in accordance with the ASTM "Standard Guide for Vapor Encroachment Screening on Property Involved in Real Estate Transactions" (E2600-10 or any subsequent standards as published).

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

(d) For Developments in programs that allow a waiver of the Phase I ESA such as an existing USDA funded Development, the Development Owners are hereby notified that it is their responsibility to ensure that the Development is maintained in compliance with all state and federal environmental hazard requirements.

(e) Those Developments which have or are to receive first lien financing from HUD may submit HUD's environmental assessment report, provided that it conforms to the requirements of this section.

§11.306. Scope and Cost Review Guidelines.

(a) General Provisions. The objective of the Scope and Cost Review Report (SCR) required for Rehabilitation Developments (excluding Reconstruction) and Adaptive Reuse Developments is to provide a self-contained report that provides a comprehensive description and evaluation of the current conditions of the Development and identifies a scope of work for the proposed repairs, replacements and improvements to an existing multifamily property or identifies a scope of work for the conversion of a non-multifamily property to multifamily use. The SCR author must evaluate the sufficiency of the Applicant's scope of work and provide an independent review of the Applicant's proposed costs. The report must be in sufficient detail for the Underwriter to fully understand all current conditions, scope of work and cost estimates. It is the responsibility of the Applicant to ensure that the scope of work and cost estimates submitted in the Application is provided to the author. The SCR must include a copy of the Development Cost Schedule submitted in the Application. The report must also include the following statement, "any person signing this Report acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law."

(b) For Rehabilitation Developments, the SCR must include analysis in conformity with the ASTM "Standard Guide for Property Condition Assessments. Baseline Property Condition Assessment Process (ASTM Standard Designation: E 2018, or any subsequent standards as published)" except as provided for in subsections (f) and (g) of this section.

(c) The SCR must include good quality color photographs of the subject Real Estate (front, rear, and side elevations, on-site amenities, interior of the structure). Photographs should be properly labeled.

(d) The SCR must also include discussion and analysis of:

(1) Description of Current Conditions. For both Rehabilitation and Adaptive Reuse, the SCR must contain a detailed description with good quality photographs of the current conditions of all major systems and components of the Development regardless of whether the system or component will be removed, repaired or replaced. For historic structures, the SCR must contain a description with photographs of each aspect of the building(s) that qualifies it as historic and must include a narrative explaining how the scope of work relates to maintaining the historic designation of the Development. Replacement or relocation of systems and components must be described;

(2) Description of Scope of Work. The SCR must provide a narrative of the consolidated scope of work either as a stand-alone section of the report or included with the description of the current conditions for each major system and components. Any New Construction must be described. Plans or drawings (that are in addition to any plans or drawings otherwise required by rule) and that relate to any part of the scope of work should be included, if available;

(3) Useful Life Estimates. For each system and component of the property the SCR must estimate its remaining useful life, citing the basis or the source from which such estimate is derived;

(4) Code Compliance. The SCR must document any known violations of any applicable federal, state, or local codes. In developing the cost estimates specified herein, it is the responsibility of the Applicant to ensure that the SCR adequately considers any and all applicable federal, state, and local laws and regulations which are applicable and govern any work and potentially impact costs. For Applications requesting Direct Loan funding from the Department, the SCR author must include a comparison between the local building code and the International Existing Building Code of the International Code Council;

(5) Program Rules. The SCR must assess the extent to which any systems or components must be modified, repaired, or replaced in order to comply with any specific requirements of the housing program under which the Development is proposed to be financed, the Department's Uniform Physical Condition Standards, and any scoring criteria including amenities for which the Applicant may claim points. It is the responsibility of the Applicant to inform the report author of those requirements in the scope of work; for Direct Loan Developments this includes, but is not limited to the requirements in the Lead-Based Paint Poisoning Prevention Act (42 USC §§4821-4846), the Residential Lead- Based Paint Hazard Reduction Act of 1992 (42 USC §§4851-4856), and implementing regulations, Title X of the 1992 Housing and Community Development Act at 24 CFR Part 35 (including subparts A, B, J, K, and R), and the Lead: Renovation, Repair, and Painting Program Final Rule and Response to Children with Environmental Intervention Blood Lead Levels (40 CFR Part 745);

(6) Accessibility Requirements. The SCR report must include an analysis of compliance with the Department's accessibility requirements pursuant to Chapter 1, Subchapter B and §11.101(b)(8) of this title (relating to Site and Development Requirements and Restric-

tions) and identify the specific items in the scope of work and costs needed to ensure that the Development will meet these requirements upon Rehabilitation (including conversion and Adaptive Reuse);

(7) Reconciliation of Scope of Work and Costs. The SCR report must include the Department's Scope and Cost Review Supplement (SCR Supplement) with the signature of the SCR author. The SCR Supplement must reconcile the scope of work and costs of the immediate physical needs identified by the SCR author with the Applicant's scope of work and costs. The costs presented on the SCR Supplement must be consistent with both the scope of work and immediate costs identified in the body of the SCR report and the Applicant's scope of work and costs as presented in the Application. Variations between the costs listed on the SCR Supplement and the costs listed in the body of the SCR report or on the Applicant's Development Cost Schedule must be reconciled in a narrative analysis from the SCR provider. The consolidated scope of work and costs shown on the SCR Supplement will be used by the Underwriter in the analysis to the extent adequately supported in the report; and

(8) Cost Estimates. The Development Cost Schedule and SCR Supplement must include all costs identified below:

(A) Immediately Necessary Repairs and Replacement. For all Rehabilitation developments, and Adaptive Reuse developments if applicable, immediately necessary repair and replacement should be identified for systems or components which are expected to have a remaining useful life of less than one year, which are found to be in violation of any applicable codes, which must be modified, repaired or replaced in order to satisfy program rules, or which are otherwise in a state of deferred maintenance or pose health and safety hazards. The SCR must provide a separate estimate of the costs associated with the repair, replacement, or maintenance of each system or component which is identified as being an immediate need, citing the basis or the source from which such cost estimate is derived.

(B) Proposed Repair, Replacement, or New Construction. If the development plan calls for additional scope of work above and beyond the immediate repair and replacement items described in subparagraph (A) of this paragraph, the additional scope of work must be evaluated and either the nature or source of obsolescence to be cured or improvement to the operations of the Property discussed. The SCR must provide a separate estimate of the costs associated with the additional scope of work, citing the basis or the source from which such cost estimate is derived.

(C) Reconciliation of Costs. The combined costs described in subparagraphs (A) and (B) of this paragraph should be consistent with the costs presented on the Applicant's Development Cost Schedule and the SCR Supplement.

(D) Expected Repair and Replacement Over Time. The term during which the SCR should estimate the cost of expected repair and replacement over time must equal the lesser of 30 years or the longest term of any land use or regulatory restrictions which are, or will be, associated with the provision of housing on the Property. The SCR must estimate the periodic costs which are expected to arise for repairing or replacing each system or component or the property, based on the estimated remaining useful life of such system or component as described in paragraph (1) of this subsection adjusted for completion of repair and replacement immediately necessary and proposed as described in subparagraphs (A) and (B) of this paragraph. The SCR must include a separate table of the estimated long term costs which identifies in each line the individual component of the property being examined, and in each column the year during the term in which the costs are estimated to be incurred for a period and no less than 30 years. The estimated costs for future years should be given in both present dollar values and anticipated future dollar values assuming a reasonable inflation factor of not less than 2.5% per annum.

(e) Any costs not identified and discussed in sufficient detail in the SCR as part of subsection (d)(6), and (8)(A) and (B) of this section will not be included in the underwritten Total Development Cost in the Report.

(f) If a copy of such standards or a sample report have been provided for the Department's review, if such standards are widely used, and if all other criteria and requirements described in this section are satisfied, the Department will also accept copies of reports commissioned or required by the primary lender for a proposed transaction, which have been prepared in accordance with:

(1) Fannie Mae's criteria for Physical Needs Assessments;

(2) Federal Housing Administration's criteria for Project Capital Needs Assessments;

(3) Freddie Mac's guidelines for Engineering and Property Condition Reports; and

(4) USDA guidelines for Capital Needs Assessment.

(g) The Department may consider for acceptance reports prepared according to other standards which are not specifically named in this section, if a copy of such standards or a sample report have been provided for the Department's review, if such standards are widely used, and if all other criteria and requirements described in this section are satisfied.

(h) The SCR shall be conducted by a Third Party at the expense of the Applicant, and addressed to Texas Department of Housing and Community Affairs as the client. Copies of reports provided to the Department which were commissioned by other financial institutions should address Texas Department of Housing and Community Affairs as a co-recipient of the report, or letters from both the provider and the recipient of the report should be submitted extending reliance on the report to Texas Department of Housing and Community Affairs.

(i) The SCR report must include a statement that the individual or company preparing the SCR report will not materially benefit from the Development in any other way than receiving a fee for performing the SCR. Because of the Department's heavy reliance on the independent cost information, the provider must not be a Related Party to or an Affiliate of any other Development Team member. The SCR report must contain a statement indicating the report preparer has read and understood the requirements of this section.

(j) Scope of Work Narrative. For Tax-Exempt Bond Developments that do not include a request for Direct Loan or where the Department is not the bond issuer, a Scope and Cost Review prepared by a Third Party is not required. The application must provide a Scope of Work Narrative, consisting of:

(1) A detailed description of the current conditions of all major systems and components of the Development regardless of whether the system or component will be removed, repaired or replaced;

(2) For historic structures, a description of each aspect of the building(s) that qualifies it as historic, including a narrative explaining how the scope of work relates to maintaining the historic designation of the Development; and

(3) a narrative of the consolidated scope of work for the proposed rehabilitation for each major system and components.

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

Filed with the Office of the Secretary of State on December 8, 2025.

TRD-202504466
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 28, 2025
Proposal publication date: September 19, 2025
For further information, please call: (512) 475-3959

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SUBCHAPTER E. FEE SCHEDULE, APPEALS, AND OTHER PROVISIONS

10 TAC §§11.901 - 11.907

STATUTORY AUTHORITY. The adoption of these sections of rule is made pursuant to Tex. Gov't Code §§2306.053 and 2306.67022, which authorize the Department to adopt rules and, specifically, this Qualified Allocation Plan.

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

§11.901. Fee Schedule.

Any unpaid fees, as stated in this section, will cause an Applicant to be ineligible to apply for Department funding, ineligible to receive additional Department funding associated with a Commitment, Determination Notice or Contract, and ineligible to submit extension requests, ownership transfers, and Application amendments until such time the Department receives payment. Payments of the fees shall be in the form of a check and to the extent there are insufficient funds available, it may cause the Application, Commitment, Determination Notice or Contract to be terminated or Allocation rescinded. Other forms of payment may be considered on a case-by-case basis. Applicants will be required to pay any insufficient payment fees charged to the Department by the State Comptroller. The Executive Director may extend the deadline for specific extenuating and extraordinary circumstances, unless prohibited by other parts of this chapter, provided the Applicant submits a written request for an extension to a fee deadline no later than five business days prior to the deadline associated with the particular fee. For any payment that must be submitted in accordance with this chapter, staff may grant relief of the associated deadline for that payment for unusual or unpredictable circumstances that are outside of the Applicant's control such as inclement weather or failed deliveries. Applicants must submit any payment due under this chapter and operate under the assumption that the deadline for such payment is final.

(1) Competitive Housing Tax Credit Pre-Application Fee. A pre-application fee, in the amount of $10 per Unit, based on the total number of Units reflected in the pre-application, must be submitted with the pre-application in order for the pre-application to be considered accepted by the Department. Pre-applications in which a Community Housing Development Corporation (CHDO) or a private Qualified Nonprofit Organization intends to serve as the Managing General Partner of the Development Owner, or Control the Managing General Partner of the Development Owner, may be eligible to receive a discount of 10% off the calculated pre-application fee provided such documentation is submitted with the fee. (§2306.6716(d))

(2) Refunds of Competitive HTC Pre-application Fees. (§2306.6716(c)) Upon written request from the Applicant, the Department shall refund the balance of the pre-application fee for a Competitive HTC pre-application that is withdrawn by the Applicant and that is not fully processed by the Department. The amount of refund will be commensurate with the level of review completed. Initial processing will constitute 50% of the review, threshold review prior to a deficiency being issued will constitute 30% of the review, and review after deficiencies are submitted and reviewed will constitute 20% of the review. In no instance will a refund of the pre-application fee be made after the Full Application Delivery Date for a pre-application that was fully submitted.

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

(A) Housing Tax Credit Applications. For Applicants having submitted a Competitive Housing Tax Credit pre-application which met the pre-application threshold requirements, and for which a pre-application fee was paid, the Application fee will be $20 per Unit based on the total number of Units in the full Application. Otherwise, the Application fee will be $30 per Unit based on the total number of Units in the full Application. Applications in which a CHDO or Qualified Nonprofit Organization intends to serve as the Managing General Partner of the Development Owner, or Control the Managing General Partner of the Development Owner, may be eligible to receive a discount of 10% off the calculated Application fee, provided such documentation is submitted with the fee. (§2306.6716(d))

(B) Direct Loan Applications. The fee will be $1,000 per Application except for those Applications that are layered with Housing Tax Credits and submitted simultaneously with the Housing Tax Credit Application. Pursuant to Tex. Gov't Code §2306.147(b), the Department is required to waive Application fees for private nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services and if Direct Loan funds are awarded. In lieu of the Application fee, these organizations must include proof of their exempt status and a description of their supportive services as part of the Application. The Application fee is not a reimbursable cost under the Direct Loan Program.

(4) Refunds of Application Fees. Upon written request from the Applicant, the Department shall refund the balance of the Application fee for an Application that is withdrawn by the Applicant and that is not fully processed by the Department. The withdrawal must occur prior to any Board action regarding eligibility or appeal. The amount of refund will be commensurate with the level of review completed. Initial processing will constitute 10% of the review, the site visit will constitute 10% of the review, program evaluation review will constitute 40% of the review, and the underwriting review will constitute 40% of the review. For Competitive HTC Applications, in no instance will a refund of the Application fee be made after final awards are made in July.

(5) Third Party Underwriting Fee. Applicants will be notified in writing prior to the evaluation in whole or in part of a Development by an independent external underwriter if such a review is required. The fee must be received by the Department prior to the engagement of the underwriter. The fees paid by the Development Owner to the Department for the external underwriting will be credited against the Commitment or Determination Notice Fee, as applicable, established in paragraphs (6) and (7) of this section, in the event that a Commitment or Determination Notice is issued by the Department to the Development Owner.

(6) Housing Tax Credit Commitment Fee. No later than the expiration date in the Commitment, a fee equal to 4% of the annual Housing Credit Allocation amount must be submitted. If the Development Owner has paid the fee and returns the credits by November 1 of the current Application Round, then a refund of 50% of the Commitment Fee may be issued upon request.

(7) Tax Exempt Bond Development Determination Notice Fee. No later than the expiration date in the Determination Notice, unless an extension was requested, a fee equal to 4% of the annual Housing Credit Allocation amount must be submitted. If the Development Owner has paid the fee and is not able close on the bonds, then a refund of 50% of the Determination Notice Fee may be issued upon request, but generally no later than 90 days after the Certificate of Reservation deadline.

(8) Tax-Exempt Bond Credit Increase Request Fee. Requests for increases to the credit amounts to be issued on IRS Forms 8609 than what was reflected in the Determination Notice for Tax-Exempt Bond Developments must be submitted with a fee equal to 4% of the amount of the credit increase for one year.

(9) Extension Fees. All extension requests for deadlines relating to the Carryover, 10% Test (submission and expenditure), Construction Status Reports, or Cost Certification requirements submitted at least 30 calendar days in advance of the applicable original deadline will not be required to submit an extension fee. Any extension request submitted fewer than 30 days in advance or after the original deadline must be accompanied by an extension fee of $2,500. Fees for each subsequent extension request on the same activity will increase by increments of $500, regardless of whether the first request was submitted thirty (30) calendar days in advance of the applicable deadline. An extension fee will not be required for extensions requested on Developments that involve Rehabilitation when the Department or U.S. Department of Agriculture (USDA) is the primary lender, if USDA or the Department is the cause for the Applicant not meeting the deadline. For each Construction Status Report received after the applicable deadline, extension fees will be automatically due (regardless of whether an extension request is submitted). Unpaid extension fees related to Construction Status Reports will be accrued and must be paid prior to issuance of IRS Forms 8609. For purposes of Construction Status Reports, each report will be considered a separate activity. An extension fee of the deadline to submit the Determination Notice and associated documents will not be required, provided a written request was submitted to the Department.

(10) Amendment Fees. An amendment request for a non-material change that has not been implemented will not be required to pay an amendment fee. Material amendment requests (whether implemented or not), or non-material amendment requests that have already been implemented will be required to submit an amendment fee of $2,500 in order for the request to be processed. Fees for each subsequent amendment request related to the same Application will increase by increments of $500. A subsequent request, related to the same Application, regardless of whether the first request was non-material and did not require a fee, must include a fee of $3,000. Amendment fees and fee increases are not required for the Direct Loan programs during the Federal Affordability Period.

(11) Right of First Refusal Fee. Requests for approval of the satisfaction of the Right of First Refusal provision of the Land Use Restriction Agreement (LURA) must be accompanied by a non-refundable fee of $2,500.

(12) Qualified Contract Pre-Request Fee. A Development Owner must file a preliminary Qualified Contract Request to confirm eligibility to submit a Qualified Contract request. The Pre-Request must be accompanied by a non-refundable processing fee of $250.

(13) Qualified Contract Fee. Upon eligibility approval of the Qualified Contract Pre-Request, the Development Owner may file a Qualified Contract Request. Such request must be accompanied by a non-refundable processing fee of $3,000.

(14) Ownership Transfer Fee. Requests to approve an ownership transfer must be accompanied by a non-refundable processing fee of $1,000. Ownership Transfer fees are not required for Direct Loan only Developments during the Federal Affordability Period. For Developments that were previously issued bonds by the Department and for which an Assignment, Assumption, and Consent Agreement will need to be executed, the ownership transfer must be accompanied by a written acknowledgement that the requestor will be responsible for the costs incurred by TDHCA for preparation of documents by outside bond counsel.

(15) Unused Credit or Penalty Fee for Competitive HTC Applications. Development Owners who have more tax credits allocated to them than they can substantiate through Cost Certification will return those excess tax credits prior to issuance of IRS Form 8609. A penalty fee equal to the one year credit amount of the lost credits (10% of the total unused tax credit amount) will be required to be paid by the Owner prior to the issuance of IRS Form 8609 if the tax credits are not returned, and 8609's issued, within 180 days of the end of the first year of the credit period. This penalty fee may be waived without further Board action if the Department recaptures and re-issues the returned tax credits in accordance with Code, §42. If an Applicant returns a full credit allocation after the Carryover Allocation deadline required for that allocation, the Executive Director may recommend to the Board the imposition of a penalty on the score for any Competitive Housing Tax Credit Applications submitted by that Applicant or any Affiliate for any Application in an Application Round occurring concurrent to the return of credits as further provided for in §11.9(f) of this chapter (relating to Factors Affecting Scoring and Eligibility in current and future Application Rounds), or if no Application Round is pending, the Application Round immediately following the return of credits. If any such point penalty is recommended to be assessed and presented for final determination by the Board, it must include notice from the Department to the affected party not less than 14 calendar days prior to the scheduled Board meeting. The Executive Director may, but is not required to, issue a formal notice after disclosure if it is determined that the matter does not warrant point penalties.

(16) Compliance Monitoring Fee. Upon receipt of the cost certification for HTC Developments, HTC Developments that are layered with Direct Loan funds, or upon the completion of the Development Period and the beginning of the repayment period for Direct Loan only Developments, the Department will invoice the Development Owner for compliance monitoring fees. For HTC only the amount due will equal $40 per low-income unit. For Direct Loan Only Developments the fee will be $34 per Direct Loan Units, including HOME Match Eligible Units. Developments with both HTCs and Direct Loan, including HOME Match Eligible Units, will only pay one fee equal to $40 per low income unit. Existing HTC developments with a Land Use Restriction Agreement that require payment of a compliance monitoring fee that receive a second allocation of credit will pay only one fee; the fee required by the original Land Use Restriction Agreement will be disregarded. For HTC Developments, the fee will be collected, retroactively if applicable, beginning with the first year of the credit period. For Direct Loan only Developments, the fee will be collected beginning with the first year of after Project Completion. The invoice must be paid prior to the issuance of IRS Form 8609 for HTC properties. For Direct Loan only Developments, the fee must be paid prior to

the release of final retainage. Subsequent anniversary dates on which the compliance monitoring fee payments are due shall be determined by the month the first building is placed in service. Compliance fees may be adjusted from time to time by the Department.

(17) Public Information Request Fee. Public information requests are processed by the Department in accordance with the provisions of Tex. Gov't Code, Chapter 552. The Department uses the guidelines promulgated by the Office of the Attorney General to determine the cost of copying and other costs of production.

(18) Adjustment of Fees by the Department and Notification of Fees. (§2306.6716(b)) All fees charged by the Department in the administration of the Housing Tax Credit and Direct Loan programs may be revised by the Department from time to time as necessary to ensure that such fees compensate the Department for its administrative costs and expenses. Unless otherwise determined by the Department, all revised fees shall apply to all Applications in process and all Developments in operation at the time of such revisions.

§11.902. Appeals Process.

(a) For Competitive HTC Applications, an Applicant or Development Owner may appeal decisions made by the Department pursuant to Tex. Gov't Code §2306.0321 and §2306.6715 using the process identified in this section. For Tax-Exempt Bond Developments and Direct Loan Developments (not layered with a Competitive HTC Application), an Applicant or Development Owner may appeal decisions made by the Department pursuant to §1.7 of this title (relating to Appeals). Matters that can be appealed include:

(1) A determination regarding the Application's satisfaction of applicable requirements, Subchapter B of this chapter (relating to Site and Development Requirements and Restrictions) and Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications), pre-application threshold criteria, and underwriting criteria;

(2) The scoring of the Application under the applicable selection criteria;

(3) A recommendation as to the amount of Department funding to be allocated to the Application;

(4) Misplacement of an Application or parts of an Application, mathematical errors in scoring an Application, or procedural errors resulting in unequal consideration of the Applicant's proposal;

(5) Denial of a requested change to a Commitment or Determination Notice;

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

(7) Denial of a requested change to a LURA;

(8) Any Department decision that results in the termination or change in set-aside of an Application; and

(9) Any other matter for which an appeal is permitted under this chapter.

(b) An Applicant or Development Owner may not appeal a decision made regarding an Application filed by or an issue related to another Applicant or Development Owner.

(c) An Applicant or Development Owner must file its appeal in writing with the Department not later than the seventh calendar day after the date the Department publishes the results of any stage of the Application evaluation or otherwise notifies the Applicant or Development Owner of a decision subject to appeal. The appeal must be made by a Person designated to act on behalf of the Applicant or an attorney that represents the Applicant. For Application related appeals, the Applicant must specifically identify the Applicant's grounds for appeal, based on the original Application and additional documentation filed with the original Application as supplemented in accordance with the limitations and requirements of this chapter.

(d) The Executive Director may respond in writing not later than 14 calendar days after the date of actual receipt of the appeal by the Department. If the Applicant is not satisfied with the Executive Director's response to the appeal or the Executive Director does not respond, the Applicant may appeal directly in writing to the Board. While information can be provided in accordance with any rules related to public comment before the Board, full and complete explanation of the grounds for appeal and circumstances warranting the granting of an appeal must be disclosed in the appeal documentation filed with the Executive Director.

(e) An appeal filed with the Board must be received in accordance with Tex. Gov't Code §2306.6715(d).

(f) If there is insufficient time for the Executive Director to respond to a Competitive Housing Tax Credit Application appeal prior to the agenda being posted for the July Board meeting at which awards from the Application Round will be made, the appeal may be posted to the Board agenda prior to the Executive Director's issuance of a response.

(g) Board review of an Application related appeal will be based on the original Application. A witness in an appeal may not present or refer to any document, instrument, or writing not already contained within the Application as reflected in the Department's records.

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

(i) The Department will post to its website an appeal filed with the Department or Board and any other document relating to the processing of an Application related appeal. (§2306.6717(a)(5))

§11.903. Adherence to Obligations. (§2306.6720).

Any Applicant, Development Owner, or other Person that fails to adhere to its obligations with regard to the programs of the Department, whether contractual or otherwise, made false or misleading representations to the Department with regard to an Application, request for funding, or compliance requirements, or otherwise violated a provision of Tex. Gov't Code, Chapter 2306 or a rule adopted under that chapter, may be subject to:

(1) Assessment of administrative penalties in accordance with Chapter 2, Subchapter C of this title (relating to Administrative Penalties) the Department's rules regarding the assessment of such penalties. Each day the violation continues or occurs is a separate violation for purposes of imposing a penalty; or

(2) In the case of the competitive Low Income Housing Tax Credit Program, a point reduction for any Application involving that Applicant over the next two Application Rounds succeeding the date on which the Department first gives written notice of any such failure to adhere to obligations or false or misleading representations. Point reductions under this section may be appealed to the Board.

§11.904. Alternative Dispute Resolution (ADR) Policy.

In accordance with Tex. Gov't Code §2306.082, it is the Department's policy to encourage the use of appropriate ADR procedures under the Governmental Dispute Resolution Act, Tex. Gov't Code, Chapter 2010, to assist in resolving disputes under the Department's jurisdiction, as provided for in §1.17 of this title (relating to Alternative Dispute Resolution).

§11.905. General Information for Commitments or Determination Notices.

(a) A Commitment or Determination Notice shall not be issued with respect to any Development for an unnecessary amount in accordance with §42(m)(2)(A) or where the cost for the total development, acquisition, construction or rehabilitation exceeds the limitations established by the Department and the Board.

(b) All Commitments or Determination Notices, whether reflected in the Commitment or Determination Notice or not, are made subject to full compliance with all applicable provisions of law and the Department's rules, all provisions of Commitment, Determination Notice, and Contract, satisfactory completion of underwriting, and satisfactory resolution of any conditions of underwriting, award, and administrative deficiencies.

(c) The Department shall notify, in writing, the mayor, county judge, or other appropriate official of the municipality or county, as applicable, in which the Development is located informing him/her of the Board's issuance of a Commitment Notice, as applicable.

(d) The Department may cancel a Commitment, Determination Notice or Carryover Allocation prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or completion of construction with respect to a Development and/or apply administrative penalties if:

(1) The Applicant, Development Owner, or the Development, as applicable, fails after written notice and a reasonable opportunity to cure, to meet any of the conditions of such Commitment, Determination Notice or Carryover Allocation or any of the undertakings and commitments made by the Development Owner in the Application process for the Development;

(2) Any material statement or representation made by the Development Owner or made with respect to the Development Owner or the Development is untrue or misleading;

(3) An event occurs with respect to the Applicant or the Development Owner which would have made the Application ineligible for funding pursuant to Subchapter C of Chapter 11 of this title (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules) if such event had occurred prior to issuance of the Commitment, Determination Notice or Carryover Allocation; or

(4) The Applicant, Development Owner, or the Development, as applicable, fails after written notice and a reasonable opportunity to cure, to comply with this chapter or other applicable Department rules, procedures, or requirements of the Department.

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

(a) Commitment. For Competitive HTC Developments, the Department shall issue a Commitment to the Development Owner which shall confirm that the Board has approved the Application and state the Department's commitment to make a Housing Credit Allocation to the Development Owner in a specified amount, subject to the feasibility determination described in Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy) and the determination that the Development satisfies the requirements of this chapter and other applicable Department rules. The Commitment shall expire on the date specified therein, which shall be 30 calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Commitment, pays the required fee specified in §11.901 of this chapter (relating to Fee Schedule), and satisfies any conditions set forth therein by the Department. The Commitment expiration date may not be extended.

(b) Determination Notices. For Tax Exempt Bond Developments, the Department shall issue a Determination Notice which shall confirm that the Development satisfies the requirements of this chapter as applicable and other applicable Department rules in accordance with the §42(m)(1)(D) of the Internal Revenue Code (the Code). The Determination Notice shall state the Department's determination of a specific amount of housing tax credits that the Development may be eligible for, subject to the requirements set forth in the Department's rules, as applicable. The Determination Notice shall expire on the date specified therein, which shall be 30 calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Determination Notice, pays the required fee specified in Chapter 11, Subchapter E of this title, and satisfies any conditions set forth therein by the Department. For Tax-Exempt Bond Developments utilizing a local issuer, the Determination Notice expiration date may be extended for a period not to exceed 5 calendar days, upon request. For Tax-Exempt Bond Developments utilizing TDHCA as the bond issuer, the expiration date may be extended to coincide with the closing date. If the requirements of the Determination Notice, and any conditions of the Determination Notice are met, the Determination Notice shall be valid for a period of one year from the effective date of the Determination Notice, without distinction between a Certificate of Reservation or Traditional Carryforward Reservation. The one-year period may be extended for a period not to exceed 6 months, upon request. Should an Applicant desire to have a new Determination Notice issued that reflects a different recommended credit amount, then a new Application must be submitted that meets the requirements of §11.201(2) of this chapter.

(c) Documentation Submission Requirements at Commitment of Funds. No later than the expiration date of the Commitment (or no later than December 31 for Competitive HTC Applications, whichever is earlier) or Determination Notice, the documentation described in paragraphs (1) - (7) of this subsection must be provided. Failure to provide these documents may cause the Commitment or Determination Notice to be rescinded.

(1) For entities formed outside the state of Texas, evidence that the entity filed a Certificate of Application for foreign qualification in Texas, a Franchise Tax Account Status from the Texas Comptroller of Public Accounts, and a Certificate of Fact from the Office of the Secretary of State. If the entity is newly registered in Texas and the Franchise Tax Account Status or Certificate of Fact are not available, a statement can be provided to that effect.

(2) For Texas entities, a copy of the Certificate of Filing for the Certificate of Formation from the Office of the Secretary of State; a Certificate of Fact from the Secretary of State, and a Franchise Tax Account Status from the Texas Comptroller of Public Accounts. If the entity is newly registered and the Certificate of Fact and the Franchise Tax Account Status are not available, a statement can be provided to that effect.

(3) Evidence that the signer(s) of the Commitment or Determination Notice have sufficient authority to sign on behalf of the Applicant in the form of a corporate resolution which indicates the sub-entity in Control consistent with the entity contemplated and described in the Application.

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

(5) Evidence of satisfaction of any conditions identified in the Credit Underwriting Analysis Report, any conditions provided for in Chapter 1, Subchapter C of this title (relating to the Previous Participation Review, or any other conditions of the award required to be met at Commitment or Determination Notice.

(6) Documentation of any changes to representations made in the Application subject to §10.405 of this title (relating to Amendments and Extensions).

(7) For Applications underwritten with a property tax exemption, documentation must be submitted in the form of a letter from an attorney identifying the statutory basis for the exemption and indicating that the exemption is reasonably achievable, subject to appraisal district review. Additionally, any Development with a proposed Payment in Lieu of Taxes (PILOT) agreement must provide evidence regarding the statutory basis for the PILOT and its terms.

(8) For Competitive HTC Applications, for any documentation that must be submitted in accordance with this section, staff may grant relief of the associated deadline, for unusual or unpredictable circumstances that are outside of the Applicant's control such as inclement weather or failed deliveries. Applicants must submit any payment due under this chapter and operate under the assumption that the deadline for such payment is final.

(d) Post Bond Closing Documentation Requirements. Regardless of the issuer of the bonds, no later than 60 calendar days following closing on the bonds, the Development Owner must submit the documentation in paragraphs (1) - (6) of this subsection.

(1) Training certificate(s) from a Department approved "property owner and manager Fair Housing trainer" showing that the Development Owner and on-site or regional property manager has attended and passed at least five hours of Fair Housing training. The certificate(s) must not be older than three years from the date of submission and must verify that all parts or phases of the offered training have been completed; two certificates supplied for the same part or phase of an offered training will not be counted towards the five hour required minimum, even if they were attended on different dates. The Development Owner individual reflected on the certificate must be identified on the organizational chart as having Control.

(2) A training certificate from a Department approved "architect and engineer Fair Housing trainer" showing that the lead architect or engineer responsible for certifying compliance with the Department's accessibility and construction standards has attended and passed at least five hours of Fair Housing training. The certificate must not be older than three years from the date of submission and must verify that all parts or phases of the offered training have been completed; two certificates supplied for the same part or phase of an offered training will not be counted towards the five hour required minimum, even if they were attended on different dates.

(3) Evidence that the financing has closed, such as an executed settlement statement.

(4) A confirmation from the Compliance Division evidencing receipt of the CMTS Filing Agreement form pursuant to §10.607(a) of this title (relating to Reporting Requirements).

(5) An initial construction status report consisting of items from §10.401(b)(1)-(6) of this title (relating to Construction Status Reports).

(6) A current survey or plat of the Development Site prepared and certified by a duly licensed Texas Registered Professional Land Surveyor. The survey or plat must clearly delineate the floodplain areas and show all easements recorded against the Property and encroachments.

§11.907. Carryover Agreement General Requirements and Required Documentation.

Carryover (Competitive HTC Only). All Developments that received a Commitment, and will not be placed in service and receive IRS Form(s) 8609 in the year the Commitment was issued, must submit the Carryover documentation, in the form prescribed by the Department in the Carryover Manual, no later than the Carryover Documentation Delivery Date as identified in §11.2 of this title (relating to Program Calendar for Competitive Housing Tax Credits) of the year in which the Commitment is issued pursuant to §42(h)(1)(C) of the Code.

(1) Commitments for credits will be terminated if the Carryover documentation has not been received by this deadline, unless an extension has been approved. This termination is subject to right of appeal directly to the Board, and if so determined by the Board, immediately upon final termination by the Board, staff is directed to award the credits to other qualified Applicants on the approved waiting list.

(2) If the interim or permanent financing structure, syndication rate, amount of debt or syndication proceeds are finalized but different at the time of Carryover from what was proposed in the original Application, applicable documentation of such changes must be provided and the Development may be re-evaluated by the Department for a reduction of credit or change in conditions.

(3) All Carryover Allocations will be contingent upon the Development Owner providing evidence that they have and will maintain Site Control through the 10% Test or through the anticipated closing date, whichever is earlier. For purposes of this paragraph, any changes to the Development Site acreage between Application and Carryover must be addressed by written explanation or, as appropriate, in accordance with §10.405 of this title (relating to Amendments and Extensions).

(4) Confirmation of the right to transact business in Texas, as evidenced by the Franchise Tax Account Status (the equivalent of the prior Certificate of Account Status) from the Texas Comptroller of Public Accounts and a Certificate of Fact from the Office of the Secretary of State must be submitted with the Carryover Allocation.

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

Filed with the Office of the Secretary of State on December 8, 2025.

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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Proposal publication date: September 19, 2025
For further information, please call: (512) 475-3959



SUBCHAPTER F. STATE HOUSING TAX CREDITS

10 TAC §§11.1001 - 11.1008

STATUTORY AUTHORITY. The adoption of these sections of rule is made pursuant to Tex. Gov't Code §§2306.053 and 2306.67022, which authorize the Department to adopt rules and, specifically, this Qualified Allocation Plan.

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

§11.1001. General.

(a) This subchapter applies only to 2026 State Housing Tax Credits to supplement Competitive HTC awards during the July Board meeting of the Department at which final awards of credits are authorized or to supplement Tax-Exempt Bond Developments.

(b) For Competitive HTC Applications, submissions required to make a request for State Housing Tax Credits are considered a supplement to the original Application. Requests for State Housing Tax Credits are not considered Applications under the 2026 HTC Competitive Cycle nor are they part of the 2026 Application Round.

(c) For Competitive HTC Applications, an allocation of State Housing Tax Credits will be processed as a Material Amendment to the Application under §10.405 of this title (relating to Amendments and Extensions). No fee shall be charged for this Material Amendment.

(d) For Competitive HTC Applications, revisions to costs included in a request for State Housing Tax Credits will not have an impact on points originally awarded under §11.9(e)(2) and (4) of this title(relating to Costs of Development per Square Foot or Leveraging respectively).

(e) Tax-Exempt Bond Developments shall meet the requirements of §11.1009 of this chapter (relating to State Housing Tax Credits for Tax-Exempt Bond Developments).

(f) Developments with HOME funds from the Department or another Participating Jurisdiction, will enter into a Contract and a LURA for HOME Match Eligible Units.

§11.1002. Program Calendar for State Housing Tax Credits Associated with Competitive HTC Applications.

Competitive HTC Deadlines. Non-statutory deadlines specifically listed in the Program Calendar may be extended by the Department for a period of not more than 5 business days provided that the Applicant has, in writing, requested an extension prior to the date of the original deadline and has established to the reasonable satisfaction of the Department that there is good cause for the extension.
Figure: 10 TAC §11.1002

§11.1003. State Housing Tax Credit Allocation Process Associated with Competitive HTC Applications.

(a) Intent to Request State Housing Tax Credit Allocation. Only those Applicants that elect to request an allocation of State Housing Tax Credits from the Department by the Full Application Delivery Date specified in §11.2(a) or (b) of this chapter (relating to Program Calendar) are eligible to submit a Request for State Housing Tax Credits.

(b) Requests for State Housing Tax Credits must be received by the deadline specified in §11.1002 of this subchapter (relating to Program Calendar for State Housing Tax Credits) in the format required by the Department.

(c) Minimum Request Amount. The minimum request amount is $3,000,000.

(d) Third Party Requests for Administrative Deficiency. Due to the nature of the State Housing Tax Credit process and reliance on the Original Application and scores, the Third Party Request for Administrative Deficiency process will not be utilized during the State Housing Tax Credit process under this subchapter.

§11.1004. Procedural Requirements for Requests for State Housing Tax Credits Associated with Competitive HTC Applications.

(a) The procedures and requirements of §11.201 of this chapter (relating to Procedural Requirements for Application Submission) will generally apply to Requests for State Housing Tax Credits, unless otherwise specified in this Subchapter.

(b) The Original Application will be relied upon, as deemed final and reviewed by staff as part of the original award; the request for State Housing Tax Credits must only include the items authorized in this subchapter. Architectural drawings, or other documents that relate to changes to the Application other than revisions to the financing structure may not be submitted. The Applicant must submit the required documents as a single PDF document and all spreadsheet exhibits must also be provided in a usable spreadsheet format as further specified in the Department's released materials, which will be incorporated into the Original Application by staff, and become the full Request for State Housing Tax Credits.

§11.1005. Required Documentation for State Housing Tax Credit Request Submission Associated with Competitive HTC Applications.

(a) The purpose of this section is to identify the threshold documentation that is specific to the Request for State Housing Tax Credits submission, unless specifically indicated or otherwise required by Department rule. Only those documents listed herein may be submitted.

(b) Certification, Acknowledgement, and Consent of Development Owner. A certification of the information in this subchapter as well as Subchapter B of this chapter must be executed by the Development Owner and addresses the specific requirements associated with the Development. The Person executing the certification is responsible for ensuring all individuals referenced therein are in compliance with the certification and that they have given it with all required authority and with actual knowledge of the matters certified. Applicants must certify that there has been no change to the Applicant Eligibility or Original Owner Certification since the Original Application was submitted.

(c) Site Requirements and Restrictions. The Applicant must certify that there have been no changes from the Original Application that would require additional disclosure or mitigation, or render the proposed Development Site ineligible. Any change must be addressed under the requirements of §10.405 of this title (relating to Amendments and Extensions).

(d) Site Control. Applicants must certify that there has been no change to Site Control, other than extensions or purchase by the Applicant, since the Original Application was submitted. If the nature of Site Control has changed, State Housing Tax Credit Request must submit the appropriate documentation as described in §11.204(9) of this chapter (relating to Site Control).

(e) Zoning. (§2306.6705(5)) If the zoning status of the Development has changed since the
Original Application, the Request for State Housing Tax Credits must include all requirements of
§11.204(10) of this chapter (relating to Zoning).

(f) Applicants who elect to request an allocation of State Housing Tax Credits must include a term sheet from a syndicator that, at a minimum, includes:

(1) An estimate of the amount of equity dollars expected to be raised for the Development;

(2) The amount of State Housing Tax Credits requested for allocation to the Development Owner;

(3) Pay-in schedules;

(4) Syndicator consulting fees and other syndication costs; and

(5) An acknowledgement of the amounts and terms of all other anticipated sources of funds and if the Application reflects an intent to elect income averaging there must be an acknowledgement to that effect in the term sheet.

§11.1006. State Housing Tax Credits Underwriting and Loan Policy Associated with Competitive HTC.

Requests for State Housing Tax Credits will only be reviewed for items addressed in this subchapter. In requests for State Housing Tax Credits the Total Developer Fee and Developer Fee included in Eligible Basis cannot exceed the Developer Fee amounts in the most recently published Real Estate Analysis report for the Application. The Real Estate Analysis Division will publish a memo for the State Housing Tax Credit allocation serving as a supplement to the report for the Original Application.

§11.1007. State Housing Tax Credits Selection Criteria Associated with Competitive HTC Applications.

For Qualified Developments not financed through tax exempt bonds, for years in which the Department receives requests for more State Housing Tax Credits than are available, the Department shall prioritize applications proposing the most additional low income Units for households at or below 30% of AMGI relative to the State Housing Tax Credit Request. Units for households at or below 30% of AMGI proposed in the original application shall not be considered. The Department will award based solely upon new Units proposed in exchange for tax credit equity. The initial State Housing Tax Credit award shall be made to the Applicant with the lowest request amount per additional Units provided. Subsequent awards shall be made using the same metric until the Department can no longer fund a full credit request. In the case of a tie, preference shall be determined based upon the Original Application scores under §11.9 of this chapter (relating to Competitive HTC Selection Criteria) and, if applicable, the tie breaker factors established under §11.7 of this chapter (relating to Tie Breaker Factors).

§11.1008. State Housing Tax Credits for Tax-Exempt Bond Developments.

(a) The request for State Housing Tax Credits shall be reflected in the Uniform Multifamily Application, as prescribed by the Department and further explained in the Multifamily Programs Procedures Manual, and shall include a term sheet from a syndicator that includes the amount of State Housing Tax Credits requested and pricing information.

(b) For Applications that will receive a Certificate of Reservation from the Texas Bond Review Board in January, an Applicant may submit the complete Application (which may or may not include Third Party Reports, as more fully described under §11.201(2) of this chapter (relating to Procedural Requirements for Application Submission)), from January 2 through January 31. The Department shall utilize a first-come, first-served system for establishing priority of requests for the portion of the State Housing Tax Credit available for Tax-Exempt Bond Developments.

(c) Once the number of Applications submitted exceed the amount of State Housing Tax Credits for Tax-Exempt Bond Developments the Department can allocate, Applicants for those Applications will be provided notice to that effect and be given the opportunity to modify their Application through the Administrative Deficiency process to exclude the request for the State Housing Tax Credit.

(d) Should there be an amount of State Housing Tax Credits to allocate to an Application and that Application is withdrawn or terminated, or the Certificate of Reservation is withdrawn from the Bond Review Board, the next Application in line, based on the received date will be notified that their Application will be underwritten with the State Housing Tax Credit. Alternatively, in cases where staff can make seamless adjustments to other line items to account for the lack of State HTC, staff may make such adjustments automatically and notify the Applicant accordingly.

(e) Applications submitted after January 31 and for which a Certificate of Reservation has been issued, may include a request for State Housing Tax Credits only if the Department has not reached the maximum amount of State Housing Tax Credits to allocate for Tax-Exempt Bond Developments.

(f) Qualified Developments will be issued an Allocation Certificate, pursuant to Texas Insurance Code Chapters 171 and 233 that will reflect the State Housing Tax Credit Amount recommended by the Department.

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

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

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TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 6. STATE RECORDS

SUBCHAPTER A. RECORDS RETENTION SCHEDULING

13 TAC §6.9

The Texas State Library and Archives Commission (commission) adopts the repeal of Texas Administrative Code, Title 13, Part 1, Chapter 6, Subchapter A, §6.9, concerning Notification by State Records Administrator. The repeal is adopted without changes to the proposed text as published in the August 22, 2025, issue of the *Texas Register* (50 TexReg 5412) and will not be republished.

The commission recently concluded its quadrennial review of Chapter 6 as required by Government Code §2001.039. After review, the commission determined that the reasons for adopting the rules in this chapter continue to exist; however, the commission identified one section that is no longer necessary. Section 6.9 is outdated, unnecessary, and does not implement, interpret, or prescribe law or policy, nor describe a commission procedure or practice requirement. Accordingly, the commission repeals §6.9.

During the review, the commission also determined that §6.122, Records Storage Services Fee Schedule, is more appropriately located with other fee schedule provisions in Subchapter D. On adoption of the repeal of §6.9, the commission concurrently moves §6.122 into Subchapter D and eliminates Subchapter E.

SUMMARY OF COMMENTS. The commission received no comments regarding the proposed repeal.

STATUTORY AUTHORITY. The repeal is adopted under Government Code, §441.189, which provides that any state record

may be created or stored electronically in accordance with standards and procedures adopted as administrative rules of the commission; §441.199, which authorizes the commission to adopt rules it determines necessary for cost reduction and efficiency of recordkeeping by state agencies and for the state's management and preservation of records; Government Code, §441.190, which authorizes the commission to adopt rules establishing standards and procedures for the protection, maintenance, and storage of state records; and §441.182, which authorizes the commission to recover costs through the assessment of fees for operating the state records center for the economical and efficient storage, accessibility, protection, and final disposition of inactive and vital state records and performing micrographic and other imaging services for the protection, accessibility, and preservation of state records.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Sarah Swanson
General Counsel
Texas State Library and Archives Commission
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For further information, please call: (512) 463-5460

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CHAPTER 7. LOCAL RECORDS
SUBCHAPTER D. RECORDS RETENTION SCHEDULES

13 TAC §7.125

The Texas State Library and Archives Commission (commission) adopts the repeal of Texas Administrative Code, Title 13, Part 1, Chapter 7, Subchapter D, §7.125, Records Retention Schedules. The repeal is adopted without changes to the proposed text as published in the August 22, 2025, issue of the *Texas Register* (50 TexReg 5413). The rule will not be republished.

Section 441.158 of the Government Code requires the director and librarian, under the direction of the commission, to prepare records retention schedules for each type of local government, including a schedule for records common to all types of local government, and to adopt the schedules by rule. Each schedule must list the records of the applicable local government, state the retention period prescribed by law, rule, or regulation where one exists, and prescribe retention periods for all other records, which periods have the same effect as law once adopted.

Section 7.125 was first adopted in 1992 and included full images of twelve unique records retention schedules applicable to different types of local government, along with a schedule for records common to all. Over time, the schedules were updated to reflect changes in law and practice and to simplify and consolidate record series. However, because all twelve schedules were contained within a single rule, reviewing and updating them became inefficient, as amendments could not be proposed until prior amendments became effective. For this reason, §7.125 has been repealed, and each schedule will be adopted as a separate administrative rule. This action improves the commission's ability to update and maintain the schedules and provides greater usability for local governments. The adoption of each individual schedule appears elsewhere in this same issue of the *Texas Register*.

SUMMARY OF COMMENTS. The commission received no comments regarding the proposed repeal.

STATUTORY AUTHORITY. The repeal is adopted under Government Code, §441.158, which requires the director and librarian, under the direction of the commission, to prepare and adopt records retention schedules for each type of local government, including a schedule for records common to all types of local government.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Sarah Swanson
General Counsel
Texas State Library and Archives Commission
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For further information, please call: (512) 463-5460

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13 TAC §§7.126 - 7.137

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figures in 13 TAC §§7.126 - 7.137 are not included in the print version of the Texas Register. The figures are available in the on-line version of the December 19, 2025, issue of the Texas Register.)

The Texas State Library and Archives Commission (commission) adopts new §§7.126 - 7.137, concerning Local Government Records Retention Schedules. The new rules are adopted with minor changes to the proposed text as published in the August 22, 2025, issue of the *Texas Register* (50 TexReg 5414). Specifically, the headers and effective dates on each section have been updated. The rules will be republished.

Section 441.158 of the Government Code requires the director and librarian, under the direction of the commission, to prepare records retention schedules for each type of local government, including a schedule for records common to all types of local government. The statute further requires the commission to adopt the schedules by rule. Each schedule must list the records of the applicable local government, state the retention period prescribed by law, rule, or regulation for records for which a period is prescribed, and prescribe retention periods for all other records, which periods have the same effect as law once the schedule is adopted.

The adoption of each local government records retention schedule as a separate administrative rule was determined necessary to update and improve the schedules so that each record series remains accurate, current, and supported by appropriate legal citations. Adoption in this format will also simplify the process of making updates and clarifying language in the future. Previ-

ously, all twelve schedules were contained within a single section of the Texas Administrative Code that, when printed, exceeded 475 pages. As a result of this format, amendments could not be proposed to a specific schedule until prior amendments to any of the schedules within the rule became effective, a process that made reviewing and updating individual schedules inefficient and cumbersome. By adopting each schedule separately, the commission ensures greater efficiency in reviewing and updating the schedules and improves the usability of its rules for local governments. In connection with this action, the commission adopts the repeal of §7.125, Records Retention Schedules, which previously contained all twelve schedules, and notice of that adoption appears in this same issue of the *Texas Register*.

SUMMARY OF PUBLIC COMMENT. The commission received no comments regarding the proposed new rules.

STATUTORY AUTHORITY. The new sections are adopted under Government Code §441.158, which requires the director and librarian, under the direction of the commission, to prepare records retention schedules for each type of local government, including a schedule for records common to all types of local government, and to adopt the schedules by rule.

§7.126. Local Schedule GR, Records Common to All Local Governments.

Local Schedule GR: Records Common to All Local Governments.
Figure: 13 TAC §7.126

§7.127. Local Schedule PW: Records of Public Works and Other Government Services.

Local Schedule PW: Records of Public Works and Other Government Services.
Figure: 13 TAC §7.127

§7.128. Local Schedule CC: Records of County Clerks.

Local Schedule CC: Records of County Clerks.
Figure: 13 TAC §7.128

§7.129. Local Schedule DC: Records of District Clerks.

Local Schedule DC: Records of District Clerks.
Figure: 13 TAC §7.129

§7.130. Local Schedule PS: Records of Public Safety Agencies.

Local Schedule PS: Records of Public Safety Agencies.
Figure: 13 TAC §7.130

§7.131. Local Schedule SD: Records of Public School Districts.

Local Schedule SD: Records of Public School Districts.
Figure: 13 TAC §7.131

§7.132. Local Schedule JC: Records of Public Junior Colleges.

Local Schedule JC: Records of Public Junior Colleges.
Figure: 13 TAC §7.132

§7.133. Local Schedule LC: Records of Justice and Municipal Courts.

Local Schedule LC: Records of Justice and Municipal Courts.
Figure: 13 TAC §7.133

§7.134. Local Schedule TX: Records of Property Taxation.

Local Schedule TX: Records of Property Taxation.
Figure: 13 TAC §7.134

§7.135. Local Schedule EL: Records of Elections and Voter Registration.

Local Schedule EL: Records of Elections and Voter Registration.
Figure: 13 TAC §7.135

§7.136. Local Schedule HR: Records of Public Health Agencies.

Local Schedule HR: Records of Public Health Agencies.
Figure: 13 TAC §7.136

§7.137. Local Schedule UT: Records of Utility Services.

Local Schedule UT: Records of Utility Services.
Figure: 13 TAC §7.137

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Sarah Swanson
General Counsel
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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 129. STUDENT ATTENDANCE
SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING TRUANCY

19 TAC §129.1047

The Texas Education Agency (TEA) adopts an amendment to §129.1047, concerning truancy sanctions. The amendment is adopted without changes to the proposed text as published in the September 26, 2025 issue of the *Texas Register* (50 TexReg 6281) and will not be republished. The adopted amendment aligns the rule with statute and the current agency investigative process.

REASONED JUSTIFICATION: Section 129.1047 establishes criteria for sanctions regarding truancy.

The adopted amendment removes former §129.1047(b) and (c) to align with current program practices.

Section 129.1047(d) was re-lettered as new subsection (b), and language was added to specify that sanctions related to truancy prevention measures are subject to a school district's due process rights under Texas Education Code (TEC), Chapter 39, Subchapter A. In addition, a reference to TEC, §39.102(a), was updated to §39A.002.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began September 26, 2025, and ended October 27, 2025. No public comments were received.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code, §25.0915, which establishes truancy prevention measures.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §25.0915.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 117. END STAGE RENAL DISEASE FACILITIES

The executive commissioner of the Texas Health and Human Services Commission (HHSC) adopts the repeal of Chapter 117 in Texas Administrative Code (TAC) Title 25, which consists of §§117.1, 117.2, 117.11 - 117.19, 117.31 - 117.33, 117.41 - 117.49, 117.61 - 117.65, and 117.81 - 117.86.

The repeals are adopted without changes to the proposed text as published in the June 6, 2025, issue of the *Texas Register* (50 TexReg 3362) and will not be republished.

BACKGROUND AND JUSTIFICATION

The adoption of these repeals removes them from 25 TAC Chapter 117, End Stage Renal Disease Facilities, Subchapters A - F, to replace them with similar and updated new rules in 26 TAC Chapter 507, Subchapters A - F, End Stage Renal Disease Facilities. The adoption of the new rules is published elsewhere in this issue of the *Texas Register*. 25 TAC Chapter 117, Subchapters G and H, were administratively transferred to 26 TAC 507, Subchapters Y and Z.

COMMENTS

The 31-day comment period ended July 7, 2025.

During this period, HHSC did not receive any comments regarding the proposed repeals.

SUBCHAPTER A. GENERAL PROVISIONS

25 TAC §117.1, §117.2

STATUTORY AUTHORITY

The repealed rules are adopted under 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 §251.003, which requires HHSC to adopt rules for the issuance, renewal, denial, suspension, and revocation of a license to operate an end stage renal disease facility; and Texas Health and Safety Code §251.014, which requires these rules to include minimum standards to protect the health and safety of a patient of an end stage renal disease facility.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 3, 2025.

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Karen Ray
Chief Counsel
Department of State Health Services
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For further information, please call: (512) 834-4591

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SUBCHAPTER B. APPLICATION AND ISSUANCE OF A LICENSE

25 TAC §§117.11 - 117.19

STATUTORY AUTHORITY

The repealed rules are adopted under 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 §251.003, which requires HHSC to adopt rules for the issuance, renewal, denial, suspension, and revocation of a license to operate an end stage renal disease facility; and Texas Health and Safety Code §251.014, which requires these rules to include minimum standards to protect the health and safety of a patient of an end stage renal disease facility.

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SUBCHAPTER C. MINIMUM STANDARDS FOR EQUIPMENT, WATER TREATMENT AND REUSE, AND SANITARY AND HYGIENIC CONDITIONS

25 TAC §§117.31 - 117.33

STATUTORY AUTHORITY

The repealed rules are adopted under 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 §251.003, which requires HHSC to adopt rules for the issuance, renewal, denial, suspension, and revocation of a license to operate an end stage renal disease facility; and Texas Health and Safety Code §251.014, which requires these rules to include minimum standards to protect the health and safety of a patient of an end stage renal disease facility.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. MINIMUM STANDARDS FOR PATIENT CARE AND TREATMENT

25 TAC §§117.41 - 117.49

STATUTORY AUTHORITY

The repealed rules are adopted under 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 §251.003, which requires HHSC to adopt rules for the issuance, renewal, denial, suspension, and revocation of a license to operate an end stage renal disease facility; and Texas Health and Safety Code §251.014, which requires these rules to include minimum standards to protect the health and safety of a patient of an end stage renal disease facility.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. DIALYSIS TECHNICIANS

25 TAC §§117.61 - 117.65

STATUTORY AUTHORITY

The repealed rules are adopted under 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 §251.003, which requires HHSC to adopt rules for the issuance, renewal, denial, suspension, and revocation of a license to operate an end stage renal disease facility; and Texas Health and Safety Code §251.014, which requires these rules to include minimum standards to protect the health and safety of a patient of an end stage renal disease facility.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. CORRECTIVE ACTION PLAN AND ENFORCEMENT

25 TAC §§117.81 - 117.86

STATUTORY AUTHORITY

The repealed rules are adopted under 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 §251.003, which requires HHSC to adopt rules for the issuance, renewal, denial, suspension, and revocation of a license to operate an end stage renal disease facility; and Texas Health and Safety Code §251.014, which requires these rules to include minimum standards to protect the health and safety of a patient of an end stage renal disease facility.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 507. END STAGE RENAL DISEASE FACILITIES

The executive commissioner of the Texas Health and Human Services Commission (HHSC) adopts new §§507.1, 507.2, 507.11 - 507.24, 507.30 - 507.38, 507.41 - 507.49, 507.51 - 507.60, 507.71 - 507.75, and 507.81 - 507.93, concerning End Stage Renal Disease Facilities.

New §§507.2; 507.11 - 507.17; 507.21 and 507.31; 507.33 - 507.36; 507.38, 507.41, 507.42, 507.48, and 507.49; 507.51 - 507.57; 507.59, 507.60, 507.72, 507.73, and 507.75; 507.82; and 507.90 are adopted with changes to the proposed text as published in the June 6, 2025, issue of the *Texas Register* (50 TexReg 3367). These rules will be republished.

New §§507.1; 507.18 - 507.20; 507.22 - 507.24; 507.30, 507.32, and 507.37; 507.43 - 507.47; 507.58, 507.71, and 507.74; 507.81, 507.83 - 507.89 and 507.91 - 507.93 are adopted without changes to the proposed text as published in the June 6, 2025, issue of the *Texas Register* (50 TexReg 3367). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The new sections are necessary to comprehensively update the end stage renal disease (ESRD) facility rules to align with Texas Health and Safety Code Chapter 251. The new sections ensure patient safety while reducing unnecessary administrative burdens and allowing ESRDs more flexibility in the delivery of care. The new sections ensure alignment with current facility licensing, inspection, and investigation procedures; and reflect current technologies. The new sections also provide updated definitions and improve rule organization and readability.

The new sections require ESRD facilities to comply with the most current applicable guidelines and standards, for example, those from the Centers for Medicare & Medicaid Services (CMS), Centers for Disease Control and Prevention, U.S. Food and Drug Administration, and Association for the Advancement of Medical Instrumentation, to ensure patient safety.

The new sections improve consistency across HHSC Health Care Regulation (HCR) rulesets and correct outdated language, references, and citations. The new sections reflect the transition of regulatory jurisdiction from the Texas Department of State Health Services (DSHS) to HHSC and replace the ESRD facility rules in Title 25 of the Texas Administrative Code (25 TAC).

HHSC's adoption of the repeal of 25 TAC Chapter 117, End Stage Renal Disease Facilities, is published elsewhere in this issue of the *Texas Register*.

COMMENTS

The 31-day comment period ended July 7, 2025.

During this period, HHSC received comments regarding the proposed rules from 20 commenters. HHSC received comments from American Renal Associates LLC D/B/A Innovative Renal Care (IRC/ARA), DaVita, Inc., ESRD Network 14 Medical Review Board, Fresenius Medical Care North America, Texas Medical Association, Texas Nurses Association, U.S. Renal Care (USRC), and eleven individuals. A summary of comments relating to the rules and HHSC's responses follows.

Comment: Innovative Renal Care/American Renal Associates (IRC/ARA) thanked HHSC for modernizing ESRD regulations and collaborating on rulemaking. IRC/ARA also urged HHSC to allow implementation flexibility for rural and underserved communities and align regulations with national standards. Additionally, IRC/ARA stated clear, practical guidance is essential to safe and high-quality dialysis care.

Response: HHSC acknowledges this comment and revises the rules to allow flexibility for facilities and more alignment with certain CMS standards. Revisions include clarifying staffing ratios and removing the additional nurse requirement, extending the amount of time a facility may remain open without providing services, and providing flexibility for patient training and routine provider visits with patients.

Comment: DaVita stated that HHSC used the terms "days," "business days," and "calendar days" inconsistently throughout the proposed rules in 26 TAC Chapter 507 and requested that HHSC use a single standard.

Response: HHSC declines to revise the rules further based on this comment because it is necessary to use business days in some instances, such as when HHSC or facilities send correspondence via U.S. Postal Service and in timelines for facilities to correct deficiencies.

Comment: USRC and Fresenius commented that the last two sentences in the definition of "direct care staff" in §507.2(26) expand the definition and are unnecessary. Fresenius also commented that they are not part of the definition.

Response: HHSC revises the definition of "direct care staff" in §507.2(26) to remove the sentence, "This does not include the Charge Nurse as shown in §507.60 of this chapter (relating to Staffing Table)." HHSC revises §507.48(j) and Figure: 26 TAC §507.60, as explained later in this adoption preamble, to clarify that a charge nurse may be considered part of direct care staff when there are seven or fewer patients. HHSC keeps the sentence, "These staff members fulfill the patient to staff ratio requirement."

Comment: An individual requested an update to the definition to "ESRD Network" to remove "not-for-profit" as several ESRD Networks are now owned by for profit corporations.

Response: HHSC agrees with the comment and revises the ESRD Network definition in §507.2(31) to remove the term "not-for-profit."

Comment: DaVita requested HHSC clarify the definition in §507.2(48) of "licensed vocational nurse (LVN)," specifically, the requirement for an LVN to meet "the competency requirements specified for dialysis technicians." The commenter added that the definition does not properly differentiate the LVN role from the dialysis technician role and is also inconsistent with §507.48(o), which only requires LVNs to meet the requirements for a dialysis technician when they are acting in the capacity of a dialysis technician.

Response: HHSC agrees with the comment and revises §507.2(48) by creating a separate sentence after the licensure requirement for an LVN. The separate sentence clarifies that an LVN may act in the capacity of a dialysis technician after meeting the competency requirements specified in §507.48(o) of this chapter.

Comment: DaVita objected to the definition of "single patient device" in §507.2(69) which requires devices to be prescribed to a patient for individual use, citing the CMS ESRD Conditions for Coverage (CfCs), which do not include this requirement. DaVita stated the definition limited care settings such as on-site home hemodialysis in skilled nursing facilities as DaVita believes multi-

patient reuse of dialysis machines is safe and clinically appropriate.

Response: HHSC declines to revise the definition in §507.2(69) in response to the comment because home dialysis service is currently defined in this chapter as dialysis performed at home by an end stage renal disease patient or the patient's caregiver and does not include on-site home hemodialysis in skilled nursing facilities. It would be an infection risk for home dialysis patients to share a dialysis machine. As multiple stakeholders requested clarification about dialysis services in skilled nursing facilities, HHSC is currently assessing regulatory authority for multi-patient reuse of dialysis machines in skilled nursing facilities.

Comment: The ESRD Network 14 Medical Review Board requested that the definition of "single patient device" in §507.2(69) be revised to reference the need to assign a patient a single device in the traditional home setting, where it is appropriate. This commenter added that the dialysis machine is not an alternate method of providing dialysis nor prescribed to a patient, but simply a need to assign the machine to a home patient in their home.

Response: HHSC agrees with the commenter and revises the definition of single patient device in §507.2(69) to "A dialysis machine, as designated by the FDA, assigned to a patient for individual use at home."

Comment: An individual requested that HHSC update the "social worker" definition to remove the "grandfather" clause for certain social workers with two years of work experience as a social worker, one year of experience having been in a dialysis facility or transplantation program before September 1, 1976, and a consultive relationship with a social worker with a master's degree from an accredited graduate school of social work.

Response: HHSC declines to revise the definition of "social worker" in §507.2(70) as suggested because that definition aligns with the definition in CMS CfCs for ESRDs in the Code of Federal Regulations (CFR), Title 42, HHSC intends to provide facilities with the same flexibility provided by the CFR as there may be individuals that still qualify under the definition.

Comment: Fresenius Kidney Care and USRC thanked HHSC for changing the experience required for a supervising nurse in the definition of "supervising nurse" from 18 to 12 months as an RN and from 12 to 6 months in dialysis within the last 24 months.

Response: HHSC acknowledges this comment relating to the definition of "supervising nurse" proposed in §507.2(73)(A)(i) and (A)(ii).

Comment: DaVita appreciates the proposed definition of "supervising nurse" in §507.2(73) to allow for a supervising nurse to have twelve months of experience as an RN, consistent with the CMS CfCs. However, DaVita objects to the requirement that the additional six months of experience in dialysis be obtained in the last 24 months. DaVita requested that HHSC revise this part of the definition by removing "obtained within the last 24 months," to further align the requirement with the CMS CfCs that do not require the 6 months of experience in dialysis to be obtained within the last 24 months. DaVita believes this requirement would create staffing limitations and difficulties for clinics

Response: Currently, 25 TAC §117.2(71)(A), proposed for repeal, requires 12 months of experience in dialysis within the last 24 months. Proposed §507.2(73)(A)(ii), reduced the experience in dialysis to six months, but maintains the requirement for the experience to be within the last 24 months. HHSC declines to revise §507.2(73)(A)(ii) as requested because reducing the supervising nurse's experience in dialysis any further presents a risk to patient health and safety.

Comment: DaVita and ESRD Network 14 Medical Review Board requested that HHSC update the definition of "Training (Patient)" to allow for training in small groups. DaVita also recommended that group training always take place in person and that individual needs are identified and addressed. ESRD Network 14 Medical Review Board stated that group training is efficient, can create a healthy shared learning environment, and that a hybrid model that includes group and individual training is ideal.

Response: HHSC agrees with the comment and revises §507.53 to add a new subsection (c) to allow patient training to be provided individually or in a small group setting, require a facility to offer patients the choice of an individual or small group training setting based on the patient's preference and individual needs, and require patient training to take place in person. HHSC revises §507.53 after new subsection (c) to renumber subsections (c)- (h) as (d) - (i). HHSC also revises the definition of "Training (Patient)" in §507.2 to add patient training must "meet the requirements in §507.53 of this chapter (relating to Home Dialysis Service)" to replace "take place in person;" and to add "home dialysis" in front of "treatment modality" to clarify the definition applies to home dialysis.

Comment: ESRD Network 14 Medical Review Board expressed full agreement with proposed §507.11(a) that all dialysis services providers must be licensed, regardless of affiliation or modality, and that home dialysis services must be under the purview of a licensed ESRD facility.

Response: HHSC acknowledges the comment.

Comment: DaVita requests that HHSC change §507.11(b), which requires a facility to obtain a license before admitting patients, to add "except as required for initial inspection under §507.12(f)."

Response: HHSC disagrees with the comment and declines to revise §507.11(b) as requested because there are no exceptions to obtaining a license before admitting patients. The subsection the commenter referred to as §507.12(f) is now §507.12(h), which requires the facility to admit and provide services to at least one patient before an HHSC inspection, but not before licensure.

Comment: DaVita and ESRD Network 14 Medical Review Board requested that HHSC amend §507.11(h)(1) to require a home and community support services agency (HCSSA) with a home dialysis designation to be Medicare certified as an ESRD dialysis facility. DaVita also suggested requiring a HCSSA to have five or fewer dialysis patients if the agency is not Medicare certified.

ESRD Network 14 Medical Review Board noted that Texas is the only state that allows providers to provide dialysis services without certification and that the exempted providers cannot process 2728 ESRD Medical Evidence Reports, which interferes with a patient's ability to receive a kidney transplant. Additionally, they stated the exemption puts patient safety, federal program integrity, and the state's monitoring ability at risk.

Response: HHSC declines to revise §507.11(h)(1) in response to this comment because the rule aligns with Texas Health and Safety Code §251.012(1), which exempts a HCCSA, licensed under Texas Health and Safety Code Chapter 142 with a home dialysis designation, from being licensed as an ESRD facility under 26 TAC Chapter 507.

Comment: An individual asked if §507.11(h)(1) means that entities providing only home staff assisted dialysis are required to be licensed solely under Texas Health and Safety Code Chapter 142, or if this interpretation is misleading because of the requirement under Texas Health and Safety Code Chapter 142 to have an agreement with an ESRD licensed facility.

Response: In accordance with Texas Health and Safety Code §251.012(1), §507.11(h)(1) exempts a home and community support services agency (HCSSA) licensed under Texas Health and Safety Code Chapter 142 with a home dialysis designation from required licensure under 26 TAC Chapter 507. Therefore, HHSC disagrees that §507.11(h)(1) is misleading because a HCSSA must be licensed under Texas Health and Safety Code Chapter 142 and there is not a requirement under that chapter for a HCSSA with the dialysis designation to have an agreement with an ESRD licensed facility to provide home staff-assisted dialysis. HHSC declines to revise the rules in response to this comment.

Comment: DaVita requested HHSC amend §507.11(h)(5) to only exempt a physician's office from licensure if the office is used primarily as an ESRD facility and either has five or fewer dialysis patients or is Medicare certified as an ESRD dialysis facility.

Response: HHSC declines to revise §507.11(h)(5) in response to this comment because the rule is consistent with Texas Health and Safety Code §251.012(5).

Comment: Fresenius Kidney Care and USRC requested HHSC revise the rule in §507.12(a)(1)(B) to allow for dialysis technicians to be in the process of completing training program requirements.

Response: HHSC declines to revise §507.12(a)(1)(B) because the rule is consistent with Texas Health and Safety Code §251.013(c).

Comment: USRC requested that HHSC revise §507.12(e) to allow facilities to prove active process towards completion to avoid the application withdrawal at six months.

Response: HHSC declines to revise §507.12(e) because the rule allows adequate time to communicate with HHSC and complete the process.

Comment: U.S. Renal Care, Inc. suggested HHSC revise §507.13(f)(2) to allow a facility making an ongoing attempt to obtain required documents for a license renewal application to avoid the requirement to cease operation 30 days after license expiration. USRC stated that document availability may be outside of the facility's control.

Response: HHSC declines to revise §507.13(f)(2) as suggested because the rules allow adequate time to communicate with HHSC to complete the process.

Comment: DaVita expressed concern that 10 business days may not be enough time to respond to information requests resulting from a renewal application, and notes that 10 business days is inconsistent with most of the regulations in Chapter 507, which uses calendar days to measure deadlines. DaVita requested that HHSC revise §507.13(h) to allow 20 business days to correct a deficiency in the renewal application.

Response: HHSC agrees and revises §507.13(h) to change "10 business days" to "15 business days" for the timeline in which a facility must correct a deficiency in the renewal application after being notified.

Comment: DaVita requested that HHSC remove §507.14(a)(4) and allow the facility to continue to operate as a change in ownership is being processed. DaVita stated the rule could lead to gaps in patient care if the change in ownership application is not required to be submitted until five days after the change, and HHSC may take up to 45 days or more to process the application and issue a new license.

Response: HHSC agrees with the comment and revises §507.14(a) by removing paragraph (4), then renumbering paragraphs (5) - (8) as paragraphs (4) - (7).

Comment: DaVita suggested HHSC remove the requirement proposed in §507.14(a)(5) because the language in §507.14(e) is already permissive and states that HHSC "may" inspect the facility.

Response: HHSC agrees with the comment and removes §507.14(a)(5), renumbered as §507.14(a)(4), because §507.14(e), renumbered as §507.14(d), already states HHSC "may" inspect the facility.

Comment: DaVita requested that HHSC revise §507.16(a) to keep the requirement for notifying HHSC of certain architectural projects at 30 days in advance rather than the proposed 90 days in advance. DaVita stated this change would allow for a licensee to react to changing circumstances.

Response: HHSC agrees with the comment and revises §507.16(a) to revert the notification requirement from at least 90 calendar days to at least 30 calendar days before the activities listed in the rule.

Comment: DaVita asserts that certain activities listed in proposed in §507.16(a), such as "submission of an initial application," or "minor alterations, renovations, remodeling, equipment and finish upgrades," should not be subject to the notice required in this rule because the activities are not subject to HHSC approval and do not affect patient care.

Response: HHSC declines to revise the list of activities in §507.16(a) based on this comment. HHSC requires notification before a facility begins the activities listed in §507.16(a)(1) - (7) because even small changes might have unintended consequences for patient health and safety. The notification allows HHSC to inform facilities when proposed changes could impact the facility's compliance.

Comment: DaVita requested HHSC remove §507.16(a)(6) because it is unclear and may be duplicative of (a)(7), which also includes a change of services or changes in treatment modality. The commenter also noted the term "invasive procedural service" is not defined and is inconsistent with the type of care given at a dialysis facility.

Response: HHSC agrees with the comment and revises §507.16(a)(6) to remove "or changing an invasive procedural service" because it does not apply to ESRD facilities. HHSC declines to remove §507.16(a)(6) entirely as it is not duplicative of (a)(7). Retrofitting, in §507.16(a)(6), may have a greater architectural scope than simply changing treatment modality or station designation. Service changes, in §507.16(a)(7), may encompass more than a retrofit; it may include changes to treatment modality or station designations.

Comment: DaVita requested HHSC update §507.17(3) to align with CMS practice which considers any closure less than 90 days as temporary and make a case-by-case determination based on facts and circumstances for any closure greater than 90 days

to determine whether a particular closure is temporary or permanent. DaVita believes 60 days is overly restrictive and can create hurdles to patient access.

Response: HHSC agrees with the comment and revises §507.17(3) by changing 60 calendar days to 90 calendar days. For consistency, HHSC revises §507.17 to change the number of days without offering services before HHSC may close a license from 60 calendar days to 90 calendar days; and revises §507.17(4) and (6) to change 60 calendar days to 90 calendar days related to inactive status and reactivating the license, respectively.

Comment: Fresenius, DaVita, and ESRD Network 14 Medical Review Board requested that HHSC revise §507.21(a) to allow a facility to request an exception described in the rule that may be temporary or permanent. DaVita suggested that HHSC strike "temporary" in §507.21(c) to allow facilities to submit permanent exceptions when appropriate.

Response: HHSC agrees with the comment and revises §507.21(a) to allow a facility, in a new paragraph (1), to request a temporary exception related to alternative concepts, methods, procedures, or techniques, or for conducting pilot projects or research; and to allow a facility, in a new paragraph (2), to request a permanent exception related to United States Food and Drug Administration-approved equipment. Because of the revisions in §507.21(a)(1) and (2) to allow temporary and permanent exceptions, HHSC also revises §507.21(c) to require a facility to request an exception by submitting a form to HHSC; removes proposed paragraph (1) that would have required submitting a written request to HHSC, and then renumbers proposed paragraphs (2) - (6) as paragraphs (1) - (5). In renumbered paragraphs (1) - (5), HHSC made necessary editorial changes at the beginning of each paragraph; and, in renumbered paragraph (5), added that the form submitted shall include the duration of the exception, "if the facility submits a request for a temporary exception." HHSC revises §507.21 to remove proposed subsection (d) that would have contained the process to request an exception, then renumbers proposed subsections (e) - (h) as subsections (d) - (g). HHSC revises renumbered subsection (e) to clarify that the timeframe in the rule begins "after the date HHSC receives the request" instead of "after receipt;" to change "an exception" to "a temporary or permanent" exception;" and to clarify "that HHSC" notifies the facility an exception has been granted. HHSC also revises renumbered subsection (f) by replacing "after receiving" with "the date the facility receives" to clarify the timeframe to implement an exception.

Comment: DaVita suggested that HHSC strike "temporary" in §507.21(c) to allow facilities to submit permanent exceptions when appropriate.

Response: HHSC revises §507.21(c) to remove "temporary" because facilities may apply for rule exceptions as provided by §507.21.

Comment: DaVita objected to limiting temporary exceptions in an emergency to a maximum of 120 days with a single renewal period of an additional 120 days in §507.22(c). The commenter requested that HHSC revise the rule to allow temporary exceptions to remain in effect until the emergency or disaster declaration is officially lifted. DaVita stated the limited time period and requiring renewal thereafter may create an administrative burden during extended emergency and disaster situations when resources need to be focused on direct patient care.

Response: HHSC declines to revise §507.22(c), because HHSC must reassess temporary exceptions to determine whether the conditions requiring the temporary exceptions still exist. HHSC notes there are sections in the chapter, including §507.23, §507.24, §507.58 and §507.59 that allow flexibility during an emergency or disaster.

Comment: An individual stated the references to technical standards in §507.30 that facilities must comply with should be revised to reflect updates to those standards that are expected to be endorsed by the respective national standard-setting organizations, which should be complete prior to the adoption of these rules.

Response: HHSC declines to revise §507.30 in response to this comment because HHSC cannot refer to technical standards that have not yet been approved.

Comment: USRC stated that in §507.31(a)(1) it may not be possible to repair a machine immediately and suggested using the term "urgent" instead.

Response: HHSC agrees with the comment but does not revise §507.31(a)(1) as suggested. Instead, HHSC revises §507.31(a)(1) to require staff to "immediately" report malfunctioning equipment and remove the requirement for "immediate repair." This revision better aligns with the requirement in §507.31(a)(2) to remove malfunctioning equipment until the facility can correct the malfunction.

Comment: An individual and DaVita pointed out that §117.31(c), proposed for repeal, requires a facility to have at least one dialysis machine available on site as backup for every ten dialysis machines in use. The individual requested that HHSC revise proposed §507.31(c) to require at least one backup dialysis machine to be available. DaVita requested that HHSC maintain the current rule, including that machines not in use during a patient shift may count as backup, consistent with HHSC draft rules at 26 TAC Chapter 520, Requirements for Design, Construction, and Fire Safety in Health Care Facilities posted for informal comment in April 2025. Fresenius and USRC thanked HHSC for removing the requirement to have one backup dialysis machine for every 10 patients.

Response: HHSC revises §507.31(c) to reinstate the requirement for at least one available back up dialysis machine for every 10 machines in use; that one of these backup machines shall be completely operational during hours of treatment; and that machines not in use during a patient shift may be counted as backup except at the time of an initial or an expansion survey. This revision meets operational requirements to avoid disruptions to patient services and ensures patients can receive dialysis on schedule even in cases of dialysis machine malfunction. Since HHSC reinstated the requirement for back up dialysis machines in §507.31(c), HHSC removes the requirement for a facility to have a policy requiring an emergency plan for when a patient cannot complete dialysis due to machine malfunction and to communicate the plan to each patient at admission. The rule requiring at least one backup dialysis machine to be available was not in the proposed ESRD rule because it was intended to be addressed in HHSC draft rules for 26 TAC Chapter 520, Requirements for Design, Construction, and Fire Safety in Health Care Facilities posted for informal comment in April 2025. Chapter 520 is still in development and has not been finalized.

Comment: DaVita expressed support for proposed §507.31(f), but stated it is inconsistent with HHSC draft rules at 26 TAC Chapter 520, Requirements for Design, Construction, and Fire

Safety in Health Care Facilities posted for informal comment in April 2025. DaVita requested the requirement remain as written in §507.31(f).

Response: HHSC acknowledges the comment related to proposed §507.31(f), renumbered as §507.31(g), requiring a facility to have emergency equipment and supplies immediately accessible in the treatment area and may revise the draft rules in 26 TAC Chapter 520 for consistency with §507.31(f), renumbered as §507.31(g), as Chapter 520 is still in development and has not been finalized.

Comment: An individual commented that updates to the standards listed in §507.30 that are expected to be endorsed by national standard-setting organizations do not specify a recommended flow velocity in the distribution system and suggested deleting the requirement in §507.33(3)(A).

Response: HHSC agrees and revises §507.33(3) by removing the requirement proposed in subparagraph (A), for indirect feed systems to have a minimum of three feet per second of water flow in the distribution loop. Because of this revision, HHSC renumbered subparagraphs (B) - (D) as (A) - (C), and in renumbered subparagraph (A), made revisions so that the water flow rate for direct and indirect feed systems shall comply with the standards listed in §507.30.

Comment: An individual recommended that HHSC revise §507.33(8)(D)(iii) to specify "removal of total chlorine" instead of "removal of chloramine" since chloramine cannot be directly measured. The commenter also suggested that HHSC revise §507.33(8)(D)(iv), (vii), and (viii) to use "total chlorine" or "chlorine/chloramine" rather than "chlorine or chloramine."

Response: HHSC agrees with the comment and revises §507.33(8)(D)(iii) as recommended. For consistency, HHSC also revises §507.33(8)(D)(ii), (iv), (vii), and (ix) to use "total chlorine" instead of "chlorine or chloramine."

Comment: An individual commented that §507.33(8)(D)(iv) reads as a requirement for the facility to test at opening, and then again before the first shift, and asked whether this is the intent.

Response: The intent of §507.33(8)(D)(iv) does include testing at the beginning of each treatment day and before patients initiate treatment. To clarify this intent, HHSC revises 507.33(8)(D)(iv) by adding a comma after "treatment day" and changing "before patients initiating treatment" to "before patients initiate treatment."

Comment: DaVita requested that HHSC remove the requirement in §507.33(8)(D)(v) for staff to manually test the automated chlorine monitoring system. DaVita stated the requirement would be burdensome for staff and that the chlorine monitoring systems do not require verification of water quality per manufacturer instructions.

Response: HHSC declines to revise §507.33(8)(D)(v) as requested because manual testing of an automated chlorine monitoring system ensures the internal monitoring system is correctly calibrated and performing correctly.

Comment: An individual, referencing §507.33(19)(A), commented that the current practice recommended by the International Organization for Standardization (ISO) 23500 Standards for routine microbiological testing is monthly testing except for home programs and integrated dialysis systems where quarterly testing is allowed.

Response: HHSC agrees with the comment and revises §507.33(19)(A) to require testing at least quarterly or more frequently, as needed or required by the technical standards outlined in §507.30. HHSC also revises §507.33(19)(A) by using a separate sentence for the requirement that routine microbiological testing must ensure the water and dialysate bacteria and endotoxin levels are within the limits described in the standards listed in §507.30.

Comment: An individual, referencing proposed §507.33(19)(C), commented that the current technical standards do not allow internal testing and that laboratories should not use a calibrated loop either. The commenter suggested that HHSC revise the rule to use "A calibrated loop shall not be used in microbiological testing of water or dialysate samples."

Response: HHSC agrees with the comment and revises proposed §507.33(19)(C) to remove the requirements for internal testing, including the requirement that colonies shall be counted using a magnifying device. HHSC also revises §507.33(19)(C) to remove, "A facility shall not use a calibrated loop in microbiological testing of water samples." These changes are made for consistency with current technical standards.

Comment: An individual, referencing §507.33(19)(D), commented that it was a good idea to spell out the maximum levels for the total viable microbial count and endotoxin concentration. The commenter suggested that HHSC also include the action levels. The commenter also pointed out that the endotoxin levels, maximum and action level, are different for dialysate.

Response: HHSC declines to revise proposed §507.33(19)(D) as requested because the rule requires the action level for the total viable microbial count in the product water to be consistent with the standards listed in §507.30.

Comment: An individual commented on the monthly frequency of water disinfection proposed in §507.33(21) because heat disinfection is usually done at least each day of use. The commenter suggested that HHSC avoid defining a heat disinfection frequency, and rather include how the facility should monitor effectiveness of heat disinfection.

Response: HHSC declines to revise §507.33(21) as suggested. Instead, HHSC revises §507.33(21) to add that facilities may conduct hot water disinfection more frequently as needed or required by the technical standards in §507.30.

Comment: DaVita recommended HHSC revise §507.34(b) to follow the standard set by the CMS CfCs for dialysate testing when the concentrate manufacturer changes.

Response: HHSC declines to revise §507.34(b) in response to this comment because the CfCs do not contemplate concentrate manufacturer changes and because mixing families of concentrates can be detrimental to patient health and safety due to chemical incompatibilities and variations in chemical composition that can lead to severe and potentially fatal patient outcomes.

Comment: DaVita commented that with ever-improving technology and machine capabilities, verification of dialysate conductivity is no longer required and, in some cases, no longer able to be tested. DaVita recommends for HHSC to add in §507.34(c) that verification of dialysate conductivity is only required when specified in the manufacturer's directions for use. DaVita stated that linking the requirement to manufacturer instructions will have the effect of not excluding newer machines where dialysate conductivity is no longer required.

Response: HHSC declines to revise §507.34(c) and instead revises §507.34(d) to clarify that for machines with internal independent testing, staff must verify and document that the machine conducted internal testing before each patient treatment.

Comment: Fresenius Kidney Care and US Renal Care thanked HHSC for acknowledging machines with internal independent testing for conductivity and pH in §507.34(d).

Response: HHSC acknowledges these comments.

Comment: IRC/ARA expressed appreciation of the intent behind proposed §507.34(d) and the emphasis on maintaining high standards to ensure the quality of dialysate solution being provided, but noted that the six-month testing requirement in §507.34(d) may present operational challenges because it may be more stringent than equipment manufacturer requirements. The comment from IRC/ARA asked for clarification of the following: (1) if the proposed rule considers equipment from manufacturers that might require service intervals longer than yearly; (2) if the proposed rule would require modifications to a manufacturer's recommended services for an equipment model where independent conductivity/pH testing is not applicable; and (3) on the meaning in the proposed rule of "shall test," for an equipment model for which the six month Preventative Maintenance recommendation is to only "check" the conductivity display against an external meter.

Response: HHSC revises §507.34(d) to clarify that for machines with internal independent testing, staff must verify and document that the machine conducted internal testing before each patient treatment. The requirement to test calibration every six months is to ensure patient health and safety.

Comment: An individual suggested that HHSC revise §507.34(e) to replace the term "water" with "dialysate." The individual also suggested including the bacteriological maximum and action levels in this rule.

Response: HHSC agrees with the comment and revises §507.34(e) to replace the term "water" with "dialysate" as suggested. However, HHSC declines to revise §507.34(e) to include the bacteriological maximum and action levels because the rule already requires the bacteriological levels to meet the technical standards listed in §507.30.

Comment: An individual requested that HHSC move the rule proposed in §507.35(c) to §507.31, because transducer protectors are not devices related to hemodialyzer reuse, and the requirement is more closely related to the topic of "Equipment," the title of §507.31. The individual also stated that the quarterly inspection of equipment with internal transducer protectors in §507.35(c) is an added burden and that many of the machines now require only annual maintenance.

Response: HHSC agrees and revises proposed §507.35(c) to remove the requirement for a facility to "quarterly inspect equipment with internal transducer protectors to ensure the equipment is not contaminated," and replace it in a new subsection (d) in §507.31, where HHSC also changes the frequency of inspections from "quarterly" to "annually;" and adds "If the transducer protector is wetted or fluid or blood is visible, a facility must follow instructions as described in §507.36 of this chapter (relating to Infection Control). In addition, HHSC revises proposed §507.35(c) to remove the requirement for facility staff to "replace a transducer protector when wetted during a dialysis treatment and use a transducer protector for only one treatment," and replace it in a new subsection (d) in §507.36, where HHSC also adds "If fluid or blood is visible on the side of the transducer protector that faces the machine, the machine must be opened by qualified personnel after the dialysis treatment to allow the internal transducer to be inspected for contamination, including inspection for possible blood contamination of the internal pressure tubing set and pressure sensing port." Because HHSC removes the requirements proposed in §507.35(c), HHSC renumbers subsections (d) - (j) as subsections (c) - (i). HHSC added subsection (d) to clarify infection control standards if the transducer protector is contaminated to ensure patient health and safety.

Comment: An individual suggested that HHSC move the rule in §507.35(k) to §507.42 on patient rights because §507.35(k) relates to obtaining written informed consent for dialysis services.

Response: HHSC agrees with the comment and revises §507.35 to remove subsection (k) and add this requirement for informed consent in §507.42 as a new subsection (c). Because of this change in §507.35, HHSC renumbers subsection (l) as subsection (j).

Comment: An individual requested that HHSC add a requirement in §507.36 for signage designating clean and contaminated areas in the company's official language, as well as additional languages based on the preferred languages of facility employees.

Response: HHSC declines to revise §507.36 as requested because the rule already requires facilities to clearly designate clean and contaminated areas.

Comment: An individual requested that HHSC revise §507.36(a)(2)(B) to specify the number of sinks as one hands-free operable sink per dialysis station.

Response: HHSC declines to revise §507.36(a)(2)(B) as requested because the requirement to have one hands-free operable sink per dialysis station would be too burdensome and cost prohibitive for facilities.

Comment: DaVita recommended that HHSC remove the term "hands-free" in proposed §507.36(a)(2)(B) because many older facilities have standard sinks and having to install handsfree sinks would be financially burdensome to facilities and could be disruptive to patient care.

Response: HHSC declines to remove "hands-free" in proposed §507.36(a)(2)(B) as recommended. Currently 25 TAC §117.33(a)(1)(C)(ii), proposed for repeal, requires a sufficient number of sinks with hands-free operable controls. Therefore, sinks for handwashing with hands-free controls should not introduce a new financial burden. However, HHSC revises proposed §507.36(a)(2)(B) to remove the requirements to have enough sinks with hands-free operable controls and provisions for hand drying. HHSC revises §507.36(a)(2) to add a new subparagraph (C) as follows "Enough sinks, with water and soap shall be available to facilitate handwashing. Sink faucets shall have hands-free operable controls to activate the water flow, which may include a single-lever, wrist blade lever, electronic sensor faucet, or an elbow or wrist action faucet. Provisions for hand drying shall be included at each handwashing sink." Because HHSC added a new subparagraph (C) in §507.36(a)(2), HHSC also renumbered subparagraphs (C) - (O) as subparagraphs (D) - (P).

Comment: One individual, U.S. Renal Care, Inc., ESRD Network 14 Medical Review Board, DaVita, IRC/ARA, and Fresenius Kidney Care suggested removing the limit in proposed

§507.36(a)(2)(C) to the number of times alcohol-based hand rub can be used unless hands are visibly soiled.

Response: HHSC revises proposed §507.36(a)(2)(C), renumbered as §507.36(a)(2)(D), by removing how many times staff may use a waterless antiseptic hand rub before using soap and water and replacing it with a requirement for staff to wash with soap and water when hands are visibly soiled.

Comment: DaVita stated that the requirement for sinks to be installed in locations permitting ease of access and proper use is of concern because of how older facilities were designed and built and that updating the location and arrangement of sinks would be financially burdensome for facilities to comply with and could disrupt patient care. DaVita requested that HHSC revise §507.36(a)(3) to clarify that facilities should comply to the extent possible for the layout and design of the facility.

Response: HHSC declines to revise §507.36(a)(3) as recommended because this requirement is currently in 25 TAC §117.33(a)(1)(D), proposed for repeal, and therefore, should not introduce a new financial burden and because sinks must be accessible and working properly for the health and safety of staff and patients.

Comment: U.S. Renal Care, Inc. commented that "three calendar days" proposed in §507.38(a)(5)(I)(iii), for the facility to obtain the results of the patient's Hepatitis B surface antigen (HBsAg) status, can be affected by the holiday schedules. USRC suggested that HHSC change "three calendar days" to "four calendar days" for maximum opportunity at compliance.

Response: HHSC declines to revise §507.38(a)(5)(I)(iii) as suggested because this requirement is currently in 25 TAC §117.(d)(2)(ix)(III), proposed for repeal. Because dialysis treatment may begin within three calendar days, it is crucial for patient health and safety for the facility to obtain a patient's HBsAg status within that time frame to determine if certain precautions are required prior to the patient beginning dialysis treatment.

Comment: An individual recommended that HHSC revise proposed §507.38(c)(1) to include the following "the COVID-19 vaccine shall be offered in accordance with the CDC's current immunization schedules and public health guidance, including any recommended booster doses."

Response: HHSC declines to revise §507.38 in response to this comment. HHSC will not add COVID-19 vaccination requirements to this rule because §507.38 is not intended to address all diseases. Facilities are free to require additional vaccination requirements if they wish to do so.

Comment: Texas Medical Association requested that HHSC update §507.41(g) to expressly state that advanced practice registered nurses (APRNs), physician assistants (PAs), licensed master social workers, and registered dietitians must demonstrate and sustain their necessary skills and licensures.

Response: HHSC agrees with the comment and revises §507.41(g) to add APRNs, PAs, licensed master social workers, and registered dietitians to the list of staff who must demonstrate and sustain the necessary skills and licensures.

Comment: U.S. Renal Care, Inc. and Fresenius Kidney Care requested HHSC revise §507.45(i) to align with CMS guidance and allow an ESRD to skip contacting the ESRD Network before considering involuntary discharge of a disruptive patient due to a "severe and immediate threat to the health and safety of others." The commenters requested HHSC include this as a reason a clinic may not be able to contact their ESRD Network for assistance prior to considering an involuntary discharge of a disruptive patient.

Response: HHSC declines to revise §507.45(i) as requested because the ESRD Network should be notified immediately for an involuntary discharge due to a severe or immediate threat to the health and safety of others. The requirement to provide this notice to the ESRD Network prior to considering an involuntary discharge of a disruptive patient ensures patients are treated fairly.

Comment: DaVita requested HHSC clarify whether the reporting requirements in §507.46(b)(3)(A) may be met by reporting through EMResource, a Department of State Health Services system for tracking available hospital and emergency medical services resources and other emergency response data. DaVita explained that reporting facility closures or reductions in hours to the multiple entities listed, and on various platforms, would be burdensome to clinics and not practical to comply with during an emergency.

Response: HHSC declines to revise §507.46(b)(3)(A) as requested because EMResource does not have the capability to share information with ESRD reporting systems at this time.

Comment: U.S. Renal Care, Inc. and Fresenius Kidney Care requested HHSC revise §507.47(c) to allow a sponsoring physician to countersign orders within 30 calendar days instead of within 15 calendar days.

Response: HHSC declines to revise §507.47(c) in response to this comment. It can be crucial to a dialysis patient's health and safety to have orders authenticated or countersigned by the sponsoring physician to check for accuracy because high-risk patients may require frequent monitoring and updating of orders. HHSC believes that in an ESRD facility "within 15 calendar days" provides enough time to comply with this rule.

Comment: DaVita voiced concern that the language in §507.47(j) regarding the types of anesthetics that can be administered by qualified dialysis technicians is too broad because lidocaine (subcutaneous or topical) is only one type of anesthetic, with most topicals not being lidocaine, or a combination of lidocaine and other anesthetics. DaVita suggested HHSC revise §507.47(j) by replacing the listed types of lidocaine with "lidocaine and other anesthetics (prior to cannulation)" and replacing heparin with "heparin and other anticoagulants."

Response: HHSC declines to revise §507.47(j) as suggested because the rule states that licensed nurses, PAs, or physicians must administer all medications except intravenous normal saline, intravenous heparin, subcutaneous lidocaine, topical lidocaine, and oxygen, which may be administered by qualified dialysis technicians. Using the term "other" as a category for anesthetics other than lidocaine and for anticoagulants other than heparin is too broad of a category for dialysis technicians to administer.

Comment: An individual requested HHSC revise §507.48 to decrease the ratio of dialysis technicians and nurses to patients to at least 1:2 at all times. The individual notes that this would improve proper hand hygiene, decrease patient infection risk, ensure small centers are not overextended, and allow for better patient care.

Response: HHSC declines to revise §507.48 based on this comment because the rule, as written, is sufficient protection for patient health and safety.

Comment: U.S. Renal Care and Fresenius Kidney Care thanked HHSC for adding §507.48(c) regarding the required presence of a registered nurse in the facility and situations when patients may enter the facility when a registered nurse is not present.

Response: HHSC acknowledges the comments.

Comment: U.S. Renal Care, Inc. and Fresenius Kidney Care requested that HHSC revise §507.48(d)(3) to remove "pre" from the dialysis evaluation because "pre-dialysis" indicates before the start of treatment and not within the first hour of initiation of treatment.

Response: HHSC agrees with the comment and revises §507.48(d)(3) to replace "pre-dialysis" with "dialysis." HHSC also replaced the term "evaluation" in §507.48(d)(3) with "assessment" because the subject matter in subsection (d) relates to conducting assessments.

Comment: DaVita requested that HHSC revise §507.48(d)(4) to replace "immediate" with "timely" because immediate post-dialysis assessments may not be feasible when there are abnormal findings or changes in condition. DaVita also stated that the term may cause confusion.

Response: HHSC declines to remove the term "immediate" in §507.48(d)(4) because an immediate assessment is essential for patient safety, if an abnormal finding or change of condition is identified pre-dialysis, intradialytic, or post-dialysis. However, HHSC revises §507.48(d)(4) to replace the term "immediate post-dialysis assessments" with "immediate assessments" to provide clarity and alleviate confusion.

Comment: Fresenius Kidney Care, US Renal Care, Inc., ESRD Network 14 Medical Review Board, DaVita, and IRC/ARA requested HHSC revise §507.48(j)(2) to match the staffing ratio chart in §507.60. Fresenius Kidney Care also noted that staffing flexibility helps with the nursing shortage.

Response: HHSC revises §507.48(j)(2), renumbered §507.48(j)(3), to remove the requirement for two licensed nurses for the treatment of 8-12 patients, matching Figure: 26 TAC §507.60. Additional updates in §507.48 and Figure: 26 TAC §507.60 clarify staffing requirements and ratios to help with staffing flexibilities due to nursing shortages which in part, include that the direct care staff requirement can be fulfilled by a patient care technician (PCT), registered nurse (RN), or licensed vocational nurse (LVN) as applicable.

Comment: DaVita requested HHSC revise §507.48(l) to require a facility to educate a patient on the importance of leaving their access sites uncovered only when staff observe their access site is covered, when appropriate, or as needed. DaVita stated providing and documenting the education for every treatment is burdensome.

Response: HHSC declines to revise §507.48(l) because this education is important for patient health and safety.

Comment: DaVita requested HHSC revise §507.49(d) to remove the allowance for a dietitian's designee to conduct a nutrition reassessment, aligning with CMS requirements. DaVita noted that it is unclear who would be able to complete a nutrition assessment.

Response: HHSC agrees and revises §507.49(d) to remove the allowance for a dietitian's designee to conduct a nutrition reassessment.

Comment: DaVita, ESRD Network 14 Medical Review Board, US Renal Care, Inc., IRC/ARA, and Fresenius requested HHSC keep the current ratio for dietitians in rule §507.49(e)(1) at one full-time dietitian per 125 patients because lowering the dietitian ratio to one dietitian for every 100 patients would create staffing issues particularly in rural areas.

Response: HHSC agrees and revises §507.49(e)(1) to change the maximum caseload for a full-time equivalent dietitian from 100 to 125 patients. To avoid a staffing issue, HHSC revises proposed §507.49(e)(2) to remove the requirement for a facility to have a second full time equivalent dietitian if the first dietitian's caseload is over 100, and added in §507.49(e)(1) that a facility shall employ or contract a second dietitian for a patient caseload over 125 patients. In addition, HHSC revises proposed §507.49(e)(2) to require the governing body to ensure the facility assigns personnel to assist dietitians with ancillary tasks when the patient load, including all modalities, exceeds 100 patients per facility.

Comment: DaVita appreciated HHSC for changing the requirement in proposed §507.51(c) related to documenting the first encounter with a new patient to align with CMS requirements.

Response: HHSC acknowledges the comment.

Comment: Fresenius Kidney Care and US Renal Care requested HHSC revise §507.52(b)(3) to state that more than two visits a month may be conducted by a physician and additional visits may be conducted via telemedicine. Nine individual commenters request the rule in §507.52(b)(3) be updated to one visit per month, with the option of visits being via telemedicine; and for HHSC to revise the rule in to align with federal guidelines of requiring monthly in person visits. One individual commenter suggested unstable patients should be seen more often in person and by telemedicine. Another individual commenter suggested that visit frequency be tailored to a patient's needs.

Response: In response to these comments, HHSC revises §507.52(b)(3) by removing "with visits separated by at least 10 calendar days," and adding after the requirement for a physician to see the patient at least twice a month, "The physician shall conduct the first visit in person. The second visit is required unless the patient is stable, as justified in the patient record by the physician. If the second visit is necessary, it shall be separated from the first visit by at least 10 calendar days and may be conducted in person or using telemedicine. Additional visits conducted in the same month by a physician may be conducted using telemedicine." These revisions allow the frequency of visits, after the first physician visit, to be based on a patient's needs. These revisions also give a physician the option to conduct visits, other than the first visit, using telemedicine.

Comment: One commenter suggests the rule in §507.52(b)(3) be updated to monthly check-ins complemented by weekly updates from nursing staff.

Response: HHSC declines to revise the rule in §507.52(b)(3) based on the comment because the rule, as written, is sufficient protection for patient health and safety.

Comment: DaVita requested HHSC revise §507.52(b)(4) to allow the use of telemedicine for home dialysis patients as permitted by federal regulations. ESRD Network 14 Medical Review Board requested HHSC revise §507.52(b)(4) to allow an APRN or a PA to use telemedicine for home dialysis patients. ESRD Network 14 Medical Review Board stated this change would help address transportation and geographical challenges.

Response: HHSC revises §507.52(b)(4)(A) to require a physician to see a patient in person at least once every three months if a home dialysis patient is seen by an APRN or a PA no less than once a month. HHSC also revises §507.52(b)(4)(B) to replace "The provider" with "The physician;" to add "shall conduct physician visits in person" in front of "in the dialysis facility, at the physician's office, or in the patient's home;" and to add "A physician may conduct additional visits in the same month using telemedicine." HHSC revises §507.52(b)(4) by adding a new subparagraph (C) to add "An APRN or a PA may conduct visits using telemedicine." Because of adding a new subparagraph (C), HHSC revises proposed §507.52(b)(4)(C) to renumber it as §507.52(b)(4)(D).

Comment: DaVita requested HHSC revise §507.52(c)(6)(A) by replacing "jointly developed by" with "reviewed and approved by."

Response: HHSC declines to revise the rule in response to this comment because §507.52(c)(6)(A) contains "reviewed and approved by."

Comment: Fresenius Kidney Care and U.S. Renal Care Inc. requested HHSC revise §507.52(e) to incorporate dieticians and social work students.

Response: HHSC declines to revise §507.52(e) in response to this comment because the rule is specific to clinical students providing medical services to patients.

Comment: ESRD Network 14 Medical Review Board and DaVita requested HHSC revise §507.52(e)(1) to clarify that the instructor does not need to be on the premises because a qualified dialysis nurse may provide appropriate guidance and supervision.

Response: HHSC revises §507.52(e)(1) to clarify the instructor must be "on the premises" and provide "direct supervision to the student." Direct supervision as defined by §507.2(74)(B) requires the supervisor, in this case the instructor, to be in the facility but not necessarily immediately present where the task or activity is being performed. Additionally, HHSC revises §507.52(e)(2)(B) to change "direct supervision" to "immediate supervision" because an RN on staff at the facility must be immediately present if a student administers medications.

Comment: Fresenius Kidney Care and U.S. Renal Care, Inc. requested HHSC revise §507.53(b) to remove the requirement for a separate room for home dialysis services to align with CMS, increase access in rural areas, and allow for group training with patient consent.

Response: HHSC declines to revise 507.53(b) as requested because a separate room is necessary for patient privacy and for training based on patient's preference and individual needs as stated in 507.53(c). However, HHSC revises §507.53(b) to note that home dialysis services are defined in §507.2 of this chapter (relating to Definitions) to add clarity to the rule.

Comment: Fresenius Kidney Care ESRD Network 14 Medical Review Board, DaVita, and US Renal Care, Inc. requested HHSC revise proposed §507.53(c) to allow an exception for single use machines to be assigned to multiple home dialysis patients when patients are in a skilled nursing facility or transitional care unit.

Response: HHSC declines to revise proposed §507.53(c), renumbered as §507.53(d), which requires the facility to assign each individual home dialysis patient, regardless of modality, one machine for the patient's exclusive use in the home, and prohibits the facility from assigning multiple home dialysis patients to the same machine. Home dialysis service is currently defined in this chapter as dialysis performed at home by an end stage renal disease patient or the patient's caregiver. It would be an infection risk for home dialysis patients to share a dialysis machine.

Comment: An individual asked if §507.53(c) applied to long-term care settings.

Response: HHSC acknowledges the comment, however, "home dialysis service" is defined in §507.2 as dialysis performed at home by an end stage renal disease patient or the patient's caregiver. 26 TAC Chapter 507 does not address long-term care settings.

Comment: DaVita requested HHSC clarify the meaning of "or portion thereof" in §507.53(d). DaVita also requested HHSC revise §507.53(d) to increase nurse staffing flexibility by allowing an licensed vocational nurse or patient care technician to provide support and serve as a bridge to a second registered nurse when there are between 21 and 25 patients.

Response: HHSC revises §507.53(d), renumbered as §507.53(e), to clarify the meaning by removing "or portion thereof" and replacing it with "for every group of." HHSC revises renumbered §507.53(e) to increase the ratio of 20 patients to 25 patients for one full-time equivalent registered nurse and to add that "For 21 - 25 patients, the facility shall assign a licensed vocational nurse or a dialysis technician to assist the registered nurse."

Comment: DaVita is seeking clarification on the requirement in §507.53(e)(3), specifically, what evidence or documentation (check list, competency evaluation, etc.) will be required to show that competency was reassessed.

Response: HHSC revises §507.53(e)(3), renumbered as §507.53(f)(3), to remove "reassess" and replace it with "document" to show the nurse's competency to provide home dialysis three months after passing the initial competency exam. The facility is not limited to any particular type of documentation to show competency.

Comment: DaVita requested HHSC revise §507.53(g) to align with CMS and allow a home visit at the initiation of home therapy, instead of before beginning training.

Response: HHSC declines to revise §507.53(g), renumbered as §507.53(h), in response to this comment because identifying whether the patient's home is appropriate for home dialysis before beginning training avoids wasting patient time and resources.

Comment: DaVita and ESRD Network 14 Medical Review Board requested HHSC revise §507.53(g) to allow an exception for urgent starts and allow the home visit to be conducted via audio-visual means to prevent central venous catheter placement.

Response: HHSC declines to revise §507.53(g), renumbered as §507.53(h), in response to this comment because the facility must complete a home visit even in case of urgent start peritoneal dialysis to ensure patient health and safety.

Comment: DaVita requested HHSC revise §507.53(h) to clarify that a facility team should make a reasonable attempt to retrieve self-monitoring data because retrieving complete self-monitoring data may not always be possible due patient compliance issues.

Response: HHSC agrees and revises §507.53 by adding in a new subsection (j), "If a facility is unable to obtain a patient's self-monitoring data after an appropriate number of attempts, the physician shall refer the case to the medical director for a determination about a potential modality change for the patient." The revision is needed so that when a facility cannot obtain the patient's self-monitoring data after an appropriate number of attempts, the physician may refer the case to the medical director to determine whether a modality change is appropriate for the patient. Because of this revision in §507.53, HHSC also renumbered subsections (i) - (s) as (k) - (u).

Comment: U.S. Renal Care, Inc. and Fresenius requested HHSC revise proposed §507.53(j)(1) to exempt initial monitoring home visits when urgent peritoneal dialysis begins in the hospital.

Response: HHSC declines to revise proposed §507.53(j)(1), renumbered as subsection (l)(1), in response to this comment. The facility must complete this initial monitoring home visit to ensure patient health and safety even when urgent peritoneal dialysis begins in the hospital.

Comment: U.S. Renal Care, Inc. and Fresenius Kidney Care requested HHSC clarify whether proposed §507.53(j)(3)(A) allows for two visits within three months to be conducted via telemedicine when an APRN or a PA sees a patient monthly when medically appropriate and the patient consents. DaVita and ESRD Network 14 Medical Review Board requested HHSC revise proposed §507.53(j)(3)(A) to allow for two visits within three months to be conducted via telemedicine when an APRN or a PA sees a patient monthly.

Response: HHSC revises proposed §507.53(j)(3), renumbered as subsection (l)(3), by adding "in accordance with §507.52(b)(4) of this subchapter (relating to Medical Services)." This change is made because the requirement in renumbered subsection (l)(3), for a patient to be seen by a physician, an APRN, or a PA, is the same as in the revisions HHSC made in §507.52(b)(4). HHSC also removes proposed subparagraphs (A) and (B) in renumbered subsection (l)(3) because the reference added makes them unnecessary to include. In addition, HHSC made editorial changes to refer to "a physician" instead of "prescribing physician" and to refer to "the patient" as "a home dialysis patient" to use consistent terminology.

Comment: An individual requested HHSC revise proposed §507.53(k)(3) to remove the reference to chloramines testing.

Response: HHSC revises proposed §507.53(k)(3), renumbered as subsection (m)(3) to remove the reference to chloramine testing and only refer to total chlorine testing.

Comment: U.S. Renal Care, Inc. and Fresenius Kidney Care requested HHSC revise proposed §507.53(p) to allow the patient or caregiver to culture and measure home patient hemodialysis machines with facility oversight.

Response: HHSC revises proposed §507.53(p), renumbered as subsection (r), to allow the patient or the patient's caregiver with facility oversight to do the testing.

Comment: An individual requested HHSC revise proposed §507.53(p) to require quarterly culture and endotoxin testing to align the rule with CMS.

Response: HHSC revises 507.53(p), renumbered as subsection (r), to require testing at least quarterly or more frequently as needed or required by the standards listed in §507.30 of this subchapter.

Comment: An individual requested HHSC revise §507.53(s)(1)(C) to remove the reference to chloramines testing and require that testing results align with the technical standards.

Response: HHSC agrees with the comment and revises §507.53(s)(1)(C), renumbered as subsection (u)(1)(C), to remove the reference to chloramine testing and only refer to total chlorine testing; and to add a reference to the technical standards in §507.30.

Comment: DaVita requested HHSC revise §507.53(s)(1)(C) to allow a caregiver to document water testing results.

Response: HHSC agrees with the comment and revises §507.53(s)(1)(C), renumbered as subsection (u)(1)(C), to allow the patient's caregiver to document the total chlorine level by adding "or the patient's caregiver."

Comment: U.S. Renal Care, Inc. and Fresenius Kidney Care requested HHSC revise §507.53(s)(1)(D) to allow the patient or caregiver to obtain the microbiological quality of the dialysate with facility oversight.

Response: HHSC agrees with the comment and revises §507.53(s)(1)(D), renumbered as subsection (u)(1)(D), to allow the patient or the patient's caregiver with facility oversite to obtain the microbiological quality of the dialysate.

Comment: One individual, U.S. Renal Care, Inc., Fresenius Kidney Care, ESRD Network 14 Medical Review Board, and DaVita requested HHSC revise §507.54(a)(2) to reduce the patient care technician certification period from 24 months to 18 months to align with CMS. IRC/ARA asked HHSC to provide rationale for extending the patient care technician certification period to 24 months, which exceeds CMS's 18-month requirement.

Response: HHSC agrees with the comment and revises §507.54(a)(2) to change the requirement for all dialysis technicians to receive certification within 18 months rather than the proposed 24 months, which aligns with CMS requirements.

Comment: DaVita objected to §507.54(b), which requires a facility administrator to have at least one year of experience in a healthcare facility because it makes hiring more difficult and facilities already have qualified medical directors and supervising nurses.

Response: HHSC agrees with the comment and removes subsection §507.54(b), which was burdensome for facilities. Because of this change, HHSC also renumbered subsections (c) - (g) as (b) - (f).

Comment: An individual requested HHSC add a rule to §507.54(c) to require at least five hours of annual ESRD-specific continuing education for physicians, APRNs, and PAs.

Response: HHSC declines to revise §507.54(c), renumbered as subsection (b), because the licensing boards for these professions already specify minimum requirements for continuing education to ensure patient health and safety, and a facility may provide and require additional staff trainings as needed.

Comment: U.S. Renal Care, Inc. and Fresenius Kidney Care thanked HHSC for the rule proposed in §507.54(d)(2)(A), which allows a newly licensed registered nurse's last six months of clinical experience to run concurrently with six months of dialysis experience.

Response: HHSC acknowledges these comments related to proposed §507.54(d)(2)(A), renumbered as §507.54(c)(2)(A).

Comment: DaVita appreciated HHSC aligning proposed §507.54(d)(4) with §507.52(e)(1) but requested HHSC revise §507.54(d)(4) to use the term "self-care training" for clarity and consistency and require a registered nurse to have at least three months experience with the self-care training modality rather than six months.

Response: HHSC declines to revise proposed §507.54(d)(4), renumbered as subsection (c)(4), related to the experience of a registered nurse because the rule as proposed requires the registered nurse to have "three months experience in the specific modality," not six months. HHSC agrees to use the term "self-care training" and revises renumbered subsection (d)(4) and (5) to use "self-care training" to replace "training" as needed. HHSC revises renumbered subsection (c)(4) to clarify that the patient self-care training a facility provides by a qualified registered nurse is "either in-center or at home." In addition, HHSC revises renumbered subsection (c)(4) to remove the requirement for supervision by the qualified registered nurse when other facility staff assist in the training and add this requirement in renumbered subsection (c)(5) for the qualified registered nurse to supervise the self-care training when other facility staff assist in the self-care training in-center. These revisions to use consistent terminology are necessary to promote the clarity of these rules.

Comment: DaVita recommended a change to proposed §507.54(d)(4), to allow a qualified charge nurse with preceptor experience (one year experience in hemodialysis obtained within the last 24 months) to provide self-care training in-center.

Response: HHSC declines to revise §507.54(d)(4), renumbered as subsection (c)(4), because having three months experience in the specific modality ensures patient health and safety. The rule allows for other qualified facility staff to assist under the supervision of a qualified registered nurse.

Comment: U.S. Renal Care, Inc. asked whether the nursing peer review committee required under §507.54(d)(6) can be on a regional or national level. Fresenius Kidney Care asked HHSC to clarify Texas Occupations Code Chapter 303 with regard to other health care facilities and asked if dialysis facilities are only required to establish a nursing peer review committee if they have more than 8 nurses.

Response: Section 507.54(d)(6), renumbered subsection (c)(6), requires a facility to establish a nursing peer review committee to conduct nursing peer review, as required by Texas Occupations Code Chapter 303. HHSC does not provide interpretation or clarification on this statute. HHSC declines to revise the rule in response to these comments.

Comment: An individual requested HHSC revise proposed §507.54(f)(2) to remove the reference to a transplantation program before September 1, 1976.

Response: HHSC declines to revise §507.54(f)(2), renumbered subsection (e)(2), in response to this comment because it aligns with the CMS CfCs.

Comment: U.S. Renal Care, Inc. and Fresenius Kidney Care asked why HHSC added §507.54(g)(2) requiring written physician standing orders authorizing delegation of biomedical technical staff responsibilities.

Response: HHSC revises §507.54(g)(2), renumbered as subsection (f)(2), to remove this requirement in paragraph (2). Upon further review, HHSC determined that this requirement is not necessary to comply with physician delegation requirements as set out elsewhere in statute, which the original requirement sought to address. Because HHSC removes paragraph (2) from renumbered subsection (f), HHSC renumbers paragraphs (3) - (7) as paragraphs (2) - (6) and updates references to the renumbered paragraphs where needed.

Comment: Fresenius Kidney Care requested HHSC clarify whether the word "or" in §507.54(g)(3)(A)(ii)(III) means only one item from the list is needed as minimum education or training for technical staff. DaVita requested HHSC revise §507.54(g)(3)(A)(ii) to allow technical staff to meet "one or more" of the listed requirements and notes it would be difficult to hire and retain staff that meet all the requirements.

Response: The use of "or" in §507.54(g)(3)(A)(ii), renumbered as subsection (f)(2)(A)(ii), means any single item in renumbered subsection (2)(A)(ii)(I) - (IV) can satisfy this training or experience requirement for technical staff. Also, renumbered subsection (f)(2)(A)(ii) does not limit the number of the listed requirements a technician can obtain. Therefore, HHSC revises renumbered subsection (f)(2)(A)(ii) to add "in one or more of the following" as requested to make it clear that staff do not need to meet all of the training or experience requirements listed in the rule. HHSC also revises renumbered subsection (f)(2)(A)(ii) to remove "including at least," because it is not necessary to use this phrase in the rule.

Comment: DaVita requested HHSC clarify §507.55(a)(8)(C) and state what evidence or documentation will be required to show the facility explained consent, rights, and responsibilities to the patient.

Response: HHSC revises §507.55(a)(8)(C) to add "when a patient requires an accommodation," to clarify this is when a clinical record must include details on how staff explained consent forms for treatment to the patient.

Comment: An individual noted that the list of reportable incidents in §507.56(a) does not include death of a patient and hospital transfers and suggested that if hospital transfers were reportable before an incident in Lufkin in 2012 related to multiple patient deaths, patient lives may have been saved.

Response: HHSC notes the ESRD rules at the time of the Lufkin incident required facilities to report hospital transfers. HHSC revises §507.56(a) to add the following reportable incidents back into the rule: new paragraph (1) death of a dialysis patient that occurs in the facility; new paragraph (2) death of a dialysis patient that occurs within 24 hours after the last dialysis treatment; and new paragraph (3) emergent hospital transfers from the dialysis facility. Because of adding new paragraphs (1) - (3), HHSC renumbered the paragraphs proposed as paragraphs (1) - (4) as paragraphs (4) - (7). To correct formatting errors, HHSC replaces a period at the end of renumbered paragraph (4) to replace it with a semicolon and also removes "and" between renumbered paragraphs (6) and (7) to replace it with "or." The reason to use "or" is that it means any one of these incidents in §507.56(a) can be met for the rule to apply and for the required action to be taken.

Comment: U.S. Renal Care, Inc. and Fresenius Kidney Care requested HHSC update the HHSC Complaint and Incident Intake online portal to remove the fields for perpetrator and social security number.

Response: HHSC acknowledges the comment and notes such an update does not require any changes to the proposed rules.

Comment: DaVita requested HHSC engage with stakeholders to review the incident report form before requiring facilities to use it.

Response: HHSC acknowledges the comment.

Comment: DaVita requested HHSC clarify whether "self-care" in §507.57(a) applies to all modalities.

Response: HHSC revises §507.57(a) to clarify the rule applies to in-center self-care modality.

Comment: Fresenius Kidney Care requested HHSC revise §507.59(c) to allow telemedicine for the required monthly physician visit during a public health disaster.

Response: HHSC declines to revise §507.59(c) as requested. Upon review of the "notwithstanding" clause in §507.59(c), and because of the revisions HHSC is making in §507.52(b)(3), described previously in this section of the preamble, HHSC changes the reference in the "notwithstanding" clause from "§507.52" to "§507.52(b)(3)." This change helps facilities locate the exceptions to §507.52(b)(3) that may be applied during a public health disaster, for example, the requirement for a physician on the facility's medical staff to see the patient at least twice a month.

Comment: Fresenius Kidney Care requested for HHSC to clarify whether §507.59(f) includes annual home visits.

Response: Proposed §507.59(f) relates to conducting a home dialysis patient visit required by §507.53 using telemedicine medical services during a public health disaster. HHSC is making additional revisions to §507.59, including removing proposed subsection (f).

Comment: Texas Nurses Association commented that they support §507.71 through §507.75 and that these rules are sufficient to ensure dialysis technicians have adequate knowledge to ensure patient safety when initiating or discontinuing dialysis via central venous catheter (CVC) or manipulating the CVC.

Response: HHSC acknowledges the comment.

Comment: An individual expressed support for §507.72 through §507.75 which allow dialysis technicians to access CVCs because it allows nurses to have more capacity to focus on their nursing duties, perform better patient care, and results in no difference in infection rates.

Response: HHSC acknowledges the comment.

Comment: An individual thanked HHSC for allowing certified clinical hemodialysis technicians to assist with catheter care and improving nurse to patient staffing ratios.

Response: HHSC acknowledges the comment.

Comment: The Texas Medical Association recommended that HHSC maintain the requirements in §507.71(d) and §507.71(e) regarding delegation and supervision of dialysis technicians when initiating or discontinuing dialysis via CVC or manipulating a CVC, as well as required certification, training, and competency to promote patient safety.

Response: HHSC acknowledges the comment.

Comment: Fresenius Kidney Care and U.S. Renal Care, Inc. request HHSC revise §507.71(e)(1) to allow dialysis technicians to initiate or discontinue dialysis via CVC or manipulate a CVC prior to being nationally certified if they are under direct supervision.

Response: HHSC declines to revise §507.71(e)(1) as requested because it is crucial for patient health and safety that a dialysis technician is certified before being allowed to initiate or discontinue dialysis via a CVC or manipulating a CVC.

Comment: DaVita requested that HHSC make the references to "lidocaine" and "heparin" in §507.72(c)(2) and §507.73(e) consistent with the references in §507.47(j).

Response: HHSC agrees that the references to these medications in §507.72(c)(2) and §507.73(e), for the training and competency evaluation for a dialysis technician or trainee to administer "lidocaine" and "heparin," need to be consistent with the references used in §507.47(j). In addition, the reference to "normal saline" in §507.72(c)(2) and §507.73(e) needs to be consistent with §507.47(j). Therefore, HHSC revises §507.72(c)(2) and §507.73(e) to use "intravenous" normal saline, "intravenous" heparin, "subcutaneous" lidocaine, and "topical" lidocaine.

Comment: An individual asked if required training content on potential complications included prevention of air embolism and requested HHSC revise §507.72(c)(3) to require training content to include prevention of air embolism because air embolisms can result in patient death.

Response: HHSC declines to revise §507.72(c)(3) because the rule already includes "materials used and prevention of complications" and the training content must include prevention of air embolism. Facilities are responsible for ensuring staff are adequately trained within the parameters provided in §507.72(c)(3).

Comment: DaVita suggested HHSC revise §507.73(e) to make terminology for "lidocaine" and "heparin" consistent with §507.47(j) and §507.72(c)(2).

Response: HHSC agrees that the references to "heparin" and "lidocaine" in §507.72(c)(2) related to the training for dialysis technicians should be consistent with the requirements in §507.47(j) for dialysis technicians to administer these medications as part of a routine hemodialysis treatment. Therefore, HHSC revises §507.72(c)(2) to refer to " intravenous heparin, "subcutaneous lidocaine," and "topical lidocaine" instead of "heparin" and "lidocaine." HHSC declines to use the term "other" because this category is broad and may include drugs that HHSC does not approve for this use. HHSC may amend the rules in the future to add any new anesthetics that become standard for this use.

Comment: DaVita expressed appreciation to HHSC for modifying the requirements in §507.75 to allow for dialysis technicians to perform CVC care to patients under the supervision of a registered nurse.

Response: HHSC acknowledges the comment.

Comment: DaVita disagreed with the inclusion of "listen to" in the list of prohibited activities in §507.81(a)(1) because in many instances it is necessary and appropriate to have a facility representative present during an HHSC interview with staff or patients.

Response: HHSC declines to revise §507.81(a)(1) based on this comment because the rule allows a facility to inform HHSC and record or listen to an HHSC internal discussion if it obtains approval.

Comment: DaVita disagreed with §507.81(d), which states that section does not prohibit staff, patients, or others being interviewed from recording an interview with HHSC. DaVita stated

that recording the interview should at least be subject to permission from the facility representative.

Response: HHSC declines to revise §507.81(d) based on this comment because under the state law regarding one-party consent, HHSC cannot prevent a party to the conversation from recording an interview.

Comment: An individual requested that resources should be allocated by HHSC to randomly check facilities for compliance. The individual requested that HHSC edit §507.82 to require ESRDs to comply with these random checks.

Response: HHSC declines to revise §507.82(b) because the rule already requires compliance with any inspection as stated in §507.82(e) and HHSC has authority to conduct inspections at its discretion.

Comment: DaVita disagreed with the addition of video surveillance in §507.82(e) to the items HHSC may examine upon a facility inspection as such broad access by HHSC may lead to privacy concerns and impact the facility's ability to comply with federal patient privacy laws.

Response: HHSC declines to revise the rule because it is necessary to verify a facility's compliance with applicable laws and rules and because Texas Health and Safety Code §251.051(a) authorizes HHSC to conduct an inspection to verify a facility's compliance.

Comment: DaVita opposed the elimination of the appeal process for challenging deficiencies identified during inspection in §507.82(e), previously §117.18(c)(4)(C)(vi)(I), which is proposed for repeal. They also opposed the removal of the language that a "signature does not indicate the administrators or designees agreement with deficiencies stated on the form."

Response: HHSC declines to revise §507.82(e), previously §117.18(c)(4)(C)(vi)(I), based on this comment because the rule in §507.82(j), requires the HHSC representative to hold an exit conference with the facility representative at an inspection's or investigation's conclusion and inform the facility representative of any preliminary inspection or investigation findings, which is consistent with current practice.

Comment: DaVita disagreed with the requirement in §507.82(f) that members of the governing body or personnel be required to submit a written statement to HHSC and recommend it be limited to topics that are not already addressed through the governing body minutes and related documentation.

Response: HHSC declines to revise §507.82(f) based on this comment because it is important for HHSC staff to have the opportunity to talk to and request statements from relevant individuals, including, at times, members of a facility's governing body. HHSC notes this subsection does not require a written statement and only allows HHSC the opportunity to request one.

Comment: DaVita requested clarification in §507.83 on which accreditation organizations are allowed to do complaint investigations. DaVita asked HHSC to add which accreditation organizations may conduct complaint investigations.

Response: HHSC declines to revise §507.83 as requested because the rule accurately states HHSC investigates complaints directed to HHSC against a facility. Any complaints investigated by accreditation organizations are outside the scope of the rules in 26 TAC Chapter 507.

Comment: One commenter thanked HHSC for adding "within the past two years" to the requirement in §507.87(c)(5)(A).

Response: HHSC acknowledges this comment.

Comment: DaVita requests HHSC clarify §507.90 to outline specifically which employees the rule applies to, which types of actions are grounds for revocation, and an option for avoiding a penalty if the facility takes appropriate action against the employee.

Response: HHSC declines to revise §507.90 because the rule, as written, applies to the facility or any of its employees and outlines the actions that may be grounds for revocation. HHSC declines to add an option for avoiding a penalty because the facility may show compliance as part of due process in any action under the Administrative Procedure Act.

HHSC revises §507.2(1) to spell out what "ESRD" means when used in the definition of "action level."

HHSC revises §507.2(9) to replace federal holiday with national holiday and add "listed in Texas Government Code §662.003" to define business day.

HHSC revises the definition in §507.2(22) of "dialysate supply system" to remove "for the characteristics listed above" and replace it with "devices" as used in this definition" in front of the list of devices this term includes. The revisions change "system" to "dialysate supply system" to clarify the name of this device and changes the punctuation between the list of devices to improve readability and understanding.

HHSC revises §507.11(a) to differentiate between the "home dialysis services" provided under 26 TAC Chapter 507 by an ESRD facility and the home dialysis services provided by a HCSSA under 26 TAC Chapter 558.

HHSC revises §507.12(a)(4) to remove subparagraph (B) because it is not necessary for the application process for the applicant to attend an additional prelicensure conference when there is a change in the supervising nurse before the facility opens. HHSC further revises §507.12(a)(4) to remove "(A)" to update the formatting of the rule because of removing subparagraph (B). HHSC revises §507.12(e) to clarify that the application HHSC receives is the "license" application.

HHSC revises §507.13(h) to change that HHSC may "consider the renewal application as withdrawn" to may "deny the license" if the facility does not correct a deficiency in the renewal application within the timeframe specified in the rule. Because of this change, HHSC also revises §507.13(h) to change that any license fee paid is nonrefundable because the renewal application is withdrawn if HHSC denies the license. Changes to the rule clarify the current process HHSC follows.

HHSC changed the processing time for change of ownership applications in §507.14(a)(3) from five to ten calendar days to align with other facility change of ownership rules.

HHSC removed §507.14(c) because it is redundant with §507.14(a)(6), renumbered as (a)(5). Due to this change, HHSC renumbered subsections (d) and (e) as subsections (c) and (d).

HHSC revises §507.14(e), renumbered as §507.14(d), to align with §507.12(h) by replacing "during the initial licensing period" with "Within the first two years of licensure."

HHSC revises §507.15(c) to change "revised license" to "new license" because HHSC issues a new license after approval of a relocation.

HHSC revises §507.16(a)(4) to refer to "an ESRD license" to replace "a different license."

HHSC revises §507.17 to add a new paragraph (7) to describe the current facility requirements and process followed, if the facility does not resume patient services within 10 calendar days after the date the facility's license is placed on inactive status.

HHSC revises §507.21 to remove subsection (d) because it is redundant with §507.21(c) on how to submit a request for an exception. The remaining sections (e) - (h) were renumbered (d) - (g).

HSC revises §507.30 by removing "all applicable technical standards, including those listed below" and replacing it with "the following technical standards" that ESRD facilities must comply with.

HHSC revises §507.33(8)(D)(ii) to change "in the event of free chlorine or chloramine breaking through the first bed" to "in the event of total chlorine (the sum of free chlorine and chloramine) breaking through the first bed." This change to use "total chlorine" is consistent with the revisions HHSC is making in §507.33(8)(D)(iii), (iv), (vii), and (ix).

HHSC revises §507.33(8)(D)(v) to clarify that an automated chlorine monitoring system will provide "the equivalent frequencies of testing as required in clause (iv) of this subparagraph" instead of "the equivalent frequencies of monitoring as defined above."

HHSC revises §507.33(19)(D) to replace "units/millimeter" with "units/milliliter" to correct the meaning of the acronym "ml" in (CFU/ml).

HHSC revises §507.34(l)(4) and (l)(5)(C) to remove "are above the action level" and replace this with "comply with §507.30 of this subchapter," the Technical Standards section in 26 TAC Chapter 507.

HHSC revises §507.36(a)(2)(C) to remove "warm" from the water requirement for hand washing as it is no longer required.

HHSC adds §507.36(g) due to health and safety to replace a transducer protecter when wet and check for contamination if fluid or blood is visible.

HHSC revises §507.38(a)(4)(A) to change "must maintain" to "shall maintain" to use "shall" as construed by Texas Government Code §311.016.

HHSC revises §507.42 by adding subsection (d) prohibiting discrimination based on a patient's disability and requiring compliance with Texas Health and Safety Code Chapter 161, Subchapter S (relating to Allocation of Kidneys and Other Organs Available for Transplant) as found in 25 TAC §117.49, proposed for repeal.

HHSC revises §507.51(e)(1) by adding "The caseload is cumulative across all modalities and facilities where the dietitian is employed." This change clarifies the caseload requirement.

HHSC revises §507.51(e)(2) to remove "The maximum patient load is 125 patient per full time equivalent qualified social worker with assigned personnel assistance, including all modalities" because it was duplicative of the rule in §507.51(e)(1).

HHSC revises §507.53(b)(1) to remove "warm" from the water requirement for hand washing as it is no longer required.

HHSC revises §507.53(j)(3), renumbered as §507.53(l)(3), to add a reference to the revisions HHSC is making in §507.52(b)(4), related to medical services for home dialysis patients. HHSC also revises renumbered §507.53(l)(3) to remove subparagraphs (A) and (B). These changes avoid repeating the same rules in both sections.

HHSC revises §507.53(p), renumbered as §507.53(r), to remove "as they may not require disinfection, culture, and measurement for colony forming units and endotoxins." This change removes redundant manufacturing recommendation topics.

HHSC revises §507.54(d)(4), renumbered as §507.54(c)(4), to replace "family" with "caregiver" to use consistent terminology. HHSC also revises renumbered §507.54(c)(4) to remove "When other personnel assist in the training, the qualified registered nurse shall supervise the training," to move this requirement to §507.54(c)(5) for organizational purposes.

HHSC revises §507.54(d)(5), renumbered as §507.54(c)(5), to replace "personnel" with "facility staff" to use consistent terminology.

HHSC revises §507.59(d) for consistency with §507.59(c) by adding a "notwithstanding" clause that references the revisions HHSC is making in §507.52(b)(4) for home dialysis patients to be seen by a physician, an APRN, or a PA in the absence of a public health disaster. HHSC revises §507.59(d) to add "The visit by a physician, an APRN, or a PA may be conducted using telemedicine medical services." HHSC revises §507.59(d) to remove paragraphs (1) - (3) proposed in §507.59(d) because these are the same requirements in §507.52(b)(4) that apply in the absence of a public health disaster. HHSC revises §507.59(e) to change the reference in the "notwithstanding" clause from "§507.53" to "§507.53(l)(1)" for a registered nurse to conduct an initial monitoring visit of a patient's home adaptation before the home dialysis patient begins training. This change helps facilities locate the exceptions to §507.53(l)(1) that may be applied during a public health disaster. HHSC also revises §507.59 to remove subsection (f) because this exception during a public health disaster is covered by the revisions in §507.59(d).

HHSC revises §507.72(c)(1) - (c)(3) to refer to "the facility's training curricula" for consistency and clarification.

HHSC revises §507.73(e)(2) and (4) to remove "or other prescribed anticoagulants" and "other anesthetics," respectively, because the list of these medications in subsection (e) that dialysis technician trainees will be cannulating dialysis access and administering are limited to intravenous heparin, subcutaneous lidocaine, and topical lidocaine.

HHSC revises §507.73(f)(6) to remove "or other prescribed anticoagulants" because the anticoagulant dialysis technician trainees will be initiating or discontinuing is limited to intravenous heparin.

HHSC revises §507.73(g) and §507.75(4) for consistency with the revisions HHSC is making in §507.72(c)(2) and §507.73(e) to use intravenous normal saline, intravenous heparin, subcutaneous lidocaine, and topical lidocaine. HHSC also revises §507.73(g) and §507.75(4) to remove "or other anesthetics" because this broad category of anesthetics cannot be used in these rules.

HHSC revises §507.90(d)(2)(G)(ii) to remove the reference to Texas Penal Code Title 5 because Title 5 is already listed in §507.90(d)(2)(F). HHSC also revises §507.90(d)(2)(G) to renumber clauses (iii) - (vii) as clauses (ii) - (vi).

SUBCHAPTER A. GENERAL PROVISIONS

26 TAC §507.1, §507.2

STATUTORY AUTHORITY

The new rules are adopted under 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 §251.003, which requires HHSC to adopt rules for the issuance, renewal, denial, suspension, and revocation of a license to operate an end stage renal disease facility; and Texas Health and Safety Code §251.014, which requires these rules to include minimum standards to protect the health and safety of a patient of an end stage renal disease facility.

§507.2. Definitions.

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

(1) Action level--The point at which end stage renal disease (ESRD) facility staff shall take steps to interrupt the trend towards unacceptable levels.

(2) Administrator--An individual responsible for implementation and proper application of policies, programs, and services established for the ESRD facility.

(3) Advanced practice registered nurse (APRN)--A registered nurse authorized by the Texas Board of Nursing to practice as an advanced practice registered nurse in Texas. The term includes a nurse practitioner and clinical nurse specialist. The term is synonymous with "advanced nurse practitioner" and "advanced practice nurse."

(4) Adverse event--An event that results in unintended harm to the patient because of an act of commission or omission by the ESRD facility or ESRD facility staff rather than by the patient's underlying disease or condition or those events affecting patient's family members, visitors, or staff.

(5) Applicant--The person who seeks an ESRD facility license from the Texas Health and Human Services Commission (HHSC) and is legally responsible for the ESRD facility's operation, whether by lease or ownership.

(6) Architectural inspection--An inspection HHSC conducts to ensure compliance with all applicable federal and state regulations relating to the ESRD facility physical plant and to verify project construction aligns with submitted contract construction documents.

(7) Audio-only telecommunication--An interactive, two-way audio communication that uses only sound and that meets the privacy requirements of the federal Health Insurance Portability and Accountability Act. Audio-only includes the use of telephonic communication.

(8) Biofilm--A coating on surfaces consisting of microcolonies of bacteria embedded in a protective extracellular matrix. The matrix, a slimy material secreted by the cells, protects the bacteria from antibiotics and disinfectants.

(9) Business day--Any weekday from Monday through Friday that is not a state or national holiday listed in Texas Government Code §662.003.

(10) Calendar day--All days, including weekends and holidays.

(11) Caregiver--A person trained, qualified, and competent in using a device for the selected modality prescribed to the patient.

(12) Charge nurse--A practicing licensed registered nurse in accordance with applicable provisions of law who is responsible for making daily staff assignments based on patient needs, providing immediate supervision and support of patient care, monitoring patients for changes in condition, and communicating with the physician, dietitian, and social worker regarding patient needs.

(13) Closed system--A dialysis system for hemodialysis or peritoneal dialysis, that uses sterile manufactured bagged dialysate or dialysate solution.

(14) CMS--Centers for Medicare and Medicaid Services.

(15) Competency--Demonstrated ability to carry out specified tasks or activities with reasonable skill and safety that adheres to the prevailing standard of practice.

(16) Conditions for Coverage (CfCs)--The minimum health and safety rules that all Medicare and Medicaid participating ESRD facilities must meet. The basic health and safety requirements that an ESRD facility must meet to receive payment from the Medicare program.

(17) Conventional dialysis system--The ESRD facility's water treatment components and single pass dialysis machines.

(18) Core staff members--The ESRD facility's medical director, supervising nurse, dietitian, social worker, administrator, and approved biomedical representative.

(19) Corrective action plan--An alternative to enforcement action, as outlined in Texas Health and Safety Code §251.061 (relating to Corrective Action Plan).

(20) Delegation--Transfer of the authority to perform a selected task or activity in a selected situation to a qualified and properly trained individual.

(21) Dialysate--An aqueous fluid made from water and concentrate, containing electrolytes and usually dextrose that exchanges solutes with blood during hemodialysis that is delivered to the dialyzer by the dialysate supply system. This term does not include peritoneal dialysis fluid.

(22) Dialysate supply system--Devices that prepare dialysate on line from water and concentrates, or store and distribute premixed dialysate; circulate the dialysate through the dialyzer; monitor the dialysate for temperature, conductivity, pressure, flow, and blood leaks; and prevent dialysis during disinfection or cleaning modes. The term "devices" as used in this definition includes reservoirs; conduits; proportioning devices for the dialysate; monitors and associated alarms; and controls assembled as a dialysate supply system. The dialysate supply system is often an integral part of single patient dialysis machines.

(23) Dialysis--A process to remove dissolved substances from a patient's body by diffusion, osmosis, and convection (ultrafiltration) from one fluid compartment to another across a semipermeable membrane.

(24) Dialysis technician--An individual who is not a registered nurse or physician and provides dialysis care under the supervision of a registered nurse or physician. This individual may also be known as a Patient Care Technician (PCT) or Certified Clinical Hemodialysis Technician (CCHT).

(25) Dietitian--An individual who:

(A) is currently licensed by the Texas Department of Licensing and Regulation under the laws of this state as a licensed dietitian;

(B) is a registered dietitian; and

(C) has one year of experience in clinical dietetics after becoming a registered dietitian.

(26) Direct care staff--Staff who provide hands-on dialysis care to specifically assigned patients during their dialysis treatment (e.g., registered nurse, licensed vocational nurse, patient care technician). These staff members fulfill the patient to staff ratio requirement.

(27) Education--Presenting and teaching informative materials, including to licensed ESRD facility's patients, about treatment modalities, options, and overall health literacy. An ESRD facility may conduct education individually or in a group setting.

(28) Empty bed contact time (EBCT)--A measure of how much contact occurs between particles, such as activated carbon, and water as the water flows through a bed of the particles. EBCT = (7.48 x V)/Q where V is the volume of particles in the bed (feet), Q is the flow rate of the water through the bed (gallon/minute), and 7.48 is the conversion factor for gallons to feet.

(29) End stage renal disease--The stage of renal impairment that appears irreversible and permanent and that requires a regular course of dialysis or kidney transplantation to maintain life (also known as chronic kidney disease stage V).

(30) End stage renal disease (ESRD) facility--A facility that provides dialysis treatment or dialysis training and support to individuals with end stage renal disease.

(31) ESRD Network--An organization consisting of all Medicare-approved ESRD facilities in the designated geographic area specified by CMS. The network is operated by a corporation that functions under a federal government contract. The network organization is the administrative governing body to the network and acts as a liaison to the Federal government. The network helps ensure quality of care and coordinated delivery of end stage renal disease services.

(32) Endotoxin--Lipopolysaccharides consisting of a polysaccharide chain covalently bound to lipid A and the major component of the outer cell wall of gram-negative bacteria.

(33) Endotoxin-retentive filter--Membrane filter specifically proven to remove bacteria and endotoxins.

(34) Executive commissioner--The executive commissioner of the Texas Health and Human Services Commission.

(35) Facility--A contiguous, identifiable location HHSC approved for use as a licensed ESRD facility that is either a freestanding building or a single, distinct, contiguous space in a multi-tenant building.

(36) Full-time--The time period established by an ESRD facility as a full working week, as defined and specified in the facility's policies and procedures.

(37) Full-time equivalent--Work time equivalent to 2,080 hours per 12 consecutive months.

(38) Governing body--The governing authority of a licensed ESRD facility responsible for organization, management, control, operation, and appointment of medical staff. The governing body includes the medical director and representatives of the ESRD facility's owner. The governing body has the overall legal responsibility for the ESRD facility's governance and operation.

(39) Health care facility--Any type of facility or home and community support services agency licensed to provide health care in any state or certified for Medicare (Title XVIII) or Medicaid (Title XIX) participation in any state.

(40) Home dialysis service--Dialysis performed at home by an end stage renal disease patient or caregiver who has completed an appropriate course of training, as described in §507.53 of this chapter (relating to Home Dialysis Service).

(41) Hospital--A entity licensed under Texas Health and Safety Code Chapter 241 (relating to Hospitals), or when exempt from licensure, certified by the United States Department of Health and Human Services as in compliance with conditions of participation for hospitals in Title XVIII, Social Security Act (42 United States Code §1395 et seq.).

(42) In-center dialysis--Dialysis provided within the ESRD facility's licensed patient care area.

(43) Inspection--A survey conducted by a representative of HHSC to determine whether an applicant or licensee is in compliance with this chapter and Texas Health and Safety Code Chapter 251 (relating to End Stage Renal Disease Facilities).

(44) Integrated hemodialysis system--A preconfigured hemodialysis system, as designated by the United States Food and Drug Administration (FDA), in which dialysis-quality water and concentrate is prepared and used at the patient's station in the approved and licensed dialysis unit. In licensed facilities that use this modality of delivery of dialysis services, the conventional water distribution system may not be necessary, as each unit contains its own water purification system, produces dialysate, and makes individualized adjustments as needed.

(45) Interdisciplinary team (IDT)--A group composed of the primary dialysis physician, registered nurse, dietitian, and social worker who are responsible for planning care for the patient.

(46) Intermediate-level disinfection--A surface treatment using chemical germicides or disinfectants that are capable of inactivating various classes of microorganisms including viruses (primarily medium to large viruses and lipid-containing viruses), fungi, and actively growing bacteria (including tubercle bacteria) when such chemical germicides or disinfectants are used in accordance with the manufacturer's directions for use or per established guidelines. Intermediate-level disinfection is generally not effective in inactivating or eliminating bacterial endospores. Examples of intermediate-level disinfectants include bleach, 70 - 90 percent ethanol or isopropanol, and certain phenolic or iodophor preparations.

(47) Licensed nurse--A registered nurse or licensed vocational nurse.

(48) Licensed vocational nurse (LVN)--An individual who is currently licensed under Texas Occupations Code Chapter 301 (relating to Nurses) by the Texas Board of Nursing as a licensed vocational nurse, or who holds a valid vocational nursing license with multi-state licensure privilege from another compact state. An LVN may act in the capacity of a dialysis technician after meeting the competency requirements specified in §507.48(o) of this chapter (relating to Nursing Services).

(49) Medical director--A physician who:

(A) is board certified in internal medicine by the American Board of Internal Medicine or in pediatrics by the American Board of Pediatrics; has completed a board-approved training program in nephrology; and has at least 12 months of experience providing care to patients receiving dialysis; or

(B) is board certified in nephrology or pediatric nephrology and has at least 12 months of experience providing care to patients receiving dialysis.

(50) Medical review board--A review board appointed by the ESRD Network that has a contract with CMS.

(51) Modality--A particular treatment option and settings for a patient with end stage renal disease, for example, in-center hemodialysis, home hemodialysis, home peritoneal dialysis, self-care dialysis, nocturnal dialysis, or transplantation.

(52) Owner--The legal or governmental entity that holds or will hold a license issued under this chapter and Texas Health and Safety Code Chapter 251.

(53) Patient--An individual receiving dialysis treatment or training from an ESRD facility.

(54) Patient plan of care--Documentation of the interactive process by which the interdisciplinary team and the patient and family members or guardian develop and implement a plan, based on the assessments performed by the interdisciplinary team members, to assist the end stage renal disease patient in managing the disease and its complications.

(55) Pediatric patient--An individual under 18 years of age.

(56) Person--An individual, corporation, or other legal entity.

(57) Physician--An individual who is licensed by the Texas Medical Board to practice medicine under Texas Occupations Code, Subtitle B, Title 3.

(58) Physician assistant--An individual licensed as a physician assistant by the Texas Physician Assistant Board.

(59) Plan of Correction (POC)--A written plan developed by the ESRD facility that lists specific actions the ESRD facility will take to correct specific deficiencies of state licensing regulations.

(60) Prelicensure conference--A meeting between HHSC staff and the administrator or licensed professional listed on the license application to review licensure standards and provide consultation before HHSC issues a license. The prelicensure conference is not an architectural review feasibility conference.

(61) Product water--Water produced by a water treatment system or by an individual component of a system.

(62) Progress note--A physical or electronic record of an event dated and signed by facility staff, which summarizes facts about the patient's care and the patient's response during a given time period.

(63) Pyrogen--A fever producing substance. Pyrogens are most often lipopolysaccharides of gram-negative bacterial origin.

(64) Quality assessment and performance improvement (QAPI)--An ongoing program that measures, analyzes, and tracks quality indicators related to improving health outcomes. The program implements improvement plans and evaluates the implementation until resolution is achieved.

(65) Registered nurse (RN)--An individual currently licensed by the Texas Board of Nursing as a registered nurse, or who holds a valid registered nursing license with multi-state licensure privilege from another compact state.

(66) Second-chance patient--A patient voluntarily or involuntarily discharged from a facility, or pending involuntary discharge due to behavioral or compliance issues, chosen by the ESRD Network to participate in the second chance program set forth by the ESRD Network who agrees to receive treatment at another licensed ESRD facility. The patient will have specific behavioral expectations compliance expectations, or both, that shall be achieved and maintained to successfully participate in the second chance program and remain a patient at the accepting facility.

(67) Self-care patient--An in-center patient who performs all or part of their dialysis treatment, including, at a minimum, set up and tear down of machinery, holding their own site at termination of treatment, and taking and recording their own vital signs.

(68) Self-care service--A service where patients participate in their self-care with supervision by a qualified registered nurse as approved and delegated by the medical director.

(69) Single patient device--A dialysis machine, as designated by the FDA, assigned to a patient for individual use at home.

(70) Social worker--An individual who:

(A) is currently licensed by the Texas Behavioral Health Executive Council as a social worker under Texas Occupations Code Chapter 505 (relating to Social Workers), and holds a master's degree from a graduate school of social work accredited by the Council on Social Work Education; or

(B) has at least two years of work experience as a social worker, one year of which was in a dialysis facility or transplantation program before September 1, 1976, and has established a consultative relationship with a social worker who has a master's degree from a graduate school of social work accredited by the Council on Social Work Education.

(71) Sorbent regeneration system--A system that regenerates dialysate by passing the dialysate through substances that restore the dialysate to a condition comparable to fresh dialysate.

(72) Station--An area in the ESRD facility in which a patient receives in-center hemodialysis treatment, or dialysis instruction, such as home hemodialysis training or home peritoneal dialysis training.

(73) Supervising nurse (Director of Nursing)--A registered nurse who has:

(A) clinical experience including:

(i) at least 12 months of clinical nursing experience as an RN, and

(ii) an additional 6 months of experience in dialysis obtained within the last 24 months, or

(B) at least 18 months experience as an RN and holds a current certification from a nationally recognized board in nephrology nursing or hemodialysis.

(74) Supervision--Authoritative procedural guidance by a qualified individual for accomplishing a function or activity with initial direction and periodic inspection of the actual act of accomplishing the function or activity.

(A) Immediate supervision--The supervisor is observing the task or activity as it is performed.

(B) Direct supervision--The supervisor is at the licensed ESRD facility site but not necessarily immediately physically present where the task or activity is being performed.

(C) Indirect supervision--The supervisor is not at the licensed ESRD facility site but is accessible by two-way communication, able to respond to an inquiry when made, and readily available for consultation.

(75) Technical supervisor--The supervisor of the ESRD facility's mechanical, reuse, and water treatment systems.

(76) Telehealth or telehealth service--A health service, other than a telemedicine medical service, delivered by a health professional licensed, certified, or otherwise entitled to practice in this state and acting within the scope of the health professional's license, certification, or entitlement to a patient at a different physical location than the health professional using telecommunications or information technology, in accordance with Texas Occupations Code Chapter 111 (relating to Telemedicine, Teledentistry, and Telehealth).

(77) Telemedicine or telemedicine medical service--A health care service delivered by a physician licensed in this state, or a health professional acting under the delegation and supervision of a physician licensed in this state, and acting within the scope of the physician's or health professional's license to a patient at a different physical location than the physician or health professional using telecommunications or information technology, in accordance with Texas Occupations Code Chapter 111.

(78) Training (Patient)--The process of developing, practicing, and maintaining specific skills of an individual patient related to the patient's home dialysis treatment modality, including self-care, home hemodialysis, peritoneal dialysis, and other modalities. Patient training must meet the requirements in §507.53 of this chapter.

(79) Training (Staff)--The process of teaching tasks through on-the-job experience or instruction from an individual who has the capacity through education or experience to perform the delegated task or activity.

(80) Transitional care--Services to transition a patient from a current modality to a self-care modality in-center or at home.

(81) Transitional services--In-center dialysis intended to transition a patient from a current modality to a self-care modality whether in-center or at home.

(82) Ultrafilter--A membrane filter with a pore size in the range of 0.001 to 0.05 micrometer. Performance is usually rated in terms of a nominal molecular weight cut off (MWCO), which is defined as the smallest molecular weight species for which the filter membrane has more than 90 percent rejection.

(83) Water distribution system--Storage tanks and piping used to distribute the product water from the purification cascade to or from its point of use, including individual hemodialysis machines, dialyzer reprocessing equipment, and dialysate concentrate preparation systems.

(84) Water treatment system--A collection of water purification devices and associated piping, pumps, valves, gauges, and other related components that together produce purified water for hemodialysis applications and deliver it to the point of use.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. LICENSING REQUIREMENTS

26 TAC §§507.11 - 507.24

STATUTORY AUTHORITY

The new rules are adopted under 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 §251.003, which requires HHSC to adopt rules for the issuance, renewal, denial, suspension, and revocation of a license to operate an end stage renal disease facility; and Texas Health and Safety Code §251.014, which requires these rules to include minimum standards to protect the health and safety of a patient of an end stage renal disease facility.

§507.11. General Requirements for a License.

(a) All facilities that provide dialysis services, regardless of affiliation or modality, shall be licensed as an end stage renal disease (ESRD) facility. A patient of an ESRD facility receiving home dialysis services, as defined in §507.2 of this chapter (relating to Definitions), shall receive the services under the purview of a licensed ESRD facility.

(b) A facility shall obtain a license before admitting patients.

(c) A facility shall prominently and conspicuously display the license in a public area of the facility that is readily visible to patients, employees, and visitors.

(d) A facility shall not alter the ESRD facility license.

(e) An ESRD facility license is nontransferable. The facility shall comply with the provisions of §507.12 of this subchapter (relating to Application and Issuance of Initial License) in the event of a change in the ownership.

(f) The Texas Health and Human Services Commission (HHSC) issues an ESRD facility license for the facility site and person named in the application.

(g) An ESRD facility may share a building with other licensed health care facilities.

(1) The ESRD facility shall be licensed separately from the other licensed facilities.

(2) No identifiable part of the building may be dually licensed by more than one person.

(h) The following facilities are not required to be licensed under this chapter:

(1) a home and community support services agency licensed under Texas Health and Safety Code Chapter 142 (relating to Home and Community Support Services), with a home dialysis designation;

(2) a hospital licensed under Texas Health and Safety Code Chapter 241 (relating to Hospitals) that provides dialysis only to individuals receiving:

(A) inpatient services from the hospital; or

(B) outpatient services due to a disaster declared by the governor or a federal disaster declared by the president of the United States occurring in this state or another state during the term of the disaster declaration;

(3) a hospital operated by, or on behalf of, the state as part of the managed health care provider network established under Texas

Government Code Chapter 501 (relating to Inmate Welfare) that provides dialysis only to individuals receiving:

(A) inpatient services from the hospital; or

(B) outpatient services while the individual is serving a term of confinement in a facility operated by, or under contract with, the Texas Department of Criminal Justice;

(4) an ESRD facility operated by, or on behalf of, the state as part of the managed health care provider network established under Texas Government Code Chapter 501 that provides dialysis only to individuals receiving those services while serving a term of confinement in a facility operated by, or under contract with, the Texas Department of Criminal Justice; or

(5) the office of a physician unless the office is used primarily as an ESRD facility.

§507.12. Application and Issuance of Initial License.

(a) An applicant shall comply with this subsection before receiving an initial license.

(1) The applicant shall submit an accurate and complete application form to the Texas Health and Human Services Commission (HHSC) in accordance with HHSC instructions, including evidence that:

(A) the facility has at least one qualified physician on staff; and

(B) each dialysis technician on staff completed the training program requirements as required by §507.72 of this chapter (relating to Training Curricula and Instructors).

(2) The applicant shall submit the appropriate license fee, as required in §507.20 of this subchapter (relating to Fees).

(3) The applicant for a new or existing facility that is increasing the number of in-center dialysis treatment stations shall have an isolation room, as specified in the current CMS Conditions for Coverage or shall provide a CMS waiver.

(4) The applicant shall attend a prelicensure conference conducted by HHSC to review facility staff qualifications and licensure rules, and to receive consultation before the on-site licensure inspection. HHSC may waive the prelicensure conference requirement at its discretion.

(5) The applicant shall submit a copy of a fire safety inspection that:

(A) indicates approval by an individual certified by the Texas Commission on Fire Protection; and

(B) is dated no earlier than 12 months before the facility licensure date.

(6) The facility physical plant shall meet the requirements set forth in Subchapter Z of this chapter (relating to Physical Plant and Construction Requirements) before HHSC issues an end stage renal disease (ESRD) facility license for a newly constructed ESRD facility or an ESRD facility converted from a non-ESRD facility building.

(7) The applicant shall submit to HHSC, in accordance with HHSC instructions, a complete chemical analysis of the product water and reports to verify that bacteriological and endotoxin levels of product water and dialysate are compliant with §507.33 of this chapter (relating to Water Treatment) and §507.34 of this chapter (relating to Dialysate). The facility shall keep the reports on file at the facility and make the reports available to HHSC staff during an on-site inspection or when requested by HHSC.

(b) When HHSC determines the applicant has complied with subsection (a) of this section, HHSC issues the license to the applicant.

(1) The license is effective on the issue date.

(2) The license expires on the last day of the month two years after the issue date.

(c) HHSC will not process an application until HHSC receives the fee required in subsection (a)(2) of this section.

(d) An applicant may withdraw their application by notifying HHSC in accordance with HHSC instructions.

(e) If the applicant does not complete all requirements of subsection (a) of this section within six months after the date HHSC receives the license application and appropriate fee, HHSC will consider the application withdrawn. The applicant must reapply for an initial license in accordance with this section.

(f) Any fee paid for a withdrawn application is nonrefundable, as indicated by §507.20(a) of this subchapter.

(g) Denial of a license is governed by §507.90 of this chapter (relating to Enforcement).

(h) Within the first two years of licensure, HHSC inspects the facility to determine the facility's compliance with the provisions of Texas Health and Safety Code Chapter 251 (relating to End Stage Renal Disease Facilities) and this chapter.

(1) HHSC may conduct this inspection at the same time as the inspection to determine compliance with Code of Federal Regulations Title 42, Part 494 (relating to Conditions for Coverage for End-Stage Renal Disease Facilities).

(2) After the facility admits and provides services to at least one patient, the facility shall request an on-site inspection in accordance with HHSC instructions. An HHSC representative will conduct the inspection while patients are in the facility being dialyzed.

(3) At the time of inspection, the facility shall provide services to at least one patient in each modality the facility requested in their application. An HHSC representative may interview patients at the time of the inspection, either in the patient's home or at the facility. An HHSC representative may interview peritoneal and home hemodialysis patients trained or retrained at the facility as part of the inspection.

§507.13. License Renewal.

(a) The Texas Health and Human Services Commission (HHSC) sends written notice of license expiration to a facility at least 90 calendar days before the expiration date of a license. If the facility does not receive the notice, it is the facility's duty to notify HHSC and request a renewal notice.

(b) HHSC renews the license of a facility that meets the minimum requirements for a license.

(c) The facility shall submit to HHSC before the license expiration date:

(1) a complete and accurate renewal application form;

(2) a copy of two fire safety inspections indicating approval by an individual certified by the Texas Commission on Fire Protection, which includes:

(A) one approved within the 12 months before the submission date or the license expiration date, whichever is earlier, and

(B) one approved within the last 13 - 24 months before the submission date or the license expiration date, whichever is earlier; and

(3) the license renewal fee.

(d) HHSC may conduct an inspection before issuing a renewal license in accordance with §507.82 of this chapter (relating to Inspections).

(e) A renewal license is valid for two years from the previous expiration date.

(f) A facility must submit a complete renewal application, including all required documents and the fee, at least 30 days before the license expiration date.

(1) If the facility does not submit the completed renewal application, required documents, and license renewal fee until after the license expiration date, the facility must pay a late fee of half of the renewal fee based on the facility's number of stations, as listed in §507.20(c) of this subchapter (Relating to Fees).

(2) If the facility does not submit the completed renewal application, required documents, license renewal fee, and late fee within 30 days after the expiration date, HHSC notifies the facility to immediately cease operation.

(A) If HHSC notifies a facility to immediately cease operation, the facility must apply for and receive an initial license under §507.12 of this subchapter (relating to Application and Issuance of Initial License) to resume services.

(B) If HHSC requires the facility to apply for an initial license, the facility shall not provide services until HHSC issues the initial license.

(3) HHSC issues a renewal license only after the facility submits the renewal application, required documents, license renewal fee and any applicable late fee.

(g) If the facility does not wish to provide services after the license expiration date, the facility must close in accordance with §507.18 of this subchapter (relating to Closure).

(h) After the license expiration date, if the facility does not correct a deficiency in the renewal application within 15 business days after being notified, HHSC may assess a late fee as described in subsection (f)(1) of this section or deny the license. If HHSC denies the license, any license fee paid is nonrefundable, as indicated by §507.20(a) of this subchapter.

(i) Denial of a license is governed by §507.90 of this chapter (relating to Enforcement).

§507.14. Change of Ownership.

(a) A change of ownership occurs when there is a change in the person legally responsible for the facility's operation, whether by lease or ownership.

(1) If a corporate licensee amends its articles of incorporation to revise its name and the tax identification number does not change, this subsection does not apply, except for the following notification requirement. The corporation shall notify the Texas Health and Human Services Commission (HHSC) within 10 calendar days after the effective date of the name change.

(2) The sale of stock of a corporate licensee does not cause this subsection to apply.

(3) The new owner shall submit a license application, documents, and fee in accordance with §507.12 of this subchapter (relating to Application and Issuance of Initial License) to HHSC before the date of the change of ownership or within 10 calendar days after the change of ownership date.

(4) HHSC may waive the inspection required by subsection (d) of this section.

(5) When HHSC determines the new owner complied with provisions of §507.12 of this subchapter, HHSC issues a license, which is effective on the date of the change of ownership.

(6) The license expiration date shall be in accordance with §507.12(b)(2) of this subchapter.

(7) The previous owner's license shall be void on the effective date of the new owner's license, and the facility shall return the voided license to HHSC.

(b) The facility shall comply with §507.12(a)(7) of this subchapter.

(c) Applications under this section are subject to §507.12(d) and (e) of this subchapter.

(d) Within the first two years of licensure, HHSC may inspect the facility to determine the facility's compliance with the provisions of Texas Health and Safety Code Chapter 251 (relating to End Stage Renal Disease Facilities) and this chapter in accordance with §507.12(h) of this subchapter.

§507.15. Relocation.

(a) A facility planning to relocate shall notify the Texas Health and Human Services Commission (HHSC) in accordance with HHSC instructions at least 90 calendar days before the planned relocation. Relocations shall be within the state of Texas.

(1) The facility shall submit a license application in accordance with §507.12 of this subchapter (relating to Application and Issuance of Initial License) to HHSC before relocation.

(2) HHSC may waive the inspection required by §507.12 of this subchapter.

(3) The license is effective on the issue date.

(4) The license expires on the last day of the month two years after the issue date.

(5) The previous facility license is void once the relocation is effective and after the facility ceases all services at the previous location. The facility must return the voided license to HHSC.

(b) The facility shall comply with §507.12(a)(7) of this subchapter.

(c) When HHSC determines the facility complied with this section, HHSC issues a new license to the applicant, when applicable.

(d) Applications under this subsection are subject to §507.12(d) and (e) of this subchapter.

(e) Within the first two years of licensure after relocation, HHSC may inspect the facility to determine the facility's compliance with the provisions of Texas Health and Safety Code Chapter 251 (relating to End Stage Renal Disease Facilities) and this chapter in accordance with §507.12(h) of this subchapter.

§507.16. Change in Status.

(a) A facility shall notify the Texas Health and Human Services Commission (HHSC) in writing in accordance with HHSC instructions at least 30 calendar days before:

(1) any construction;

(2) addition, alteration, renovation, or remodeling;

(3) equipment and finish upgrade;

(4) conversion of a licensed or previously licensed facility to an ESRD license designation;

(5) demolition;

(6) retrofitting a function, such as changing end stage renal disease treatment modality or training station designations; or

(7) change of services, including change in treatment modality, station type, and station number.

(b) A facility shall notify HHSC in writing and in accordance with HHSC instructions within 10 calendar days following:

(1) a change in the facility name, mailing address, facility administrator email address, telephone number, or fax number;

(2) a change of administrator; or

(3) the facility ceasing operation.

(c) A facility shall request and receive HHSC written approval in accordance with HHSC instructions before changes in services or the number of stations.

(1) The facility shall request HHSC approval at least 90 calendar days before the planned change and must receive HHSC approval before implementing the changes.

(2) The change shall comply with Subchapter Z of this chapter (relating to Physical Plant and Construction Requirements).

(3) For an additional service or increase in stations, HHSC may require the facility to provide evidence of appropriate staffing, policies and procedures, or any other documentation it determines is necessary to evaluate the request.

(4) For an increase in stations, the facility shall also submit written evidence that the water treatment system is of sufficient size to accommodate the increase and maintain a safe water supply.

(5) HHSC may conduct an on-site inspection before acting on the requested changes.

(6) The facility shall comply with §507.12(a)(7) of this subchapter (relating to Application and Issuance of Initial License).

(7) HHSC sends the facility written notice of HHSC approval or denial of the requested change.

(8) All existing facilities increasing the number of in-center dialysis treatment stations shall have an isolation room, as specified in the current CMS Conditions for Coverage, or shall provide a waiver. Refer to isolation room requirements in Subchapter Z of this chapter.

§507.17. Inactive Status.

A facility that stops offering services under its license shall first ensure the safety of the facility's patients, staff, and visitors, then inform the Texas Health and Human Services Commission (HHSC) and request inactive status within five calendar days of ceasing operations, in accordance with HHSC instructions. HHSC may close a license if the facility does not offer services for more than 90 calendar days unless the facility sends a written request to place the license on inactive status.

(1) To be eligible for inactive status, a facility must be in good standing with no pending legal action or investigation.

(2) The facility is responsible for any license renewal requirements or fees, and for proper maintenance of patient records, while the license is inactive.

(3) A license may not remain inactive for more than 90 calendar days without an approved extension from HHSC.

(4) A facility that does not reactivate its license within 90 calendar days after it stopped offering services may request a single 90-day renewal period of the inactive status from HHSC through a written request in accordance with HHSC instructions.

(5) A facility may request HHSC to place the license on inactive status once during each two-year licensing period.

(6) If the facility does not reactivate its license or request a renewal for inactive status by the 90th calendar day after the facility stopped offering services, HHSC may consider the facility closed and the license invalid.

(7) If the facility does not resume patient services within 10 calendar days after the date the facility's license is placed on inactive status:

(A) the facility shall submit to HHSC an application for inspection and water culture testing results;

(B) the facility's water culture testing results submitted to HHSC with the application shall meet the requirements of §507.33 of this chapter (relating to Water Treatment); and

(C) the facility shall not resume providing patient services until after HHSC inspects the facility.

§507.21. Exceptions to These Rules.

(a) An end stage renal disease (ESRD) facility may request the following types of exceptions from a requirement in this chapter.

(1) An ESRD facility may request a temporary exception related to alternative concepts, methods, procedures, or techniques, or for conducting pilot projects or research.

(2) An ESRD facility may request a permanent exception related to United States Food and Drug Administration-approved equipment.

(b) Exceptions related to operating a facility during an emergency or disaster situation are governed by §507.22 of this subchapter (relating to Exceptions During Emergency or Disaster Situations).

(c) To request an exception to a requirement in this chapter, a facility shall submit a form to the Texas Health and Human Services Commission (HHSC) that includes:

(1) the specific rule for which the facility requests an exception;

(2) a detailed description of the specific circumstances the facility administration believe justify the exception;

(3) a detailed description of what alternatives the facility considered, if any, and why the facility did not select any of the identified alternatives, including compliance with the rule;

(4) a detailed description of how the proposed exception is desirable to maintain or improve the health and safety of the patients, will not jeopardize patient health and safety, and will maintain patient access to care; and

(5) the proposed duration of the exception, if the facility submits a request for a temporary exception.

(d) HHSC may conduct an inspection and may consult with the medical review board before approving an exception.

(e) HHSC responds to an exception request within 90 calendar days after the date HHSC receives the request. On finding that the facility satisfied the conditions of this section, HHSC may grant a tem-

porary or permanent exception and shall specify the exception duration when notifying the facility that HHSC granted the exception.

(f) The facility may implement an exception only after the date the facility receives written approval from HHSC.

(g) Granting of an exception is public information, is subject to disclosure, and may be posted on the HHSC website.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Karen Ray
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SUBCHAPTER C. OPERATIONAL REQUIREMENTS FOR EQUIPMENT, WATER TREATMENT AND REUSE, AND SANITARY AND HYGIENIC CONDITIONS

26 TAC §§507.30 - 507.38

STATUTORY AUTHORITY

The new rules are adopted under 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 §251.003, which requires HHSC to adopt rules for the issuance, renewal, denial, suspension, and revocation of a license to operate an end stage renal disease facility; and Texas Health and Safety Code §251.014, which requires these rules to include minimum standards to protect the health and safety of a patient of an end stage renal disease facility.

§507.31. Equipment.

(a) All equipment used by a facility, including backup equipment, shall be approved by the United States Food and Drug Administration (FDA), operated in accordance with the manufacturer's direction for use, and maintained free of defects that could be a potential hazard to patients, staff, or visitors. Qualified staff or contract personnel shall perform maintenance and repair of all equipment.

(1) Staff shall be able to identify malfunctioning equipment and immediately report such equipment to the appropriate staff for repair.

(2) Staff shall clearly and immediately label medical equipment that malfunctions and promptly remove the equipment from service until the facility ensures identification and correction of the malfunction.

(3) A facility shall maintain a record of all maintenance and repairs.

(4) After the facility ensures necessary repair or alteration to any equipment or system, the facility shall thoroughly test the equipment or system for proper operation and disinfect the equipment or system before returning the equipment or system to service.

(5) A facility shall comply with the Federal Food, Drug, and Cosmetic Act, 21 United States Code (USC) §360i(b) (relating to Records and Reports on Devices), concerning reporting when a medical device, as defined in 21 USC §321(h) (relating to Definitions; Generally), has or may have caused or contributed to the injury or death of a patient of the facility.

(6) A facility shall document completion of the requirements listed in paragraphs (1) - (5) of this subsection on the facility's equipment or system repair log (electronic or paper).

(b) A facility shall develop, implement, and enforce a written preventive maintenance program to ensure patient care related equipment used in the facility, or provided by the facility for use by a patient in the patient's home, receives electrical safety inspections, when appropriate, and maintenance at least annually, or more frequently in accordance with the manufacturer's direction for use. Facility staff or contract personnel may provide the preventive maintenance.

(c) At least one complete dialysis machine shall be available on site as backup for every 10 machines in use. At least one of these backup machines shall be completely operational during hours of treatment. Machines not in use during a patient shift may be counted as backup except at the time of an initial or an expansion survey.

(d) A facility shall annually inspect equipment with internal transducer protectors to ensure the equipment is not contaminated. If the transducer protector is wetted or fluid or blood is visible, the facility must follow instructions as described in §507.36 of this subchapter (relating to Infection Control).

(e) If a facility treats pediatric patients, the facility shall use equipment and supplies, to include blood pressure cuffs, dialyzers, and blood tubing, appropriate for this special population.

(f) All equipment and appliances shall be properly grounded in accordance with the National Fire Protection Association (NFPA 99), Standard for Health Care Facilities, §4.3.2.2.2, 2002 Edition.

(g) A facility shall have emergency equipment and supplies immediately accessible in the treatment area.

(1) At a minimum, the emergency equipment and supplies shall include:

(A) oxygen;

(B) ventilatory assistance equipment, to include airways, manual breathing bag, and mask;

(C) suction equipment;

(D) supplies specified by the medical director; and

(E) automated external defibrillator.

(2) If a facility treats pediatric patients, the facility shall have the appropriate type and size emergency equipment and supplies listed in paragraph (1) of this subsection for this special population.

(3) A facility shall establish, implement, and enforce a policy for periodic testing and maintenance of the emergency equipment. Staff shall properly maintain and test the emergency equipment and supplies and document the testing and maintenance.

§507.33. Water Treatment.

The requirements in this section apply to water used for hemodialysis, including preparation of concentrates from powder at a dialysis facility and dialysate, and reprocessing dialyzers for multiple use.

(1) The design for the water treatment system in a facility shall be based on considerations of the source water for the facility and designed by a water quality professional with education, training, or experience in dialysis system design.

(2) When a facility does not use a public water system supply, the facility shall test the source water monthly in the same manner as a public water system, as required by the Texas Commission on Environmental Quality (TCEQ) under Texas Administrative Code, Title 30, Chapter 290, Subchapter F (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems).

(3) The physical space in which the water treatment system is located shall be adequate to allow for maintenance, testing, and repair of equipment. If facility staff mixes concentrates in the same area, the physical space shall also be adequate to house and allow for maintenance, testing, and repair of the mixing equipment and for performing the mixing procedure. When a facility uses a water distribution system, the system shall be configured as a continuous recirculation loop. To minimize biofilm formation, there shall always be flow in a piping system, except during the backwash cycle of the carbon tanks for direct feed systems.

(A) For direct and indirect feed systems, the water flow rate shall comply with the standards listed in §507.30 of this subchapter (relating to Technical Standards).

(B) This section shall not apply to facilities providing only home training and services utilizing single patient devices. Devices used in the facility for training and support services shall be compliant with the United States Food and Drug Administration (FDA) and Underwriters' Laboratories (UL) requirements.

(C) The water treatment and distribution system shall include appropriate pressure gauges, flow meters, sample ports, and other ancillary equipment necessary to allow monitoring of the performance of individual system components and the system as a whole, as determined by the facility medical director.

(4) The water treatment system components shall be arranged and maintained so that bacterial and chemical contaminant levels in the product water do not exceed the standards for hemodialysis water quality described by the standards listed in §507.30 of this subchapter.

(A) Direct feed systems shall include a means of verifiably preventing retrograde flow of water into the distribution loop from the feed side of the reverse osmosis unit.

(B) Dead-end piping (risers with no flow, branches with no fixture) shall not be installed. In any renovation work, dead-end piping shall be removed.

(5) The facility shall develop written policies and procedures for operating the water treatment system, receiving approval from the medical director, and implementing and enforcing the approved policies and procedures. The facility shall develop written parameters for operating each water treatment system component and ensuring the operator is trained and knowledgeable on these parameters. Each major water system component shall be labeled in a manner that identifies the device, describing its function, how performance is verified, and actions to take in the event performance is not within an acceptable range. The facility's policies and procedures for the bypass valves for the carbon tanks, and any other bypass valves considered to be critical by the medical director, shall have a means to minimize the likelihood the device will be inadvertently bypassed during the normal operation of the system.

(6) The materials of any components of water treatment systems (including piping, storage, filters, and distribution systems) that contact the product water shall not interact chemically or physically to adversely affect the product water purity or quality. Such components shall be fabricated from unreactive materials (e.g., plastics) or appropriate stainless steel. The use of materials that are known to cause toxicity in hemodialysis, such as copper, brass, galvanized material, or aluminum, is prohibited at any point beyond the water treatment component used to remove contaminating metal ions (e.g., reverse osmosis system or deionizer).

(7) Chemicals infused into the water such as iodine, acid, flocculants, and complexing agents shall be shown to be nondialyzable or shall be adequately removed from product water. Systems shall be monitored in accordance with the manufacturer's direction for use, and specific test procedures to verify removal of additives shall be provided and documented. Chemical injection systems shall include a means of regulating the metering pump to control the addition of a chemical. This control system shall be designed to tightly control addition of the chemical. This control system shall ensure the chemical is added only when the water is flowing through the pre-treatment cascade and in fixed proportion to the water flow. If an automated control system is used to inject the chemical, there shall be an independent monitor of the controlling parameter.

(8) Each water treatment system shall include reverse osmosis membranes or deionization tanks and a minimum of two carbon tanks in series. If the source water is from a private supply that does not use chlorine or chloramine, the water treatment system shall include reverse osmosis membranes or deionization tanks and a minimum of one carbon tank.

(A) Reverse osmosis systems, if used, shall meet the standards set forth by the CMS Conditions for Coverage.

(B) Single patient devices used in a dialysis facility shall meet the appropriate standards set forth in the CMS Conditions for Coverage to provide dialysis-quality water. Once the designated patient no longer needs the single patient device, the facility may process, disinfect, and prepare the device for another designated patient's use, per manufacturer's directions for use.

(C) A facility shall meet the following requirements for deionization systems.

(i) Deionization systems, if used, shall be monitored continuously to produce water of one megohm-centimeter or greater specific resistivity (or conductivity of 1.0 microsiemens/centimeter or less) at 25 degrees Celsius. The system shall have an audible and visual alarm which activates in the facility to include the patient care area when the product water resistivity falls below this level, and the product water stream shall be prevented from reaching any point of use.

(ii) A facility shall not dialyze patients on deionized water with a resistivity less than 1.0 megohm-centimeter measured at the output of the final deionizer.

(iii) Deionization tanks, if used, shall be a minimum of two mixed beds in series and shall be used with resistivity monitors including audible and visual alarms placed pre and post the final deionization tank in the system and audible in the patient care area.

(iv) Feed water for deionization systems shall be pretreated with activated carbon adsorption, or a comparable alternative, to prevent nitrosamine formation.

(v) If a deionization system is the last process in a water treatment system, it shall be followed by an ultrafilter or other bacteria and endotoxin reducing device.

(vi) Facilities shall ensure all devices that are regenerated or reconstituted off site, such as deionizers, shall be disinfected at the time of regeneration or reconstitution, so contaminated water is not reintroduced into the system after regeneration or reconstitution.

(D) A facility shall meet the following requirements for carbon tanks.

(i) The carbon tanks shall contain granular activated carbon, with a minimum iodine number of 900 or equivalent, as indicated by the medical device manufacturer. The facility shall not use previously used carbon.

(ii) A minimum of two carbon adsorption beds shall be installed in series with a sample port following the first bed. A sample port shall also be installed following the second bed for use in the event of total chlorine (the sum of free chlorine and chloramine) breaking through the first bed.

(iii) The total empty bed contact time (EBCT) shall be at least 10 minutes, with the final tank providing at least five minutes EBCT at the maximum flow rate through the bed. Carbon adsorption systems used to prepare water for home dialysis or for portable dialysis systems are exempt from the requirement for the second carbon and a 10-minute EBCT, if removal of total chlorine to below 0.1 milligram/liter (mg/L) is verified before each treatment.

(iv) Water from the sample ports following the first carbon bed shall be tested for total chlorine levels at the beginning of each treatment day, before patients initiate treatment, before reprocessing of dialyzers, and again before the beginning of each patient shift. If there are no set patient shifts, testing shall be performed every four hours until all activities that require use of dialysis-quality water are completed.

(v) If used, an automated chlorine monitoring system will provide, at minimum, the equivalent frequencies of testing as required in clause (iv) of this subparagraph and used in accordance with the manufacturer's direction for use. Facility staff shall manually test the automated chlorine monitoring system before the first patient treatment every morning to verify that the device is functioning within manufacturer's specifications to ensure water quality. If a breakdown in the system occurs at any time before or during the treatment day, the facility shall return to manually testing the system every four hours during the treatment day and maintain the appropriate records for manual monitoring.

(vi) Carbon beds are sometimes arranged as series-connected pairs of beds so that they need not be overly large. The beds within each pair are of equal size and water flows through them are parallel. In this situation, each pair of beds shall have a minimum empty bed contact time of five minutes at the maximum flow rate through the bed. When series connected pairs of beds are used, the piping shall be designed to minimize differences in the resistance to flow from inlet and outlet between each parallel series of beds, to ensure an equal volume of water flows through all beds.

(vii) All samples for total chlorine testing shall be drawn when the water treatment system has been operating for at least 15 minutes.

(viii) A facility may use tests for total chlorine, which include both free and combined forms of chlorine, as a single analysis with the maximum allowable concentration of 0.1 mg/L. Test results of greater than 0.5 parts per million (ppm) for chlorine or 0.1 ppm for chloramine from the port between the initial tanks and final tanks shall require testing to be performed at the final exit and replacement of the initial tanks. A facility shall use testing equipment, supplies, and procedures in accordance with the manufacturer's directions for use.

(ix) In a system without a holding tank, if test results at the exit of the final tanks are greater than the parameters for total chlorine described in this subparagraph, dialysis treatment shall be immediately terminated to protect patients from exposure to chlorine or chloramines, and the medical director shall be notified. In systems with holding tanks, if the holding tank tests less than 0.1 mg/L for total chlorine, the reverse osmosis may be turned off and the product water in the holding tank may be used to finish treatments in process. The medical director shall be notified.

(x) If means other than granulated carbon is used to remove chlorine or chloramine, the facility governing body shall approve such use, in writing, after reviewing the intended method's safety for use in hemodialysis applications. If such methods include the use of additives, there shall be evidence the product water does not contain unsafe levels of these additives.

(9) Water softeners, if used, shall be tested at the end of the treatment day to verify their capacity to treat a sufficient volume of water to supply the facility for the entire treatment day and shall be fitted with a mechanism to prevent water containing the high concentrations of sodium chloride used during regeneration from entering the product water line during regeneration.

(10) If used, the faces of timers used to control any component of the water treatment or dialysate delivery system shall always be visible to the operator. The facility shall maintain written evidence that staff checked timers for operation and accuracy each day of operation.

(11) Filter housings, if used during disinfectant procedures, shall include a means to clear the lower portion of the housing of the disinfecting agents. Filter housings shall be opaque.

(12) Ultrafilters, or other bacterial reducing filters, if used, shall be fitted with pressure gauges on the inlet and outlet water lines to monitor the pressure drop across the membrane. Ultrafilters shall be included in routine disinfection procedures. Ultrafilters with a nominal molecular weight cut off (MWCO) of 20,000 or less are generally adequate for endotoxin removal.

(13) If used, storage tanks shall have a conical or bowl-shaped base and drain from the lowest point of the base. Storage tanks shall have a tight-fitting lid and be vented through a hydrophobic 0.2-micron air filter. A means shall be provided to effectively disinfect any storage tank installed in a water distribution system.

(14) Ultraviolet (UV) lights, if used, shall be monitored at the frequency in accordance with the manufacturer's direction for use and have an endotoxin-reducing filter located downstream of the device. Records shall be maintained for monitoring, as outlined by the manufacturer's directions for use. Monitoring of all water system components shall be maintained on water system logs (electronic or paper).

(15) Water treatment system piping shall be labeled to indicate the pipe contents and direction of flow.

(16) The water treatment system shall be continuously monitored during patient treatment and guarded by audible and visual alarms, which can be seen and heard in the dialysis treatment area should water quality drop below specific parameters. Quality monitor sensing cells shall be located at the last component of the water treatment system and at the beginning of the distribution system. No water treatment components that could affect the product water quality, as measured by this device, shall be located after the sensing cell.

(17) When deionization tanks do not follow a reverse osmosis system, the facility shall ensure the parameters for the rejection

rate of the membranes assure that the lowest rate accepted would provide product water with a level of chemical contaminants in compliance with the standards listed in §507.30 of this subchapter.

(18) A facility shall maintain water treatment system operation records for each treatment day. The logbook (electronic or paper) shall include each component's operating parameter and the action taken when a component is not within the facility's set parameters.

(19) Microbiological testing of product water shall be conducted.

(A) Routine microbiological testing shall be conducted on a quarterly, or more frequent basis as needed, or required by the standards listed in §507.30 of this subchapter. Routine microbiological testing shall ensure the water and dialysate bacteria and endotoxin levels are within the limits described in the standards listed in §507.30 of this subchapter. For a newly installed water distribution system, or when any repairs, modifications, or changes to the configuration have been made to an existing system, weekly testing shall be conducted for four weeks to verify that bacteria and endotoxin levels are consistently within the allowed limits. Changes to components that are designed to be replaced on a routine schedule such as filters, ultrafilters, and ultraviolet lamps do not require a period of more frequent testing.

(B) At a minimum, sample sites chosen for testing shall include the beginning of the distribution piping, product water in the reuse room at any site of concentrate mixing, and end of the distribution piping.

(C) Samples shall be collected before sanitizing or disinfecting the water treatment system and dialysis machines. Water testing results shall be routinely trended and reviewed by the medical director to determine if results seem questionable or if there is an opportunity for improvement. The medical director shall determine if there is a need for retesting.

(D) Product water used to prepare dialysate, concentrates from powder, or to reprocess dialyzers for multiple use shall contain a total viable microbial count of less than 100 colony forming units/milliliter (CFU/ml) and an endotoxin concentration of less than 0.25 endotoxin units (EU)/ml. The action level for the total viable microbial count in the product water shall be consistent with the standards listed in §507.30 of this subchapter.

(E) If the action levels described at subparagraph (D) of this paragraph are observed in the product water, the medical director shall be notified, and corrective measures shall be taken promptly to reduce the levels into an acceptable range.

(F) All bacteria and endotoxin results shall be recorded to identify trends that may indicate the need for corrective action.

(20) If ozone generators are used to disinfect any portion of the water or dialysate delivery system, the ozone generator shall be capable of delivering ozone at the concentration and for the exposure time specified and in accordance with the manufacturer's direction for use. Testing based on the manufacturer's direction shall be used to measure the ozone concentration each time disinfection is performed, to include testing for safe levels of residual ozone at the end of the disinfection cycle. Testing for ozone in the ambient air shall be conducted on a periodic basis as recommended by the manufacturer. The records of all testing shall be maintained in a log (electronic or paper). The frequency of disinfection shall be performed at least monthly.

(21) If used, hot water disinfection systems shall use water that meets the standards listed in §507.30 of this subchapter, which must be capable of delivering hot water at the temperature and for the exposure time specified and in accordance with the manufacturer's direction for use, and be monitored for temperature and time of exposure to hot water, as specified by the manufacturer. Water temperature shall be monitored at a point furthest from the water heater, where the lowest water temperature is likely to occur. The water temperature shall be measured each time a disinfection cycle is performed. A record that verifies successful completion of the heat disinfection shall be maintained. The frequency of disinfection shall be performed at least monthly or more frequently, as needed or required by the standards listed in §507.30 of this subchapter.

(22) After chemical disinfection, a mechanism shall be incorporated to ensure that the equipment and system are restored to a safe condition before using the equipment and product water being used for dialysis applications. The results of all absence testing shall be documented. The frequency of disinfection shall be performed at least monthly. A mechanism shall be incorporated in the distribution system to ensure disinfectant does not drain from pipes during the disinfection period.

(23) Users shall establish and implement a procedure for regular disinfection of the line between the outlet from the water distribution system and the back of the dialysis machine.

(24) Samples of product water used for dialysis shall be submitted for chemical analysis every six months, after a change of the reverse osmosis membranes, and demonstrate that the quality and level of chemical contaminants of the product water used to prepare dialysate, concentrates from powder, or to reprocess dialyzers for multiple use meets the standards listed in §507.30 of this subchapter.

(A) Samples for chemical analysis shall be collected at the most distal point in each water distribution loop. All other outlets from the distribution loops shall be inspected to ensure that the outlets are fabricated from compatible materials. Appropriate containers and pH adjustments shall be used to ensure accurate determinations. New facilities, or facilities that add or change the water distribution system configuration, shall draw samples at the most distal point for each water distribution loop and then every six months thereafter.

(B) Additional chemical analysis shall be submitted when any modification or change to the existing system configuration is made to the water treatment system, or if the percent rejection of a reverse osmosis system decreased 5.0 percent or more from the percent rejection measured at the time the water sample for the preceding chemical analysis was taken.

(25) Facility records shall include all test results and provide evidence the medical director has reviewed the water quality testing results and directed corrective action when indicated.

(26) Only individuals qualified by the education or experience described in §507.54 of this chapter (relating to Staff Qualifications) may operate, repair, or replace water treatment system components.

§507.34. Dialysate.

(a) The facility shall develop, implement, maintain, and evaluate quality assessment and performance improvement (QAPI) procedures to ensure ongoing conformance to policies and procedures regarding dialysate quality.

(b) Each facility shall set all hemodialysis machines to use only one family of concentrates. When new machines are put into service, the concentrate family changes, or the concentrate manufacturer changes, dialysate samples shall be taken from each machine and sent to a laboratory for verification of the dialysate electrolyte values.

(c) Before each patient treatment, facility staff shall verify the dialysate conductivity and pH of each machine with an independent method, following the manufacturer's guidance.

(d) For machines with internal independent conductivity and pH testing, the staff must verify and document that the machine conducted internal testing before each patient treatment. The facility shall test the machine's calibration every six months and maintain logs of the calibration testing.

(e) Bacteriological testing shall be conducted, and bacteriological levels shall meet the hemodialysis dialysate quality required by the standards listed in §507.30 of this subchapter (relating to Technical Standards).

(f) Only a qualified, licensed nurse may use an additive to increase concentrations of specific electrolytes in the acid concentrate. The nurse shall follow mixing procedures, as specified by the additive manufacturer. For additives prescribed for a specific patient, the nurse shall label the container holding the prescribed acid concentrate with the patient name, final concentration of the added electrolyte, date the prescribed concentrate was made, and the facility staff name who mixed the additive. Facility staff may use additives only:

(1) when other interventions were not effective;

(2) per physician order; and

(3) when the additive is reviewed by the governing body.

(g) A facility shall ensure all components used in concentrate preparation systems (including mixing and storage tanks, pumps, valves, and piping) are only made from materials (e.g., plastics or appropriate stainless steel) that do not interact chemically or physically with the concentrate to affect its purity, or with the germicides used to disinfect the equipment. The facility shall ensure components are not made of or use materials known to cause toxicity in hemodialysis such as copper, brass, galvanized material, and aluminum.

(h) Facility policies shall address means to protect stored dialysate components (acid concentrates, bicarbonate concentrates, or bulk storage of dialysate components) from tampering or degeneration due to exposure to extreme heat or cold.

(i) The facility shall develop, implement, and enforce procedures to:

(1) control the transfer of acid concentrates from the delivery container to the clearly labeled storage tank and prevent the inadvertent mixing of different concentrate formulations;

(2) form an integral system of the tank and associated plumbing to prevent contamination of the acid concentrate; and

(3) secure and clearly label the storage tank and inlet and outlet connections, if remote from the tank.

(j) Concentrate mixing systems shall include a purified water source, a suitable drain, and an acceptable electrical outlet, as specified by the manufacturer's recommendations, directions, or instructions.

(1) Mixing system operators shall use personal protective equipment as specified and in accordance with the manufacturer's direction for use during all mixing processes.

(2) Operators shall follow the manufacturer's directions for use of a concentrate mixing system, including instructions for mixing the powder with the correct amount of water, and determine and record the number of bags or weight of powder added.

(3) The facility shall use clear mixing tank labeling to indicate the fill and final volumes required to correctly dilute the powder.

(4) The facility shall monitor systems for preparing either bicarbonate or acid concentrate from powder according to the manufacturer's directions for use to ensure compliance with subsection (k)(1) of this section.

(5) Facility staff shall not use or transfer concentrates to holding tanks or distribution systems until staff complete all tests per the manufacturer's specifications and in accordance with the manufacturer's directions for use. Facility staff shall document the test results and include the facility staff signature who completed the tests.

(6) Where a facility designs its own system for mixing concentrates, the facility shall develop and validate procedures using an independent laboratory to ensure proper concentrate mixing, including establishing acceptable limits for proper concentration tests.

(k) The facility shall ensure the design of acid concentrate mixing tanks allow the inside of the tank to be rinsed when changing concentrate formulas.

(1) The facility shall ensure that the design and maintenance of acid mixing systems prevent rust and corrosion.

(2) Facility staff shall empty acid concentrate mixing tanks completely and rinse with dialysis-quality water before mixing another batch of concentrate to prevent cross-contamination between different batches.

(3) Facility staff shall disinfect acid concentrate mixing equipment, as specified by the equipment manufacturer or, in the case where no specifications are given, as defined by facility policy.

(4) The facility shall maintain records of disinfecting and rinsing disinfectants to safe residual levels.

(l) Bicarbonate concentrate mixing tanks shall have conical or bowl-shaped bottoms and shall drain from the lowest point of the base. The tank design shall allow disinfection and rinsing of all internal surfaces.

(1) Facility staff shall not pre-fill bicarbonate concentrate mixing tanks the night before use, and mixed solution shall not remain in mixing or holding tanks overnight.

(2) If disinfectant remains in the mixing tank overnight, facility staff shall completely drain this solution, rinse the tank and test for residual disinfectant before preparing the first batch of that day of bicarbonate concentrate.

(3) Facility staff shall empty the container and rinse with dialysis-quality water before mixing a new batch of bicarbonate solution, and staff shall not mix unused portions of bicarbonate concentrate with fresh concentrate.

(4) At a minimum, facility staff shall disinfect bicarbonate distribution systems weekly. Facility staff shall disinfect the bicarbonate distribution systems more frequently if required by the manufacturer's directions for use, or if dialysate culture results comply with §507.30 of this subchapter.

(5) If facility staff reuse jugs to deliver bicarbonate concentrate to individual hemodialysis machines, staff shall:

(A) empty jugs of concentrate, rinse jugs with dialysis-quality water, and invert jugs to drain at the end of each treatment day;

(B) rinse pick-up tubes with dialysis-quality water and allow tubes to air dry at the end of each treatment day;

(C) at a minimum, disinfect jugs and pick-up tubes weekly, and the facility QAPI committee shall consider more frequent

jug and pick-up tube disinfection if dialysate culture results comply with §507.30 of this subchapter; and

(D) following disinfection:

(i) drain jugs, rinse jugs using dialysis-quality water to ensure jugs are free of residual disinfectant, and invert jugs to dry;

(ii) rinse pick-up tubes using dialysis-quality water to ensure tubes are free of residual disinfectant, and allow the tubes to air dry; and

(iii) test jugs and pick-up tubes for residual disinfectant and document the test results.

(m) The facility shall label all mixing tanks, bulk storage tanks, dispensing tanks, and containers for single hemodialysis treatments to indicate the contents of the tank or container.

(1) Before batch preparation, facility staff shall affix a label to the mixing tank that includes the date of preparation, tank contents, and chemical composition or formulation of the concentrate being prepared. This labeling shall remain on the mixing tank until the tank has been emptied.

(2) A facility shall permanently label bulk storage and dispensing tanks to identify the chemical composition or formulation of their contents.

(3) A facility shall, at a minimum, sufficiently label single-machine containers to differentiate the contents from other concentrate formulations used in the facility and permit positive identification by users of container contents.

(n) A facility shall maintain permanent records of batches produced to include the concentrate formula produced, volume of the batch, lot numbers of powdered concentrate packages, manufacturer of the powdered concentrate, date and time of mixing, test results, person performing mixing, and expiration date, if applicable.

(o) If facility staff prepare acid and bicarbonate concentrates in the facility, the facility shall ensure completion of preventive maintenance in accordance with the manufacturer's direction for use. The facility shall maintain records indicating the date, time, facility staff performing the procedure, and results, if applicable.

§507.35. Reuse of Hemodialyzers and Related Devices.

(a) Reuse practice in a facility shall comply with the standards listed in §507.30 of this subchapter (relating to Technical Standards) and the CMS Conditions for Coverage.

(b) Facility staff shall review the dialyzer manufacturer's labeling to determine whether a specific dialyzer requires special considerations.

(c) Facility staff shall reuse arterial lines only when the arterial lines are labeled for reuse by the manufacturer, and the manufacturer-established protocols for the specific line are approved by the United States Food and Drug Administration.

(d) The water supply in the reuse room shall incorporate a check valve to prevent chemical agents used from inadvertently back flowing into the water distribution system.

(e) Ventilation systems in the reuse room shall meet the requirements of Subchapter Z of this chapter (relating to Physical Plant and Construction Requirements) and be connected to an exhaust system to the outside that is separate from the building exhaust system, have an exhaust fan located at the discharge end of the system, and have an exhaust duct system of noncombustible corrosion-resistant material, as needed to meet the planned usage of the system. Exhaust outlets shall be above the roof-level and arranged to minimize recirculation of exhaust air into the building.

(f) A facility shall establish, implement, and enforce a policy for dialyzer reuse criteria (including any facility-set number of reuses allowed) that is included in patient education materials and posted in the waiting room and patient treatment areas. A dialyzer may be reused only if the dialyzer's original volume is measured and recorded before its first use, and the volume of that dialyzer is used as the basis for discard for that dialyzer.

(g) A facility shall consider and address the health and safety of patients sensitive to disinfectant solution residuals.

(h) A facility shall provide each patient with information regarding the reuse practices at the facility and the opportunity to have questions answered.

(i) A facility shall restrict the reprocessing room to authorized personnel during the reprocessing of dialyzers.

(j) If a facility participates in centralized reprocessing at a different location, in which dialyzers from multiple facilities are reprocessed at one site, the facility shall:

(1) ensure direct communication with the medical director at the centralized reprocessing center and the facility medical director;

(2) require the use of an automated reprocessing facility;

(3) maintain responsibility and accountability for the entire reuse process;

(4) adopt, implement, and enforce policies to ensure the transfer and transport of used and reprocessed dialyzers to and from the off-site location does not increase contamination of the dialyzers or the environment;

(5) ensure that each dialyzer is returned to the appropriate facility or patient home, and a system shall be established to verify that the correct dialyzers are being returned to each patient's home in the case of home patients who participate in a dialyzer reprocessing program; and

(6) provide Texas Health and Human Services Commission staff access to the off-site reprocessing site as part of a facility inspection.

§507.36. Infection Control.

(a) A facility shall follow Standard Precautions for all patient care activities in accordance with Code of Federal Regulations, Title 29 §1910.1030(d)(1) - (3) (relating to Bloodborne Pathogens) and Texas Health and Safety Code Chapter 85, Subchapter I (relating to Prevention of Transmission of HIV and Hepatitis B Virus by Infected Health Care Workers).

(1) The facility shall demonstrate that it follows standard infection control precautions by implementing the most current Recommended Infection Control Practices for Hemodialysis Units developed by the Centers for Disease Control and Prevention, to prevent and control cross-contamination and the spread of infectious agents.

(2) The facility and facility staff shall take infection control precautions for all patients.

(A) Facility staff shall wear disposable gloves when caring for a patient or touching the patient's equipment or bloodlines at the dialysis station.

(B) Facility staff shall remove gloves and clean hands between each patient contact, and after touching blood, body fluids, secretions, excretions, and contaminated items or station.

(C) Enough sinks, with water and soap shall be available to facilitate handwashing. Sink faucets shall have hands-free operable controls to activate the water flow, which may include a single-lever, wrist blade lever, electronic sensor faucet, or an elbow or wrist action faucet. Provisions for hand drying shall be included at each handwashing sink.

(D) If hands are not visibly soiled, staff may substitute use of a waterless antiseptic hand rub for handwashing. Staff shall wash with soap and water when hands are visibly soiled.

(E) Facility staff shall wear gowns, eye protection, and, where applicable, masks to protect themselves and prevent soiling clothing when performing procedures during which spurting or spattering of blood might occur (e.g., during initiation and termination of dialysis, cleaning dialyzers, and centrifuging blood). If visibly soiled, gowns shall be changed and discarded immediately.

(F) Facility staff shall not eat, drink, or smoke in the dialysis treatment area or laboratory.

(G) For an item taken to the dialysis station, facility staff shall:

(i) dispose of the item;

(ii) dedicate the item for use only on a single patient; or

(iii) clean and disinfect the item before taking the item to a common clean area or using the item on another patient.

(H) Facility staff shall dedicate non-disposable items that cannot be cleaned and disinfected (e.g., adhesive tape, cloth covered blood pressure cuffs) for use on only a single patient.

(I) Facility staff shall use unused medications or supplies (syringes, alcohol swabs, etc.) taken to the patient's station for only that patient and not return the medications or supplies to a common clean area or use the medications or supplies on other patients.

(J) A facility shall clearly designate clean areas for preparing, handling, and storing medications and unused supplies and equipment. Facility staff shall not handle or store medications or clean supplies in the same or an immediately adjacent area where facility staff handle used supplies, equipment, or blood samples.

(K) A facility shall clearly designate contaminated areas where staff handle used supplies, equipment, or blood samples.

(L) When facility staff use multiple dose medication vials (including vials containing diluents), staff shall prepare individual patient doses in a clean, centralized area away from dialysis stations and deliver the medication separately to each patient.

(M) Facility staff shall not carry multiple dose medication vials from station to station.

(N) Facility staff shall not use common medication carts to deliver medications to patients. If facility staff use trays to deliver medications to individual patients, staff shall clean and disinfect the trays after delivering medications to each patient.

(O) If facility staff use a common supply cart to store clean supplies in the patient treatment area, this cart shall remain in a designated area at a sufficient distance from patient stations to avoid contamination with blood. Staff shall not move such carts between stations to distribute supplies.

(P) Facility staff shall not carry medication vials, syringes, alcohol swabs, or supplies in their pockets.

(3) The facility shall ensure the location and arrangement of handwashing sinks permit ease of access and proper use.

(4) Facility staff shall explain the potential risks associated with blood and blood products to patients and family members and provide the indicated personal protective equipment to a patient or family member, if the patient or family member assists in procedures that could result in contact with blood or body fluids. Facility staff shall encourage patients to clean their access sites before each treatment and their hands following their treatment.

(b) A facility shall designate a staff member to monitor and coordinate infection control activities.

(c) A facility shall develop, maintain, and enforce a system to identify and track infections to allow identification of trends or patterns. This activity shall be reviewed as a part of the facility's quality assessment and performance improvement (QAPI) program described in §507.43 of this chapter (relating to Quality Assessment and Performance Improvement). The record shall include trends, corrective actions, and improvement actions taken.

(d) Facility staff shall replace a transducer protector when wetted during a dialysis treatment and use a transducer protector for only one treatment. If fluid or blood is visible on the side of the transducer protector that faces the machine, the machine must be opened by qualified personnel after the dialysis treatment to allow the internal transducer to be inspected for contamination, including inspection for possible blood contamination of the internal pressure tubing set and pressure sensing port.

§507.38. Disease Prevention.

(a) The facility shall take the following measures for Hepatitis B prevention.

(1) The facility shall offer Hepatitis B vaccination to all previously unvaccinated, susceptible new staff members in accordance with Code of Federal Regulations, Title 29 §1910.1030(f)(1) - (2) (relating to Bloodborne Pathogens). Staff vaccination records shall be maintained in each staff member's health record.

(2) With an order from the patient's nephrologist, facility staff shall make the Hepatitis B vaccine available to a patient who is susceptible to Hepatitis B, provided that the patient has coverage or is willing to pay for the vaccination.

(3) The facility shall ensure the most recent Centers for Disease Control and Preventions (CDC) Hepatitis B Vaccine Information Statement is available to patients.

(4) The facility shall ensure serologic screening of patients.

(A) The facility must record the Hepatitis B virus (HBV) serological status to include Hepatitis B surface antigen (HbsAg), total anti-Hepatitis B core antibody (anti-HBc), and antibody to Hepatitis B surface antigen (anti-HBs) of all patients before admission to the hemodialysis unit. The facility shall maintain the anti-HBc results obtained previously or on admission in the clinical record and repeated only if clinically indicated.

(B) A patient returning to a facility after extended hospitalization or absence of 30 calendar days or longer shall have been screened for HbsAg within one month before or at the time of admission to the facility or have a known anti-HBs status of at least 10 milli-international units per milliliter no more than 12 months before admission. The facility shall document how this screening requirement is met.

(C) Repeated serologic screening shall be based on the patient's antigen or antibody status.

(i) Monthly screening for HbsAg is required for patients whose previous test results are negative for anti-HBs.

(ii) Screening of HbsAg-positive or anti-HBs-positive patients may be performed on a less frequent basis but shall be performed at least annually.

(5) The facility shall follow appropriate isolation procedures for an HBsAg-positive patient.

(A) An end stage renal disease (ESRD) facility licensed before February 9, 2009, shall comply with §507.16(c)(8) of this chapter (relating to Change in Status). An ESRD facility licensed after February 9, 2009, shall treat patients positive for HBsAg in a separate treatment room that complies with Subchapter Z of this chapter (relating to Physical Plant and Construction Requirements).

(B) Separate dedicated supplies and equipment, including blood glucose monitors, shall be used to provide care to the Hepatitis B positive patients. All supplies used in the isolation area or room, such as clamps, blood pressure cuffs, testing reagents, etc., shall be labeled "isolation" and not routinely removed from the isolation area or room.

(C) Refillable concentrate containers shall be surface disinfected at the completion of each treatment. Refillable acid concentrate containers shall be kept in the isolation area or room and refilled at the door. Refillable bicarbonate concentrate containers shall be removed for cleaning and disinfection. In the disinfection area, containers labeled "isolation" containers and pick-up tubes shall be segregated in a dedicated, designated area away from all other containers and pick-up tubes.

(D) Separate gowns shall be used in the isolation area or room and removed before leaving the isolation area or room. Anyone entering the isolation area or room during the patient's treatment shall wear a protective gown. Gowns used in the isolation area or room shall be discarded at the end of each treatment day. If visibly soiled, gowns shall be changed and discarded immediately.

(E) Dedicated cleaning supplies (such as a mop and bucket) for cleaning the isolation area or room and blood spills shall be used and labeled "isolation."

(F) A patient who tests positive for HBsAg shall be dialyzed on equipment reserved and maintained for an HBsAg-positive patient's use only.

(G) When a direct patient care staff member is assigned to both HBsAg-negative and HBsAg-positive patients, the HBsAg-negative patients assigned to this grouping shall be Hepatitis B antibody positive. Hepatitis B antibody positive patients are to be seated at the treatment stations nearest the isolation station and assigned to the same staff member who is caring for the HBsAg-positive patient.

(H) If an HBsAg-positive patient is discharged, the equipment that had been reserved for that patient shall be given intermediate-level disinfection before use for a patient testing negative for HBsAg.

(I) In the case of patients new to dialysis or a patient returning to a facility after extended hospitalization or absence of 30 calendar days or longer, if these patients are admitted for treatment before results of HBsAg or anti-HBs testing are known, these patients shall undergo treatment as if the HBsAg test results were potentially positive, except that they shall not be treated in the HBsAg isolation room, area, or machine.

(i) The facility shall treat potentially HBsAg-positive patients in a location in the treatment area that is outside of traffic patterns and shall not reuse the dialyzer until the HBsAg test results are known.

(ii) The dialysis machine used by the HBsAg-positive patient shall be given intermediate-level disinfection before its use by another patient.

(iii) The facility shall obtain the patient's HBsAg status results within three calendar days of admission.

(b) The facility shall take the following measures for tuberculosis prevention.

(1) The facility direct care staff shall be screened for tuberculosis upon employment before patient contact, or provide documentation of negative tuberculosis status, per current CDC recommendations.

(2) Subsequent screening of facility staff shall be performed after any potential exposure to laryngeal or pulmonary tuberculosis, per current CDC recommendations.

(3) Facility staff shall follow the facility's respiratory isolation procedures and precautions when providing treatment to patients with pulmonary tuberculosis.

(4) The facility shall screen patients for tuberculosis when indicated by the presence of risk factors for, or the signs and symptoms of tuberculosis. Screening shall be performed after potential exposure to active laryngeal or pulmonary tuberculosis, per current CDC recommendation.

(c) The facility shall adopt, implement, and enforce a policy for offering and providing pneumococcal and influenza vaccines. The policy shall:

(1) include provisions that the influenza vaccine shall be offered according to the CDC annual recommendations, and the pneumococcal vaccine shall be offered throughout the year;

(2) require the facility staff administering the vaccine to ask the patient if they are currently vaccinated against influenza or pneumococcal disease, assess potential contraindications, and then, if appropriate, administer the vaccine under approved facility protocols;

(3) address required vaccination documentation in the patient clinical record; and

(4) include that the Texas Health and Human Services Commission may waive vaccine administration requirements based on established vaccine shortages.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. OPERATIONAL REQUIREMENTS FOR PATIENT CARE AND TREATMENT

26 TAC §§507.41 - 507.49, 507.51 - 507.60

STATUTORY AUTHORITY

The new rules are adopted under 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 §251.003, which requires HHSC to adopt rules for the issuance, renewal, denial, suspension, and revocation of a license to operate an end stage renal disease facility; and Texas Health and Safety Code §251.014, which requires these rules to include minimum standards to protect the health and safety of a patient of an end stage renal disease facility.

§507.41. Governing Body.

(a) The facility shall have an identified governing body responsible for the facility's organization, management, control, and operation, including appointing the facility's medical director as defined in §507.2 of this chapter (relating to Definitions).

(b) A facility may request in writing a waiver to appoint or retain as medical director a physician who does not meet one or more of the qualifications in §507.2(49)(B) of this chapter. The request shall explain why a physician meeting the board certification requirement is not available and include the physician's resume for the physician the facility seeks to appoint or retain. The facility shall make the request through the Texas Health and Human Services Commission (HHSC) Health Facility Licensing Unit, for transmission to the CMS. The facility may not appoint or retain as medical director a physician who does not meet one or more of the qualifications in §507.2(49)(B) of this chapter until the facility receives approval from CMS.

(c) The governing body shall develop, implement, and enforce policies and procedures for all services provided by the facility.

(d) The governing body shall adopt, implement, and enforce policies and procedures to ensure compliance with current laws, rules, and regulations pertaining to medical staff.

(e) The governing body shall implement and annually review current and effective administrative rules, regulations, and policies designed to protect patient health and safety.

(f) The governing body shall ensure there is a quality assessment and performance improvement (QAPI) program to evaluate the provision of patient care. The governing body shall review and monitor QAPI activities at least biannually.

(g) The governing body shall ensure all facility staff, including advanced practice registered nurses (APRN), physician assistants (PAs), registered nurses, licensed vocational nurses, licensed master social workers, registered dietitians, patient care technicians, and other technical staff, are qualified to serve the complex needs of dialysis patients and deliver dialysis services. APRNs, PAs, registered nurses, licensed vocational nurses, licensed master social workers, registered dietitians, patient care technicians, and other technical staff shall demonstrate and sustain the skills and any professional licensures required to perform the specific duties of their positions.

(h) The governing body shall ensure adequate numbers of qualified personnel are present whenever patients are undergoing dialysis so that the patient to staff ratio is appropriate to the level of dialysis care given and meets the needs of patients, including meeting the minimum staffing requirements demonstrated in §507.60 of this chapter (relating to Staffing Table).

(i) The governing body shall review, approve, and implement the facility's training program for staff, patients, and caregivers.

(j) The governing body shall develop, implement, and enforce policies and procedures relating to the facility's emergency preparedness plan to meet the requirements of §507.46 of this subchapter (relating to Emergency Preparedness). The plan shall address the continuity of essential building systems including emergency power and water, or a contract with another licensed end stage renal disease (ESRD) facility to provide emergency contingency care to patients to meet the requirements of Subchapter Z of this chapter (relating to Physical Plant and Construction Requirements).

(k) The governing body shall ensure all equipment used by facility staff or patients is properly maintained in accordance with the manufacturer's directions.

(l) The governing body shall ensure the facility's physical environment protects the health and safety of patients, personnel, and the public. The licensed facility site and the facility's surrounding physical structure used by the patients (including stairwells, corridors, and passageways) shall meet the local building and fire safety codes and standards as they relate to design and space requirements for safe access and patient privacy.

(m) The governing body shall develop, implement, and enforce policies and procedures regarding disruptive patients or family members to ensure the health and safety of patients, personnel, and the public.

(n) The governing body shall ensure that all facility staff members have access to the most current version of all applicable laws, rules, and regulations.

§507.42. Patient Rights.

(a) Each facility shall adopt, implement, and enforce policies and procedures appropriate to the patient population served to ensure each patient is:

(1) treated with respect, dignity, and full recognition of the patient's individuality and personal needs;

(2) provided privacy and confidentiality for the patient and the patient's clinical record;

(3) provided a safe, sanitary, and comfortable treatment environment;

(4) provided information in a manner to facilitate understanding by the patient and the patient's legal representative, family member, or significant other, as applicable, including patient information materials available in the appropriate language;

(5) provided an interpreter, interpreter service, or visual and hearing assistance if written materials in the patient's primary language are not available or not appropriate for the patient's needs;

(6) informed by a physician of the patient's medical status;

(7) informed of and provided education regarding all treatment modalities and settings, including self-care and transplant, for the treatment of end stage renal disease upon initiating treatment and an annual basis thereafter;

(8) informed about and provided the opportunity to participate in all aspects of care, including plan of care meetings, the right to refuse treatment, and the medical consequences of such refusal;

(9) informed of all services available in the facility and all charges for services provided;

(10) informed about the facility's reuse of dialysis supplies, including hemodialyzers, and if printed materials such as brochures are used to describe a facility and its services the brochures shall contain a statement describing the methods and procedures used when such supplies are reused;

(11) assured of a reasonable response by the facility to the patient's requests and needs for treatment or service, within the facility's capacity, the facility's stated mission, and applicable law and regulation;

(12) provided hours of dialysis that are scheduled for patient convenience whenever feasible or possible, with consideration is given to the patient's work or school schedule;

(13) transferred or discharged only for medical reasons, for the patient's welfare or that of other patients or staff members, or for nonpayment of fees; and given 30 calendar days advance notice in the event of a transfer or discharge, except in cases where the patient presents an immediate risk to others;

(14) given an opportunity and assistance to improve problematic behavior before dismissal from the facility;

(15) protected from abuse, neglect, or exploitation;

(16) provided information regarding advance directives and allowed to formulate such directives to the extent permitted by law, including documents executed under Texas Health and Safety Code Chapter 166 (relating to Advance Directives);

(17) fully informed on how to file a complaint against the facility without fear of reprisal or denial of services, including a written statement provided at the time of admission informing patients of their rights to make a complaint directly to Texas Health and Human Services Commission (HHSC) Complaint and Incident Intake;

(18) fully informed of the rights listed in this section, the responsibilities established by the facility, and all rules and regulations governing patient conduct and responsibilities, including a written copy of the patient's rights and responsibilities provided upon admission to each patient or the patient's legally authorized representative; and

(19) fully informed of the patient plan of care process, including the necessary services outlined in the patient plan of care.

(b) A facility shall prominently and conspicuously post a legible and current copy of the patient rights and facility license certificate in one or more public areas of the facility, so that the posting is readily available and observable to all facility patients, staff, and visitors.

(c) A facility shall obtain written informed consent for dialysis services from the patient or the patient's legally authorized representative.

(d) A facility shall not discriminate based on a patient's disability and shall comply with Texas Health and Safety Code Chapter 161, Subchapter S (relating to Allocation of Kidneys and Other Organs Available for Transplant).

§507.48. Nursing Services.

(a) The facility shall provide nursing services to prevent or reduce complications, maximize the patient's functional status, and educate the end stage renal disease patient, patient's family, patient's caregiver, or significant other.

(b) The facility shall employ a full-time supervising nurse to supervise and manage the provision of safe patient care. A facility shall not use contract staff as a full-time supervising nurse.

(c) The facility shall ensure a registered nurse is in the facility when patients are present in the facility.

(1) The facility's governing body shall develop policies and procedures for allowing patients in the building when a registered nurse is not present and inclement weather or safety concerns exist. The policies and procedures shall require a review of any occurrence when patients are allowed in the building when a registered nurse is not present. Facility staff shall present the date of the incident, reasons, patients affected, and staff present to the facility's quality assessment and performance improvement (QAPI) committee and governing body for review and development of an appropriate plan.

(2) In inclement weather or due to safety concerns, when two or more basic cardiopulmonary life support-trained staff members are in the facility, patients may enter the facility lobby in accordance with the facility's policies and procedures.

(d) A registered nurse shall conduct:

(1) admission nursing assessments;

(2) assessments of a patient upon a change in the patient's status, extended or frequent hospitalizations, or at the patient's request;

(3) dialysis assessments on all patients within the first hour of treatment each time the patient receives treatment; and

(4) immediate assessments if an abnormal finding or change of condition is identified pre-dialysis, intradialytic, or post-dialysis.

(e) A registered nurse shall participate in the interdisciplinary team review of a patient's progress and recommend changes in treatment based on the patient's current needs and facilitate communication between the patient, patient's family, and the patient's significant other, as applicable, and other interdisciplinary members, to ensure the facility delivers the necessary care.

(f) A registered nurse shall provide oversight and direction to dialysis technicians and licensed vocational nurses.

(g) A registered nurse shall participate in the facility's QAPI activities.

(h) A registered nurse functioning in the charge role shall be present during all dialysis treatments.

(i) If the facility provides pediatric dialysis, a registered nurse with experience or training in pediatric dialysis shall be available to provide care for pediatric dialysis patients smaller than 35 kilograms in weight.

(j) The facility shall ensure sufficient direct care staff, as defined in §507.2(26) of this chapter (relating to Definitions), are on site to meet the needs of the patients, and at least one licensed nurse is available on site for every 12 patients or portion thereof, as demonstrated in §507.60 of this subchapter (relating to Staffing Table). The nurse can be either a registered nurse (RN) or licensed vocational nurse (LVN). A registered nurse functioning in the charge role shall be present during all dialysis treatments. Each direct care staff shall only be assigned a maximum of four patients.

(1) During treatment of seven or fewer patients, direct care staff shall consist of at least one registered nurse and one direct care staff, as demonstrated in §507.60 of this subchapter.

(2) For one to seven patients, the direct care staff may be assigned a maximum of four patients and the charge nurse may be assigned a maximum of three patients.

(3) During treatment of 8-12 patients, the registered nurse functioning as charge nurse shall not be assigned as direct care staff, as demonstrated in §507.60 of this subchapter.

(4) For pediatric dialysis patients, one registered nurse shall be provided on site for each patient weighing less than 10 kilograms and one registered nurse provided on site for every two patients weighing from 10 to 20 kilograms.

(k) A facility shall ensure patients are in view of staff during hemodialysis treatments, and staff shall observe the patient, their access site, and their bloodline connections during the dialysis treatment.

(l) The facility shall include documentation in the patient's record verifying the patient was educated during treatment, upon admission, and annually on the importance of leaving their access sites uncovered.

(m) A licensed nurse or dialysis technician shall collect and document objective and subjective data for each patient before and after treatment, according to facility policy and the staff member's level of training.

(1) The facility shall have written policies and procedures specific to the facility to guide nursing staff actions in the event a patient's condition deteriorates during treatment to identify parameters which would require a patient be referred to a nurse for evaluation.

(2) A registered nurse shall conduct a patient assessment when indicated by a question relating to a change in the patient's status or at the patient's request.

(n) A registered nurse shall conduct the initial patient assessment before the patient's first dialysis treatment by the facility.

(o) This chapter does not preclude a licensed vocational nurse (LVN) from practicing in accordance with the rules adopted by the Texas Board of Nursing. If the LVN is acting in the capacity of a dialysis technician, the facility shall determine that the LVN has passed a training and competency evaluation curriculum that meets the requirements in §507.72 of this chapter (relating to Training Curricula and Instructors) and §507.73 of this chapter (relating to Competency Evaluation).

(p) A dialysis technician providing direct patient care shall demonstrate knowledge and competency for the responsibilities specified in §507.72 and §507.73 of this chapter.

§507.49. Nutrition Services.

(a) A facility shall provide nutrition services to a patient and the patient's caregivers to maximize the patient's nutritional status.

(b) The dietitian shall be responsible for:

(1) conducting a nutrition assessment of a patient;

(2) participating in an interdisciplinary team review of a patient's progress;

(3) recommending therapeutic diets in consideration of cultural preferences and changes in treatment based on the patient's nutritional needs in consultation with the patient's physician;

(4) counseling a patient, a patient's family, and a patient's significant other, as applicable, on prescribed diets and monitoring adherence and response to diet therapy;

(5) referring a patient for assistance with nutrition resources such as financial assistance, community resources, or in-home assistance;

(6) participating in the facility's quality assessment and performance improvement (QAPI) activities; and

(7) providing ongoing monitoring of subjective and objective data to determine the need for timely intervention and follow-up, including weight changes, blood chemistries, adequacy of dialysis, and medication changes that affect nutrition status and potentially cause adverse nutrient interactions.

(c) The dietitian shall contact the patient to document and complete the patient's comprehensive nutrition assessment with an educational component no later than 30 calendar days or 13 treatments after the patient's admission to the facility, whichever occurs later.

(d) The dietitian shall conduct a nutrition reassessment no less than annually or upon a change in the patient's status, extended or frequent hospitalizations, a change in the patient's modality, or at the patient's request.

(e) Each facility shall employ or contract with a dietitian to provide clinical nutrition services for each patient.

(1) The maximum caseload for a full-time equivalent dietitian is 125 patients. The caseload is cumulative across all modalities and facilities where the dietitian is employed. A facility shall employ or contract a second dietitian for a patient caseload over 125 patients.

(2) The governing body shall ensure the facility assigns personnel to assist dietitians with ancillary tasks when the patient load, including all modalities, exceeds 100 patients per facility.

(f) The facility shall ensure nutrition services are available at the facility during scheduled patient treatment times. A patient may need an appointment to access nutritional services.

(g) A facility shall have written physician standing orders specific to that facility authorizing delegation of responsibilities for the facility dietitian, as determined by the medical director and the facility.

(1) The medical director shall review and approve the standing orders at least annually.

(2) The standing orders shall be consistent with the statutes and rules of the Texas Medical Board, Texas Board of Nursing, and Texas Department of Licensing and Regulation.

(h) When the facility uses a medication algorithm or protocol for managing renal bone disease, the nutritional care for each patient shall be individualized.

§507.51. Social Services.

(a) A facility shall provide social services to patients and their families that are directed at supporting and maximizing the patient's adjustment, social functioning, and rehabilitation.

(b) The social worker is responsible for:

(1) conducting psychosocial evaluations, which include health-related quality of life surveys;

(2) participating in the interdisciplinary team review of a patient's progress;

(3) providing an ongoing assessment and recommend changes in treatment based on the patient's current psychosocial needs;

(4) providing social work interventions including counseling, case work, and group work services to patients and their families experiencing special problems associated with end stage renal disease;

(5) identifying community social agencies and other community resources, and assisting patients and families to use them;

(6) participating in the facility's quality assessment and performance Improvement (QAPI) activities; and

(7) assisting patients to achieve optimum levels of productive activity and making rehabilitation referrals as appropriate.

(c) The facility shall ensure the social worker initially contacts the patient and documents the initial contact no later than 30 calendar days or 13 treatments from the patient's admission, whichever occurs later. Qualified facility staff shall complete comprehensive psychosocial assessment no later than 30 calendar days or 13 treatments from the patient's admission to the facility, whichever occurs later.

(d) Qualified facility staff shall conduct a governing-body-approved psychosocial and quality of life reassessment as needed, but no later than 90 calendar days after the initial assessment and at least annually thereafter, and when there is:

(1) a significant change to the patient's psychosocial needs;

(2) extended or frequent hospitalizations;

(3) any event that would interfere with the patient's ability to follow aspects of the plan of care;

(4) a change in the patient's modality; or

(5) at the patient's request.

(e) Each facility shall employ or contract with a social worker to meet the psychosocial needs of the patients.

(1) The facility shall ensure one full-time equivalent of qualified social worker time is available for up to 125 patients per facility, which is the maximum case load for all modalities available in the facility. The caseload is cumulative across all modalities and facilities where the social worker is employed. The facility shall employ or contract a second social worker for a patient caseload over 125.

(2) The governing body shall ensure the facility assigns personnel to assist social workers with ancillary tasks, such as assistance with financial services, transportation, and administrative and clerical duties, when the patient load, including all modalities, exceeds 100 patients per facility.

(f) The facility shall ensure social services are available at the facility during scheduled patient treatment times. A patient may need an appointment to access social services.

§507.52. Medical Services.

(a) The medical director shall meet the requirements set forth in the CMS Conditions for Coverage and is responsible for:

(1) developing facility treatment goals that are based on review of aggregate data assessed through quality assessment and performance improvement (QAPI) activities;

(2) ensuring adequate training of licensed nurses and dialysis technicians;

(3) adequate monitoring of patients and the dialysis process;

(4) developing, implementing, and enforcing all policies required by this chapter;

(5) ensuring the facility's attending physicians follow the facility's policies and procedures, and the physicians follow the facility's established treatment and clinical standards, including quality, safety, and infection control standards; and

(6) ensuring all facility care staff, including nurses, patient care technicians, social workers, dietitians, physicians, and other ancillary staff receive annual training in all modalities, including transplant.

(b) The facility shall meet the following requirements regarding medical staff responsibilities.

(1) Each patient shall be under the care of a licensed and qualified nephrologist on the medical staff, or a physician on the medical staff who has demonstrated experience treating dialysis patients for at least 18 months.

(2) Each pediatric dialysis patient shall be under the care of a pediatric nephrologist or under the care of an adult nephrologist with direct patient evaluation by a pediatric nephrologist as follows:

(A) for patients two years of age or younger, monthly (two of three evaluations may be conducted by phone);

(B) for patients 3-12 years of age, quarterly; and

(C) for patients 13-18 years of age, semiannually.

(3) For each patient receiving dialysis in the facility, a physician on the facility's medical staff shall see the patient at least twice a month. The physician shall conduct the first visit in person. The second visit is required unless the patient is stable, as justified in the patient record by the physician. If the second visit is necessary, it shall be separated from the first visit by at least 10 calendar days and may be conducted in person or using telemedicine. Additional visits conducted in the same month by a physician may be conducted using telemedicine.

(4) Home dialysis patients shall be seen by a physician, an advanced practice registered nurse (APRN), or a physician assistant (PA) no less than once a month.

(A) The physician shall see the patient in person at least once every three months.

(B) The physician shall conduct physician visits required by subparagraph (A) of this paragraph in person and may conduct the visit in the dialysis facility, at the physician's office, or in the patient's home. The physician may conduct additional visits in the same month using telemedicine.

(C) An APRN or a PA may conduct the visits required by this paragraph using telemedicine.

(D) The record of these contacts shall include evidence of assessment for new and recurrent problems and review of dialysis adequacy each month.

(5) The facility shall ensure a physician on the medical staff is on call and available 24 hours a day (in person or by telecommunication) to patients and staff.

(6) The physician shall verify and sign all orders for treatment. Facility staff shall update routine orders for treatment at least annually. Any changes in patient treatment shall be per physician's order.

(A) Orders for hemodialysis treatment shall include length of treatment, dialyzer, blood flow rate, dialysate composition, target weight, all medications administered during or needed for treatment, and specific infection control measures, as needed.

(B) Orders for peritoneal dialysis treatment shall include fill volumes, number of exchanges, dialysate concentrations, catheter care, medications, and specific infection control measures, as needed.

(c) If the facility uses APRNs or PAs:

(1) the facility shall ensure documented evidence of communication with the treating physician whenever the APRN or PA changes treatment orders;

(2) the APRN or (PA) shall not replace the physician in participating in patient care planning or in QAPI activities;

(3) the APRN or PA shall not replace the physician for the completion of assessments, as defined by the CMS Conditions for Coverage, or for the twice monthly evaluation of the in-center dialysis patient;

(4) the APRN or PA shall notify the treating physician of patient medical emergencies;

(5) the APRN or PA shall meet the requirements established by the Texas Board of Nursing (for an APRN) or the Texas Physician Assistant Board (for a PA); and

(6) the APRN or PA shall use mechanisms that provide authority for that care, which shall include protocols or other written authorization:

(A) reviewed and approved by the APRN or PA and the appropriate physician;

(B) signed by both the APRN or PA and the physician;

(C) reviewed and re-signed at least annually;

(D) maintained in the practice setting of the APRN or PA; and

(E) made available as necessary to the Texas Health and Human Services Commission (HHSC) to verify authority to provide medical aspects of care.

(d) The facility shall comply with Texas Health and Safety Code Chapter 166 (relating to Advance Directives) concerning out-of-hospital do-not-resuscitate orders.

(e) If the facility has a contract or agreement with an accredited school of health care for the school to use their facility for a portion of the students' clinical experience, those students may provide care under the following conditions.

(1) The facility may offer clinical experience to students, provided the instructor is present at the facility, provides direct supervision to the student, and assumes responsibility for all student activities occurring within the facility.

(2) A student may administer medications only if:

(A) on assignment as a student at their school of health care; and

(B) under the immediate supervision of a qualified registered nurse on staff at the facility.

(3) A facility shall not use a student to fulfill the requirement for administration of medications by licensed personnel.

(4) A facility shall not consider a student when determining staffing levels required by the facility.

(5) A student shall not mix concentrate or test water quality.

(6) A student shall not accept or transcribe physician orders.

(7) A student shall not conduct the assessments of new or unstable patients.

(8) A qualified registered nurse shall directly supervise the students to protect the students and facility patients.

§507.53. Home Dialysis Service.

(a) A facility that provides home dialysis training, and support shall ensure through its interdisciplinary team that home dialysis services are at least equivalent to those provided to in-facility patients and meet all applicable licensure rules.

(b) A facility shall provide a separate room for home dialysis services, as defined in §507.2 of this chapter (relating to Definitions).

(1) The room shall include a handwashing sink with water and soap available to facilitate handwashing. Sink faucets shall have a hands-free operation to activate the water flow, which may include a single-lever, wrist blade lever, electronic sensor faucet, or an elbow or wrist action faucet. Provisions for hand drying shall be included at each handwashing sink.

(2) The facility shall clearly designate clean areas for preparing, handling, and storing medications and unused supplies and equipment. Facility staff shall not handle or store medications or clean supplies in the same or an immediately adjacent area where facility staff handle used supplies, equipment, or blood samples.

(3) The facility shall have a designated area with a separate sink for disposal of blood or body fluids. The facility shall clearly designate contaminated areas where staff handle used supplies, equipment, or blood samples.

(c) Patients may receive Training (Patient), as defined in §507.2 of this chapter (relating to Definitions), individually or in a small group setting. A facility must offer patients a choice of an individual or small group training setting and ensure the facility meets each patient's preferences and individual needs. Patient training must take place in person.

(d) When a patient completes home dialysis training, the facility shall assign each individual home dialysis patient, regardless of modality, one machine for the patient's exclusive use in the home. A facility shall not assign multiple home dialysis patients to the same machine.

(e) For home dialysis patients, including all modalities, a facility shall maintain a staffing level of one full-time equivalent registered nurse for every group of 25 patients. For 21 - 25 patients, the facility shall assign a licensed vocational nurse or a dialysis technician to assist the registered nurse.

(f) A registered nurse shall conduct home dialysis training. Before permitting a registered nurse to provide home dialysis training to a patient and a patient's caregiver, the facility shall:

(1) verify the registered nurse has:

(A) at least 12 months clinical nursing experience; and

(B) a minimum of three months experience, occurring within the last 24 months, in the specific modality with the responsibility for training the patient and the patient's caregiver;

(2) evaluate and document the nurse's ability to independently provide home dialysis training;

(3) document the nurse's competency to provide home dialysis training three months after passing the initial competency exam; and

(4) ensure all competency evaluations administered under this subsection contain the facility staff's signature evaluating the nurse's competency to provide home dialysis training.

(g) A facility's medical director shall develop and approve the home dialysis training curriculum. The home dialysis training curriculum shall comply with the following requirements.

(1) Training for each home dialysis patient shall address the patient's specific needs in the nature and management of end stage renal disease in a manner that complies with all patient privacy and infection control requirements.

(2) Training shall include the full range of techniques associated with the treatment modality selected, including the effective use of dialysis supplies and equipment in achieving and delivering the physician's prescription.

(3) Training of the patient and caregiver, as applicable, shall include:

(A) effective and safe administration of erythropoiesis-stimulating agents (if prescribed) to achieve and maintain a target level hemoglobin, hematocrit, and blood pressure levels, or hematocrit, as written in the patient's plan of care;

(B) how to detect, report, and manage potential dialysis complications, including water treatment problems;

(C) availability of support resources and how to access and use resources;

(D) how to self-monitor health status and record and report health status information;

(E) how to handle medical and nonmedical emergencies;

(F) infection control precautions;

(G) proper waste storage and disposal procedures;

(H) how to order supplies on an ongoing basis;

(I) not using non-medical electrical equipment within six feet of the home hemodialysis machine; and

(J) notifying the facility of any change in machinery used in home dialysis.

(4) Staff shall include documentation in the clinical record that the patient, the caregiver, or both, received and demonstrated adequate comprehension of the training.

(h) The interdisciplinary team shall oversee training of a home dialysis patient and the designated caregiver before the initiation of home dialysis, and when the home dialysis caregiver or home dialysis modality changes.

(i) A home dialysis training facility shall retrieve and review complete self-monitoring data and other information from the home dialysis self-care patient, or their designated caregiver, at least every two months, and maintain this information in the patient's clinical record in the facility.

(j) If a facility is unable to obtain a patient's self-monitoring data after an appropriate number of attempts, the physician must refer the case to the medical director for a determination about a potential modality change for the patient.

(k) A home dialysis training facility shall furnish home dialysis support services, regardless of whether dialysis supplies may be provided by the dialysis facility or a durable medical equipment company.

(l) A home dialysis training facility shall provide services as follows.

(1) The facility shall complete an initial monitoring visit of the patient's home adaptation by facility personnel (including the registered nurse responsible for training the patient in the chosen modality and technical staff as appropriate) in accordance with the patient's plan of care, before the patient begins training for the selected home modality, and periodically thereafter.

(2) The facility must make a monitoring visit to the patient's home in case of:

(A) patient's change of address,

(B) change in the patient's primary caregiver,

(C) disaster that impacts the patient's home,

(D) major renovation, or

(E) any other event that may impact the patient's care.

(3) A physician, an advanced practice registered nurse, or a physician assistant shall see a home dialysis patient in accordance with §507.52(b)(4) of this subchapter (relating to Medical Services).

(4) The interdisciplinary team shall develop and periodically review an individualized and comprehensive plan of care for the patient. The plan of care shall specify the services necessary to address the patient's needs and meet the measurable and expected outcomes, which meet a hemodialysis Kt/Vurea (Kt/V) of at least 1.2 (three times a week), or standard Kt/V of 2.0 (four to six times a week), or a peritoneal dialysis weekly Kt/V of at least 1.7, or meet an alternative equivalent professionally-accepted clinical practice standard for adequacy of dialysis.

(5) The facility shall provide patient consultation with interdisciplinary team members as needed.

(m) A home dialysis training facility shall monitor the quality of water and dialysate used by a home hemodialysis patient, including an initial on-site evaluation and testing of the water and dialysate system, and any time facility staff repairs or exchanges the water treatment equipment.

(1) A home dialysis training facility shall annually analyze the product water used for dialysate preparation to ensure the water meets the standards listed in §507.30 of this chapter (relating to Technical Standards).

(2) A home dialysis training facility shall test the water and dialysate system in accordance with the manufacturer's direction for use.

(3) A home dialysis training facility shall test the water and dialysate system in accordance with the system's United States Food and Drug Administration (FDA) approved labeling, for integrated hemodialysis system designed, tested, and validated to meet the quality (including standards for chemical and total chlorine testing) water and dialysate required by standards listed in §507.30 of this chapter. The facility shall meet testing and other requirements of the standards listed in §507.30 of this chapter, when using an integrated water and dialysate system, which is designed and validated to meet the standards listed in §507.30 of this chapter.

(4) A home dialysis training facility shall perform bacteriological and endotoxin testing of water used for dialysate preparation and dialysate monthly and ensure the results are within the limits allowed by the standards listed in §507.30 of this chapter.

(n) The dialysis facility shall correct any water and dialysate quality problem for the home hemodialysis patient, and if necessary, arrange for backup dialysis until the facility corrects the problem if:

(1) an analysis of the water and dialysate quality indicates contamination; or

(2) the home hemodialysis patient demonstrates clinical symptoms associated with water and dialysate contamination.

(o) The dialysis facility shall be responsible for arranging the purchase, lease, or rental of medically necessary home dialysis supplies and equipment, and the delivery, installation, repair, and maintenance of these supplies and equipment (including supportive equipment), as prescribed by the attending physician. If the patient purchases, leases or rents dialysis equipment, the facility shall ensure the equipment's installation, repair, and maintenance in accordance with the manufacturer's directions for use.

(p) The dialysis facility shall identify a plan and arrange for emergency backup dialysis services when needed.

(q) The dialysis facility shall maintain a recordkeeping system that ensures continuity of care and patient privacy.

(r) The dialysis facility, or the patient or patient's caregiver with facility oversight, shall culture and measure the hemodialysis machines of home patients for colony forming units and endotoxins before disinfection, at least quarterly or more frequently, as needed, or required by the standards listed in §507.30 of this chapter. The facility shall follow the manufacturer's recommendations regarding the proper procedure for disinfection. For integrated hemodialysis system devices, facility staff shall follow the device's FDA labeling and manufacturer's recommendations.

(s) As applicable, the facility shall maintain maintenance records for all dialysis machines and dialysis equipment at the licensed facility site.

(t) If required, the electrical connection for the home hemodialysis machines shall be connected to a ground-fault circuit interrupter (GFCI) receptacle in accordance with Subchapter Z of this chapter (relating to Physical Plant and Construction Requirements).

(u) The dialysis machine shall comply with the requirements of §507.33 of this chapter (relating to Water Treatment). The facility shall ensure that the water pressure in the patient's home meets the minimum requirement specified by the water treatment system's manufacturer.

(1) The facility shall meet the following requirements for an integrated hemodialysis system.

(A) The facility shall analyze the source water used for dialysate annually or if there is a change in the source water, to ensure the water quality meets the manufacturer's guidelines for source water purity.

(B) The facility shall obtain the product water chemical quality every six months before replacing the water purification disposable component, or when any modifications are made to the integrated hemodialysis system to ensure that the product water meets the current CMS guidelines.

(C) The facility shall provide a means for the patient or patient's caregiver to sample the product water to test for total chlorine levels immediately before using the dialysate. The total chlorine level shall comply with the standards listed in §507.30 of this chapter, and the results shall be documented by the patient or the patient's caregiver.

(D) If applicable, the facility, or the patient or patient's caregiver with facility oversight, shall obtain the microbiological quality of the dialysate at the end of a prepared dialysate bag, with the requirements at §507.33 of this chapter and §507.34 of this chapter (relating to Dialysate).

(2) If using a dialysis system that uses manufactured dialysate solution in its existing form, the facility shall use the system according to manufacturer's directions. The facility shall ensure patients receive necessary training and can demonstrate competencies to follow the manufacturer's directions for use.

(3) If using a peritoneal dialysis system that uses manufactured dialysis solution the facility shall use the system according to manufacturer's directions. The facility shall ensure that patients are trained and can demonstrate competencies to follow the manufacturer's directions for use.

(4) If using sorbent technology, the patient or facility staff shall test the sorbent regeneration dialysis system (machine) before each treatment with the manufacturer's self-test method, and the patient or facility staff shall document evidence of the self-test. The facility shall analyze the source water used for dialysate to ensure the water quality meets the manufacturer's guidelines for source water purity annually or if there is a change in the source water.

§507.54. Staff Qualifications.

(a) Facility staff (whether employees or contractors) shall meet the personnel qualifications and demonstrated competencies necessary to serve the needs of the patients. Facility staff shall demonstrate and sustain the skills needed to perform the specific duties of their positions.

(1) The facility shall develop and implement a written orientation program to familiarize all new employees (including office staff) with the facility, its policies, and their job responsibilities. The facility shall ensure that each new direct care staff member (whether employee or contractor) receives sufficient time to become familiar with the facility.

(A) The orientation program shall meet the following minimum time requirements.

(i) For individuals with previous dialysis experience, the orientation program shall be two weeks.

(ii) For new direct care staff members with no previous dialysis experience, the orientation program shall be two weeks plus additional time as determined by the facility.

(B) In facilities with similar policies and equipment, staff with dialysis experience oriented to one facility may be shared with another facility after a shorter orientation period. Each facility where a shared employee works shall keep documentation on file of the shared staff's current competency and tasks delegated by that facility's medical director to unlicensed technicians.

(C) A facility shall provide registered nurses with no previous dialysis experience an orientation program of a minimum of seven weeks. The seven-week orientation program shall contain content specific to end stage renal disease patient management and appropriate to the population served by the facility, including at least:

(i) fluid, electrolyte, and acid-base balance;

(ii) kidney disease and treatment;

(iii) dietary management of kidney disease;

(iv) principles of dialysis;

(v) dialysis technology;

(vi) venipuncture technique;

(vii) care of the dialysis patient;

(viii) psychological, social, financial, and physical complications of long-term dialysis;

(ix) prevention of hepatitis and other infectious diseases;

(x) risks and benefits of reuse (if reuse is practiced); and

(xi) all available treatment modalities, including the availability of kidney transplantation.

(2) A facility shall ensure each licensed nurse and dialysis technician demonstrates competency through written and skills testing after they complete the orientation program and annually thereafter. The facility shall maintain documented evidence of competency in writing in personnel files. Current certification by a nationally recognized board may substitute for the annual written test. The facility shall ensure all dialysis technicians receive certification from a national commercially available certification program within 18 months of being hired as a dialysis technician.

(b) A facility shall ensure medical staff meet the following requirements.

(1) Each physician on the medical staff shall have a current license to practice medicine in the state of Texas.

(2) If a facility uses an advanced practice registered nurse, that individual shall meet the requirements established by the Texas Board of Nursing in Texas Administrative Code, Title 22 (22 TAC), Chapter 221 (relating to Advanced Practice Nurses).

(3) If a facility uses a physician assistant, that individual shall meet the requirements established by the Texas Medical Board in 22 TAC Chapter 185 (relating to Physician Assistants).

(c) A facility shall ensure nursing staff meet the following requirements.

(1) Each individual licensed as a nurse shall have a current Texas license to practice nursing in accordance with the statutes and rules of the Texas Board of Nursing, or a current license from another state in the Nurse Licensure Compact (NLC).

(2) Each registered nurse assigned charge nurse responsibilities shall have at least 12 months of clinical experience and six months experience in hemodialysis after completing the facility's training program.

(A) For a newly licensed registered nurse, the last six months of clinical experience may run concurrently with the six months of dialysis experience.

(B) The hemodialysis experience shall be within the last 24 months.

(C) A registered nurse who holds a current certification from a nationally recognized board in nephrology nursing or hemodialysis may substitute the certification for the six months experience in dialysis obtained within the last 24 months.

(3) The facility shall document written physician standing orders, specific to the facility, in the patient's clinical record to guide nursing staff actions in the event a patient's condition deteriorates during treatment. The medical director shall review and approve these standing orders at least annually, consistent with the Texas Medical Board statutes and rules and the Texas Board of Nursing statutes, rules, and policy statements for registered nurses and licensed vocational nurses.

(4) If a facility provides patient self-care training, either in-center or at home, a registered nurse with at least 12 months clinical experience and three months experience in the specific modality, shall be responsible for providing self-care training to the patient or caregiver in that modality.

(5) When other facility staff assist in the self-care training in-center, the qualified registered nurse shall supervise the self-care training. When other facility staff assist in training a patient or the patient's caregiver in self-care training, the facility shall document in the employee's personnel record that the employee is qualified, as approved by the medical director, to assist in the self-care training.

(6) The facility shall establish a nursing peer review committee to conduct nursing peer review, as required by Texas Occupations Code Chapter 303 (relating to Nursing Peer Review).

(d) Each dietitian shall have a current Texas license, be a registered dietitian, and have a minimum of one year of professional work experience in clinical dietetics after becoming a registered dietitian.

(e) Each social worker shall:

(1) hold a current license as a social worker under Texas Occupations Code Chapter 505 (relating to Social Workers) and hold a master's degree in social work from a graduate school of social work accredited by the Council on Social Work Education; or

(2) have at least two years of work experience as a social worker, one year of which was in a dialysis facility or transplantation program before September 1, 1976, and have an established consultative relationship with a social worker who has a master's degree in social work from a graduate school of social work accredited by the Council on Social Work Education.

(f) A facility shall ensure biomedical technical staff meet the following requirements.

(1) The facility's biomedical technical staff may be one or more individuals (including nursing staff) employed by or under contract with the facility as long as the individual meets the minimum qualifications for each required level of responsibility, as described in this subsection.

(2) Only individuals qualified by training, education, or experience may operate, repair, or replace components of the systems used in providing dialysis treatment or reprocessing dialyzers.

(A) Technical staff shall have minimum education, training, and experience documented and maintained on file in the facility, which includes:

(i) a high school diploma or equivalent, except for technical staff employed by the facility for two or more years before April 11, 1999, who are exempt from this requirement; and

(ii) training or experience, in one or more of the following:

(I) completion of a college-based technical dialysis program;

(II) completion of the didactic training and education requirement for patient care technicians set out in §507.72(a) and (b) of this chapter (relating to Training Curricula and Instructors);

(III) current certification in technical aspects of dialysis by a nationally recognized testing organization; or

(IV) 12 months experience in dialysis within the last two years.

(B) Any staff member assigned responsibilities in the technical area shall pass an annual written competency examination, demonstrate skills related to the required level of responsibility, and be certified by the facility's medical director as competent to perform their assigned duties. Current certification by a national board in dialysis technology may substitute for the written test.

(C) The technical staff shall annually complete a minimum of five hours of continuing education with a technical or end stage renal disease focus. Facility staff may provide continuing education. Continuing education documentation shall include the continuing education course title, duration, and author or instructor.

(3) The technical supervisor is responsible for supervision of technical services. The technical supervisor shall meet the education, training, and experience requirements described in this paragraph.

(A) The technical supervisor shall meet the requirements in paragraph (3) of this subsection.

(B) The technical supervisor shall ensure technical staff demonstrate competency in equipment maintenance and repair, mechanical service, water treatment systems, and reprocessing of hemodialyzers, if applicable.

(i) Before assuming technical supervisory responsibility, a technical supervisor trainee shall successfully complete the facility's orientation and training courses as established for each technical area.

(ii) The medical director shall approve the training courses. The training courses shall follow a written curriculum with stated objectives. The curriculum shall include all items noted in this clause and paragraph (4)(B) of this subsection.

(4) Facility staff responsible for the water treatment and dialysate systems shall demonstrate understanding of the risks to patients of exposure to water that has not been treated to remove contaminants and impurities.

(A) The facility shall maintain training documentation for each individual who operates (regularly or intermittently) these systems to ensure safe operation of the water treatment and dialysate systems.

(B) The staff responsible for water treatment and dialysate systems shall meet the education, training, and experience requirements described in paragraph (2) of this subsection and shall demonstrate competency by:

(i) successful completion of the facility training course specific to water treatment, dialysate preparation, and related tasks, which must be approved by the medical director and follow a written curriculum with state objectives;

(ii) completion of a training curriculum that includes

(I) introduction to end stage renal disease;

(II) principles of hemodialysis;

(III) principles of infection control and basic microbiology for water treatment systems, machines, and sampling techniques;

(IV) rationale for water treatment for dialysis;

(V) risks and hazards of using unsafe water for dialysis;

(VI) current water standards;

(VII) source water characteristics;

(VIII) communication with source water agencies and water treatment vendors;

(IX) selection of water treatment equipment;

(X) water purification equipment, to include filtration, carbon adsorption, and reverse osmosis;

(XI) ion exchange to include softeners and deionizers;

(XII) water distribution system and other equipment specific to the facility;

(XIII) monitoring system performance, to include online and offline monitoring, aseptic sample collection, incubation of samples, and interpretation of results;

(XIV) evaluation of water treatment component performance, to include filters, activated carbon adsorption beds, reverse osmosis, and ion exchange;

(XV) evaluation of system performance, to include monitoring schedules and review of system failures;

(XVI) purpose of each component of dialysate, to include electrolytes, glucose, acid, and buffer;

(XVII) hazards of exposure of patients to a dialysate containing a different concentration of electrolytes than prescribed;

(XVIII) testing methods in use to verify expected concentrations in any reconstituted components of the dialysate are achieved;

(XIX) action to take in the event testing of a mixed batch of dialysate concentrate does not meet the expected parameters;

(XX) labeling employed to positively identify each concentrate; and

(XXI) procedures to ensure the proper transfer of concentrates from the manufacturer's drums to the holding tanks;

(iii) confirmation of the ability to distinguish all primary colors; and

(iv) successful completion of the facility's orientation and training course as established for the water treatment and dialysate preparation systems technician trainee before the trainee's initial assumption of responsibility.

(5) The staff responsible for equipment maintenance and repair shall meet the education, training, and experience requirements described in paragraph (2) of this subsection and shall demonstrate competency by:

(A) successful completion of the facility training course outlined in paragraph (2) of this subsection, relating to water treatment systems;

(B) successful completion of a training curriculum, which includes:

(i) prevention of transmission of hepatitis through dialysis equipment;

(ii) safety requirements of dialysate delivery systems;

(iii) repair and maintenance of dialysis and other equipment specific to the facility;

(iv) electrical safety, including lockout or tagout;

(v) emergency equipment maintenance;

(vi) building maintenance;

(vii) fire safety and prevention requirements; and

(viii) emergency response procedures; and

(C) successful completion of a written competency exam and demonstration of skills specific to the facility's mechanical and equipment service and water treatment and distribution systems.

(6) The staff responsible for reprocessing hemodialyzers and other supplies shall meet the education, training, and experience requirements described in paragraph (2) of this subsection and shall demonstrate competency by:

(A) successful completion of a training curriculum that includes the components of the standards for reuse of hemodialyzers listed in §507.30 of this chapter (relating to Technical Standards); and

(B) successful completion of a written competency exam that includes return demonstration of skills specific to reprocessing of hemodialyzers and other dialysis supplies.

§507.55. Clinical Records.

(a) A facility shall develop, implement, and enforce policies and procedures for a clinical record system to ensure complete and accurate documentation of care provided to each patient. The clinical record system shall make documentation readily available and systematically organized to facilitate the compilation and retrieval of information.

(1) The facility shall centralize all information in the patient's clinical record and protect the record against loss or damage in accordance with state and federal regulations.

(2) The facility shall provide an area for clinical records storage that is separate from all patient treatment areas and secured from unauthorized access. The facility shall store the active clinical record of each patient currently treated by the facility on site.

(3) The facility shall maintain the confidentiality of each patient's personal and clinical records.

(4) The facility shall not use signature stamps to authenticate clinical record entries.

(5) The facility may preserve clinical records electronically. Electronic records shall meet all requirements of paper records, including protection from casual access and retention for the specified period. Systems shall ensure that facility staff may not alter entries regarding the delivery of care without evidence and explanation of such alteration.

(6) The facility shall preserve inactive clinical records by electronic means and may store inactive records off site, as long as the facility maintains security, and ensures the record is readily retrievable for review by the Texas Health and Human Services Commission (HHSC) or HHSC designee.

(7) Each patient's clinical record, whether hard copy, electronic, or a combination of both, shall include complete and pertinent information about the patient's condition, assessments by the interdisciplinary team, updated plans of care, all interventions and treatments prescribed and delivered, and details of any events occurring with the patient during treatment. The record of care shall be readily accessible to every authorized interdisciplinary team member so that safe care can be coordinated to best meet the patient's needs.

(8) Each clinical record shall include:

(A) identifying information;

(B) consents and notifications;

(C) if the patient requires an accommodation, details on how staff explained consent forms for treatment, whether staff obtained the patient's consent, and how staff explained to the patient the patient's rights and responsibilities;

(D) documentation that the physician explained the treatment risks, benefits, and complications to the patient before the patient's first treatment;

(E) documentation that a licensed registered nurse witnessed the patient signing the consent forms before the patient's first treatment;

(F) physician orders;

(G) progress notes;

(H) problem list;

(I) medical history and physical examination;

(J) professional assessments by the registered nurse, social worker, and dietitian;

(K) medications given during treatment, which may be listed on the treatment record; and a list of medications the patient takes at home;

(L) transfusion records;

(M) laboratory reports;

(N) diagnostic studies;

(O) hospitalization records;

(P) consultations;

(Q) records of creation and revision of access for dialysis;

(R) plans of care, including evidence of interdisciplinary team review and adjustment;

(S) evidence of patient education;

(T) daily treatment records; and

(U) discharge summary, if applicable.

(b) A facility physician shall complete a comprehensive medical history and physical examination no later than 30 calendar days from the patient's admission to the facility and at least annually thereafter.

(1) For a patient new to dialysis, the physician responsible for the dialysis care shall complete the history and examination.

(2) For an established dialysis patient, the history and examination may be completed by an advanced practice registered nurse or physician assistant.

(3) Before the first treatment in the facility, the physician shall inform the registered nurse functioning in the charge role of at least the patient's diagnoses, medications, hepatitis status, allergies, and dialysis prescription. The patient's clinical record shall include this data.

(c) The patient's clinical record shall provide an ongoing and accurate report of the patient's progress, reflecting changes in patient status, plans for and results of changes in treatment, diagnostic testing, consultations, and unusual events. Each interdisciplinary team member shall record the patient's progress as indicated by any change in the patient's medical, nutritional, or psychosocial condition.

(d) Facility staff shall note the patient's condition and response to treatment on the daily treatment record.

(e) A facility shall ensure care for transient patients meets the following requirements.

(1) Except as provided by paragraph (2)(B) of this subsection, before providing dialysis treatment to a transient patient the facility shall obtain and include, at a minimum:

(A) orders for treatment in this facility;

(B) a list of medications and allergies;

(C) laboratory testing results no earlier than one month before treatment, which include screening for Hepatitis B status;

(D) the most current plan of care;

(E) the most current treatment records from the home facility; and

(F) records of care and treatment at this facility.

(2) If a facility dialyzes a patient who is normally dialyzed in another facility, the facility shall meet the following requirements.

(A) The facility shall continuously evaluate staffing levels and use this information in determining whether to accept a transient patient for treatment.

(B) If a transient patient arrives unannounced, the facility may provide dialysis after obtaining, at a minimum, from the patient records:

(i) orders for treatment;

(ii) Hepatitis B status; and

(iii) medical justification by the physician ordering treatment that the patient's need for dialysis outweighs the need for the additional clinical information set out in this subsection.

(3) In the event a transient patient's hepatitis status is unknown, the patient may undergo treatment as if the Hepatitis B surface antigen (HbsAg) test results were potentially positive, except that the facility shall not treat such a patient in the HBsAg isolation room, area, or machine.

(f) Facility staff shall complete clinical records within 30 days after discharge. The discharge summary shall clearly identify the patient's disposition and include the diagnosis or cause of death, date of discharge or death, location of death, transplant, or relocation information when appropriate, and reason for discharge if not for transplantation or death.

(g) Clinical records are the facility's property, and the facility shall safeguard clinical records against loss, destruction, or unauthorized use.

(h) The facility shall provide copies of pertinent portions of a patient's record when the patient is transferred. The records provided shall include, at a minimum, the most current orders for dialysis treatment, last three treatment records, he current hepatitis status, and current plan of care. If the facility transfers the patient to another outpatient facility, the facility shall provide copies of the most recent history and physical and assessment of each interdisciplinary team member.

(i) The facility shall retain records for a minimum of five years after the patient's discharge and in accordance with state and federal regulations. The facility shall not destroy clinical records that relate to any matter that is involved in litigation, unless the litigation has been finally resolved.

(j) If a facility ceases operation, it shall arrange for the preservation of records to ensure compliance with this section. The facility shall notify HHSC in writing of the location of the clinical records and the clinical records custodian's name and address.

§507.56. Incident Reports.

(a) A facility shall report only the following incidents to the Texas Health and Human Services Commission (HHSC). The facility shall report these incidents to HHSC within 10 business days after the facility being informed or possessing knowledge of:

(1) the death of a dialysis patient that occurs in the facility;

(2) the death of a dialysis patient that occurs within 24 hours after the patient's last dialysis treatment, unless the death is related to:

(A) an accident unrelated to dialysis care and services;

(B) a pre-scheduled elective surgery;

(C) a previously executed do-not-resuscitate order or advance directive;

(D) a hospice patient; or

(E) a patient who withdraws from dialysis;

(3) emergent hospital transfers from the dialysis facility;

(4) the confirmed conversion of staff or a patient to Hepatitis B surface antigen (HbsAg) positive, unless it is a verified false positive;

(5) the involuntary transfer or discharge of a patient, unless the involuntary transfer or discharge is due to nonpayment or the patient was a participant in the ESRD Network's Second Chance program, in which case there is no incident report required if the patient is involuntarily discharged within the first 90 days of placement;

(6) a fire in the facility; or

(7) a generator out of operation.

(b) The facility shall report an incident listed in subsection (a) of this section to HHSC Complaint and Incident Intake through the HHSC online portal.

§507.57. Nonconventional Dialysis.

(a) A facility shall meet the following requirements for in-center self-care.

(1) If a licensed dialysis facility offers in-center self-care in addition to conventional hemodialysis, the facility shall develop, implement, and maintain policies and procedures related to self-care, including policies regarding staffing levels in the self-care milieu.

(2) While nurse to patient ratios must remain the same, the facility may reduce the number of patient care technicians from a 4:1 ratio to a 6:1 ratio if:

(A) the self-care area is separated from the conventional dialysis area, such as in a separate bay or room within the facility; and

(B) self-care patients can, at a minimum, demonstrate the ability to:

(i) set up and tear down the machinery used in their treatment;

(ii) hold their own sites at termination of treatment, except for a catheter patient; and

(iii) monitor and record their own vital signs before beginning and ending the day's treatment.

(3) A licensed facility that offers the option of in-center self-care shall ensure that all assessments, evaluations, history and physicals, treatment plans, modality options education, and similar documents and activities are completed before starting or moving to self-care.

(4) Before a patient moves from conventional dialysis to self-care in a licensed dialysis facility, the patient shall demonstrate verbal understanding of competencies in the self-care areas, as determined by the facility staff.

(5) The facility shall maintain written documentation of self-care competencies via checklists and competency testing in the patient's medical record.

(6) The facility shall annually evaluate a patient's competency and skills to verify the patient maintains the abilities and knowledge to continue self-care. The facility shall document the annual evaluation in the patient's medical record. A patient may take on additional aspects of self-care. Before the patient may independently complete the additional self-care aspects, the facility shall evaluate the patient's competency to perform the self-care aspects and document the evaluation for additional self-care aspects in the patient's medical record. The facility shall annually re-evaluate the patient's competency to perform the additional self-care aspects.

(b) A facility shall meet the following requirements for transitional care services.

(1) A facility offering transitional services shall develop, implement, and enforce policies and procedures specific to operation of transitional services.

(2) Licensed dialysis facilities that offer transitional care shall ensure that all assessments, evaluations, history and physicals, treatment plans and similar documents and activities are completed before beginning treatment.

(3) A facility offering transitional services shall provide the patient with appropriate education regarding end-stage renal disease, its treatment and treatment availability, and advisability of all modalities to include renal transplant, dietary concerns and needs, and social services.

(4) A facility offering transitional services shall ensure the patient retains all rights applicable to treatment in a licensed dialysis facility. The interdisciplinary treatment team shall assess a patient for transitioning services no later than 30 calendar days after entry into the program. If the team determines a patient requires continued services only available in a conventional dialysis setting, the facility shall consider the patient for transfer to a conventional setting to continue the benefits of dialysis. The facility shall not consider this transfer as an involuntary discharge from the transitional facility.

(5) Transitional direct care staff shall receive equivalent training to both in-center and home hemodialysis staff, including training to the manufacturer's specifications of the hemodialysis machine being used. The facility shall keep available upon request documentation of the transitional direct care staff's:

(A) training and skills, and

(B) competencies as approved by the medical director.

(c) A facility shall meet the following requirements for integrated hemodialysis systems.

(1) A licensed facility offering the use of self-contained or integrated hemodialysis systems shall develop, implement, and enforce policies and procedures related to these systems and staff shall have verification of competency for each type of machine they perform or monitor treatments on.

(2) If the licensed dialysis facility uses self-contained or integrated hemodialysis systems along with conventional hemodialysis machines, the facility shall separate the self-contained units or integrated hemodialysis systems from the conventional machines.

(3) Each patient shall receive education on the self-contained unit's use and efficacy.

(4) A facility using solely self-contained or integrated hemodialysis systems shall follow the manufacturer's recommendations and instructions for the use of the machines.

(5) A licensed facility offering the use of self-contained or integrated hemodialysis systems shall maintain a copy of the manufacturer's instructions on each type of unit used in the facility. The facility shall provide inspectors with a copy of the manufacturer's instructions and recommendations upon request.

(6) A facility shall ensure a registered nurse is present in the integrated hemodialysis systems treatment area, and the facility shall maintain the same staffing ratios as for conventional dialysis.

§507.59. Medical Services and Home Dialysis During a Public Health Disaster.

(a) This section applies only to an end stage renal disease (ESRD) facility located in a county for which:

(1) the governor declared a state of disaster due to a pandemic or epidemic, pursuant to Texas Government Code Chapter 418 (relating to Emergency Management);

(2) the commissioner of the Texas Department of State Health Services determined that a public health disaster exists, pursuant to Texas Health and Safety Code Chapter 81 (relating to Communicable Diseases; Public Health Disasters; Public Health Emergencies); and

(3) the Texas Health and Human Services Commission (HHSC) designated this section as applicable, pursuant to paragraphs (1) and (2) of this subsection.

(b) An ESRD facility may temporarily adopt accommodations under this section to meet patient needs, support infection control procedures, and maintain necessary social distancing in response to a public health disaster.

(c) Notwithstanding §507.52(b)(3) of this subchapter (relating to Medical Services), at a minimum, each patient receiving dialysis in the facility shall be seen by a physician on the medical staff once a month during the patient's treatment time.

(d) Notwithstanding §507.52(b)(4) of this subchapter, home dialysis patients shall be seen by a physician, an advanced practice registered nurse (APRN), or a physician assistant (PA) no less than once a month. This visit by a physician, an APRN, or a PA may be conducted using telemedicine medical services.

(e) Notwithstanding §507.53(l)(1) of this subchapter (relating to Home Dialysis Service), a registered nurse may conduct an initial monitoring visit of a patient's home adaptation before the patient beginning training for the selected home modality from outside the patient's home if the nurse performs the visit using a synchronous audiovisual interaction between the registered nurse and the patient while the patient is at home.

(1) The nurse shall conduct the visit to the same review standards as a normal face-to-face visit.

(2) If the nurse cannot perform the visit using a synchronous audiovisual interaction between the nurse and the patient, the nurse must conduct the visit in the patient's home.

§507.60. Staffing Table.

The attached graphic sets out minimum staffing levels for nursing staff, direct care staff, and total clinical staff.

Figure: 26 TAC §507.60

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. REQUIREMENTS FOR DIALYSIS TECHNICIANS

26 TAC §§507.71 - 507.75

STATUTORY AUTHORITY

The new rules are adopted under 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 §251.003, which requires HHSC to adopt rules for the issuance, renewal, denial, suspension, and revocation of a license to operate an end stage renal disease facility; and Texas Health and Safety Code §251.014, which requires these rules to include minimum standards to protect the health and safety of a patient of an end stage renal disease facility.

§507.72. Training Curricula and Instructors.

(a) Each training program for dialysis technicians shall develop a written curriculum with objectives specified for each section.

(b) The training curriculum for dialysis technicians shall include:

(1) an introduction to dialytic therapies, history, and major issues to include:

(A) a history of dialysis;

(B) definitions and terminology;

(C) communication skills;

(D) ethics and confidentiality;

(E) multidisciplinary process;

(F) roles of other team members; and

(G) information about renal organizations and resources;

(2) the principles of hemodialysis to include:

(A) principles of dialysis;

(B) access to the circulatory system; and

(C) anticoagulation, local anesthetics, and normal saline;

(3) understanding the individual with kidney failure to include:

(A) basic renal anatomy, physiology, and pathophysiology;

(B) the effect of renal failure on other body systems;

(C) symptoms and findings related to the uremic state;

(D) modes of renal replacement therapy, including transplantation;

(E) basic renal nutrition;

(F) basic psychosocial aspects of end stage renal disease;

(G) medications commonly administered to patients with end stage renal disease;

(H) confidentiality of patient personal and clinical records;

(I) professional conduct;

(J) patient rights and responsibilities; and

(K) rehabilitation;

(4) dialysis procedures to include:

(A) using aseptic technique;

(B) technical aspects of dialysis, operation and monitoring of equipment, initiation and termination of dialysis;

(C) delivering an adequate dialysis treatment and factors that may result in inadequate treatment;

(D) observing and reporting patient reactions to treatment;

(E) glucose monitoring and hemoglobin and hematocrit monitoring;

(F) emergency procedures and responses, such as cardiopulmonary resuscitation, air embolism management, and response to line separation and hemolysis;

(G) external and internal disasters, fire, natural disasters, and emergency preparedness; and

(H) safety and quality assurance and performance improvement (QAPI);

(5) hemodialysis devices to include:

(A) theory and practice of conventional, high efficiency, and high flux dialysis;

(B) dialysate composition, options, indications, complications, and safety;

(C) monitoring and safety; and

(D) disinfection of equipment;

(6) water treatment to include:

(A) standards for water treatment used for dialysis listed in §507.30 of this chapter (relating to Technical Standards);

(B) systems and devices;

(C) monitoring; and

(D) risks to patients of unsafe water;

(7) reprocessing, if the facility practices reuse, to include:

(A) principles of reuse;

(B) safety, QAPI, universal precautions, and water treatment; and

(C) standards for reuse in the standards listed in §507.30 of this chapter;

(8) patient teaching to include:

(A) the technician's role in supporting patient education goals; and

(B) adult education principles;

(9) infection control and safety to include:

(A) risks to patients of nosocomial infections, accidents, and errors in treatment;

(B) universal precautions, aseptic technique, sterile technique, and specimen handling;

(C) basic bacteriology and epidemiology;

(D) risks to employees of blood and chemical exposure; and

(E) electrical, fire, disaster, environmental safety, and hazardous substances; and

(10) QAPI to include:

(A) the technician's role in QAPI activities;

(B) principles of QAPI; and

(C) the importance of ongoing QAPI activities in ensuring the facility provides safe dialysis treatments to patients.

(c) The facility's training curricula shall comply with the following requirements related to a dialysis technician's additional responsibilities.

(1) If a dialysis technician is to assist with training or treatment of peritoneal dialysis patients, the facility's training curricula shall include:

(A) principles of peritoneal dialysis;

(B) sterile technique;

(C) peritoneal dialysis delivery systems;

(D) symptoms of peritonitis; and

(E) other complications of peritoneal dialysis.

(2) If a dialysis technician, other than a licensed vocational nurse (LVN), is to cannulate access or administer intravenous normal saline, intravenous heparin, subcutaneous lidocaine, topical lidocaine, or oxygen, the facility's training curricula shall include:

(A) access to the circulation to include:

(i) for a fistula, creation, development, needle placement, and prevention of complications;

(ii) for a graft, creation, materials, needle placement, and prevention of complications; and

(iii) symptoms to report;

(B) safe administration of medications to include:

(i) identifying the correct patient;

(ii) ensuring the appropriate medication;

(iii) measuring the appropriate dose;

(iv) determining the appropriate route; and

(v) checking the appropriate time for administration;

(C) administration of normal saline to include:

(i) reasons for administration;

(ii) potential risks and complications;

(iii) administration limits; and

(iv) information to report and record;

(D) administration of heparin to include:

(i) reasons for administration;

(ii) methods of administration;

(iii) preparation of ordered dose;

(iv) potential risks and complications; and

(v) information to report and record;

(E) administration of lidocaine to include:

(i) reasons for administration;

(ii) method of administration;

(iii) preparation of ordered dose;

(iv) potential complications and risks; and

(v) information to report and record; and

(F) administration of oxygen to include:

(i) reasons for administration;

(ii) method of administration;

(iii) delivery of the ordered flow rate;

(iv) potential complications and risks; and

(v) information to report and record.

(3) If a dialysis technician, other than a licensed vocational nurse, is to initiate or discontinue dialysis via a central venous catheter or manipulate a central venous catheter, the facility's training curricula shall include:

(A) patient assessment;

(B) infection control and aseptic technique;

(C) materials used and prevention of complications;

(D) observing and reporting patient reactions to treatment;

(E) safety checks, potential complications, and risks; and

(F) information to report and record.

(d) The instructor shall maintain a roster of attendance for each training class.

(e) The instructor shall evaluate each trainee weekly during the training program to determine the trainee's progress.

(f) The facility shall administer a written examination encompassing the required content. The dialysis technician trainee shall pass the exam with a score of at least 80 percent before the trainee's release from orientation.

(1) The examination shall encompass the content required in subsection (b) of this section.

(2) When the dialysis technician trainee cannulates access, administers medications, initiates or discontinues dialysis via a central venous catheter, or manipulates a central venous catheter, the examination shall encompass the content required in subsection (c) of this section.

(3) Other than the first examination for a specific responsibility in a facility, current certification as a dialysis technician by a nationally recognized testing organization may be substituted for the written examination.

(g) An instructor for the course to train an individual as a dialysis technician shall be:

(1) a physician who qualifies as a medical director;

(2) a registered nurse with at least 12 months of experience in hemodialysis obtained within the last 24 months and a current competency skills checklist on file in the facility, or a registered nurse instructor of a dialysis technician training course of an accredited college or university;

(3) a qualified dietitian or social worker providing training only within the individual's area of expertise; or

(4) a technician with at least 12 months experience, qualified by training and experience in water treatment, dialysate preparation, reprocessing, or other technical aspects of dialysis providing training only within their area of expertise.

(h) Licensed nurses and patient care technicians who have at least one year of experience in hemodialysis and a current competency skills checklist on file in the facility may assist in didactic sessions and serve as preceptors.

(i) For an individual with no previous experience in direct patient care, a minimum of 80 clock hours of classroom education and 200 clock hours of supervised clinical training shall be required. Training programs for dialysis technician trainees who have previous direct patient care experience may be shortened if they demonstrate competency with the required knowledge and skills but may not be less than a total of 80 clock hours of combined classroom education and clinical training.

§507.73. Competency Evaluation.

(a) The governing body shall ensure the facility's core staff members review the training records of each trainee, including tests and skills checklists, hear comments from the training instructors and preceptors, and validate that the trainee has successfully completed the training program and is competent to perform their job duties and tasks.

(b) An individual who completes the facility's orientation and training program and the facility determines is qualified to deliver dialysis patient care may qualify as a dialysis technician by passing the written examination described in §507.72(f) of this subchapter (relating to Training Curricula and Instructors) and demonstrating competency by completing the skills checklist described in subsection (c) of this section.

(c) The supervising nurse or a registered nurse who qualifies as an instructor under §507.72(g)(2) of this subchapter shall complete a competency skills checklist to document each dialysis technician trainee's knowledge and skills for:

(1) assembling necessary supplies;

(2) preparing dialysate according to procedure and dialysis prescription;

(3) assembling and preparing the dialysis extracorporeal circuit correctly;

(4) securing the correct dialyzer for the specific patient;

(5) installing and rinsing dialyzer and all necessary tubing;

(6) testing monitors and alarms, conductivity, and presence and absence of residual sterilants, if applicable;

(7) setting monitors and alarms according to facility and manufacturer protocols;

(8) obtaining pre-dialysis evaluation to include vital signs, weight, and temperature according to facility protocol and informing the registered nurse of unusual findings;

(9) inspecting access for patency and, after cannulation is performed and heparin administered, initiating dialysis according to the patient's prescription, observing universal precautions, and reporting unusual findings to the registered nurse;

(10) adjusting blood flow rates according to established protocols and the patient's prescription;

(11) calculating and setting the dialysis machine to allow fluid removal rates according to established protocols and the patient's prescription;

(12) monitoring the patient and equipment during treatment, responding appropriately to patient needs and machine alarms, and reporting unusual occurrences to the registered nurse;

(13) changing fluid removal rate, placing patient in Trendelenburg position, and administering replacement normal saline as directed by the registered nurse, physician order, or facility protocol;

(14) documenting findings and actions per facility protocol;

(15) describing appropriate response to dialysis-related emergencies such as cardiac or respiratory arrest, needle displacement or infiltration, clotting, blood leaks, or air emboli, and nonmedical emergencies such as power outages or equipment failure;

(16) discontinuing dialysis and establishing hemostasis by:

(A) inspecting, cleaning, and dressing access according to facility protocol; and

(B) reporting unusual findings and occurrences to the registered nurse;

(17) obtaining and recording post-dialysis vital signs, temperature, and weight and reporting unusual findings to the registered nurse;

(18) discarding supplies and sanitizing equipment and treatment chair according to facility protocol;

(19) communicating the patient's emotional, medical, psychological, and nutritional concerns to the registered nurse;

(20) maintaining current certification in cardiopulmonary resuscitation; and

(21) maintaining professional conduct, good communication skills, and confidentiality in the care of patients.

(d) For dialysis technician trainees who will be assisting with training or treatment of peritoneal dialysis patients, each trainee shall satisfactorily:

(1) assist patients in ordering supplies;

(2) make a dialysate exchange (draining and refilling the peritoneal space with dialysate) to include continuous ambulatory peri-

toneal dialysis exchange procedures, and initiation or discontinuation of continuous cycling peritoneal dialysis;

(3) observe peritoneal effluent;

(4) know what observations to report;

(5) collect dialysate specimen; and

(6) set up and operating continuous cycling peritoneal dialysis equipment.

(e) For dialysis technician trainees who will be cannulating dialysis access and administering intravenous normal saline, intravenous heparin, subcutaneous lidocaine, topical lidocaine, or oxygen, each trainee shall satisfactorily:

(1) cannulate to include:

(A) inspecting the access for patency;

(B) preparing the skin;

(C) using aseptic technique;

(D) placing needles correctly;

(E) establishing blood access;

(F) replacing needles;

(G) knowing when to call for assistance;

(H) securing needles; and

(I) removing needles;

(2) administer intravenous heparin to include:

(A) checking the patient's individual prescription;

(B) preparing the dose;

(C) labeling the prepared syringe;

(D) administering the dose; and

(E) observing for complications;

(3) administer normal saline to include:

(A) understanding unit protocol;

(B) checking the patient's prescription;

(C) recognizing signs of hypotension;

(D) notifying the registered nurse;

(E) administering normal saline; and

(F) rechecking vital signs;

(4) administer subcutaneous or topical lidocaine to include:

(A) checking the patient's prescription;

(B) identifying the correct medication;

(C) preparing the dose;

(D) administering the dose; and

(E) observing for complications; and

(5) administer oxygen to include:

(A) verifying the ordered flow rate from the nurse functioning in the charge role;

(B) setting up the equipment; and

(C) connecting the tubing for the patient.

(f) For dialysis technician trainees who will be initiating or discontinuing dialysis via a central venous catheter or manipulating a central venous catheter, each trainee shall satisfactorily:

(1) use aseptic technique;

(2) establish blood access;

(3) observe for complications;

(4) document findings and actions per facility protocol;

(5) know when to call for assistance and reporting unusual findings and occurrences to the registered nurse; and

(6) administer intravenous heparin to include:

(A) checking the patient's individual prescription;

(B) preparing the dose;

(C) labeling the prepared syringe;

(D) administering the dose; and

(E) observing for complications.

(g) If a dialysis technician is to cannulate a dialysis access, initiate or discontinue dialysis via a central venous catheter, manipulate a central venous catheter, administer intravenous normal saline, intravenous heparin, subcutaneous lidocaine, topical lidocaine, or oxygen, the medical director shall verify and document the dialysis technician's competency to perform these tasks and delegate authority to the technician in accordance with Texas Occupations Code Chapter 157 (relating to Authority of Physician to Delegate Certain Medical Acts).

§507.75. Prohibited Acts.

The facility shall ensure a dialysis technician does not:

(1) initiate patient education;

(2) alter ordered treatment, including shortening the treatment time;

(3) change central venous catheter dressings;

(4) administer any medications other than intravenous normal saline, intravenous heparin, subcutaneous lidocaine, topical lidocaine, or oxygen, which may only be administered during a routine dialysis treatment;

(5) administer blood or blood products;

(6) perform nonaccess site arterial puncture;

(7) accept physician orders;

(8) provide hemodialysis treatment to pediatric patients under the age of 18 who weigh less than 35 kilograms; or

(9) alter the level of electrolytes in dialysate through use of additives ("spiking").

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. INSPECTIONS, INVESTIGATIONS, AND ENFORCEMENT

26 TAC §§507.81 - 507.93

STATUTORY AUTHORITY

The new rules are adopted under 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 §251.003, which requires HHSC to adopt rules for the issuance, renewal, denial, suspension, and revocation of a license to operate an end stage renal disease facility; and Texas Health and Safety Code §251.014, which requires these rules to include minimum standards to protect the health and safety of a patient of an end stage renal disease facility.

§507.90. Enforcement.

(a) Enforcement is a process by which a sanction is proposed, and if warranted, imposed on an applicant or licensee regulated by the Texas Health and Human Services Commission (HHSC) for failure to comply with applicable statutes, rules, or orders.

(b) HHSC has jurisdiction to enforce violations of Texas Health and Safety Code Chapter 251 (relating to End Stage Renal Disease Facilities) and this chapter. HHSC may deny, suspend, or revoke a license or impose an administrative penalty for:

(1) failure to comply with any applicable provision of Texas Health and Safety Code, including Chapter 251;

(2) failure to comply with any provision of this chapter or any other applicable laws;

(3) the facility, or any of its employees, committing an act that causes actual harm or risk of harm to the health or safety of a patient;

(4) the facility, or any of its employees, materially altering any license issued by HHSC;

(5) failure to comply with minimum standards for licensure;

(6) failure to provide a complete license application;

(7) failure to comply with an order of the executive commissioner or another enforcement procedure under Texas Health and Safety Code Chapter 251;

(8) a history of failure to comply with the applicable rules relating to patient environment, health, safety, and rights that reflects more than nominal noncompliance;

(9) the facility aiding, committing, abetting, or permitting the commission of an illegal act;

(10) the facility, or any of its employees, committing fraud, misrepresentation, or concealment of a material fact on any documents a facility is required to submit to HHSC or required to maintain pursuant to Texas Health and Safety Code Chapter 251, and the provisions of this chapter;

(11) failure to comply with other state and federal laws affecting the health, safety, and rights of facility patients;

(12) failure to timely pay an assessed administrative penalty as required by HHSC;

(13) failure to submit an acceptable plan of correction (POC) for cited deficiencies within the timeframe required by HHSC;

(14) failure to timely implement a POC for deficiencies cited by HHSC within the dates designated in the POC;

(15) failure to comply with applicable requirements within a designated probation period; or

(16) if the facility is participating under Title XVIII, and the CMS terminates the facility's Medicare provider agreement.

(c) HHSC has jurisdiction to enforce violations of Texas Health and Safety Code Chapter 251 and this chapter. HHSC may deny a license if the applicant:

(1) fails to provide timely and sufficient information or fees required by HHSC that is directly related to the application;

(2) has had the following actions taken against the applicant within the two-year period preceding the application:

(A) decertification or cancellation of its contract under the Medicare or Medicaid program in any state;

(B) federal Medicare or state Medicaid sanctions or penalties;

(C) unsatisfied federal or state tax liens;

(D) unsatisfied final judgments;

(E) eviction involving any property or space used as an end stage renal disease (ESRD) facility or health care facility in any state;

(F) unresolved federal Medicare or state Medicaid audit exceptions;

(G) denial, suspension, or revocation of an ESRD facility license, a private psychiatric hospital license, or a license for any health care facility in any state; or

(H) a court injunction prohibiting ownership or operation of an ESRD facility.

(d) HHSC may deny a person or entity a license or suspend or revoke an existing license on the grounds that the person or entity has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of the ownership or operation of a facility. HHSC applies the requirements of Texas Occupations Code Chapter 53 (relating to Consequences of Criminal Conviction).

(1) In determining whether a criminal conviction directly relates, HHSC considers the provisions of Texas Occupations Code §53.022 (relating to Factors in Determining Whether Conviction Directly Relates to Occupation) and Texas Occupations Code §53.023 (relating to Additional Factors for Licensing Authority to Consider After Determining Conviction Directly Relates to Occupation).

(2) The following felonies and misdemeanors directly relate to the duties and responsibilities of a licensed facility because these criminal offenses indicate an inability or a tendency for the person to be unable to own or operate a facility:

(A) a misdemeanor violation of Texas Health and Safety Code Chapter 251;

(B) a misdemeanor or felony involving moral turpitude;

(C) a misdemeanor or felony relating to deceptive business practices;

(D) a misdemeanor or felony of practicing any health-related profession without a required license;

(E) a misdemeanor or felony under any federal or state law relating to drugs, dangerous drugs, or controlled substances;

(F) a misdemeanor or felony under Texas Penal Code (TPC) Title 5 (relating to Offenses Against the Person), involving a patient, resident, or client of any health care facility, a home and community support services agency, or a health care professional; or

(G) a misdemeanor or felony under TPC:

(i) Title 4 (relating to Inchoate Offenses);

(ii) Title 7 (relating to Offenses Against Property);

(iii) Title 8 (relating to Offenses Against Public Administration);

(iv) Title 9 (relating to Offenses Against Public Order and Decency);

(v) Title 10 (relating to Offenses Against Public Health, Safety, and Morals); or

(vi) Title 11 (relating to Organized Crime).

(H) Offenses listed in this paragraph are not exclusive in that HHSC may consider similar criminal convictions from other state, federal, foreign, or military jurisdictions that indicate an inability or tendency for the person or entity to be unable to own or operate a facility.

(3) HHSC revokes a license on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

(e) If HHSC proposes to deny, suspend, or revoke a license, HHSC sends a notice of the proposed action by certified mail, return receipt requested, at the address shown in the current records of HHSC or HHSC may personally deliver the notice. The notice to deny, suspend, or revoke a license, or impose an administrative penalty, states the alleged facts or conduct to warrant the proposed action, provide an opportunity to demonstrate or achieve compliance, and states that the applicant or license holder has an opportunity for a hearing before taking the action.

(1) The facility must request a hearing within 30 calendar days after receipt of the notice. Receipt of the notice is presumed to occur on the third business day after the notice is mailed by HHSC to the applicant's or licensee's last known address.

(2) The request for a hearing shall be in writing and submitted to the Texas Health and Human Services Commission, Enforcement Unit, Regulatory Services Division.

(3) A hearing shall be conducted pursuant to Texas Government Code Chapter 2001 (relating to Administrative Procedure) and Texas Administrative Code, Title 1 Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act).

(4) If the facility does not request a hearing in writing within 30 calendar days after receiving the notice, the facility is deemed to have waived the opportunity for hearing, and the proposed action shall be taken.

(5) If the facility fails to appear or be represented at the scheduled hearing, the facility has waived the right to a hearing, and the proposed action shall be taken.

(f) If HHSC suspends a license, the suspension shall remain in effect until HHSC determines that the reason for suspension no longer exists. An authorized representative of HHSC investigates before making a determination.

(1) During the time of suspension, the suspended license holder shall return the license to HHSC.

(2) If a suspension overlaps a renewal date, the suspended license holder shall comply with the renewal procedures in this chapter; however, HHSC may not renew the license until HHSC determines that the reason for suspension no longer exists.

(g) If HHSC revokes or does not renew a license, a person may reapply for a license by complying with the requirements and procedures in this chapter at the time of reapplication. HHSC may refuse to issue a license if the reason for revocation or nonrenewal continues to exist.

(h) Upon revocation or nonrenewal, a license holder shall return the license to HHSC within 30 calendar days after notification from HHSC.

(i) In lieu of denying, suspending, or revoking the license, HHSC may place the facility on probation for a period of not less than 30 calendar days if the facility is found in repeated noncompliance and the facility's noncompliance does not endanger the public's health and safety.

(1) HHSC provides the facility notice of probation and the items of noncompliance at least 10 calendar days before the probation period begins.

(2) During the probation period, the facility must correct the items of noncompliance and report corrections to HHSC for approval.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 3, 2025.

TRD-202504420
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: December 23, 2025
Proposal publication date: June 6, 2025
For further information, please call: (512) 834-4591

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TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 130. IMPAIRMENT AND SUPPLEMENTAL INCOME BENEFITS

SUBCHAPTER B. SUPPLEMENTAL INCOME BENEFITS

28 TAC §130.102

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts amended 28 TAC §130.102, concerning eligibility for supplemental income benefits (SIBs). Section 130.102 implements Texas Labor Code §408.1415, which sets standards for SIBs recipients to demonstrate an active effort to get employment.

The amendments to §130.102 are adopted with changes to the proposed text published in the August 29, 2025, issue of the *Texas Register* (50 TexReg 5589). DWC replaced the word "for" with "to obtain" in §130.102(d)(1)(D). Section 130.102 will be republished.

REASONED JUSTIFICATION. The amendments align the rule text with the statutory text. They add a reference to submitting job applications to mirror the language in Labor Code §408.1415(a)(3) and (b)(2), define "job application," and conform references to work search efforts. The amendments also include nonsubstantive editorial and formatting changes that make updates for plain language and agency style to improve the rule's clarity. In response to comments, DWC replaced the word "for" with "to obtain" in §130.102(d)(1)(D) to match the wording in Labor Code §408.1415(a).

Amending §130.102 is necessary to eliminate confusion that has resulted from differences between the wording in the rule and the wording in the statute. It is also necessary to clarify that a job application is submitted to provide an employer or its designated representative information about a candidate for a specific position, and that a job application may be a physical or electronic form or other document. This ensures that the application is directed at a specific position, is about a specific candidate, can be physical or electronic, and can be a document other than a form.

Labor Code §408.1415 requires a person receiving SIBs to provide evidence to DWC of active participation in a vocational rehabilitation program, active participation in work search efforts through the Texas Workforce Commission (TWC), or active work search efforts documented by job applications submitted by the SIBs recipient.

DWC invited public comments on an informal draft posted on DWC's website on April 28, 2025. DWC considered the comments it received on the draft when drafting the proposal. DWC also held a public hearing on the proposal on October 1, 2025.

SUMMARY OF COMMENTS AND INFORMATION SUBMITTED, AND AGENCY RESPONSE.

Commenters: DWC received eight written comments from 34 commenters, and one oral comment at the October 1, 2025, public hearing. No commenters included information, data, research, or analysis about the cost, benefit, or effect of the proposal. The Office of Injured Employee Counsel (OIEC) commented in support of the proposal. Commenters in support of the proposal with changes were: American Safety Services, Inc., Odessa, Texas; Barrilleaux Energy Services, LLC, Magnolia, Texas; Black Label Services, Inc., Windsor, CO; Blakely Construction Co., Inc., Odessa, Texas; Branson Sherman Construction Inc. d/b/a WTB, Midland, Texas; Casing Specialties, Midland, Texas; Charger Services, LLC, Midland, Texas; Deutsche Windtechnik d/b/a DWT, Inc., Humble, Texas; G&W ESP Services, LLC, Midland, Texas; Gran Lago Services, LLC, Midland, Texas; J. Irwin Co., Bastrop, Texas; John Gibson, The Law Offices of John Gibson & Associates; Klein Automation & Electric, Inc., Hobbs, NM; Legacy Safety & Consulting, LLC, Hobbs, NM; Lone Start Instrumentation & Electric, Odessa, Texas; Lucky Services, Inc., Hobbs, NM; Mesa Well Servicing, LLP, Hobbs, NM; N & B Well Service, LLC, Monahans, Texas; Oil States Industries, Arlington, Texas; Onyx Contractors, LP, Midland, Texas; Paul L. Kelley, Paul Kelley Law, PLLC (at the hearing); Sage Enviro Tech Ltd., Corpus Christi, Texas; S&S Fishing & Rental, Inc., Andrews, Texas; Smith Laydown and Casing Services, LLC, Midland, Texas; Steve Dennis, Reid, Dennis & Frick; Texas Association of School Boards; TCI Casing Specialties, Midland, Texas; Tejas Completion Services, Richmond, Texas; Tejas Hot Shot Services & Transportation, LLC, Odessa, Texas; Texas Cotton Ginners' Trust; The Wireline Group, Houston, Texas; Trey Trucks, Ltd., Crane, Texas; Waukesha-Pearce Industries, Houston, Texas; and Wrangler Trucking, LLC, Gonzales, Texas. No commenters were against the proposal.

Comment on §130.102. A commenter supported amending §130.102 to conform with the statutory language in the Labor Code regarding work search efforts. The commenter also supported the new definition of "job application" to include both a physical or electronic form or other document.

Agency Response to Comment on §130.102. DWC appreciates the comment.

Comment on §130.102. A commenter stated that carriers can't verify job searches because the rule doesn't require injured workers to give carriers copies of their job applications.

Agency Response to Comment on §130.102. DWC appreciates the comment but declines to require injured workers to submit copies of their job applications to insurance carriers. Such a change would be beyond the scope of this rule, which is to align the rule text with the statutory text, not to address verification methods.

Comment on §130.102. Seven commenters stated that the rule doesn't address situations where injured workers apply for positions for which they are not qualified. They stated that applying for jobs the injured worker cannot perform or has no intention of accepting is not an active effort to obtain employment.

Agency Response to Comment on §130.102. DWC appreciates the comment but declines to amend the rule to address injured workers' individual qualifications or intent. Such a change would be beyond the scope of this rule, which is to align the rule text with the statutory text, not to opine on an employee's qualifications or suitability for a particular job.

Comment on §130.102(d)(1)(D). Thirty-two commenters stated that DWC should replace "for" with "to obtain" in §130.102(d)(1)(D) to align the rule with the statutory requirement that the documented activities that entitle a claimant to SIBs are those taken "to obtain employment."

Agency Response to Comment on §130.102(d)(1)(D). DWC appreciates the comment and has made the change.

Comment on §130.102(d)(1)(D). Nineteen commenters stated that DWC should add "prescribed by the employer" after "a physical or electronic form" in §130.102(d)(1)(D) to reflect employers' common practice of requiring job applications on the employer's specified form.

Agency Response to Comment on §130.102(d)(1)(D). DWC appreciates the comment but declines to make this change because codifying a common, but not universal, practice could have the unintended effect of excluding valid job applications. Such a change would also be beyond what the Labor Code requires.

Comment on §130.102(f). A commenter stated that solo job seekers should not use TWC's work search contacts to qualify for SIBs. The commenter stated that the rule should distinguish between the minimum number of work search contacts through TWC and the minimum number of job applications that solo job seekers must submit. The commenter recommends the following replacement language in §130.102(f): "… an injured employee must provide documentation sufficient to establish that he or she has, each week during the qualifying period, made work search efforts through the TWC or submitted job applications totaling at least the minimum number established by the TWC Local Workforce Development Board for entitlement to unemployment compensation in the injured employee's county of residence."

Agency Response to Comment on §130.102(f). DWC appreciates the comment but declines to make this change. TWC's published guidance includes submitting job applications in its list of acceptable work search activities. In addition, Section 130.102(d)(1) requires at least one or any combination of efforts, including returning to work, participating in vocational rehabilitation, work search efforts through TWC, or work search efforts documented by job applications. Any of those qualify as an active effort to obtain employment to qualify for SIBs. As a result, including submitting the minimum number of job applications in the types of work search efforts required is appropriate.

Comment on §130.102. A commenter supported the proposed changes to require employees to submit job applications themselves, rather than allowing others to do it for them, and to require a documentary job application. The commenter stated that these changes are consistent with the statute.

Agency Response to Comment on §130.102. DWC appreciates the comment.

Comment on §130.102(d)(1). A commenter stated that DWC should add a subparagraph (3) to §130.102(d)(1) that states, "If there exist factors affecting the availability of employment, such as access to employment in rural areas, economic conditions in the claimant's county of residence, or other appropriate employment availability factors, these factors shall be considered in evaluating work search efforts." The commenter stated that Labor Code §408.1415(f)(3) requires DWC to adopt rules that consider factors affecting the availability of employment, including recognition of access to employment in rural areas, economic conditions, and other appropriate employment availability factors. The commenter stated that nothing in the proposed rule differentiates between urban and rural work search efforts, or the economic conditions in the claimant's county of residence which can vary widely depending upon the part of the state.

Agency Response to Comment on §130.102(d)(1). DWC appreciates the comment, but declines to make the change. Section 408.1415(b)(3) requires the commissioner to consider factors affecting the availability of employment, including recognition of access to employment in rural areas, economic conditions, and other appropriate employment availability factors, in adopting rules under Section 408.1415. It does not require that the rule text itself distinguish between rural and urban areas in requiring a minimum number of work search efforts. That said, TWC's published guidance for the required number of work search activities varies by county, so it does take into account different economic conditions based on each county, urban or rural. For example, TWC currently only requires one work search activity in Edwards County, while it requires five in Bexar County.

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts the amendments to 28 TAC §130.102 under Labor Code §§408.1415, 402.00111, 402.00116, and 402.061.

Labor Code §408.1415 requires a person receiving SIBs to provide evidence to DWC of active participation in a vocational rehabilitation program, active participation in work search efforts through the TWC, or active work search efforts documented by job applications submitted by the SIBs recipient. It also requires the commissioner of workers' compensation to adopt rules setting out compliance standards for these requirements.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

§130.102. Eligibility for Supplemental Income Benefits; Amount.

(a) General. An injured employee is not entitled to supplemental income benefits until the expiration of the impairment income benefit period.

(b) Eligibility Criteria. An injured employee who has an impairment rating of 15% or greater, who has not commuted any impairment income benefits, who has not permanently lost entitlement to supplemental income benefits and who has completed and filed an Application for Supplemental Income Benefits in accordance with this subchapter is eligible to receive supplemental income benefits if, during the qualifying period, the injured employee:

(1) has earned less than 80% of the injured employee's average weekly wage as a direct result of the impairment from the compensable injury; and

(2) has demonstrated an active effort to obtain employment in accordance with Labor Code §408.1415 and this section.

(c) Direct Result. An injured employee has earned less than 80% of the injured employee's average weekly wage as a direct result of the impairment from the compensable injury if the impairment from the compensable injury is a cause of the reduced earnings.

(d) Work Search Requirements.

(1) An injured employee demonstrates an active effort to obtain employment by meeting at least one or any combination of the following work search requirements each week during the entire qualifying period:

(A) has returned to work in a position which is commensurate with the injured employee's ability to work.

(B) has actively participated in a vocational rehabilitation program as defined in §130.101 of this title (Definitions).

(C) has actively participated in work search efforts conducted through the Texas Workforce Commission (TWC).

(D) has performed active work search efforts documented by job applications the injured employee submitted. For purposes of this section, "job application" means a physical or electronic form or other document that is submitted to an employer or its designated representative to provide information about a candidate to obtain a specific position.

(E) has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor that specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work.

(2) An injured employee who has not met at least one of the work search requirements in any week during the qualifying period is not entitled to SIBs unless the injured employee can demonstrate that he or she had reasonable grounds for failing to comply with the work search requirements under this section.

(e) Vocational Rehabilitation. As provided in subsection (d)(1)(B) of this section, regarding active participation in a vocational rehabilitation program, an injured employee must provide documentation sufficient to establish that he or she has actively participated in a vocational rehabilitation program during the qualifying period.

(f) Work Search Efforts. As provided in subsection (d)(1)(C) and (D) of this section regarding active participation in work search efforts and active work search efforts, an injured employee must provide documentation sufficient to establish that he or she has, each week during the qualifying period, made the minimum number of work search efforts, including submitting the minimum number of job applications, consistent with the work search efforts established by TWC that are required for unemployment compensation in the injured employee's county of residence under the TWC Local Workforce Development Board requirements.

(1) If the required number of work search efforts changes during a qualifying period, the lesser number of work search efforts is the required minimum number of work search efforts for that period.

(2) If the injured employee is residing out of state, the minimum number of work search efforts required is the number required by the public employment service under applicable unemployment compensation laws for the injured employee's place of residence.

(g) Calculation of amount. Subject to any approved reduction for the effects of contribution, the monthly supplemental income benefit payment is calculated quarterly as follows:

(1) multiply the injured employee's average weekly wage by 80% (.80);

(2) add the injured employee's wages for all 13 weeks of the qualifying period;

(3) divide the total wages by 13;

(4) subtract this figure from the result of paragraph (1) of this subsection;

(5) multiply the difference by 80% (.80);

(6) if the resulting amount is greater than the maximum rate under the Act, Labor Code, §408.061, use the maximum rate; and

(7) multiply the result by 4.34821.

(h) Maximum Medical Improvement and Impairment Rating Disputes. If there is no pending dispute regarding the date of maximum medical improvement or the impairment rating before the expiration of the first quarter, the date of maximum medical improvement and the impairment rating is final and binding.

(i) Services Provided by a Carrier Through a Private Provider of Vocational Rehabilitation Services. The insurance carrier is responsible for reasonable travel expenses incurred by the injured employee if the employee is required to travel in excess of 20 miles one way from the injured employee's residence to obtain vocational rehabilitation services from a private provider.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 4, 2025.

TRD-202504427
Kara Mace
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Effective date: December 24, 2025
Proposal publication date: August 29, 2025
For further information, please call: (512) 804-4703

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING
SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

31 TAC §15.38

The General Land Office (GLO) adopts new 31 Texas Administrative Code (TAC) §15.38, relating to certification status of the Dune Protection and Beach Access Plan for the City of Starbase, Texas (City), without changes to the proposed text.

The proposed rule was published in the October 24, 2025 issue of the *Texas Register* (50 TexReg 6990) and will not be republished.

The GLO adopts new §15.38 to certify the City of Starbase's Dune Protection and Beach Access Plan (Plan) as consistent with state law.

Copies of the Plan may be obtained by contacting the GLO or the City of Starbase.

BACKGROUND INFORMATION AND JUSTIFICATION

Pursuant to the Open Beaches Act (OBA), Texas Natural Resources Code (Tex. Nat. Res. Code) Chapter 61, the Dune Protection Act (DPA), Tex. Nat. Res. Code Chapter 63, Tex. Nat. Res. Code §33.607, and 31 TAC §§15.3, 15.7, and 15.17, each local government with ordinance authority over construction adjacent to public beaches is required to adopt a plan for preserving and enhancing access to and use of public beaches and dune protection within the jurisdiction of the local government and submit its plan to the GLO for certification. If appropriate, the GLO will certify that the Plan and Erosion Response Plan (ERP) is consistent with state law by adoption or amendment of a rule, as authorized in Tex. Nat. Res. Code §§61.011(d)(5), 61.015(b), and 63.121. The certification by rule reflects the State's certifi-

cation of the plan; however, the text of the plan is not adopted by the GLO, as explained in 31 TAC §15.3(o)(4).

The DPA and 31 TAC §15.3 provide that a county may allow a municipality within the county to administer the DPA within its corporate limits and extraterritorial jurisdiction. Each municipality administering the DPA is required to establish a dune protection line and dune protection plan with procedures and requirements governing the review and approval of dune permits.

On May 3, 2025 residents of Cameron County (County) voted to incorporate Starbase as a Type C municipality within the State of Texas. Thereafter, on September 17th, 2025 the City passed Resolution No. 2025-09-17-D03-RE requesting that the County delegate authority to administer the DPA, to the City. On September 23rd, 2025 the County delegated the authority to administer the DPA to the City through Cameron County Commissioners Court Order No. 2025O09098.

On September 25th, 2025, the Starbase City Commission passed Ordinance No. 2025-09-25-F01-OR, adopting the City's Plan and ERP. The City provided public notice of the hearing on the proposed Plan and ERP and establishment of the dune protection line through publication in the Brownsville Herald on September 3rd, September 6th, and September 10th, 2025 in accordance with Tex. Nat. Res. Code § 63.013 and 31 TAC §15.3(l) and §15.17(c). On September 26th, 2025 the City submitted the proposed Plan and ERP to the GLO for certification.

COMMENTS

The 30-day comment period ended on November 24, 2025. During this period, the GLO did not receive any comments regarding the proposed rule.

ANALYSIS OF PLAN AND GLO'S AMENDMENT TO CHAPTER 15 ADDING NEW SECTION 31 TAC §15.38.

The City's Plan establishes the dune protection line at 1,000 feet landward of mean high tide, at the maximum extent of a local government's jurisdiction for establishing dune protection lines. The Plan also establishes procedures and requirements for dune protection permits seaward of the dune protection line and beachfront construction certificates within 1,000 feet landward of mean high tide or seaward of the first public road, whichever is greater, consistent with 31 TAC Chapter 15.

The City's Plan establishes an eroding area boundary in accordance with 31 TAC §15.2(32) at whichever distance landward of the line of vegetation is greater: 200 feet, or the distance determined by multiplying 50 years by the annual historical erosion rate (based on the most recent GLO approved data published by the University of Texas at Austin, Bureau of Economic Geology). All areas seaward of the eroding area boundary are considered an eroding area under the Plan and all applicable eroding area standards apply in that area.

The City's Plan prohibits the use of impervious surfaces seaward of the eroding area boundary in accordance with 31 TAC §15.6(f). Impervious surfaces may be used landward of the eroding area boundary, except where they would cause ponding, channeling or dune destabilization or where they would materially weaken dunes or materially damage dune vegetation. The allowance of impervious surfaces landward of the eroding area boundary complies with 31 TAC §15.6(f) since the Plan establishes eroding areas as the areas seaward of the eroding area boundary.

The City's ERP establishes a building setback line coextensive with the eroding area boundary. Except for construction of public amenities and beach access improvements, the City's Plan and ERP prohibit the construction, placement, or maintenance of a permanent structure seaward of the eroding area boundary and building setback line, unless a property owner qualifies for an exemption by demonstrating that there are no practicable alternatives to construction seaward of the eroding area boundary or building setback line.

The City's Plan and ERP provide stricter construction requirements for exempt properties. All exempt construction must provide plans and certifications for the structure by a registered professional engineer licensed in the State of Texas demonstrating a minimum two-foot freeboard above base flood elevation (BFE), no enclosures below BFE, feasible relocation of the habitable structure, compliance with the specifications in American Society of Civil Engineers, Structural Engineering Institute, Flood Resistant Design and Construction, ASCE 24-05, and that construction is designed to minimize impacts on natural hydrology. Construction should also be located landward of the toe of the foredune ridge, where practicable.

The Plan's prohibition on construction of new structures and impervious surfaces seaward of the eroding area boundary and building setback line provides increased protection for areas at higher risk of damage from flooding and erosion and reduces the risk of public expenditures for erosion and storm damage losses to public and private property. These restrictions also promote a continuous critical dune area that will help provide protection from erosion and storms and provides a vegetative buffer between development and the beach.

Pursuant to the enrollment of House Bill 5246, the 89th Legislature amended Tex. Govt. Code §482.107(8), effective September 1, 2025 to allow the Texas Space Commission (Space Commission) to issue an order, subject to the approval of the municipality's governing body, to temporarily close a highway, venue, or "Gulf Beach" as specified by Tex. Nat. Res. Code §33.203(11), which includes areas of Boca Chica beach.

On September 23, 2025 the Space Commission, pursuant to new Tex. Gov't Code §482.107(a)(8), issued standing Order No. 2025-01 authorizing the City to temporarily close a highway as defined by Tex. Transp. Code §221.001, or the "Gulf Beach" during space flight activities. Such temporary closures are necessary to safeguard public safety and operational security in furtherance of state aerospace policy and will be issued only as necessary consistent with the requirements in 43 Texas Administrative Code §22.12. The City shall ensure that a safety zone perimeter is established in coordination with law enforcement and entities conducting space flight activities. The Order ensures the following dates remain available to the public for recreational use and will not be subject to any access limitations:

1) the Saturday or Sunday preceding Memorial Day;

2) Memorial Day;

3) July 4;

4) a Saturday or Sunday preceding Labor Day; or

5) Labor Day.

In addition to the authority to close the Gulf Beach under the Space Commission Order, the City, pursuant to 31 TAC §15.7, is authorized to close the public beach in cases of emergencies related to public health and safety and must notify the GLO

as soon as practicable upon the closure and reopening of the beach. Such emergency closures must be minimized in scope and duration.

The City's Plan follows additional closure related provisions that are more protective of the public's access and use of the beach than the limitations on access restrictions outlined in the Space Commission's Order. These additional provisions in the adopted Plan are consistent with the access requirements related to spaceflight activities included in the Mitigated Finding of No Significant Impact and Record of Decision for the Final Tiered Environmental Assessment (Mitigated FONSI/ROD), issued by the Federal Aviation Administration on April 24, 2025.

The Mitigated FONSI/ROD states that there shall be no State Highway 4 access restrictions on the following:

1.) Memorial Day

a.) Memorial Day to Labor Day (the times of greatest visitor beach uses and enjoyment), no Weekend Access Restrictions from Friday at 6:00 a.m. through Sunday.

b.) Road access restrictions for any space flight activities would occur from Monday through Friday at 6:00 a.m. This predictive schedule ensures the public access to all open areas of the Laguna Atascosa National Wildlife Refuge (e.g., Boca Chica Beach) from Friday at 6:00 a.m. through Sunday from Memorial Day through Labor Day.

c.) When a space flight activity requires at least one road access restriction between Fridays at 6:00 a.m. and Sundays from Memorial Day to Labor Day, or on weekends from the day after Labor Day to the day before Memorial Day, it is considered a "Weekend Access Restriction."

d.) Weekend Access Restrictions may be requested up to five times per calendar year;

2.) Labor Day

a.) From the day after Labor Day to the day before Memorial Day (throughout the winter months), no Weekend Access Restrictions on Saturday or Sunday;

3.) July 4th;

4) Martin Luther King Jr. Day;

5) Presidents' Day;

6) Texas Independence Day;

7) Cesar Chavez Day;

8) Emancipation Day in Texas (also referred to as Juneteenth);

9) Veteran's Day;

10) Good Friday;

11) Easter;

12) Father's Day;

13) Mother's Day;

14) Thanksgiving Day, no access restrictions shall be permitted from Thanksgiving Day through the Sunday immediately following Thanksgiving;

15) Christmas Day; and

16) New Year's Day ("Holidays").

If any Holiday falls on a Monday or Friday, no Weekend Access Restrictions shall be permitted.

In accordance with the April 24, 2025 Mitigated FONSI/ROD, to reduce impacts to recreational users the City shall provide forty-eight (48) hours notice of any road and beach closure through its official website: www.starbase.texas.gov/.

A copy of the Final Tiered EA may also be obtained from the FAA's website: www.faa.gov/space/stakeholder_engagement/spacex_starship.

If a future FAA Mitigated FONSI/ROD modifies the dates of public beach access closures, increases the duration or total number of hours of closures in excess of the 2025 Mitigated FONSI/ROD, or changes the public notice process, express written GLO approval will be required prior to implementation by the City.

STATUTORY AUTHORITY

The new rule is adopted as authorized by Tex. Gov. Code §482.107(8) and Tex. Nat. Res. Code §§33.602, 33.607, 61.011, 61.015(b), 61.022 (b) & (c), 63.091, and 63.121, which provide the GLO with the authority to adopt rules governing the preservation and enhancement of the public's right to access and use public beaches and certification of local government beach access and dune protection plans as consistent with state law.

Tex. Nat. Res. Code §§33.602, 33.607, 61.011, 61.015(b), 61.022 (b) & (c), 63.091, and 63.121 are affected by the adopted new rule.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 5, 2025.

TRD-202504438
Jennifer Jones
Chief Clerk and Deputy Land Commissioner
General Land Office
Effective date: December 25, 2025
Proposal publication date: October 24, 2025
For further information, please call: (512) 475-1859

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 21. TEXAS COUNCIL FOR DEVELOPMENTAL DISABILITIES

CHAPTER 877. GRANT AWARDS

40 TAC §877.1, §877.2

The Texas Council for Developmental Disabilities (Council) adopts amendments to §877.1 concerning General Provisions and §877.2 concerning Application and Review Process. The rules were adopted without changes to the rules as proposed in the October 3, 2025, issue of the *Texas Register* (50 TexReg 6468). The rules will not be republished.

The purpose of the amendments to §877.1 is to clarify language regarding that number of allowable grants from an organization and to §877.2 is to apply consistent language to all sections regarding the Council Request for Applications process.

No comments were received on the proposed amendments.

The amendments are authorized under the Texas Human Resources Code, §112.020, which provides authority for the Council to adopt rules as necessary to implement the Council's duties and responsibilities.

The amendments will affect Texas Human Resources Code, Title 7, Chapter 112, Developmental Disabilities.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 1, 2025.

TRD-202504394
Beth Stalvey
Executive Director
Texas Council for Developmental Disabilities
Effective date: December 21, 2025
Proposal publication date: October 3, 2025
For further information, please call: (512) 948-2035




Texas

REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Health and Human Services Commission

Title 26, Part 1

The Texas Health and Human Services Commission (HHSC) proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 26, Part 1, of the Texas Administrative Code (TAC):

Chapter 110, Hearings Under the Administrative Procedure Act

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 110, Hearings Under the Administrative Procedure Act, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to hhsrulescoordinationoffice@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 110" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register.*

The text of the rule sections being reviewed will not be published but may be found in Title 26, Part 1, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings (www.sos.texas.gov).

TRD-202504479
Jessica Miller
Director, Rules Coordination Office
Texas Health and Human Services Commission
Filed: December 9, 2025

♦ ♦ ♦

The Texas Health and Human Services Commission (HHSC) proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 26, Part 1, of the Texas Administrative Code (TAC):

Chapter 559, Day Activity and Health Services Requirements

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 559, Day Activity and Health Services Requirements, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to hhsrulescoordinationoffice@hhs.texas.gov.

When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 559" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register.*

The text of the rule sections being reviewed will not be published but may be found in Title 26, Part 1, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings (www.sos.texas.gov).

TRD-202504481
Jessica Miller
Director, Rules Coordination Office
Texas Health and Human Services Commission
Filed: December 9, 2025

♦ ♦ ♦

The Texas Health and Human Services Commission (HHSC) proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 26, Part 1, of the Texas Administrative Code (TAC):

Chapter 565, Home and Community-Based (HCS) Program and Community First Choice (CFC) Certification Standards

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 565, Home and Community-Based (HCS) Program and Community First Choice (CFC) Certification Standards, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to hhsrulescoordinationoffice@hhs.texas.gov.

When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 565" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register.*

The text of the rule sections being reviewed will not be published but may be found in Title 26, Part 1, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings (www.sos.texas.gov).

TRD-202504480

Jessica Miller
Director, Rules Coordination Office
Texas Health and Human Services Commission
Filed: December 9, 2025

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Adopted Rule Reviews

Texas Board of Nursing

Title 22, Part 11

In accordance with Government Code §2001.039, the Texas Board of Nursing (Board) filed a notice of intention to review and consider for re-adoption, re-adoption with amendments, or repeal, the following chapters contained in Title 22, Part 11, of the Texas Administrative Code, pursuant to the 2022 rule review plan adopted by the Board at its April 2022 meeting, in the July 4, 2025, issue of the *Texas Register* (50 TexReg 3921).

Chapter 213. Practice and Procedure, §§213.1 - 213.37

Chapter 214. Vocational Nursing Education, §§214.1 - 214.14

Chapter 215. Professional Nursing Education, §§215.1 - 215.14

Chapter 216. Continuing Competency, §§216.1 - 216.11

Chapter 221. Advanced Practice Nurses, §§221.1 - 221.17

Chapter 222. Advanced Practice Registered Nurses with Prescriptive Authority, §§222.1 - 222.12

Chapter 227. Pilot Programs for Innovative Applications to Vocational and Professional Nursing Education, §§227.1 - 227.6

The Board received one comment regarding Chapter 213 and one comment regarding Chapters 221 and 222. A summary of the comments and the Board's response are explained below.

Summary of Comments Regarding Chapter 213 and Agency Response:

Summary of Comment: The Board received a comment from Betty Smith. Ms. Smith is an attorney and partner at Lype, Dest & Smith, a law firm in Austin, Texas. Ms. Smith expressed concerns and objects to the readoption of subsection 213.30(j) which prevents the Board from reconsidering a petition for licensure eligibility for a period of three years following the issuance of a final Board order denying a petition, after a contested case hearing and an administrative law judge's proposal for decision recommending denial.

The commenter objects to a three-year waiting period stating that the rule unfairly penalizes petitioners for exercising their right to a hearing. The commenter argues this requirement discourages due process participation and creates inequity because petitioners who do not request a hearing, who may reapply after only one year. The commenter further states that the rule fails to account for staff-related delays in processing and does not consider material changes in circumstances that could justify earlier reconsideration. Commenter notes that this three-year waiting period was initially described along with a related, since repealed rule (former rule 213.27(f) relating to denials associated with previously licensed individuals) as discretionary and therefore inconsistent with the three-year waiting period still applicable as outlined in 213.30(j).

The commenter suggests the rule be modified to clarify that the three-year reapplication period is discretionary rather than mandatory, to permit earlier reapplication if there is a material change in facts or circumstances and to ensure the rule does not deter petitioners from exercising due process rights.

Agency Response: The Board disagrees with the comments and declines to modify the rule. The Board has the authority to create procedural rules it deems necessary to carry out its public safety mission. The three-year waiting period does not deny a petitioner's due process rights. Rather, the rule promotes efficient use of state resources. Petitioners whom the Board proposes to deny, have a statutory right under Tex. Occ. Code §301.257(e) to proceed to hearing. SOAH hearings consist of an independent third-party administrative law judge (ALJ) who examines and evaluates the evidence regarding grounds of ineligibility and makes legal and factual determinations regarding petitioner's eligibility. The hearing process expends states resources of both the Board and SOAH. The commenter ignores that the rule's limitation is only available after final un-appealed Board Order of denial after a contested case convened in accordance with due process rights. If a petitioner receives an unfavorable ruling, the three-year waiting period prevents them from immediately refiling the same petition. This saves the Board from expending time and taxpayer money on identical or very similar cases in quick succession. The rule promotes finality in administrative decisions. A final determination, especially after a contested case hearing, should have a reasonable lasting effect. The waiting period encourages applicants to fully present their case during the initial hearing, rather than relying on a series of rapid-fire, perfunctory petitions. Further, it ensures that an adequate amount of time has passed for an applicant to demonstrate rehabilitation or changed circumstances.

The Board disagrees that there exists an unreasonable chilling effect on a petitioner's due process rights. Petitioners who pursue a SOAH hearing have already received a full, contested case hearing, the very definition of due process. The rule does not deny petitioners a future hearing but regulates when they can initiate a new proceeding. The initial hearing is the primary forum for due process. The three-year waiting period is a reasonable limitation, not a permanent penalty or suspension of rights. The arguments focusing on anecdotal complaints regarding Staff delays in processing petitions for declaratory orders of eligibility do not provide empirical justification for amendment to the rule.

The Board disagrees that the burden of proof or resource imbalance are grounds for invalidating a rule. The administrative process, with its clear burden of proof, is a neutral arbiter of facts. The preponderance of evidence is not inherently unfair. This standard provides a reasonable level of proof for regulatory action, protective of both parties.

Lastly, the Board declines to modify the rule to clarify that the three-year reapplication period is discretionary, rather than mandatory. The rule language is sufficiently clear, and a previously published, internal interpretation does not legally necessitate an amendment.

Summary of Comments Regarding Chapters 221 and 222 and Agency Response:

Summary of Comment: The Texas Society of Anesthesiologists (TSA) recommended that the Board amend its rules in Chapters 221 and 222 to align with the Texas Medical Board's (TMB) recently adopted office-based anesthesia (OBA) rules in 22 Texas Administrative Code Chapter 173. TSA expressed concern that the Board's rules are inconsistent with TMB's requirements and therefore may not ensure uniform standards of patient care.

As one example, TSA noted that TMB's rules define ketamine as a hypnotic and require facilities to be classified as Level III or higher when intravenous ketamine is administered. TSA stated that the Board's rule at §221.16(a)(2)(B) is inconsistent with the TMB's requirements and could permit intravenous ketamine administration outside of TMB's framework. TSA also cited broader concerns regarding inconsistencies related to physician presence for certain types of anesthesia, oversight

of agents such as ketamine and propofol, informed consent requirements, emergency preparedness standards, and documentation of the delegating physician.

Agency Response: The Board declines to propose amendments to its rules in response to this comment. The Board carefully reviewed the concerns raised by TSA and does not find that Chapters 221 and 222 conflict with the TMB's OBA rules. The example raised by TSA regarding ketamine administration does not create a conflict, as the TMB expressly clarified in its rule adoption preamble that its OBA rules "do not address the use of low-dose ketamine when not administered as an anesthetic agent" (50 TexReg 358, Jan. 10, 2025). As such, IV ketamine, administered in low dose, for a purpose other than anesthesia, is not contemplated by the TMB's OBA rules.

Further, the Board notes that the requirements adopted by the TMB in 22 Texas Administrative Code Chapter 173 operate within the existing statutory framework of the Medical Practice Act regarding physician delegation in office-based anesthesia settings. In its rule adoption preamble, the TMB explained that the new Chapter 173 rules represent no substantive change from the repealed OBA rules with respect to Certified Registered Nurse Anesthetists under state law (50 TexReg 358, January 10, 2025).

The Board also notes that TSA cited a repealed provision of the Texas Medical Disclosure Panel (TMDP) rules at 25 Texas Administrative Code §601.9. The current TMDP disclosure and consent requirements applicable to anesthesia services are codified at 25 Texas Administrative Code §604.5. The Board declines to duplicate requirements already promulgated by the TMDP and applicable to anesthesia services.

With respect to the other concerns raised, TSA did not provide specific examples of direct conflict between the Board's rules and the TMB's rules. The Board finds its current rules appropriately ensure patient safety and align with statutory requirements governing advanced practice registered nurses, including CRNAs. Therefore, no changes are proposed to the rules in response to this comment.

The Board is aware that the TMB held a stakeholder meeting on September 11, 2025, regarding psychotropic ketamine therapy and is considering new or amended rules to clarify regulation of this practice area. The Board is monitoring those developments and will consider rule amendments if future conflicts arise.

The Board has completed its review and has determined that the reasons for originally adopting the above rules continue to exist. The rules were also reviewed to determine whether they were obsolete, whether they reflected current legal and policy considerations and current procedures and practices of the Board, and whether they were in compliance with Texas Government Code Chapter 2001 (Texas Administrative Procedure Act). The Board finds that the rules are not obsolete, reflect current legal and policy considerations, and that the rules are in compliance with the Texas Administrative Procedure Act, but necessary amendments to 22 Texas Administrative Code §213.13 were identified, pursuant to an internal audit, to clarify and align current procedures and practices of the Board. In this issue of the *Texas Register*, the Board proposes those amendments to 22 Texas Administrative Code §213.13 to update the rule section to reflect current procedures and practices.

The Board readopts the rules in Chapters 213, 214, 215, 216, 221, 222, and 227 without changes, pursuant to the Texas Government Code §2001.039 and Texas Occupations Code §301.151, which authorizes the Board to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act. This concludes the rule review of the above Chapters under the 2022 rule review plan adopted by the Board.

TRD-202504431

James W. Johnston
General Counsel
Texas Board of Nursing
Filed: December 5, 2025

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Comptroller of Public Accounts

Title 34, Part 1

The Comptroller of Public Accounts adopts the review of Texas Administrative Code, Title 34, Part 1, Chapter 7, concerning Prepaid Higher Education Tuition Program; Chapter 9, concerning Property Tax Administration; Chapter 11, concerning Government Growth Impact Statement; Chapter 12, concerning Economic Growth; Chapter 13, concerning Unclaimed Property Reporting and Compliance; Chapter 14, concerning Texas Bullion Depository; and Chapter 15, concerning Electronic Transfer of Certain Payments to State Agencies. This review is being conducted in accordance with Government Code, §2001.039. The review assessed whether the reasons for adopting the chapters continue to exist.

The comptroller received no comments on the proposed review, which was published in the October 10, 2025, issue of the *Texas Register* (50 TexReg 6690).

Relating to the review of Chapter 7, the comptroller finds that the reasons for adopting Chapter 7 continue to exist and readopts the sections at this time without changes in accordance with the requirements of Government Code, §2001.039.

Relating to the review of Chapter 9, the comptroller finds that the reasons for adopting Subchapter 9 continue to exist and readopts the sections at this time without changes in accordance with the requirements of Government Code, §2001.039. At a later date, Subchapter A, §9.101, and §9.103; Subchapter F, §9.1054 and §9.1058; Subchapter G, §9.2001 and §9.2003; Subchapter H, §§9.3001-9.3005; 9.3008, and 9.3010-9.3015; Subchapter I, §§9.9.4001, 9.4011, and 9.4033; Subchapter K, §§9.4202, 9.4209, 9.4223, 9.4240, and 9.4244; Subchapter L, §§9.4301-9.4303, 9.4305, 9.4307-9.4309, and 9.4311-9.4315; and Subchapter M, §9.4321 and §9.4323 will be amended in separate rulemakings in accordance with the Texas Administrative Procedure Act.

As a result of the review of Chapter 9, at a later date, the comptroller will propose the repeal of Subchapter H, §9.3009.

Relating to the review of Chapter 11, the comptroller finds that the reasons for adopting Chapter 11 continue to exist and readopts the sections at this time without changes in accordance with the requirements of Government Code, §2001.039.

Relating to the review of Chapter 12, the comptroller finds that the reasons for adopting Chapter 12 continue to exist and readopts the sections at this time without changes in accordance with the requirements of Government Code, §2001.039.

Relating to the review of Chapter 13, the comptroller finds that the reasons for adopting Chapter 13 continue to exist and readopts the sections at this time without changes in accordance with the requirements of Government Code, §2001.039. At a later date, §13.6 and §13.9 will be amended in separate rulemakings in accordance with the Texas Administrative Procedure Act.

Relating to the review of Chapter 14, the comptroller finds that the reasons for adopting Chapter 14 continue to exist and readopts the sections at this time without changes in accordance with the requirements of Government Code, §2001.039.

Relating to the review of Chapter 15, the comptroller finds that the reasons for adopting Chapter 15 continue to exist and readopts the sections at this time without changes in accordance with the requirements of Government Code, §2001.039. At a later date, Subchapter A, §§15.1, 15.4, and 15.6; Subchapter B, §15.21, and Subchapter C, §15.32, and §15.35 will be amended in separate rulemakings in accordance with the Texas Administrative Procedure Act.

This concludes the review of Texas Administrative Code, Title 34, Part 1, Chapter 7, Chapter 9, Chapter 11, Chapter 12, Chapter 13, Chapter 14, and Chapter 15.

TRD-202504499
Jenny Burleson
Director, Tax Policy
Comptroller of Public Accounts
Filed: December 10, 2025

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 10 TAC §11.2(a)

Deadline	Documentation Required
01/06/2026	Application Acceptance Period Begins. Public Comment period starts.
01/09/2026	Pre-Application Final Delivery Date (including waiver requests).
02/16/2026	Deadline for submission of Request for Preliminary Determination in accordance with §11.8(d) of this chapter.
02/16/2026	Deadline for submission of Application for .ftp access if pre-application not submitted.
Deadline	Documentation Required
02/27/2026	End of Application Acceptance Period and Full Application Delivery Date (including Quantifiable Community Participation documentation for Applications that were initially submitted as a pre-application; Environmental Site Assessments (ESAs), Scope and Cost Reviews (SCRs); Appraisals; Primary Market Area Map; Feasibility Report; all Resolutions necessary under §11.3 of this chapter related to Housing De- Concentration Factors). Final Input from Elected Officials Delivery Date (including Resolution for Local Government Support pursuant to §11.9(d)(1) of this chapter and State Representative Input pursuant to §11.9(d)(5) of this chapter.

04/06/2026	Market Analysis Delivery Date pursuant to §11.205 of this chapter. Deadline for Quantifiable Community Participation documentation for Applications that were not initially submitted as a Pre-Application.
04/15/2026	Deadline for Third Party Request for Administrative Deficiency.
Early June 2026	Scoring Notices Issued for Majority of Applications Considered “Competitive.”
06/03/2026	Public comment deadline for the comment to be included in the Board materials relating to the July presentation of awards are due in accordance with §1.10.
June 2026	On or before June 30, publication of the list of Eligible Applications for Consideration for Award in July.
July 2026	On or before July 31, Board issuance of Final Awards.
Deadline	Documentation Required
August 2026	Commitments are Issued.
11/02/2026	Carryover Documentation Delivery Date.
07/01/2027	10% Test Documentation Delivery Date.
12/31/2028	Placement in Service.

Five business days after the date on the Deficiency Notice (without incurring point loss)	Administrative Deficiency Response Deadline (unless an extension has been granted).

Figure: 10 TAC §11.1002(a)

Deadline	Documentation Required
2/27/2026	Full Application Delivery Deadline, must include completed Intent to Request a State Housing Tax Credit Allocation
9/4/2026	State Housing Tax Credit Request Form due
December 2026	Allocation Certificates issued

Figure: 26 TAC §507.60

MINIMUM STAFFING LEVELS FOR PATIENT CARE STAFF				
Patients Receiving Treatment	**Charge Nurse (RN[1])[2]**	**Direct Care Staff – Licensed Nurse RN or LVN[3,4,5]**	**Direct Care Staff – PCT[6, 7] (Can be fulfilled by RN or LVN)**	**Total Clinical Staff[8]**
1 – 7[9]	1	0	1	2
8	1	0	2	3
9 - 12	1	0	3	4
13 - 16	1	1	4	6
17 - 20	1	1	5	7
21 - 24	1	1	6	8
25 - 28	1	2	7	10
29 - 32	1	2	8	11
33 - 36	1	2	9	12
37 - 40	1	3	10	14
41 - 44	1	3	11	15
45 - 48	1	3	12	16
49 - 53	1	4	13	18
Etc.	Maintain 1 charge nurse (RN).	After 12 patients, Add 1 RN or LVN for every 1-12 patients.	For every additional 1-4 patients, add 1 additional direct care staff.	Sum of staff from previous three columns.

[1] Registered nurse (RN).

[2] The charge nurse may have patient assignments only when there are one to seven patients receiving treatment. The charge nurse may provide unassigned care to patients at any time.

[3] Licensed vocational nurse (LVN).

[4] Nurses in this category must be available to address emergency patient situations, including for patients who are not assigned to them.

[5] The charge nurse is not included as direct care staff.

[6] Each direct care staff shall only be assigned a maximum of four patients.

[7] Patient care technician (PCT).

[8] The number of total clinical staff includes the charge nurse.

[9] For seven patients, the direct care staff may be assigned a maximum of four patients and the charge nurse may be assigned a maximum of three patients.



The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

2026 Tax Charts

Pursuant to section 154.061(b) of the Texas Family Code, the Office of the Attorney General of Texas, as the Title IV-D agency, has promulgated the following tax charts to assist courts in establishing the amount of a child support order. These tax charts are applicable to employed and self-employed persons in computing net monthly income. The charts include a range of monthly gross wages for obligors starting at $100. The child support percentages used to calculate child support for obligors of all incomes with children in one household are located within section 154.125(b) and (c). Under Texas Family Code section 154.125(c), a different set of percentages is used to calculate child support for low-income obligors, who are defined as obligors whose monthly net resources are less than $1,000. The child support percentages used to calculate child support for obligors with children in more than one household are located within section 154.129. This section provides an alternative method for computing child support for children in more than one household.

For assistance computing child support under the Texas Child Support Guidelines, please visit: https://csapps.oag.texas.gov/monthly-child-support-calculator

INSTRUCTIONS FOR USE

To use these tables, first compute the obligor's annual gross income. Then recompute to determine the obligor's average monthly gross income. These tables provide a method for calculating "monthly net income" for child support purposes, subtracting from monthly gross income the social security taxes and the federal income tax withholding for a single person claiming one personal exemption and the standard deduction.

Thereafter, in many cases the guidelines call for a number of additional steps to complete the necessary calculations. For example, sections 154.061 - 154.070 provide for appropriate additions to "income" as that term is defined for federal income tax purposes, and for certain subtractions from monthly net income, in order to arrive at the net resources of the obligor available for child support purposes. If necessary, one may compute an obligee's net resources using similar steps.

LIMITATIONS ON USE

These charts are intended to assist courts in common situations, and do not account for all deductions and adjustments allowable under the Internal Revenue Code. For instance, these charts do not account for the qualified business income deduction, which might be taken by some owners of sole proprietorships, S corporations, partnerships, or stand-alone rental properties (pass-through entities). In some situations, section 199A of the Internal Revenue Code allows owners of pass-through entities to take a deduction against their income resulting in a reduction of the effective tax rate. These charts should not be used to estimate the net income of owners of pass-through entities. The computation of net income for parties with complex tax situations may require consultation with an income tax professional.

EMPLOYED PERSONS 2026 TAX CHART				
	Federal Insurance Contributions Act Taxes			
Monthly Gross Wages	Old-Age, Survivors and Disability Insurance Program (Social Security) Tax (6.2%)*,**	Medicare's Hospital Insurance Program (Medicare) Tax (1.45%)*	Federal Income Tax***	Net Monthly Income
$100.00	$6.20	$1.45	$0.00	$92.35
$150.00	$9.30	$2.18	$0.00	$138.52
$200.00	$12.40	$2.90	$0.00	$184.70
$250.00	$15.50	$3.63	$0.00	$230.87
$300.00	$18.60	$4.35	$0.00	$277.05
$350.00	$21.70	$5.08	$0.00	$323.22
$400.00	$24.80	$5.80	$0.00	$369.40
$450.00	$27.90	$6.52	$0.00	$415.58
$500.00	$31.00	$7.25	$0.00	$461.75
$550.00	$34.10	$7.98	$0.00	$507.92
$600.00	$37.20	$8.70	$0.00	$554.10
$650.00	$40.30	$9.43	$0.00	$600.27
$700.00	$43.40	$10.15	$0.00	$646.45
$750.00	$46.50	$10.88	$0.00	$692.62
$800.00	$49.60	$11.60	$0.00	$738.80
$850.00	$52.70	$12.33	$0.00	$784.97
$900.00	$55.80	$13.05	$0.00	$831.15
$950.00	$58.90	$13.78	$0.00	$877.32
$1,000.00	$62.00	$14.50	$0.00	$923.50
$1,050.00	$65.10	$15.23	$0.00	$969.67
$1,100.00	$68.20	$15.95	$0.00	$1,015.85
$1,150.00	$71.30	$16.68	$0.00	$1,062.02
$1,200.00	$74.40	$17.40	$0.00	$1,108.20
$1,256.67****	$77.91	$18.22	$0.00	$1,160.54
$1,300.00	$80.60	$18.85	$0.00	$1,200.55
$1,400.00	$86.80	$20.30	$5.83	$1,287.07
$1,500.00	$93.00	$21.75	$15.83	$1,369.42
$1,600.00	$99.20	$23.20	$25.83	$1,451.77
$1,700.00	$105.40	$24.65	$35.83	$1,534.12
$1,800.00	$111.60	$26.10	$45.83	$1,616.47
$1,900.00	$117.80	$27.55	$55.83	$1,698.82
$2,000.00	$124.00	$29.00	$65.83	$1,781.17
$2,100.00	$130.20	$30.45	$75.83	$1,863.52
$2,200.00	$136.40	$31.90	$85.83	$1,945.87
$2,300.00	$142.60	$33.35	$95.83	$2,028.22
$2,400.00	$148.80	$34.80	$106.33	$2,110.07
$2,500.00	$155.00	$36.25	$118.33	$2,190.42
$2,600.00	$161.20	$37.70	$130.33	$2,270.77
$2,700.00	$167.40	$39.15	$142.33	$2,351.12
$2,800.00	$173.60	$40.60	$154.33	$2,431.47
$2,900.00	$179.80	$42.05	$166.33	$2,511.82
$3,000.00	$186.00	$43.50	$178.33	$2,592.17
$3,100.00	$192.20	$44.95	$190.33	$2,672.52
$3,200.00	$198.40	$46.40	$202.33	$2,752.87
$3,300.00	$204.60	$47.85	$214.33	$2,833.22
$3,400.00	$210.80	$49.30	$226.33	$2,913.57
$3,500.00	$217.00	$50.75	$238.33	$2,993.92
$3,600.00	$223.20	$52.20	$250.33	$3,074.27
$3,700.00	$229.40	$53.65	$262.33	$3,154.62
$3,800.00	$235.60	$55.10	$274.33	$3,234.97
$3,900.00	$241.80	$56.55	$286.33	$3,315.32
$4,000.00	$248.00	$58.00	$298.33	$3,395.67
$4,100.00	$254.20	$59.45	$310.33	$3,476.02
$4,200.00	$260.40	$60.90	$322.33	$3,556.37
$4,300.00	$266.60	$62.35	$334.33	$3,636.72
$4,400.00	$272.80	$63.80	$346.33	$3,717.07
$4,500.00	$279.00	$65.25	$358.33	$3,797.42
$4,600.00	$285.20	$66.70	$370.33	$3,877.77
$4,700.00	$291.40	$68.15	$382.33	$3,958.12
$4,800.00	$297.60	$69.60	$394.33	$4,038.47
$4,900.00	$303.80	$71.05	$406.33	$4,118.82
$5,000.00	$310.00	$72.50	$418.33	$4,199.17
$5,100.00	$316.20	$73.95	$430.33	$4,279.52
$5,200.00	$322.40	$75.40	$442.33	$4,359.87
$5,300.00	$328.60	$76.85	$454.33	$4,440.22
$5,400.00	$334.80	$78.30	$466.33	$4,520.57

$5,500.00	$341.00	$79.75	$478.33	$4,600.92
$5,600.00	$347.20	$81.20	$496.17	$4,675.43
$5,700.00	$353.40	$82.65	$518.17	$4,745.78
$5,800.00	$359.60	$84.10	$540.17	$4,816.13
$5,900.00	$365.80	$85.55	$562.17	$4,886.48
$6,000.00	$372.00	$87.00	$584.17	$4,956.83
$6,100.00	$378.20	$88.45	$606.17	$5,027.18
$6,200.00	$384.40	$89.90	$628.17	$5,097.53
$6,300.00	$390.60	$91.35	$650.17	$5,167.88
$6,400.00	$396.80	$92.80	$672.17	$5,238.23
$6,500.00	$403.00	$94.25	$694.17	$5,308.58
$6,600.00	$409.20	$95.70	$716.17	$5,378.93
$6,700.00	$415.40	$97.15	$738.17	$5,449.28
$6,800.00	$421.60	$98.60	$760.17	$5,519.63
$6,900.00	$427.80	$100.05	$782.17	$5,589.98
$7,000.00	$434.00	$101.50	$804.17	$5,660.33
$7,100.00	$440.20	$102.95	$826.17	$5,730.68
$7,200.00	$446.40	$104.40	$848.17	$5,801.03
$7,300.00	$452.60	$105.85	$870.17	$5,871.38
$7,400.00	$458.80	$107.30	$892.17	$5,941.73
$7,500.00	$465.00	$108.75	$914.17	$6,012.08
$7,600.00	$471.20	$110.20	$936.17	$6,082.43
$7,700.00	$477.40	$111.65	$958.17	$6,152.78
$7,800.00	$483.60	$113.10	$980.17	$6,223.13
$7,900.00	$489.80	$114.55	$1,002.17	$6,293.48
$8,000.00	$496.00	$116.00	$1,024.17	$6,363.83
$8,100.00	$502.20	$117.45	$1,046.17	$6,434.18
$8,200.00	$508.40	$118.90	$1,068.17	$6,504.53
$8,300.00	$514.60	$120.35	$1,090.17	$6,574.88
$8,400.00	$520.80	$121.80	$1,112.17	$6,645.23
$8,500.00	$527.00	$123.25	$1,134.17	$6,715.58
$8,600.00	$533.20	$124.70	$1,156.17	$6,785.93
$8,700.00	$539.40	$126.15	$1,178.17	$6,856.28
$8,800.00	$545.60	$127.60	$1,200.17	$6,926.63
$8,900.00	$551.80	$129.05	$1,222.17	$6,996.98
$9,000.00	$558.00	$130.50	$1,244.17	$7,067.33
$9,100.00	$564.20	$131.95	$1,266.17	$7,137.68
$9,200.00	$570.40	$133.40	$1,288.17	$7,208.03
$9,300.00	$576.60	$134.85	$1,310.17	$7,278.38
$9,400.00	$582.80	$136.30	$1,332.17	$7,348.73
$9,500.00	$589.00	$137.75	$1,354.17	$7,419.08
$9,600.00	$595.20	$139.20	$1,376.17	$7,489.43
$9,700.00	$601.40	$140.65	$1,398.17	$7,559.78
$9,800.00	$607.60	$142.10	$1,420.17	$7,630.13
$9,900.00	$613.80	$143.55	$1,442.17	$7,700.48
$10,000.00	$620.00	$145.00	$1,464.17	$7,770.83
$10,100.00	$626.20	$146.45	$1,486.17	$7,841.18
$10,200.00	$632.40	$147.90	$1,509.17	$7,910.53
$10,300.00	$638.60	$149.35	$1,533.17	$7,978.88
$10,400.00	$644.80	$150.80	$1,557.17	$8,047.23
$10,500.00	$651.00	$152.25	$1,581.17	$8,115.58
$10,600.00	$657.20	$153.70	$1,605.17	$8,183.93
$10,700.00	$663.40	$155.15	$1,629.17	$8,252.28
$10,800.00	$669.60	$156.60	$1,653.17	$8,320.63
$10,900.00	$675.80	$158.05	$1,677.17	$8,388.98
$11,000.00	$682.00	$159.50	$1,701.17	$8,457.33
$11,100.00	$688.20	$160.95	$1,725.17	$8,525.68
$11,200.00	$694.40	$162.40	$1,749.17	$8,594.03
$11,300.00	$700.60	$163.85	$1,773.17	$8,662.38
$11,400.00	$706.80	$165.30	$1,797.17	$8,730.73
$11,500.00	$713.00	$166.75	$1,821.17	$8,799.08
$11,600.00	$719.20	$168.20	$1,845.17	$8,867.43
$11,700.00	$725.40	$169.65	$1,869.17	$8,935.78
$11,800.00	$731.60	$171.10	$1,893.17	$9,004.13
$11,900.00	$737.80	$172.55	$1,917.17	$9,072.48
$12,000.00	$744.00	$174.00	$1,941.17	$9,140.83
$12,100.00	$750.20	$175.45	$1,965.17	$9,209.18
$12,200.00	$756.40	$176.90	$1,989.17	$9,277.53
$12,300.00	$762.60	$178.35	$2,013.17	$9,345.88
$12,400.00	$768.80	$179.80	$2,037.17	$9,414.23
$12,500.00	$775.00	$181.25	$2,061.17	$9,482.58

$12,600.00	$781.20	$182.70	$2,085.17	$9,550.93
$12,700.00	$787.40	$184.15	$2,109.17	$9,619.28
$12,800.00	$793.60	$185.60	$2,133.17	$9,687.63
$12,900.00	$799.80	$187.05	$2,157.17	$9,755.98
$13,000.00	$806.00	$188.50	$2,181.17	$9,824.33
$13,100.00	$812.20	$189.95	$2,205.17	$9,892.68
$13,200.00	$818.40	$191.40	$2,229.17	$9,961.03
$13,300.00	$824.60	$192.85	$2,253.17	$10,029.38
$13,400.00	$830.80	$194.30	$2,277.17	$10,097.73
$13,500.00	$837.00	$195.75	$2,301.17	$10,166.08
$13,600.00	$843.20	$197.20	$2,325.17	$10,234.43
$13,700.00	$849.40	$198.65	$2,349.17	$10,302.78
$13,800.00	$855.60	$200.10	$2,373.17	$10,371.13
$13,900.00	$861.80	$201.55	$2,397.17	$10,439.48
$14,000.00	$868.00	$203.00	$2,421.17	$10,507.83
$14,100.00	$874.20	$204.45	$2,445.17	$10,576.18
$14,200.00	$880.40	$205.90	$2,469.17	$10,644.53
$14,300.00	$886.60	$207.35	$2,493.17	$10,712.88
$14,400.00	$892.80	$208.80	$2,517.17	$10,781.23
$14,500.00	$899.00	$210.25	$2,541.17	$10,849.58
$14,600.00	$905.20	$211.70	$2,565.17	$10,917.93
$14,700.00	$911.40	$213.15	$2,589.17	$10,986.28
$14,800.00	$917.60	$214.60	$2,613.17	$11,054.63
$14,900.00	$923.80	$216.05	$2,637.17	$11,122.98
$15,000.00	$930.00	$217.50	$2,661.17	$11,191.33
$15,100.00	$936.20	$218.95	$2,685.17	$11,259.68
$15,200.00	$942.40	$220.40	$2,709.17	$11,328.03
$15,300.00	$948.60	$221.85	$2,733.17	$11,396.38
$15,375.00**	$953.25	$222.94	$2,751.17	$11,447.64
$15,400.00	$953.25	$223.30	$2,757.17	$11,466.28
$15,500.00	$953.25	$224.75	$2,781.17	$11,540.83
$15,600.00	$953.25	$226.20	$2,805.17	$11,615.38
$15,700.00	$953.25	$227.65	$2,829.17	$11,689.93
$15,713.51*****	$953.25	$227.85	$2,832.41	$11,700.00

Footnotes to Employed Persons 2026 Tax Chart:

References to "the Code" refer to the Internal Revenue Code of 1986, as amended (26 U.S.C.).

* An employed person not subject to the Old-Age, Survivors and Disability Insurance Program "OASDI" (Social Security) tax and Medicare's Hospital Insurance Program (Medicare) tax will be allowed the reductions reflected in these columns, unless it is shown that such person has no similar contributory plan such as teacher retirement, federal railroad retirement, federal civil service retirement, etc.

** In 2026 the maximum level of Monthly Gross Wages for an employed person subject to the 6.2% Social Security tax is $184,500 per year, or $15,375 per month ($184,500 / 12 = $15,375). The maximum monthly Social Security Tax in 2026 is $953.25 based on the maximum OASDI Contribution and Benefit Base amount of $184,500 for 2026.

Monthly Gross Wages	$184,500 for the year, or $15,375 monthly average
Social Security tax rate = 6.2%	$184,500 is equal to the 2026 OASDI contribution and benefit base, so $184,500 is taxed at this rate. $184,500 x .062 = $11,439 for the year, or $953.25 monthly average

*** These amounts represent one-twelfth (1/12) of the annual federal income tax calculated for a single taxpayer taking the standard deduction ($16,100). The standard deduction is subtracted according to Section 63(c) of the Code.

Note: Section 154.061 requires the Title IV-D agency to promulgate tax charts to compute net monthly income, subtracting from gross income social security taxes and federal income tax withholding for a single person claiming one personal exemption and the standard deduction. In 2025, under Section 151(d)(5) of the Code, the deduction for personal exemptions was permanently terminated.

Examples:

Monthly Gross Wages	$72,000 for the year, or $6,000 monthly average	$132,000 for the year, or $11,000 monthly average
Standard Deduction Section 63(c) of the Code	$16,100	$16,100
Income amount to be used in the income tax computation	$72,000 - $16,100 = $55,900	$132,000 - $16,100 = $115,900
Income tax computation for 2026	*If taxable income is over $50,400 but not over $105,700, the tax is $5,800 plus 22% of the excess over $50,400* *(Section 1(j) of the Code)* $5,800 + (($55,900 - $50,400) x .22) = $7,010 for the year, or $584.17 monthly average	*If taxable income is over $105,700 but not over $201,775, the tax is $17,966 plus 24% of the excess over $105,700* *(Section 1(j) of the Code)* $17,966 + (($115,900 - $105,700) x .24) = 20,414 for the year, or $1,701.17 monthly average

**** This amount represents one-twelfth (1/12) of the gross income of an individual earning the federal minimum wage ($7.25 per hour) for a 40-hour week for a full year.

Federal Minimum Wage = $7.25 per hour	$7.25 x 40 hours per week x 52 weeks per year = $15,080 per year
Monthly average	$15,080 / 12 = $1,256.67 monthly average

***** This amount represents the point where the monthly gross wages of an employed individual would result in $11,700.00 of net resources. Texas Family Code section 154.125(a) provides "The guidelines for the support of a child in this section are specifically designed to apply to situations in which the obligor's monthly net resources are not greater than the maximum amount of net resources to which the statutory guidelines are applicable, as most recently published by the Title IV-D agency in the Texas Register." Effective September 1, 2025, the adjusted amount determined under Subsection (a-1) is $11,700.00. Texas Family Code section 154.126(a) provides, "If the obligor's net resources exceed the amount provided by Section 154.125(a), the court shall presumptively apply the percentage guidelines to the portion of the obligor's net resources that does not exceed that amount. Without further reference to the percentage recommendation by these guidelines, the court may order additional amounts of child support as appropriate, depending on the income of the parties and the proven needs of the child." The tax charts promulgated by the Office of the Attorney General include net monthly income amounts up to the amount specified in Texas Family Code section 154.125.

* *

Citations Relating to Employed Persons 2026 Tax Chart:

1. Old-Age, Survivors and Disability Insurance Tax

   (a) Contribution Base

      (1) Social Security Administration's notice appearing in 90 Fed. Reg. 49050 (November 3, 2025)

      (2) Section 3121(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 3121(a))

      (3) Section 230 of the Social Security Act, as amended (42 U.S.C. § 430)

   (b) Tax Rate

      (1) Section 3101(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 3101(a))

2. Hospital (Medicare) Insurance Tax

   (a) Contribution Base

      (1) Section 3121(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 3121(a))

      (2) Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 13207, 107 Stat. 312, 467-69 (1993)

(b) Tax Rate

(1) Section 3101(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 3101(b))

3. Federal Income Tax

(a) Tax Rate Schedule for 2026 for Single Taxpayers

(1) Revenue Procedure 2025-32, Section 4.01, Table 3 which appears in Internal Revenue Bulletin 2025-45, dated November 3, 2025

(2) Section 1(j) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1(j))

(b) Standard Deduction

(1) Section 63(c) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 63(c))

(c) Personal Exemption

(1) Personal exemptions under Section 151(d) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 151(d)), were terminated July 4, 2025

4. Adjusted amount determined under Subsection (a-1) of Texas Family Code section 154.125

Office of the Attorney General "Announcement of Adjustment Required by Texas Family Code section 154.125" appearing in 50 Tex. Reg. 5351 (August 15, 2025)

SELF-EMPLOYED PERSONS 2026 TAX CHART				
	Federal Insurance Contribution Act Taxes			
Monthly Self-Employment Income*	Old-Age, Survivors and Disability Insurance Program (Social Security) Tax (12.4%)**,***	Medicare's Hospital Insurance Program (Medicare) Tax (2.9%)**	Federal Income Tax****	Net Monthly Income
$100.00	$11.45	$2.68	$0.00	$85.87
$150.00	$17.18	$4.02	$0.00	$128.80
$200.00	$22.90	$5.36	$0.00	$171.74
$250.00	$28.63	$6.70	$0.00	$214.67
$300.00	$34.35	$8.03	$0.00	$257.62
$350.00	$40.08	$9.37	$0.00	$300.55
$400.00	$45.81	$10.71	$0.00	$343.48
$450.00	$51.53	$12.05	$0.00	$386.42
$500.00	$57.26	$13.39	$0.00	$429.35
$550.00	$62.98	$14.73	$0.00	$472.29
$600.00	$68.71	$16.07	$0.00	$515.22
$650.00	$74.43	$17.41	$0.00	$558.16
$700.00	$80.16	$18.75	$0.00	$601.09
$750.00	$85.89	$20.09	$0.00	$644.02
$800.00	$91.61	$21.43	$0.00	$686.96
$850.00	$97.34	$22.76	$0.00	$729.90
$900.00	$103.06	$24.10	$0.00	$772.84
$950.00	$108.79	$25.44	$0.00	$815.77
$1,000.00	$114.51	$26.78	$0.00	$858.71
$1,050.00	$120.24	$28.12	$0.00	$901.64
$1,100.00	$125.97	$29.46	$0.00	$944.57
$1,150.00	$131.69	$30.80	$0.00	$987.51
$1,200.00	$137.42	$32.14	$0.00	$1,030.44
$1,300.00	$148.87	$34.82	$0.00	$1,116.31
$1,400.00	$160.32	$37.49	$0.00	$1,202.19
$1,500.00	$171.77	$40.17	$5.24	$1,282.82
$1,600.00	$183.22	$42.85	$14.53	$1,359.40
$1,700.00	$194.67	$45.53	$23.82	$1,435.98
$1,800.00	$206.13	$48.21	$33.12	$1,512.54
$1,900.00	$217.58	$50.88	$42.41	$1,589.13
$2,000.00	$229.03	$53.56	$51.70	$1,665.71
$2,100.00	$240.48	$56.24	$61.00	$1,742.28
$2,200.00	$251.93	$58.92	$70.29	$1,818.86
$2,300.00	$263.38	$61.60	$79.58	$1,895.44
$2,400.00	$274.83	$64.28	$88.88	$1,972.01
$2,500.00	$286.29	$66.95	$98.17	$2,048.59
$2,600.00	$297.74	$69.63	$108.29	$2,124.34
$2,700.00	$309.19	$72.31	$119.44	$2,199.06
$2,800.00	$320.64	$74.99	$130.60	$2,273.77
$2,900.00	$332.09	$77.67	$141.75	$2,348.49
$3,000.00	$343.54	$80.34	$152.90	$2,423.22
$3,100.00	$354.99	$83.02	$164.05	$2,497.94
$3,200.00	$366.44	$85.70	$175.20	$2,572.66
$3,300.00	$377.90	$88.38	$186.36	$2,647.36
$3,400.00	$389.35	$91.06	$197.51	$2,722.08
$3,500.00	$400.80	$93.74	$208.66	$2,796.80
$3,600.00	$412.25	$96.41	$219.81	$2,871.53
$3,700.00	$423.70	$99.09	$230.97	$2,946.24
$3,800.00	$435.15	$101.77	$242.12	$3,020.96
$3,900.00	$446.60	$104.45	$253.27	$3,095.68
$4,000.00	$458.06	$107.13	$264.42	$3,170.39
$4,100.00	$469.51	$109.80	$275.57	$3,245.12
$4,200.00	$480.96	$112.48	$286.73	$3,319.83
$4,300.00	$492.41	$115.16	$297.88	$3,394.55
$4,400.00	$503.86	$117.84	$309.03	$3,469.27
$4,500.00	$515.31	$120.52	$320.18	$3,543.99
$4,600.00	$526.76	$123.19	$331.34	$3,618.71
$4,700.00	$538.22	$125.87	$342.49	$3,693.42
$4,800.00	$549.67	$128.55	$353.64	$3,768.14
$4,900.00	$561.12	$131.23	$364.79	$3,842.86
$5,000.00	$572.57	$133.91	$375.94	$3,917.58
$5,100.00	$584.02	$136.59	$387.10	$3,992.29
$5,200.00	$595.47	$139.26	$398.25	$4,067.02
$5,300.00	$606.92	$141.94	$409.40	$4,141.74
$5,400.00	$618.38	$144.62	$420.55	$4,216.45
$5,500.00	$629.83	$147.30	$431.71	$4,291.16
$5,600.00	$641.28	$149.98	$442.86	$4,365.88

$5,700.00	$652.73	$152.65	$454.01	$4,440.61
$5,800.00	$664.18	$155.33	$465.16	$4,515.33
$5,900.00	$675.63	$158.01	$476.31	$4,590.05
$6,000.00	$687.08	$160.69	$490.91	$4,661.32
$6,100.00	$698.54	$163.37	$511.36	$4,726.73
$6,200.00	$709.99	$166.05	$531.80	$4,792.16
$6,300.00	$721.44	$168.72	$552.25	$4,857.59
$6,400.00	$732.89	$171.40	$572.69	$4,923.02
$6,500.00	$744.34	$174.08	$593.14	$4,988.44
$6,600.00	$755.79	$176.76	$613.59	$5,053.86
$6,700.00	$767.24	$179.44	$634.03	$5,119.29
$6,800.00	$778.70	$182.11	$654.48	$5,184.71
$6,900.00	$790.15	$184.79	$674.92	$5,250.14
$7,000.00	$801.60	$187.47	$695.37	$5,315.56
$7,100.00	$813.05	$190.15	$715.81	$5,380.99
$7,200.00	$824.50	$192.83	$736.26	$5,446.41
$7,300.00	$835.95	$195.50	$756.71	$5,511.84
$7,400.00	$847.40	$198.18	$777.15	$5,577.27
$7,500.00	$858.86	$200.86	$797.60	$5,642.68
$7,600.00	$870.31	$203.54	$818.04	$5,708.11
$7,700.00	$881.76	$206.22	$838.49	$5,773.53
$7,800.00	$893.21	$208.90	$858.93	$5,838.96
$7,900.00	$904.66	$211.57	$879.38	$5,904.39
$8,000.00	$916.11	$214.25	$899.83	$5,969.81
$8,100.00	$927.56	$216.93	$920.27	$6,035.24
$8,200.00	$939.01	$219.61	$940.72	$6,100.66
$8,300.00	$950.47	$222.29	$961.16	$6,166.08
$8,400.00	$961.92	$224.96	$981.61	$6,231.51
$8,500.00	$973.37	$227.64	$1,002.06	$6,296.93
$8,600.00	$984.82	$230.32	$1,022.50	$6,362.36
$8,700.00	$996.27	$233.00	$1,042.95	$6,427.78
$8,800.00	$1,007.72	$235.68	$1,063.39	$6,493.21
$8,900.00	$1,019.17	$238.36	$1,083.84	$6,558.63
$9,000.00	$1,030.63	$241.03	$1,104.28	$6,624.06
$9,100.00	$1,042.08	$243.71	$1,124.73	$6,689.48
$9,200.00	$1,053.53	$246.39	$1,145.18	$6,754.90
$9,300.00	$1,064.98	$249.07	$1,165.62	$6,820.33
$9,400.00	$1,076.43	$251.75	$1,186.07	$6,885.75
$9,500.00	$1,087.88	$254.42	$1,206.51	$6,951.19
$9,600.00	$1,099.33	$257.10	$1,226.96	$7,016.61
$9,700.00	$1,110.79	$259.78	$1,247.40	$7,082.03
$9,800.00	$1,122.24	$262.46	$1,267.85	$7,147.45
$9,900.00	$1,133.69	$265.14	$1,288.30	$7,212.87
$10,000.00	$1,145.14	$267.81	$1,308.74	$7,278.31
$10,100.00	$1,156.59	$270.49	$1,329.19	$7,343.73
$10,200.00	$1,168.04	$273.17	$1,349.63	$7,409.16
$10,300.00	$1,179.49	$275.85	$1,370.08	$7,474.58
$10,400.00	$1,190.95	$278.53	$1,390.52	$7,540.00
$10,500.00	$1,202.40	$281.21	$1,410.97	$7,605.42
$10,600.00	$1,213.85	$283.88	$1,431.42	$7,670.85
$10,700.00	$1,225.30	$286.56	$1,451.86	$7,736.28
$10,800.00	$1,236.75	$289.24	$1,472.31	$7,801.70
$10,900.00	$1,248.20	$291.92	$1,492.75	$7,867.13
$11,000.00	$1,259.65	$294.60	$1,514.66	$7,931.09
$11,100.00	$1,271.11	$297.27	$1,536.96	$7,994.66
$11,200.00	$1,282.56	$299.95	$1,559.27	$8,058.22
$11,300.00	$1,294.01	$302.63	$1,581.57	$8,121.79
$11,400.00	$1,305.46	$305.31	$1,603.87	$8,185.36
$11,500.00	$1,316.91	$307.99	$1,626.18	$8,248.92
$11,600.00	$1,328.36	$310.67	$1,648.48	$8,312.49
$11,700.00	$1,339.81	$313.34	$1,670.79	$8,376.06
$11,800.00	$1,351.27	$316.02	$1,693.09	$8,439.62
$11,900.00	$1,362.72	$318.70	$1,715.40	$8,503.18
$12,000.00	$1,374.17	$321.38	$1,737.70	$8,566.75
$12,100.00	$1,385.62	$324.06	$1,760.01	$8,630.31
$12,200.00	$1,397.07	$326.73	$1,782.31	$8,693.89
$12,300.00	$1,408.52	$329.41	$1,804.61	$8,757.46
$12,400.00	$1,419.97	$332.09	$1,826.92	$8,821.02
$12,500.00	$1,431.42	$334.77	$1,849.22	$8,884.59
$12,600.00	$1,442.88	$337.45	$1,871.53	$8,948.14
$12,700.00	$1,454.33	$340.13	$1,893.83	$9,011.71

$12,800.00	$1,465.78	$342.80	$1,916.14	$9,075.28
$12,900.00	$1,477.23	$345.48	$1,938.44	$9,138.85
$13,000.00	$1,488.68	$348.16	$1,960.75	$9,202.41
$13,100.00	$1,500.13	$350.84	$1,983.05	$9,265.98
$13,200.00	$1,511.58	$353.52	$2,005.35	$9,329.55
$13,300.00	$1,523.04	$356.19	$2,027.66	$9,393.11
$13,400.00	$1,534.49	$358.87	$2,049.96	$9,456.68
$13,500.00	$1,545.94	$361.55	$2,072.27	$9,520.24
$13,600.00	$1,557.39	$364.23	$2,094.57	$9,583.81
$13,700.00	$1,568.84	$366.91	$2,116.88	$9,647.37
$13,800.00	$1,580.29	$369.58	$2,139.18	$9,710.95
$13,900.00	$1,591.74	$372.26	$2,161.49	$9,774.51
$14,000.00	$1,603.20	$374.94	$2,183.79	$9,838.07
$14,100.00	$1,614.65	$377.62	$2,206.09	$9,901.64
$14,200.00	$1,626.10	$380.30	$2,228.40	$9,965.20
$14,300.00	$1,637.55	$382.98	$2,250.70	$10,028.77
$14,400.00	$1,649.00	$385.65	$2,273.01	$10,092.34
$14,500.00	$1,660.45	$388.33	$2,295.31	$10,155.91
$14,600.00	$1,671.90	$391.01	$2,317.62	$10,219.47
$14,700.00	$1,683.36	$393.69	$2,339.92	$10,283.03
$14,800.00	$1,694.81	$396.37	$2,362.23	$10,346.59
$14,900.00	$1,706.26	$399.04	$2,384.53	$10,410.17
$15,000.00	$1,717.71	$401.72	$2,406.83	$10,473.74
$15,100.00	$1,729.16	$404.40	$2,429.14	$10,537.30
$15,200.00	$1,740.61	$407.08	$2,451.44	$10,600.87
$15,300.00	$1,752.06	$409.76	$2,473.75	$10,664.43
$15,400.00	$1,763.52	$412.44	$2,496.05	$10,727.99
$15,500.00	$1,774.97	$415.11	$2,518.36	$10,791.56
$15,600.00	$1,786.42	$417.79	$2,540.66	$10,855.13
$15,700.00	$1,797.87	$420.47	$2,562.97	$10,918.69
$15,800.00	$1,809.32	$423.15	$2,585.27	$10,982.26
$15,900.00	$1,820.77	$425.83	$2,607.57	$11,045.83
$16,000.00	$1,832.22	$428.50	$2,629.88	$11,109.40
$16,100.00	$1,843.68	$431.18	$2,652.18	$11,172.96
$16,200.00	$1,855.13	$433.86	$2,674.49	$11,236.52
$16,300.00	$1,866.58	$436.54	$2,696.79	$11,300.09
$16,400.00	$1,878.03	$439.22	$2,719.10	$11,363.65
$16,500.00	$1,889.48	$441.89	$2,741.40	$11,427.23
$16,600.00	$1,900.93	$444.57	$2,763.71	$11,490.79
$16,648.62***	$1,906.50	$445.88	$2,774.55	$11,521.69
$16,700.00	$1,906.50	$447.25	$2,786.72	$11,559.53
$16,800.00	$1,906.50	$449.93	$2,810.39	$11,633.18
$16,890.74*****	$1,906.50	$452.36	$2,831.88	$11,700.00

Footnotes to Self-Employed Persons 2026 Tax Chart:

References to "the Code" refer to the Internal Revenue Code of 1986, as amended (26 U.S.C.).

* Texas Family Code section 154.065 defines what is included in, and what may be excluded from, self-employment income for Texas child support guideline computation purposes. The values displayed in the first column of this chart are the full amount of net earnings from self-employment income (determined before the deduction required by Section 1402(a)(12) of the Code explained in the next footnote, **).

** The tax rates for self-employment taxes are 12.4% for the Old-Age, Survivors and Disability Insurance Program "OASDI" (Social Security tax) and 2.9% for Medicare's Hospital Insurance Program (Medicare) tax, however, only a portion of the net earnings from self-employment are subject to these taxes. Section 1402(a)(12) of the Code permits a self-employed person a deduction in net earnings from self-employment (as defined in sections 1401 and 1402 of the Code) equal to one-half of the combined rates. The purpose is to adjust net income downward by the amount that would have been paid by an employer, had the individual been classified as an employee. The sum of these rates is 15.3% (12.4% + 2.9% = 15.3%). One-half (1/2) of the combined rate is 7.65% (15.3% x 1/2 = 7.65%). Self-employed taxpayers compute this deduction by multiplying net earnings from self-employment by .9235 (100% - 7.65% = 92.35%) to determine the portion of self-employment income subject to self-employment taxes.

Social Security tax is owed on the portion of self-employment income subject to self-employment taxes that do not exceed the maximum OASDI Contribution and Benefit Base amount of $184,500 (for tax year 2026). Medicare's Hospital Insurance Program (Medicare) tax is owed on the full amount of self-employment income subject to self-employment taxes. Section 1401 of the Code.

Examples:

Monthly Self-Employment Income, Tex. Fam. Code § 154.065	$72,000 for the year, or $6,000 monthly average	$201,600 for the year, or $16,800 monthly average
92.35% of self-employment income is subject to self-employment taxes	$72,000 x .9235 = $66,492 for the year	$201,600 x .9235 = $186,177.60 for the year
Social Security tax rate = 12.4%	$66,492 does not exceed the OASDI contribution and benefit base, so $66,492 is taxed at this rate. $66,492 x .124 = $8,245.01 for the year, or $687.08 monthly average	$186,177.60 exceeds the OASDI contribution and benefit base, so only the first $184,500 is taxed at this rate. $184,500 x .124 = $22,878 for the year, or $1,906.50 monthly average
Medicare tax rate = 2.9%	$66,492 x .029 = $1,928.27 for the year, or $160.69 monthly average	$186,177.60 x .029 = $5,399.15 for the year, or $449.93 monthly average

*** In 2026 the maximum level of Monthly Self-Employment Income subject to the 12.4% Social Security tax is $199,783.43 per year, or $16,648.62 per month ($199,783.43 / 12 = $16,648.62). This is the income amount before the deduction required by Section 1402(a)(12) of the Code. The maximum monthly Social Security Tax in 2026 is $1,906.50 based on the maximum OASDI Contribution and Benefit Base amount of $184,500 for 2026.

Monthly Self-Employment Income, Tex. Fam. Code § 154.065	$199,783.43 for the year, or $16,648.62 monthly average
92.35% of self-employment income is subject to self-employment taxes	$199,783.43 x .9235 = $184,500 for the year
Social Security tax rate = 12.4%	$184,500 is equal to the 2026 OASDI contribution and benefit base, so $184,500 is taxed at this rate. $184,500 x .124 = $22,878 for the year, or $1,906.50 monthly average

**** These amounts represent one-twelfth (1/12) of the annual federal income tax calculated for a single taxpayer taking the standard deduction ($16,100). The standard deduction is subtracted according to Section 63(c) of the Code.

Note: Section 154.061 requires the Title IV-D agency to promulgate tax charts to compute net monthly income, subtracting from gross income social security taxes and federal income tax withholding for a single person claiming one personal exemption and the standard deduction. In 2025, under Section 151(d)(5) of the Code, the deduction for personal exemptions was permanently terminated.

The calculation of federal income taxes on self-employment income requires the determination of the total self-employment taxes imposed, as described above. The calculation of federal income taxes permits the taxpayer to reduce net income from self-employment by one half of the actual taxes imposed, thereby approximating the employment taxes (Social Security and Medicare) that are paid by an employed person. Section 164(f) of the Code.

Examples:

Monthly Self-Employment Income, Tex. Fam. Code § 154.065	$72,000 for the year, or $6,000 monthly average	$201,600 for the year, or $16,800 monthly average
Social security tax	$8,245.01 for the year, or $687.08 monthly average	$22,878 for the year, or $1,906.50 monthly average
Medicare tax	$1,928.27 for the year, or $160.69 monthly average	$5,399.15 for the year, or $449.93 monthly average
Total self-employment taxes imposed	$8,245.01 + $1,928.27 = $10,173.28 for the year	$22,878 + $5,399.15 = $28,277.15 for the year
Tax deductible portion of self-employment taxes. Section 164(f) of the Code	$10,173.28 x 1/2 = $5,086.64 for the year	$28,277.15 x 1/2 = $14,138.58 for the year
Standard Deduction Section 63(c) of the Code	$16,100	$16,100
Income amount to be used in the income tax computation	$72,000 - $5,086.64 - $16,100 = $50,813.36	$201,600 - $14,138.58 - $16,100 = $171,361.42
Income tax computation for 2026	*If taxable income is over $50,400 but not over $105,700, the tax is $5,800 plus 22% of the excess over $50,400 (Section 1(j) of the Code)* $5,800 + (($50,813.36 - $50,400) x .22) = $5,890.94 for the year, or $490.91 monthly average	*If taxable income is over $105,700 but not over $201,775, the tax is $17,966 plus 24% of the excess over $105,700 (Section 1(j) of the Code)* $17,966 + (($171,361.42 - $105,700) x .24) = $33,724.74 for the year, or $2,810.40 monthly average

***** This amount represents the point where the monthly gross income of a self-employed individual would result in $11,700.00 of net resources. Texas Family Code section 154.125(a) provides "The guidelines for the support of a child in this section are specifically designed to apply to situations in which the obligor's monthly net resources are not greater than the maximum amount of net resources to which the statutory guidelines are applicable, as most recently published by the Title IV-D agency in the Texas Register." Effective September 1, 2025, the adjusted amount determined under Subsection (a-1) is $11,700.00. Texas Family Code section 154.126(a) provides, "If the obligor's net resources exceed the amount provided by Section 154.125(a), the court shall presumptively apply the percentage guidelines to the portion of the obligor's net resources that does not exceed that amount. Without further reference to the percentage recommendation by these guidelines, the court may order additional amounts of child support as appropriate, depending on the income of the parties and the proven needs of the child." The tax charts promulgated by the Office of the Attorney General include net monthly income amounts up to the amount specified in Texas Family Code section 154.125.

* *

Citations Relating to Self-Employed Persons 2026 Tax Chart:

1. Old-Age, Survivors and Disability Insurance Tax

   (a) Contribution Base

      (1) Social Security Administration's notice appearing in 90 Fed. Reg. 49050 (November 3, 2025)

      (2) Section 1402(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1402(b))

      (3) Section 230 of the Social Security Act, as amended (42 U.S.C. § 430)

   (b) Tax Rate

      (1) Section 1401(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1401(a))

   (c) Deduction Under Section 1402(a)(12)

      (1) Section 1402(a)(12) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1402(a)(12))

2. Hospital (Medicare) Insurance Tax

   (a) Contribution Base

      (1) Section 1402(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1402(b))

      (2) Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 13207, 107 Stat. 312, 467-69 (1993)

(b) Tax Rate

(1) Section 1401(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1401(b))

(c) Deduction Under Section 1402(a)(12)

(1) Section 1402(a)(12) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1402(a)(12))

3. Federal Income Tax

(a) Tax Rate Schedule for 2026 for Single Taxpayers

(1) Revenue Procedure 2025-32, Section 4.01, Table 3 which appears in Internal Revenue Bulletin 2025-45, dated November 3, 2025

(2) Section 1(j), of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1(j))

(b) Standard Deduction

(1) Section 63(c) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 63(c))

(c) Personal Exemption

(1) Personal exemptions under Section 151(d) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 151(d)), were terminated July 4, 2025

(d) Deduction Under Section 164(f)

Section 164(f) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 164(f))

4. Adjusted amount determined under Subsection (a-1) of Texas Family Code section 154.125

Office of the Attorney General "Announcement of Adjustment Required by Texas Family Code section 154.125" appearing in 50 Tex. Reg. 5351 (August 15, 2025)

TRD-202504500
Justin Gordon
General Counsel
Office of the Attorney General
Filed: December 10, 2025

♦ ♦ ♦

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003, and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/15/25-12/21/25 is 18.00% for consumer[1] credit.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/15/25-12/21/25 is 18.00% for commercial[2] credit.

[1] Credit for personal, family, or household use.

[2] Credit for business, commercial, investment, or other similar purpose.

TRD-202504490
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: December 10, 2025

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Texas Education Agency

Correction of Error

The Texas Education Agency (TEA) proposed an amendment to 19 TAC §102.1003, concerning high-quality prekindergarten programs, in the December 5, 2025 issue of the *Texas Register* (50 TexReg 7826). Due to an error by TEA, the preamble included an incorrect public comment period closing date.

The corrected public comment period is December 5, 2025 - January 5, 2026.

TRD-202504506
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: December 10, 2025

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Request for Applications Concerning the 2025-2026 Charter School Program (Subchapter C and D, Cycle 2) Grant

Filing Authority. The availability of grant funds under Request for Applications (RFA) #701-26-110 is authorized by Public Law 114-95, Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act of 2015, Title IV, Part C, Expanding Opportunity Through Quality Charter Schools; Texas Education Code (TEC), Chapter 12; and 19 Texas Administrative Code (TAC) Chapter 100, Subchapter AA.

Eligible Applicants. Texas Education Agency (TEA) is requesting applications under RFA #701-26-110 from eligible applicants, which include open-enrollment charter schools that meet the federal definition of a charter school, have never received funds under this grant program, and are one of the following. (1) An open-enrollment charter school campus designated by the commissioner of education, for the 2024-2025, 2025-2026, or 2026-2027 school year, as a high-quality campus pursuant to 19 TAC §100.1035(c)(6). (2) Open-enrollment charter schools submitting an expansion amendment request and corresponding application for high-quality campus designation for the 2025-2026 or 2026-2027 school year by January 20, 2026, are considered eligible to apply for the grant. However, the commissioner must approve the expansion amendment request and designate the campus as a high-quality campus prior to the charter receiving grant funding, if awarded. (3) A campus charter school authorized by the local board of trustees pursuant to TEC, Chapter 12, Subchapter C, on or before January 20, 2026, as a new charter school, or as a charter school that is designed to replicate a new charter school campus, based on the educational model of an existing high-quality charter school, and that submits all required documentation as stated in this RFA. A campus charter school must apply through its public school district, and the application must be signed by the district's superintendent or the appropriate designee.

Important: Any charter school that does not open prior to Wednesday, September 2, 2026, after having been awarded grant funds may be required to forfeit any remaining grant funds and may be required to reimburse any expended amounts to TEA.

Description. The purpose of the Texas Quality Charter Schools Program Grant is to support the growth of high-quality charter schools in Texas, especially those focused on improving academic outcomes for educationally disadvantaged students. This will be achieved through administering the 2025-2026 Charter School Program (Subchapter C and D, Cycle 2) Grant to assist eligible applicants in opening and preparing for the operation of newly-authorized charter schools and replicated high-quality schools.

Dates of Project. The 2025-2026 Charter School Program (Subchapter C and D, Cycle 2) Grant will be implemented during the 2025-2026 and 2026-2027 school years. Applicants should plan for a starting date of no earlier than April 1, 2026, and an ending date of no later than September 30, 2026.

Project Amount. Approximately $7,510,980 is available for funding the 2025-2026 Charter School Program (Subchapter C and D, Cycle 2) Grant. It is anticipated that approximately eight grants will be awarded up to $900,000. This project is funded 100% with federal funds.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. The complete RFA is posted on the TEA Grant Opportunities web page at https://tea4avalonzo.tea.state.tx.us/GrantOpportunities/forms/GrantProgramSearch.aspx for viewing and downloading. In the "Available Grant Opportunities" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view and download all documents that pertain to this RFA.

Further Information. In order to make sure that no prospective applicant obtains a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to CharterSchools@tea.texas.gov, the TEA email address identified in the Program Guidelines of the RFA, no later than 12:00 p.m. (noon) CST on January 12, 2026. All questions and the written answers thereto will be posted on the TEA Grant Opportunities web page in the format of Frequently Asked Questions (FAQs) by January 19, 2026.

Deadline for Receipt of Applications. Applications must be submitted to competitivegrants@tea.texas.gov. Applications must be received no later than 11:59 p.m. CST, February 3, 2026, to be considered eligible for funding.

Issued in Austin, Texas, on December 9, 2025.

TRD-202504489
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: December 9, 2025

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 26, 2026**. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A physical copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Additionally, copies of the proposed AO can be found online by using either the Chief Clerk's eFiling System at https://www.tceq.texas.gov/goto/efilings or the TCEQ Commissioners' Integrated Database at https://www.tceq.texas.gov/goto/cid, and searching either of those databases with the proposed AO's identifying information, such as its docket number. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at Enforcement Division, MC 128, P.O. Box 13087, Austin, Texas 78711-3087 and must be postmarked by 5:00 p.m. on **January 26, 2026**. Written comments may also be sent to the enforcement coordinator by email to ENFCOMNT@tceq.texas.gov or by facsimile machine at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed contact information; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: AHS Sherman, LLC; DOCKET NUMBER: 2025-0483-PST-E; IDENTIFIER: RN100570753; LOCATION: Sherman, Grayson County; TYPE OF FACILITY: hospital emergency generator; PENALTY: $7,993; ENFORCEMENT COORDINATOR: Ramyia Wendt, (512) 239-2513; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(2) COMPANY: Amanda Whitespeare, trustee of MARIE GRACE LEGACY TRUST and Suzanne Eldridge Gore, trustee of MARIE GRACE LEGACY TRUST, and New Progress Water Supply Corporation; DOCKET NUMBER: 2024-1557-PWS-E; IDENTIFIER: RN101230712; LOCATION: Weatherford, Parker County; TYPE OF FACILITY: public water supply; PENALTY: $3,942; ENFORCEMENT COORDINATOR: Deshaune Blake, (210) 403-4033; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, REGION 13 - SAN ANTONIO.

(3) COMPANY: Aqua Texas, Inc.; DOCKET NUMBER: 2025-1200-PWS-E; IDENTIFIER: RN101206605; LOCATION: Canyon Lake, Comal County; TYPE OF FACILITY: public water supply; PENALTY: $1,281; ENFORCEMENT COORDINATOR: Ilia Perez Ramirez, (512) 239-2556; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, REGION 12 - HOUSTON.

(4) COMPANY: BASF Corporation; DOCKET NUMBER: 2025-1057-AIR-E; IDENTIFIER: RN100634922; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: chemical manufacturing plant; PENALTY: $4,575; ENFORCEMENT COORDINATOR: John Burkett, (512) 239-4169; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, REGION 12 - HOUSTON.

(5) COMPANY: CSWR-TEXAS UTILITY OPERATING COMPANY, LLC; DOCKET NUMBER: 2025-0605-PWS-E; IDENTIFIER: RN102690138; LOCATION: Milsap, Parker County; TYPE OF FACILITY: public water supply; PENALTY: $3,300; ENFORCEMENT COORDINATOR: Wyatt Throm, (512) 239-1120; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(6) COMPANY: City of Tahoka; DOCKET NUMBER: 2025-1007-MSW-E; IDENTIFIER: RN101999563; LOCATION: Tahoka, Lynn County; TYPE OF FACILITY: Type I-Arid Exempt (AE) and Type IV-AE landfill; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Lauren Little, (817) 588-5888; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, CENTRAL OFFICE - DALLAS/FORT WORTH.

(7) COMPANY: Comstock Oil & Gas, LLC; DOCKET NUMBER: 2025-0912-WR-E; IDENTIFIER: RN112174198; LOCATION: Marquez, Robertson County; TYPE OF FACILITY: operator; PENALTY: $875; ENFORCEMENT COORDINATOR: Madison Travis, (512) 239-4687; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(8) COMPANY: Concho Rural Water Corporation; DOCKET NUMBER: 2025-0962-PWS-E; IDENTIFIER: RN102677333; LOCATION: San Angelo, Tom Green County; TYPE OF FACILITY: public water supply; PENALTY: $460; ENFORCEMENT COORDINATOR: Savannah Jackson, (512) 239-4306; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(9) COMPANY: DICKMANN, DERICK D; DOCKET NUMBER: 2025-0955-WOC-E; IDENTIFIER: RN103680930; LOCATION: Conroe, Montgomery County; TYPE OF FACILITY: operator; PENALTY: $175; ENFORCEMENT COORDINATOR: Madison Travis, (512) 239-4687; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(10) COMPANY: Darling Ingredients Inc.; DOCKET NUMBER: 2024-0807-MLM-E; IDENTIFIER: RN110645421; LOCATION: Grapeland, Houston County; TYPE OF FACILITY: poultry processing business; PENALTY: $46,425; ENFORCEMENT COORDINATOR: Amy Lane, (512) 239-2614; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(11) COMPANY: Enterprise Products Operating LLC; DOCKET NUMBER: 2024-0850-AIR-E; IDENTIFIER: RN106102569; LOCATION: Pearsall, Frio County; TYPE OF FACILITY: natural gas compression station; PENALTY: $11,875; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET: $5,937; ENFORCEMENT COORDINATOR: Trenton White, (903) 535-5155; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, REGION 05 - TYLER.

(12) COMPANY: Flint Hills Resources Corpus Christi, LLC; DOCKET NUMBER: 2025-1008-AIR-E; IDENTIFIER: RN100235266; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: petroleum refinery; PENALTY: $9,375;

SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET: $4,687; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(13) COMPANY: Harris County Municipal Utility District 23; DOCKET NUMBER: 2025-0932-PWS-E; IDENTIFIER: RN103128930; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; PENALTY: $1,000; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (512) 239-2510; REGIONAL OFFICE: 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401, REGION 14 - CORPUS CHRISTI.

(14) COMPANY: Harris County Municipal Utility District 82; DOCKET NUMBER: 2023-1080-PWS-E; IDENTIFIER: RN102951779; LOCATION: Spring, Harris County; TYPE OF FACILITY: public water supply; PENALTY: $4,438; ENFORCEMENT COORDINATOR: Corinna Willis, (512) 239-2504; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(15) COMPANY: Hwy 29 Grocery, Inc.; DOCKET NUMBER: 2025-0039-PST-E; IDENTIFIER: RN104250774; LOCATION: Liberty Hill, Williamson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; PENALTY: $7,750; ENFORCEMENT COORDINATOR: Rachel Murray, (903) 535-5149; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, REGION 05 - TYLER.

(16) COMPANY: J & H KADIWAL INC; DOCKET NUMBER: 2024-1731-PST-E; IDENTIFIER: RN102850583; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; PENALTY: $9,408; ENFORCEMENT COORDINATOR: Ramyia Wendt, (512) 239-2513; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(17) COMPANY: ONEOK Hydrocarbon Southwest, LLC; DOCKET NUMBER: 2024-1050-AIR-E; IDENTIFIER: RN100209949; LOCATION: Mont Belvieu, Chambers County; TYPE OF FACILITY: natural gas fractionation plant; PENALTY: $23,475; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET: $9,390; ENFORCEMENT COORDINATOR: Warda Omar, (713) 767-3763; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, REGION 12 - HOUSTON.

(18) COMPANY: PATEL, SANJAY KUMAR and ARIEL SUN, INC.; DOCKET NUMBER: 2024-1479-PST-E; IDENTIFIER: RN101433597; LOCATION: Huntsville, Walker County; TYPE OF FACILITY: convenience store with retail sales of gasoline; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Adriana Fuentes, (956) 425-6010; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, REGION 15 - HARLINGEN.

(19) COMPANY: Phillips 66 Company; DOCKET NUMBER: 2021-0712-AIR-E; IDENTIFIER: RN102495884; LOCATION: Borger, Hutchinson County; TYPE OF FACILITY: petroleum refinery; PENALTY: $54,708; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET: $27,354; ENFORCEMENT COORDINATOR: Katie Phillips, (713) 767-3628; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, REGION 12 - HOUSTON.

(20) COMPANY: Pilot Thomas Logistics LLC; DOCKET NUMBER: 2025-0194-MLM-E; IDENTIFIER: RN102236965; LOCATION: Crane, Crane County; TYPE OF FACILITY: unmanned fleet refueling facility; PENALTY: $12,500; ENFORCEMENT COORDINATOR: Celicia Garza, (210) 657-8422; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, REGION 13 - SAN ANTONIO.

(21) COMPANY: Racetrac, Inc.; DOCKET NUMBER: 2025-0804-PST-E; IDENTIFIER: RN102236668; LOCATION: North Richland Hills, Tarrant County; TYPE OF FACILITY: operator; PENALTY: $5,250; ENFORCEMENT COORDINATOR: Rachel Murray, (903) 535-5149; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, REGION 05 - TYLER.

(22) COMPANY: Robert E. Davidson and Amy Davidson dba Longhorn Ranch Motel, Inc.; DOCKET NUMBER: 2025-1001-PWS-E; IDENTIFIER: RN101276442; LOCATION: Alpine, Brewster County; TYPE OF FACILITY: public water supply; PENALTY: $14,993; ENFORCEMENT COORDINATOR: Katherine Argueta, (512) 239-4131; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, REGION 12 - HOUSTON.

(23) COMPANY: Ryan C. Hoerauf, Inc.; DOCKET NUMBER: 2023-1359-AIR-E; IDENTIFIER: RN104845342; LOCATION: Trinidad, Henderson County; TYPE OF FACILITY: oil and gas processing plant; PENALTY: $168,750; ENFORCEMENT COORDINATOR: Krystina Sepulveda, (956) 430-6045; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, REGION 15 - HARLINGEN.

(24) COMPANY: SLOTT CONSTRUCTION COMPANY, INC.; DOCKET NUMBER: 2025-0065-WQ-E; IDENTIFIER: RN111110243; LOCATION: Willis, Montgomery County; TYPE OF FACILITY: construction site; PENALTY: $42,563; ENFORCEMENT COORDINATOR: Monica Larina, (512) 239-2545; REGIONAL OFFICE: 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401, REGION 14 - CORPUS CHRISTI.

(25) COMPANY: Southwestern Public Service Company; DOCKET NUMBER: 2023-1274-AIR-E; IDENTIFIER: RN100224765; LOCATION: Ransom Canyon, Lubbock County; TYPE OF FACILITY: electric generation plant; PENALTY: $19,200; ENFORCEMENT COORDINATOR: Warda Omar, (713) 767-3763; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, REGION 12 - HOUSTON.

(26) COMPANY: TACKMAN, MARK; DOCKET NUMBER: 2025-0957-WOC-E; IDENTIFIER: RN111639365; LOCATION: Prosper, Collin County; TYPE OF FACILITY: business; PENALTY: $863; ENFORCEMENT COORDINATOR: Deshaune Blake, (210) 403-4033; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, REGION 13 - SAN ANTONIO.

(27) COMPANY: TotalEnergies Petrochemicals & Refining USA, Inc.; DOCKET NUMBER: 2025-0811-AIR-E; IDENTIFIER: RN100212109; LOCATION: La Porte, Harris County; TYPE OF FACILITY: polypropylene manufacturing; PENALTY: $11,100; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET: $4,440; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(28) COMPANY: True Limestone Operations, Inc.; DOCKET NUMBER: 2024-1352-MLM-E; IDENTIFIER: RN111599593; LOCATION: Lueders, Haskell County; TYPE OF FACILITY: aggregate production operation; PENALTY: $11,125; ENFORCEMENT COORDINATOR: Taylor Williamson, (512) 239-2097; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, REGION 12 - HOUSTON.

(29) COMPANY: Village of Surfside Beach; DOCKET NUMBER: 2025-0565-MLM-E; IDENTIFIER: RN101175859; LOCATION: Surfside Beach, Brazoria County; TYPE OF FACILITY: public water

supply; PENALTY: $10,477; ENFORCEMENT COORDINATOR: Savannah Jackson, (512) 239-4306; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(30) COMPANY: White Rock Homeowners Association, Inc.; DOCKET NUMBER: 2024-0591-MWD-E; IDENTIFIER: RN101522357; LOCATION: Corsicana, Navarro County; TYPE OF FACILITY: wastewater treatment facility; PENALTY: $21,750; ENFORCEMENT COORDINATOR: Bethany Batchelor, (713) 767-3586; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, REGION 12 - HOUSTON.

(31) COMPANY: Texas Department of Criminal Justice; DOCKET NUMBER: 2025-0263-PWS-E; IDENTIFIER: RN102317070; LOCATION: Tennessee Colony, Anderson County; TYPE OF FACILITY: public water supply; PENALTY: $29,029; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET: $29,029; ENFORCEMENT COORDINATOR: Corinna Willis, (512) 239-2504; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

TRD-202504478
Gitanjali Yadav
Deputy Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 9, 2025

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Notice of an Application to Amend a Certificate of Adjudication 06-4412A

Notice Issued December 2, 2025

Texas Parks and Wildlife Department (Owner/Applicant), 4200 Smith School Road Austin, Texas 78744, seeks to amend a portion of Certificate of Adjudication No. 06-4412 to add instream as a purpose of use and to deposit 611 acre-feet of water into the Texas Water Trust in perpetuity. More information on the application and how to participate in the permitting process is given below.

The application was received on September 15, 2025. Additional information was received on September 30, 2025, and October 13, 2025. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on October 21, 2025.

The Executive Director completed the technical review of the application and prepared a draft amendment. The draft amendment, if granted, would include special conditions, including execution of a Texas Water Trust Agreement. The application, technical memoranda, and Executive Director's draft amendment are available for viewing on the TCEQ webpage at: https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/view-wr-pend-apps. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711.

Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by December 17, 2025. A public meeting is intended for the taking of public comment and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TCEQ may grant a contested case hearing on this application if a written hearing request is filed by December 17, 2025. The Executive Director can consider an approval of the application unless a written request for a contested case hearing is filed by December 17, 2025.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[*I/we*] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments, or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at https://www14.tceq.texas.gov/epic/eComment/ by entering ADJ 4412 in the search field. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our website at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040 o por el internet al http://www.tceq.texas.gov.

TRD-202504474
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 9, 2025

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Notice of District Petition - D-09182025-021

Notice issued December 4, 2025

TCEQ Internal Control No. D-09182025-021: MV BURLESON LLC, a Texas limited liability company (Petitioner) filed a petition for the creation of Johnson County Municipal Utility District No. 4 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 and Article III, §52 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ.

The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there is no lienholder on the property; (3) the proposed District will contain approximately 577.89 acres of land, more or less, located wholly within Johnson County, Texas; and (4) a portion of the land to be included in the District is within the extraterritorial jurisdiction of The City of Burleson (City). By Resolution No. CSO#5870-08-2025, passed and approved on August 4, 2025, City gave its consent to creation of the proposed District, pursuant to Texas Water Code, Section 54.016 and Texas Local Government Code, Section 42.042. The petition further states: the general nature of the work proposed to be done by the District at the present time is to purchase, construct, acquire, provide, operate, maintain, repair, improve, or extend inside or outside of its boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary or helpful to supply and distribute water for municipal, domestic, industrial, or commercial purposes or provide adequate drainage for the District; to collect, transport, process,

dispose of and control domestic, industrial, or commercial wastes; to gather, conduct, divert, abate, amend, and control local storm water or other local harmful excesses of water in the District; and to purchase, construct, acquire, provide, operate, maintain, repair, improve, or extend inside or outside of its boundaries such additional facilities, systems, plants, and enterprises as shall be consonant with the purposes for which the District is created, all as more particularly described in an engineer's report filed simultaneously with the filing of this Petition, to which reference is made for a more detailed description. Additional work and services which may be performed by the District include the purchase, construction, acquisition, provision, operation, maintenance, repair, improvement, extension and development of a roadway system for the District.

According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner, from the information available at this time, that the cost of said project will be approximately $104,565,000 ($80,205,000 for water, wastewater, and drainage facilities and $24,360,000 for roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our website at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results. The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at www.tceq.texas.gov.

TRD-202504483
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 9, 2025

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Notice of District Petition - D-11042025-009

Notice issued December 4, 2025

TCEQ Internal Control No. D-11042025-009: AGF Denton Ranch, Ltd., a Texas limited partnership, (Petitioner) filed a petition for creation of Hickory Creek Municipal Utility District of Denton County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 1,391.49 acres located within Denton County, Texas; and (4) some of the land within the proposed District is partially within the extraterritorial jurisdiction of the City of Denton. The petition further states that the proposed District will: (1) purchase, construct, acquire, improve, or extend inside or outside of its boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary or helpful to supply and distribute water for municipal, domestic, and commercial purposes; (2) collect, transport, process, dispose of, and control domestic and commercial wastes; gather, conduct, divert, abate, amend, and control domestic and commercial wastes; (3) gather, conduct, divert, abate, amend, and control local storm water or other local harmful excesses of water in the proposed District; (4) design, acquire, construct, finance, improve, operate, and maintain macadamized, graveled, or paved roads and turnpikes, or improvements in aid of those roads; and (5) purchase, construct, acquire, improve, or extend inside or outside of its boundaries such additional facilities, systems, plants, and enterprises as shall be consonant with all of the purposes for which the proposed District is created. Additionally, it is further proposed that the proposed District be granted road powers pursuant to Texas Water Code Section 54.234. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner that the cost of said project will be approximately $506,370,000 for water, wastewater, drainage, and road facilities.

INFORMATION SECTION

To view the complete issued notice, view the notice on our website at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results. The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For in-

formation concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at www.tceq.texas.gov.

TRD-202504476
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 9, 2025

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Notice of District Petition - D-11112025-013

Notice issued December 10, 2025

TCEQ Internal Control No. D-11112025-013: WB Bastrop Land, LLC, a Texas limited liability company, (Petitioner) filed a petition for creation of Bastrop County Municipal Utility District No. 5 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ.

The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 289.249 acres located within Bastrop County, Texas; and (4) all of the land within the proposed District is within the extraterritorial jurisdiction of the City of Bastrop. By Resolution No. 2025-80, resolved and adopted on May 27, 2025, the City of Bastrop, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. The petition further states that the proposed District will: (1) purchase, design, construct, acquire, maintain, own, operate, repair, improve, and extend a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) control, abate, and amend local storm waters or other harmful excesses of water; and (4) purchase, construct, acquire, maintain, own, operate, repair, improve, and extend such additional facilities, including roads, parks and recreation facilities, systems, plants, and enterprises as shall be consistent with all of the purposes for which the proposed District is created.

According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately $92,118,000. The financial analysis in the application was based on an estimated $73,612,000 ($53,002,000 for water, wastewater, and drainage plus $16,160,000 for roads plus $4,450,000 for recreation) at the time of submittal.

INFORMATION SECTION

To view the complete issued notice, view the notice on our website at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results. The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at www.tceq.texas.gov.

TRD-202504504
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 10, 2025

♦ ♦ ♦

Notice of Hearing: Clint Molina; SOAH Docket No. 582-26-06642; TCEQ Docket No. 2025-1596-LIC

APPLICATION.

Clint Molina, 1417 Victoria Street, Abilene, Texas, 79603, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Landscape Irrigation Technician License. The Executive Director denied Mr. Molina's application for cause. Mr. Molina has requested a formal hearing on the Executive Director's decision. During the review of Mr. Molina's application, the Executive Director became aware that Mr. Molina received State Jail Felonies in 2011 and 2012, two Class-B Misdemeanors in 2014, two Misdemeanors and a State Jail Felony in 2016, a 2nd-Degree Felony in 2017, and State Jail Felony in 2018. The Executive Director denied Mr. Molina's application because he has been convicted of offenses that directly relate to the license as referenced in Texas Occupations Code § 53.021(a)(1).

CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing via Zoom videoconference. A Zoom meeting is a secure, free meeting held over the internet that allows video, audio, or audio/video conferencing.

10:00 a.m. - January 8, 2026

To join the Zoom meeting via computer:

https://soah-texas.zoomgov.com/

Meeting ID: 161 984 0712

Password: TCEQDC1

or

To join the Zoom meeting via telephone:

(669) 254-5252

Meeting ID: 161 984 0712

Password: 5247869

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, provide an opportunity for settlement discussions, and address other matters as determined by the administrative law judge. The preliminary hearing will be held unless all timely hearing requests are withdrawn or the parties agree to waive the preliminary hearing.

The evidentiary phase of the contested case hearing, to be held at a later date, will be a legal proceeding similar to a civil trial in state district court to determine whether Mr. Molina should be issued a Landscape Irrigation Technician License. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. If **Mr. Molina** fails to appear at the preliminary hearing or evidentiary hearing, the Executive Director will request that the hearing be canceled, and that appeal of the Executive Director's decision be dismissed.

Legal Authority: Texas Water Code Chapters 5 and 37; Texas Occupations Code Chapter 53; Texas Government Code, Chapter 2001; 30 Texas Administrative Code Chapter 30, and the procedural rules of the TCEQ and SOAH, including 30 Texas Administrative Code Chapters 70 and 80 and 1 Texas Administrative Code Chapter 155.

INFORMATION.

For information concerning the hearing process, please contact the TCEQ Office of Public Interest Counsel, MC 103, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6363. Further information regarding this hearing may be obtained by contacting Alicia Ramirez, Staff Attorney, TCEQ, Environmental Law Division, MC 173, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0133. General information about the TCEQ can be found at our website at www.tceq.texas.gov. General information about SOAH can be found on its website at www.soah.texas.gov, or by calling (512) 475-4993.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week prior to the hearing.

Issued: December 9, 2025

TRD-202504510
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 10, 2025

♦ ♦ ♦

Notice of Hearing: Justin Allan Stuart; SOAH Docket No. 582-24-03111; TCEQ Docket No. 2025-1365-LIC

APPLICATION.

Justin Allan Stuart, 8835 Avenue B, Liverpool, Texas, 77577, has applied to the Texas Commission on Environmental Quality (TCEQ) for an On-Site Sewage Facility (OSSF) Apprentice License. The Executive Director denied Mr. Stuart's application for cause. Mr. Stuart has requested a formal hearing on the Executive Director's decision. During the review of Mr. Stuart's application, the Executive Director became aware that Mr. Stuart received deferred adjudications for a State Jail Felony in 2020, and a State Jail Felony in 2022. The Executive Director denied Mr. Stuart's application because you have been convicted of and she considers you to have been convicted of offenses that directly relate to the license as referenced in Texas Occupations Code § 53.021(a)(1).

CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing via Zoom video conference. A Zoom meeting is a secure, free meeting held over the internet that allows video, audio, or audio/video conferencing.

10:00 a.m. - January 8, 2026

To join the Zoom meeting via computer:

https://soah-texas.zoomgov.com/

Meeting ID: 161 984 0712

Password: TCEQDC1

or

To join the Zoom meeting via telephone:

(669) 254-5252

Meeting ID: 161 984 0712

Password: 5247869

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, provide an opportunity for settlement discussions, and address other matters as determined by the administrative law judge. The preliminary hearing will be held unless all timely hearing requests are withdrawn or the parties agree to waive the preliminary hearing.

The evidentiary phase of the contested case hearing, to be held at a later date, will be a legal proceeding similar to a civil trial in state district court to determine whether Mr. Stuart should be issued a OSSF Apprentice License. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **If Mr. Stuart fails to appear at the preliminary hearing or evidentiary hearing, the Executive Director will request that the hearing be canceled, and that appeal of the Executive Director's decision be dismissed.**

Legal Authority: Texas Water Code Chapters 5 and 37; Texas Occupations Code Chapter 53; Texas Government Code, Chapter 2001; 30 Texas Administrative Code Chapter 30, and the procedural rules of the TCEQ and SOAH, including 30 Texas Administrative Code Chapters 70 and 80 and 1 Texas Administrative Code Chapter 155.

INFORMATION.

For information concerning the hearing process, please contact the TCEQ Office of Public Interest Counsel, MC 103, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6363. Further information regarding this hearing may be obtained by contacting Alicia Ramirez, Staff Attorney, TCEQ, Environmental Law Division, MC 173, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0133.

General information about the TCEQ can be found at our website at www.tceq.texas.gov. General information about SOAH can be found on its website at www.soah.texas.gov, or by calling (512) 475-4993.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week prior to the hearing.

Issued: December 9, 2025

TRD-202504509
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 10, 2025

♦ ♦ ♦

Notice of Public Meeting for Municipal Solid Waste Registration Proposed Registration No. 40342

Application. Strategic Materials, Inc. has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 40342, to construct and operate a Type V municipal solid waste transfer station with recovery operations. The proposed facility, Strategic Materials Transfer Station, will be located at 3240 Robinson Road, Midlothian, Texas, 76065 in Ellis County. The Applicant is requesting authorization to accept municipal solid waste for processing and recycling. The recycling rate will be a minimum of 10% of incoming waste streams. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: https://arcg.is/04ifn50. For exact location, refer to the application.

Public Comment/Public Meeting. A public meeting is not a contested case hearing under the Administrative Procedure Act. The public meeting will be held Thursday, January 15, 2026, at 7:00 p.m. at the Midlothian Conference Center, located at 1 Community Drive, Midlothian, Texas 76065. The applicant and TCEQ staff will be available before the public meeting to answer individual's questions from 6:30 p.m. to 7:00 p.m.

The Public Meeting is to be held:

January 15, 2026, at 7:00 p.m.

Question and Answer Time from 6:30 p.m. to 7:00 p.m.

Midlothian Conference Center

1 Community Drive, Midlothian, Texas 76065

Any comments or questions asked during the question and answer period before the start of the public meeting will be considered informal and responses will be provided during that time by TCEQ staff or the applicant. At 7:00 p.m. the formal comment period will begin, and members of the public may state their formal comments orally into the official record. All formal comments will be considered before a decision is reached on the registration application.

Executive Director Action. The Executive Director will review the application and all formal comments and issue a decision. If the Executive Director acts on an application, the Chief Clerk will mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to overturn the Executive Director's decision.

Information. Persons are encouraged to submit written comments anytime during the public meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at https://www14.tceq.texas.gov/epic/eComment/. If you need more information about participating in the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information can be found at our website at www.tceq.texas.gov. *Si desea información en español, puede llamar al (800)-687-4040.*

The registration application is available for viewing and copying at the Midlothian Public Library, 215 North 8th Street, Midlothian, Texas 76065. The application, including any updates and notices, is available electronically on the following webpage: www.tceq.texas.gov/goto/wasteapps. Further information may also be obtained from Strategic Materials, Inc. at the mailing address 3240 Robinson Road, Midlothian, Texas, 76065 or by calling Mr. Raul Valdes at (682) 466-4875.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Issued Date: December 5, 2025

TRD-202504477
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 9, 2025

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Revised Notice of an Application for an Extension of Time to Complete Construction of a Project Authorized by of an Application to Amend a Certificate of Adjudication 123-4355A

Notice Issued December 4, 2025

City of Marlin, 101 Fortune Street, Marlin, Texas, 76661, seeks authorization to extend the time to complete construction of Brushy Creek Dam and Reservoir on Brushy Creek, Brazos River Basin, in Falls County. More information on the application and how to participate in the permitting process is given below.

The Applicant seeks an extension of time to complete construction of Brushy Creek Dam and Reservoir. The Applicant proposes to complete construction by May 8, 2029.

The application was received on April 16, 2024, and fees were received on April 18, 2024. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on August 13, 2025.

The Executive Director has completed the technical review of the application and prepared a draft Order. The draft Order, if granted, would authorize the extension of time to complete construction until May 8, 2029. The application, technical memoranda and Executive Director's draft Order are available for viewing on the TCEQ webpage at: https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/view-wr-pend-apps. Alternatively, you may request a copy of the

documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711.

Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TCEQ may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[*I/we*] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments, or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at https://www14.tceq.texas.gov/epic/eComment/ by entering ADJ 4355 in the search field. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our website at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040 o por el internet al http://www.tceq.texas.gov.

TRD-202504475
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 9, 2025

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Revised Notice of Hearing: Verti-Crete Houston, LLC; SOAH Docket No. 582-26-06288; TCEQ Docket No. 2025-1292-AIR; Air Quality Standard Permit for Concrete Batch Plants Proposed Registration No. 176289

This notice has been revised to update the public viewing location.

APPLICATION.

Verti-Crete Houston, LLC, has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit, Registration No. 176289, which would authorize construction of a specialty concrete batch plant located at 953 Pheasant Valley Drive, Missouri City, Fort Bend County, Texas 77489. This application is being processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code, Chapter 101, Subchapter J. The proposed facility will emit the following air contaminants: particulate matter including (but not limited to) aggregate, cement, road dust, and particulate matter with diameters of 10 microns or less and 2.5 microns or less.

The executive director has made a preliminary decision to issue the registration because it meets all applicable rules. The application, executive director's preliminary decision, and standard permit will be available for viewing and copying at the TCEQ Central Office, the TCEQ Houston Regional Office, and Missouri City Branch Library, 1530 Texas Parkway, Missouri City, Fort Bend County, Texas 77489, beginning the first day of publication of this notice. The facility's compliance file, if any exists, is available for public review at the TCEQ Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas. Visit www.tceq.texas.gov/goto/cbp to review the standard permit

CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing via Zoom videoconference. A Zoom meeting is a secure, free meeting held over the internet that allows video, audio, or audio/video conferencing.

10:00 a.m. (CT) - January 12, 2026

To join the Zoom meeting via computer:

https://soah-texas.zoomgov.com/

Meeting ID: 161 046 4608

Password: TCQ288

or

To join the Zoom meeting via telephone:

(669) 254-5252 or (646) 828-7666

Meeting ID: 161 046 4608

Password: 214003

For questions regarding the preliminary hearing, visit the SOAH website at: http://www.soah.texas.gov/ or call SOAH at (512) 475-4993.

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, and to address other matters as determined by the judge. The evidentiary hearing phase of the proceeding, which will occur at a later date, will be similar to a civil trial in state district court. The hearing will address the disputed issues of fact identified in the TCEQ order concerning this application issued on October 15, 2025. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with the Chapter 2001, Texas Government Code; Chapter 382, Texas Health and Safety Code; TCEQ rules including 30 Texas Administrative Code Chapter 106, Subchapters A and B; and the procedural rules of the TCEQ and SOAH, including 30 Texas Administrative Code Chapter 80 and 1 Texas Administrative Code Chapter 155. The hearing will be held unless all timely hearing requests have been withdrawn or denied.

To request to be a party, you must attend the hearing and show you would be affected by the application in a way not common to the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687-4040. General information regarding the TCEQ can be found at www.tceq.texas.gov.

Further information may also be obtained from Verti-Crete Houston, LLC, 931 Pheasant Valley Drive, Missouri City, Texas 77489 or by calling Ms. Anna De La Garza, Principal Consultant, Edge Engineering and Science at (832) 772-3000.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-4993, at least one week prior to the hearing.

Issued: December 4, 2025

TRD-202504508
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 10, 2025

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General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 26. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of November 17, 2025 to December 5, 2025. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§30.20(f), 30.30(h), and 30.40(e), the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, December 12, 2025. The public comment period for this project will close at 5:00 p.m. on Sunday, January 11, 2026.

Federal Agency Activities:

Applicant: U.S. Army Corps of Engineers (USACE) - Galveston District

Location: The project is located within the Matagorda Ship Channel, Port Lavaca, Calhoun and Matagorda Counties, Texas.

Project Description: The USACE Galveston District, in partnership with the Calhoun Port Authority, is proposing to widen and deepen the Matagorda Ship Channel. This effort aims to improve port efficiency, reduce transportation costs, and enhance navigational safety by addressing limitations in the channel's current width and depth. In addition, this project is expected to strengthen national security by increasing the United States's energy trade balance and ability to export energy products to support defense priorities in accordance with Executive Order 14156. This Draft Supplemental Environmental Impact Statement (SEIS) supplements the 2019 Final EIS for the Matagorda Ship Channel Improvement Project and evaluates the potential environmental effects of proposed modifications to the authorized project. The SEIS identifies and assesses reasonable alternatives, including the No Action Alternative, to determine whether the proposed changes would result in significant impacts to the human environment. The 2025 draft Validation Report and SEIS evaluate and compare three different potential depths and widths of the ship channel. The recommended scale would include a deepening to -47 ft. mean lower low water (MLLW) and widening of the bottom width to 300 ft. of the main channel, deepening to -49 ft. MLLW, and widening of bottom width to 550 ft. of the entrance channel, and a 1,200-ft. diameter turning basin in Lavaca Bay.

Type of Application: U.S. Army Corps of Engineers 2025 draft Validation Report and Supplemental Environmental Impact Statement.

CMP Project No: 25-1036-F2

Federal License and Permit Activities:

Applicant: Diamond Beach Holdings

Location: The project would affect waters of the United States and navigable waters of the United States associated with the Laguna Madre. The project/review area is located within the approximate 229.87-acre former Padre Isles Golf Course, to an existing tidally influenced residential canal system on North Padre Island, Corpus Christi, Nueces County, Texas.

Latitude and Longitude:

Commodore's Drive Bridge: 27.61818, -97.22426

Whitecap Preserve Marina: 27.60975, -97.22277

Boat Ramp: 27.60464, -97.22381

Central Canal Connection: 27.61041, -97.22445

South Canal Connection: 27.60463, -97.22564

Proposed Pedestrian Bridge Locations:

Bridge P1: 27.61127, -97.22487

Bridge P2: 27.60669, -97.22536

Proposed Vehicle Bridge/Cofferdam Locations:

Bridge 1: 27.61488, -97.22511

Bridge 2: 27.60648, -97.22873

Bridge 3: 27.60606, -97.22963

Bridge 4: 27.60472, -97.22731

Bridge 5: 27.60296, -97.22854

Project Description: The applicant's stated primary purpose of the requested authorization is to connect the upland excavated residential canal system at the Commodores Drive Bridge with waters of the United States is to provide tidal connectivity and hydraulic balance throughout the canal network in order to relieve unsafe hydraulic pressures that threaten the Whitecap Boulevard and Gypsy Street bridges, to improve circulation and water quality within the canal system, and to protect adjacent public and private infrastructure from scour and storm-related damage. Establishing another pathway for water to flow between Laguna Madre and Lake Padre through the Commodores Drive connection will help ensure stability at those two bridges, maintain public safety and ingress/egress during storm events, preserve the integrity of essential public infrastructure and adjacent private structures, and provide long-term water quality benefits to the overall canal system.

A secondary purpose of the canal connection, and the primary purpose of the after-the-fact authorization for the Commodores Drive Bridge cofferdam removal and the proposed bridges, docks, boat ramp, and scour protection is to support safe recreational and water access infrastructure serving the Whitecap Preserve mixed-use residential development. These features will provide functional public and private water access, stabilize canal shorelines, and enhance the long-term use and enjoyment of the development while maintaining hydraulic and structural stability within the connected canal system.

The applicant requests an after-the-fact authorization for work consisting of the removal of sand plugs and a cofferdam which resulted in the connection and extension of tidal waters of the US through existing, previously authorized residential canal systems into approximately 48.834 acres of newly excavated canals which were dug within uplands and non-jurisdictional waters to a depth of -6 feet NAVD88 within the approximate 229.87-acre Diamond Beach Holdings development and the approximate 2.47-acre expansion of a canal previously authorized to a different permittee under Corps Permit SWG-2000-02743, for the installation of a marina.

The applicant installed the following components prior to connection of the canals to jurisdictional waters:

- Three vehicular bridges consisting of the Commodore's Drive Bridge, the Willet Way Bridge, and the Turnstone Way Bridge.

- 120 feet of 9-foot by 9-foot reinforced concrete box (RCB) culvert with an 80-foot-wide concrete headwall under Crown Royal Drive to connect two ditches extending from two sections of residential canal to allow for water circulation.

- Approximately 30,500 linear feet (LF) of vinyl bulkhead with concrete cap along the canal shorelines.

- Placement of approximately 2,500 LF of limestone rip rap instead of bulkheads along some of the canal shorelines to provide for aquatic habitat.

In addition to previously installed features, the applicant requests the following proposed work:

- Connection of the canal system at Commodore's Bridge. Approximately 5,819 cubic yards (CY) of material would be excavated by mechanical means from 63,462 square feet (SF) of uplands to connect the canal system to a depth of -6 feet NAVD88.

- Construction of an additional two pedestrian and five vehicular bridges spanning the extent of the canals. For the proposed vehicular bridges, there would be temporary dewatering via a cofferdam for the footings that would be constructed at the existing canal bulkheads.

- Installation of a 102- by 40-foot boat ramp to include scour protection, which would be installed at the toe of the boat ramp where it meets the water's edge. The scour pad will measure approximately 40 feet x 10 feet x 1 foot, covering 400 SF and resulting in the placement of about 15 CY of stone or concrete mattress.

- Construction of a marina, to include the following:

- Installation of approximately 22,770 SF of floating docks, installed in multiple dock runs. These floating docks will be supported by 178 12-inch-square concrete piles installed on 20-foot centers with two piles at each centerline, for a combined permanent footprint of about 178 SF for the piles.

- Installation of five pile-supported fixed access platforms, totaling approximately 960 SF, which would provide transitions from the upland promenade to the floating docks. Each platform would be supported by four piles, resulting in twenty piles (~20 SF). Access from the platforms to the docks would be provided by six 6-foot by 40-foot gangways (1,440 SF) and one ADA-compliant 6-foot by 80-foot gangway (480 SF). These gangways would be supported by ~30 piles (~30 SF).

- Dry stack boat storage facility constructed in adjacent uplands. The number of vessels projected to be stored in the facility has not yet been determined.

- A pile-supported elevated launch and conveyor system, spanning approximately 100 feet by 60 feet over the marina basin, constructed to move vessels between the upland dry stack facility and the floating docks.

- Dockside gas pumps and sewer pump-out facilities.

The applicant has provided the following explanation why compensatory mitigation should not be required: No compensatory mitigation is proposed. The marina basin was excavated, and the boat ramp will be excavated from uplands, thereby minimizing fill or dredging in waters of the United States. The cofferdams for the bridge footings would be temporary. As a result, ecological impacts are confined to very limited benthic disturbance and shading directly beneath over-water structures. Permanent impacts to jurisdictional waters are minimal, consisting of approximately 244 SF of pile footprint and approximately 400 SF (15 CY) of scour protection, totaling approximately 644 SF of permanent impact (less than 0.015 acre), with all other elements pile-supported and shading-only. The premature removal of the Commodores cofferdam resulted in a net increase in Section 10 waters. The cofferdams for bridge footings will be temporary in nature. These are net zero impacts. The project has been designed to minimize in-water effects while providing essential marina functions.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-2024-00119. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 25-1037-F1

Applicant: Port of Corpus Christi Authority

Location: The project would affect waters of the United States and navigable waters of the United States associated with the Corpus Christi Ship Channel (CCSC) and is located Oil Dock 15 (OD 15) at the main turning basin in the CCSC; in Corpus Christi, Nueces County, Texas.

Latitude and Longitude: 27.814783, -97.411970

Project Description: The project purpose is to deepen the existing oil dock basin to align with the deepening of the CCSC to an authorized depth of -60 feet Mean Lower Low Water (MLLW), utilize dredge management placement areas (DMPAs) and/or beneficial use sites (BUSs), renew the 10-year maintenance dredging, and make structural improvements and modifications to support the incoming larger vessels and increase the dock's long-term resilience and operational reliability.

The applicant requests authorization to deepen the existing basin from the current maximum authorized depth of −48.5 ft MLLW (−46.5 ft MLLW + 2 OD) to an authorized depth of −60 ft MLLW (−54 ft MLLW + 4 ft AM + 2 ft OD). The majority of the dredging would occur within the existing 6.1-acre basin using hydraulic, mechanical, and/or silt-blading methodologies. The Port of Corpus Christi Authority (PCCA) is evaluating two design scenarios for the basin dredging. Option 1 excludes dredging back and side slopes and would generate approximately 60,042 cubic yards (CY) of dredge material. Option 2 includes dredging back and side slopes and would generate approximately 136,670 CY of dredge material. Dredge material would be placed at existing DMPAs and/or BUSs. The final placement sites

would be determined based on available capacity and the quality of materials.

In addition to deepening the existing basin, dredging may also be required along the shoreline following the installation of a new sheet pile bulkhead and removal of existing riprap. The new bulkheads would be installed landward (north of the Mean High Water (MHW)). On the western side of the dock, between the new bulkhead and the MHW, approximately 970 square feet (sq ft) of riprap would be removed, and the channel slopes potentially be dredged and graded. On the eastern side, the area of riprap removal and potential channel slope dredging and grading would be approximately 1,300 sq ft. Removal of riprap would expose accumulated sediments, which may need to be dredged and graded for stability to achieve the design shoreline slope of approximately 2.5H:1V. These activities would not result in an expansion of the overall project footprint or the basin. Shoreline dredging and grading may be conducted using hydraulic, mechanical, and/or silt-blading methodologies, with equipment staged in the water or on land.

A 10-year maintenance dredging is proposed after the initial deepening of the existing basin. This activity would be conducted using hydraulic, mechanical, or silt-blading methods. Dredge material would be placed at one of the previously identified DMPAs and/or BUSs. The current maintenance dredging authorization for Oil Dock 15 will expire on December 31, 2025.

The project proposes to construct approximately 1,440 linear feet (LF) of combined wall system bulkheads consisting of 60-inch-diameter tubular king piles supporting interlocking sheet piles. Two bulkheads would be installed, one on either side of the dock replacing the existing armored shoreline. King piles would be driven with a vibratory hammer, followed by an impact hammer. Sheet pile sections would then be threaded and interlocked between the king piles to form a continuous wall. Following the bulkhead installation, the existing concrete riprap would be removed, and limited shoreline dredging may occur. Two 144-inch-diameter mooring monopiles would be installed on the eastern and western extents of the proposed bulkheads, on the landward side and be set with a vibratory hammer and then driven by a hydraulic impact hammer. To support catwalk access from the shoreline to the new mooring structure, two, 36-inch-diameter monopiles would be installed by vibratory hammer and then driven to with a hydraulic impact hammer. An existing dock with 20, 16-inch-diameter timber piles located in the water directly in front of the proposed eastern mooring structure would be removed.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-2014-00776. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 25-1040-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from the Texas General Land Office Public Information Officer at 1700 N. Congress Avenue, Austin, Texas 78701, or via email at pialegal@glo.texas.gov. Comments should be sent to the Texas General Land Office Coastal Management Program Coordinator at the above address or via email at federal.consistency@glo.texas.gov.

TRD-202504473
Jennifer Jones
Chief Clerk and Deputy Land Commissioner
General Land Office
Filed: December 8, 2025

♦ ♦ ♦

Office of the Governor

Notice of Inflation Rate for Termination of Defunding Municipality Determination during Fiscal Year 2026

Pursuant to Texas Local Government Code Section 109.006(a)(2), the Criminal Justice Division (CJD) of the Office of the Governor publishes this notice to all persons regarding the inflation rate used for termination of a defunding municipality determination during fiscal year 2026. As required by law, the CJD has computed the inflation rate using a price index that accurately reports changes in the purchasing power of the dollar for municipalities in this state. This computation is based on economic data evaluating the difference in the Consumer Price Index (CPI) between September 2025 and September 2024 and made available by the Texas Comptroller's Office available at Key Economic Indicators (texas.gov). The CJD has determined an inflation rate of 1.6% for fiscal year 2026.

TRD-202504435
Aimee Snoddy
Executive Director
Office of the Governor
Filed: December 5, 2025

♦ ♦ ♦

Texas Health and Human Services Commission

Public Notice - Texas State Plan for Medical Assistance Amendment

The Texas Health and Human Services Commission (HHSC) announces its intent to submit amendments to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendments will be effective January 1, 2026.

The purpose of the amendments is to update the fee schedules in the current state plan by adjusting fees, rates, or charges for the following services:

2026 Annual Healthcare Common Procedure Coding System (HCPCS) Updates:

Ambulance Services;

Ambulatory Surgical Center;

Birthing Center Facility Services;

Case Management Services;

Certified Pediatric Nurse Practitioners and Certified Family Nurse Practitioners;

Certified Registered Nurse Anesthetists and Anesthesiologist Assistants;

Clinical Diagnostic Laboratory Services;

Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS);

Early and Periodic Screening, Diagnosis, and Treatment Services (EPSDT);

Family Planning Services;

Hearing Aids and Audiometric Evaluations;

Home Health Services;

Indian Health Services;

Licensed Clinical Social Worker Services;

Licensed Professional Counselor Services;

Licensed Marriage and Family Therapist Services;

Physicians and Other Practitioners;

Physician Assistants;

Rehabilitative Chemical Dependency Treatment Facility Services; and

Vision Care Services.

The proposed amendment is estimated to result in an annual aggregate expenditure of $409,386 for federal fiscal year (FFY) 2026, consisting of $244,936 in federal funds and $164,450 in state general revenue. For FFY 2027, the estimated annual aggregate expenditure is $552,238 consisting of $330,294 in federal funds and $221,944 in state general revenue. For FFY 2028, the estimated annual aggregate expenditure is $559,632 consisting of $334,716 in federal funds and $224,916 in state general revenue.

Further detail on specific reimbursement rates and percentage changes will be made available on the HHSC Provider Finance website under the proposed effective date at: https://pfd.hhs.texas.gov/rate-packets.

Rate Hearings.

A Rate hearing will be conducted either online or both in person and online in March 2026, to address the 2026 Annual Healthcare Common Procedures Coding System (HCPCS) Updates. Once available, information about the proposed rate changes and the hearing will be published in a subsequent issue of the *Texas Register* at http://www.sos.state.tx.us/texreg/index.shtml.

Copy of Proposed Amendment.

Interested parties may obtain additional information and/or a free copy of the proposed amendment by contacting Jayasree Sankaran, State Plan Policy Advisor, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 487-3349; by facsimile at (512) 730-7472; or by e-mail at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. Once submitted to the Centers for Medicare and Medicaid Services for approval, copies of the proposed amendment will be available for review at the HHSC Access and Eligibility Services for local benefit offices.

Written Comments.

Written comments about the proposed amendment and/or requests to review comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax, or email:

U.S. Mail

Texas Health and Human Services Commission

Attention: Provider Finance Department

Mail Code H-400

P.O. Box 149030

Austin, Texas 78714-9030

Overnight mail, special delivery mail, or hand delivery

Texas Health and Human Services Commission

Attention: Provider Finance Department

North Austin Complex

Mail Code H-400

4601 W. Guadalupe St.

Austin, Texas 78751

Phone number for package delivery: (737) 867-7817

Fax

Attention: Provider Finance at (512) 730-7475

Email

PFDAcuteCare@hhs.texas.gov

Preferred Communication.

For quickest response, please use e-mail or phone, if possible, for communication with HHSC related to this state plan amendment.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Provider Finance at (737) 867-7817 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202504428
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: December 4, 2025

♦ ♦ ♦

Texas Department of Licensing and Regulation

Course of Organized Instruction (COI) for Driving Safety

The Texas Department of Licensing and Regulation publishes the proposed changes to the Course of Organized Instruction (COI) for Driving Safety. The COI for Driving Safety is incorporated by reference and to be considered with the proposed amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 84, Subchapter A, §84.3; Subchapter M, §84.500 and §84.504; and Subchapter N, §84.600, regarding the Driver Education and Traffic Safety (DES) program, as published in the proposed rules section of this issue of the *Texas Register*.



COURSE OF ORGANIZED INSTRUCTION (COI) FOR DRIVING SAFETY

<u>May 2026</u>[~~December 2024~~]

6-Hour Driving Safety Course
(COI-Driving Safety)

Texas Department of Licensing and Regulation, Education and Examination Division www.tdlr.texas.gov

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NOTICE

The Course of Organized Instruction (COI) is not curriculum. It is a manual created for providers, that includes the required course content for the driver safety education course. Providers using a third-party source, or their own curriculum will use that with the COI, and Driver Education & Safety laws and rules to create a strong driver safety education course.

COURSE OF ORGANIZED INSTRUCTION FOR SIX-HOUR DRIVING SAFETY

Chapter One: Course Introduction

1.1 Introduction. This guide details the required course content and minimum instruction requirements for the instruction for six-hour Driving Safety programs in Texas, as prescribed by the Texas Education Code (TEC) and the Texas Administrative Code (TAC). All course content and instructional material shall include current statistical data, references to law, driving procedures, and traffic safety methodology. Laws and statistical data presented must be Texas-specific. Course providers may employ national data and statistics, where appropriate, for comparative purposes during instruction.

Course content, minimum instruction requirements, and administrative guidelines for Driving Safety classroom instruction shall include the instructional objectives established by the Department. Further, providers must meet the requirements of the Texas Administrative Code and the statutes authorizing those codes.

Lesson lengths stated in this COI for the chapters expressed herein are to be determined by the provider to maximize effective instructional techniques and student mastery of course content. It may be necessary to extend the training time by repeating lessons to ensure the student demonstrates mastery over course content contained in each section. Breaks to students during instruction are to be given in accordance with 16 TAC §84.500(b)(1)(B).

If there is a conflict with the information contained in this guide and applicable law, the law shall control. Failure to comply with the requirements contained in this guide, applicable law, rule or order of the Commission for the Texas Department of Licensing and Regulation (TDLR), or the TDLR executive director may subject the licensee to administrative penalties and/or sanctions pursuant to 16 TAC §84.400.

Questions regarding the guide should be directed to the Texas Department of Licensing and Regulation, Education and Examination Division, P.O. Box 12157, Austin, Texas 78711, or www.tdlr.texas.gov, or call (800)803-9202.

Chapter Two: Course Options

The following course options are authorized by the Texas Department of Licensing and Regulation (TDLR):

2.1 Traditional Course. A six-hour curriculum attended in person by the student at an approved driving safety school classroom location. In a traditional classroom location, the licensee is responsible to ensure sufficient seating that allows students the ability to comprehend instructional aids.

2.2 Alternative Delivery Method (ADM). A six-hour curriculum that does not require the student to be present in a physical classroom location. The curriculum shall be instructed through the alternative method approved by the Department.

2.3 Chapter Exams or Comprehensive Exam. To evaluate the student's knowledge and understanding and measure progress (mastery equals 70 percent or above after each Chapter or a Comprehensive Exam at the end of the course).

2.4 Sequencing of Topics. Course Provider may teach Chapter Topics Two through Twelve in any order but, at a minimum, must instruct each Topic in full.

Chapter Three: Instructional Objectives

3.1 Educational Objective of Driving Safety Courses. The educational objectives of driving safety courses must include promoting respect for and encouraging observance of traffic laws and traffic safety responsibilities of drivers and citizens; instruction on law enforcement procedures for traffic stops; human trafficking prevention; litter prevention; anatomical gifts; leaving children in vehicles unattended; distractions; motorcycle awareness; information relating to the Texas Driving with Disabilities Program; safely operating a vehicle near oversize or overweight vehicles; the passing of certain vehicles as described in Transportation Code §545.157; the dangers and consequences of street racing; alcohol awareness and its effect on motor vehicle operation; reducing traffic violations, injuries, deaths, and economic losses; proper child passenger safety seat system use; information relating to penalties, fines, and inherent dangers such as bodily injury, death, and property damage in construction zones;

and instilling safe driving habits through education, including Texas traffic laws, risk management, driver attitudes, courtesy skills, and evasive driving techniques.

[~~The educational objectives of driving safety courses shall include, but not be limited to, information relating to human trafficking prevention; promoting respect for and encouraging observance of traffic laws and traffic safety responsibilities of drivers and citizens; implementation of law enforcement procedures for traffic stops in accordance with the provisions of the Community Safety Education Act information relating to the Texas Driving with Disabilities Program (Senate Bill 2304, 88th Regular Legislature (2023)); the proper use of child passenger safety seat systems; reducing traffic violations; reducing traffic related injuries, deaths, and economic losses; motivating continuing development of traffic related competencies; the passing of certain vehicles as described in Transportation Code §545.157; the dangers and consequences of street racing; and safely operating a vehicle around an oversize or overweight vehicle, including safe following distances and safe passing methods.~~]

Chapter Four: Curriculum Instruction Characteristics

4.1 General. Driving Safety course content, including video and multimedia, shall include current statistical data, references to law, driving procedures, and traffic safety methodology. A driving safety course shall include, as a minimum, materials adequate to assure the student masters the following topics. Laws and statistical data presented must be Texas-specific. Course providers may employ national data and statistics, where appropriate, for comparative purposes during instruction.

4.2 Driving Safety Topics of Instruction.

Total instruction time must be a minimum of five (5) hours, excluding breaks, and at minimum, include the Topics listed below.

4.2.1 Topic One: Course Introduction

Objective: The student recognizes the value of legal and responsible reduced-risk driving practices and accepts driving as a privilege with responsibilities, obligations, and potential consequences.

4.2.1.1 Instruction, at minimum, must address the following topics:

(A) purpose and benefits of the course;

(B) course and facilities orientation;

(C) requirements for receiving course credit; and

(D) department provided information on course content.

4.2.2 Topic Two: The Traffic Safety Problem

Objective: To develop an understanding of the nature of the traffic safety problem and to instill in each student a sense of responsibility for its solution.

4.2.2.1 Instruction, at minimum, must address the following topics:

(A) identification of the overall traffic problem in Texas, specifically, and comparatively, the United States;

(B) death, injuries, and economic losses resulting from motor vehicle crashes in Texas; and

(C) the top five contributing factors of motor vehicle crashes in Texas as identified by the Texas Department of Transportation.

4.2.3 Topic Three: Factors Influencing Driver Performance

Objective: To identify the characteristics and behaviors of drivers and how they affect driving performance.

4.2.3.1 Instruction, at minimum, must address the following topics:

(A) attitudes, habits, feelings, and emotions (aggressive driving, etc.);

(B) physical condition (drowsy driving, etc.);

(C) knowledge of driving laws and procedures; and

(D) understanding the driving task.

4.2.4 Topic Four: Traffic Laws and Procedures

Objective: To identify the requirements of, and the rational for, applicable Texas driving laws and procedures and to influence drivers compliance.

4.2.4.1 Instruction, at minimum, must address the following topics:

(A) passing;

(B) right-of-way, and knowledge and application of procedure to yield right-of-way to emergency vehicles described in Transportation Code §545.157, school buses, and pedestrians;

(C) turns;

(D) stops;

(E) speed limits;

(F) railroad crossings safety, including statistics, causes, and evasive actions;

(G) categories of traffic signs, signals, and highway markings <u>including those in construction or maintenance work zones and identifying inherent dangers associated with violating traffic laws in those zones such as bodily injury, death, and property damage and explain ways to promote safe driving practices</u>;

(H) pedestrians;

(I) improved shoulders;

(J) intersections;

(K) occupant restraints;

(L) anatomical gifts;

(M) litter prevention;

(N) law enforcement and emergency vehicles "Move Over and Slow Down Law" (HB 3319, 87th Regular Legislature 2021);

(O) law enforcement procedures for traffic stops in accordance with the provisions of the Community

Safety Education Act (Senate Bill 30, 85th Regular Legislature (2017));

(P) Texas Driving with Disabilities Program. Curriculum is expected to instruct the student on the following:

1. How to participate in the program;

2. How to identify which diagnoses may be considered a "Communication Impediment" for the Texas Driving with Disability Program;

3. Identify which form the student should have their doctor fill out and take to DPS to have "Communication Impediment" added to the front of their Driver License or Texas State ID card;

4. Explain where to find the Communication Impediment with a Peace Officer on a Driver License or a Texas State ID card; and

5. Identify which forms a student would need to complete with the Texas Department of Motor Vehicles to disclose their Communication Impediment or Deaf/Hard of Hearing in The Texas Law Enforcement Telecommunication System (TLETS); and

(Q) other laws as applicable (i.e., financial responsibility/compulsory insurance).

4.2.5 Topic Five: Special Skills for Difficult Driving Environments

Objective: To identify how special conditions affect driver and vehicle performance and identify techniques for management of these conditions.

4.2.5.1 Instruction, at minimum, must address the following topics:

(A) inclement weather;

(B) traffic congestion;

(C) city, urban, rural, and expressway/freeway environments;

(D) reduced visibility conditions--hills, fog, curves, light conditions (darkness, glare, etc.), and

(E) roadway conditions.

4.2.6 Topic Six: Physical Forces That Influence Driver Control

Objective: To identify the physical forces that affect driver control and vehicle performance.

4.2.6.1 Instruction, at minimum, must address the following topics:

(A) speed control (acceleration, deceleration, etc.);

(B) traction (friction, hydroplaning, stopping distances, centrifugal force, etc.); and

(C) force of impact (momentum, kinetic energy, inertia, etc.).

4.2.7 Topic Seven: Perceptual Skills Needed for Driving

Objective: To identify the factors of perception and how the factors affect driver performance.

4.2.7.1 Instruction, at minimum, must address the following topics:

(A) visual interpretations;

(B) hearing;

(C) touch;

(D) smell;

(E)reaction abilities (simple and complex); and

(F) judging speed and distance.

4.2.8 Topic Eight: Defensive Driving Strategies

Objective: To identify the concepts of defensive driving and demonstrate how they can be employed by drivers to reduce the likelihood of crashes, deaths, injuries, and economic losses.

4.2.8.1 Instruction, at minimum, must address the following topics:

(A) trip planning;

(B) evaluating the traffic environment;

(C) anticipating the actions of others;

(D) decision making;

(E) implementing necessary maneuvers;

(F) compensating for the mistakes of other drivers;

(G) avoiding common driving errors;

(H) interaction with other road users (motorcycles, bicycles, trucks, pedestrians, etc.);

(I) safe operation of a motor vehicle near an oversize or overweight vehicle, including safe following distances and safe passing methods;

(J) motorcycle awareness, including the dangers of failing to yield the right-of-way to a motorcyclist and the need to share the road with motorcyclist;

(K) distractions relating to the effect of using a wireless communication device, including texting or engaging in other actions that may distract a driver from the safe or effective operation of a motor vehicle; [~~and~~]

(L) understand the dangers of speed and its impact on reduced-risk driving practices; must include the dangers and consequences of street racing in violation of Transportation Code §545.420; and

(M) define construction or maintenance work zones and identifying dangers associated with violating traffic laws in those zones such as bodily injury, death, and property damage and explain ways to promote safe driving practices.

4.2.9 Topic Nine: Driving Emergencies

Objective: To identify common driving emergencies and their countermeasures.

4.2.9.1 Instruction, at minimum, must address the following topics:

(A) collision traps (front, rear, and sides);

(B) off road recovery, paths of least resistance; and

(C) mechanical malfunctions (tires, brakes, steering, power, lights, etc.)

4.2.10 Topic Ten: Occupant Restraints and Protective Equipment

Objective: To identify the rationale for having and using occupant restraints and protective equipment.

4.2.10.1 Instruction, at minimum, must address the following topics:

(A) legal aspects;

(B) vehicle control;

(C) crash protection;

(D) operational principles (active and passive);

(E) helmets and other protective equipment;

(F) proper use of child passenger safety seat systems; and

(G) dangers involved in locking or leaving children in vehicles unattended.

4.2.11 Topic Eleven: Alcohol and Traffic Safety

Objective: To identify the effects of alcohol on roadway users.

4.2.11.1 Classroom instruction shall address the following topics:

(A) physiological effects;

(B) psychological effects;

(C) legal aspects; and

(D) synergistic effects.

4.2.12 Topic Twelve: Human Trafficking

Objective: Recognize the key indicators of human trafficking.

4.2.12.1 Instruction, at minimum, must address the following topics:

(A) activities commonly associated with human trafficking;

(B) recognition of potential victims of human trafficking; and

(C) methods for assisting victims of human trafficking, including how to report human trafficking.

4.2.13 Topic Thirteen: Comprehensive Examination or Unit Examination

Objective: The student reduces risk by legally and responsibly completing a Progress Assessment to evaluate classroom knowledge and understanding and measure progress (mastery equals 70 percent or above).

NOTICE

The Course of Organized Instruction (COI) is not curriculum. It is a manual created for providers, that includes the required course content for the driver safety education course. Providers using a third-party source, or their own curriculum will use that with the COI, and Driver Education & Safety laws and rules to create a strong driver safety education course.

TRD-202504487
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Filed: December 9, 2025

♦ ♦ ♦

Program of Organized Instruction (POI) for Driver Education and Traffic Safety (Adult Six-Hour)

The Texas Department of Licensing and Regulation publishes the proposed changes to the Program of Organized Instruction (POI) for Driver Education and Traffic Safety (Adult S ix-Hour). The POI for Driver Education and Traffic Safety (Adult Six-Hour) is incorporated by reference and to be considered with the proposed amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 84, Subchapter A, §84.3; Subchapter M, §84.500 and §84.504; and Subchapter N, §84.600, regarding the Driver Education and Traffic Safety (DES) program, as published in the proposed rules section of this issue of the *Texas Register*.



PROGRAM OF ORGANIZED INSTRUCTION (POI) FOR DRIVER EDUCATION AND TRAFFIC SAFETY

May 2026[~~**December 2024**~~]

Exclusively for Adults 6-Hour Course

(POI-Adult Six-Hour)

Texas Department of Licensing and Regulation, Education and Examination Division

www.tdlr.texas.gov

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NOTICE

The Program of Organized Instruction (POI) is not curriculum. It is a manual created for providers, that includes the required course content for the six-hour classroom instruction for the adult driver education course. Providers using a third-party source, or their own curriculum will use that with the POI, Driver Education & Safety laws and rules, and the current Texas Driver Handbook to create a strong driver education course.

PROGRAM OF ORGANIZED INSTRUCTION FOR ADULT SIX-HOUR DRIVER EDUCATION AND TRAFFIC SAFETY

Chapter One: Program Introduction

1.1 General. This guide details the required course content and minimum instruction requirements for the classroom instruction phase for the Exclusively for Adults driver education programs in Texas, as prescribed by the Texas Education Code (TEC) and the Texas Administrative Code (TAC). All course content and instructional material shall include current statistical data, references to law, driving procedures, and traffic safety methodology.

Course content, minimum instruction requirements, and administrative guidelines for Adult Driver Education and Traffic Safety classroom instruction shall include the instructional objectives, knowledge and skills, and student expectations established by the Department. Further, programs and instructors must meet the requirements of the Texas Administrative Code and the statutes authorizing those codes.

Lesson lengths for the topics expressed herein are to be determined by the provider to maximize effective instructional techniques and student mastery of course content. It may be necessary to extend the training time by repeating lessons to ensure the student demonstrates mastery over course content contained in each section. Schools are allowed to give breaks to students during instruction in accordance with 16 TAC §84.500(b)(1)(B).

If there is a conflict with the information contained in this guide and applicable law, the law shall control. Failure to comply with the requirements contained in this guide, applicable law, rule or order of the Commission for the Texas Department of Licensing and Regulation (TDLR), or the TDLR executive director may subject the licensee to administrative penalties and/or sanctions pursuant to 16 TAC §84.400.

Questions regarding the guide should be directed to the Texas Department of Licensing and Regulation, Education and Examination Division, P.O. Box 12157, Austin, Texas 78711, or www.tdlr.texas.gov, or call (800) 803-9202.

Chapter Two: Course Options

The following course options are authorized by the Texas Department of Licensing and Regulation (TDLR):

2.1 Traditional Course. An Adult six-hour curriculum attended in person by the student at an approved driver education school classroom location. In a traditional classroom location, the licensee is responsible to ensure sufficient seating and desks or tables that allows students to comprehend classroom instruction.

2.2 Online Course. An Adult six-hour curriculum that does not require the student to be present in a classroom location. The curriculum shall be instructed online as approved by the Department.

DRIVER EDUCATION AND TRAFFIC SAFETY
ADULT SIX HOUR COURSE

Chapter Three: Instructional Objectives

3.1 General. In Texas, the **Driver Education and Traffic Safety Program** provides new drivers the foundation of knowledge, understanding, skills, and experiences necessary for new drivers to drive legally and safely. This foundation is provided by licensed instructors, parents, guardians, or adult mentors through a classroom of culturally responsive instructional techniques that include knowledge assessment, skill assessment, guided observation, and parental/mentor involvement.

3.2 Educational Objective of this Course. The student legally and responsibly recognizes the necessity for reduced risk driving practices by accepting driving as a privilege with responsibilities, obligations, and potential consequences; and applying knowledge and understanding about alcohol and drug awareness. The educational objectives of driver training courses must include promoting respect for and encouraging observance of traffic laws and traffic safety responsibilities of driver education and citizens; instruction on law enforcement procedures for traffic stops; human trafficking prevention; litter prevention; anatomical gifts; leaving children in vehicles unattended; distractions; motorcycle awareness; recreational water safety;

information relating to the Texas Driving with Disabilities Program; safely operating a vehicle near oversize or overweight vehicles; the passing of certain vehicles as described in Transportation Code §545.157; the dangers and consequences of street racing; alcohol awareness and its effect on motor vehicle operation; reducing traffic violations, injuries, deaths, and economic losses; proper child passenger safety seat system use; information relating to penalties, fines, and inherent dangers such as bodily injury, death, and property damage in construction and maintenance work zones; and instilling safe driving habits through education, including Texas traffic laws, risk management, driver attitudes, courtesy skills, and evasive driving techniques.

[~~The educational objectives of driver training courses must include, but not be limited to, promoting respect for and encouraging observance of traffic laws and traffic safety responsibilities of driver education and citizens; instruction on law enforcement procedures for traffic stops in accordance with provisions of the Community Safety Education Act; information relating to human trafficking prevention in accordance with the provisions of the Julia Wells Act (Senate Bill 1831, Section 3, 87th Regular Legislature (2021)); information relating to the Texas Driving with Disabilities Program (Senate Bill 2304, 88th Regular Legislature (2023)); litter prevention; anatomical gifts; safely operating a vehicle near oversize or overweight vehicles; the passing of certain vehicles as described in Transportation Code §545.157; the dangers and consequences of street racing; leaving children in vehicles unattended; distractions; motorcycle awareness; alcohol awareness and the effect of alcohol on the effective operation of a motor vehicle; recreational water safety; reducing traffic violations, injuries, deaths, and economic losses; the proper use of child passenger safety seat systems; and motivating development of traffic related competencies through education, including, but not limited to, Texas traffic laws, risk management, driver attitudes, courtesy skills, and evasive driving techniques.~~]

Chapter Four: Minimum Course Content

4.1 Driving Safety Topics of Instruction. The driver education course exclusively for adults shall consist of six clock hours of classroom instruction that meets the following topics.

4.1.1 Topic One: Course Introduction

Objective: The student recognizes the value of legal and responsible reduced-risk driving practices and accepts driving as a privilege with responsibilities, obligations, and potential consequences.

4.1.1.1 Classroom Instruction Requirements:

(A) recognize how an Adult Driver Education course provides a novice driver the foundation of knowledge, understanding, skills, and experiences necessary to continue the life-long learning process of reduced-risk driving;

(B) know that basic knowledge of traffic laws provides a driver the foundation to formulate informed, legal, and responsible decisions to reduce risk; and

(C) recognize that driving is a privilege with risk, responsibilities, obligations, and potential consequences requiring the knowledge, understanding, and application of legal and responsible reduced-risk driving practices; and reduce risk by recognizing the value of legal and responsible reduced-risk driving practices and accepting driving as a privilege with responsibilities, obligations, and potential consequences.

4.1.2 Topic Two: Your License to Drive

Objective: The student reduces risk and accepts driving as a privilege by legally and responsibly possessing a driver license, registering a motor vehicle, and obeying the Safety Responsibility Act.

Resource: Texas Driver Handbook, Chapters 1-3

4.1.2.1 Classroom Instruction Requirements:

(A) describe the process, responsibility, and obligation of obtaining, possessing, and renewing a Texas driver license including the instruction permit;

(B) recognize driver license types, restrictions, endorsements, and special information;

(C) list and describe suspensions and revocations placed on driving privileges;

(D) list and describe guidelines and procedures to inspect and register a motor vehicle in Texas;

(E) recognize the benefits and obligations of the Safety Responsibility Act;

(F) reduce risk and accept driving as a privilege by legally and responsibly possessing a driver license, registering a motor vehicle, and obeying the Safety Responsibility Act; and

(G) explain the Texas Drivers with Disabilities Program and its underlying purposes and policies and the procedure by which a driver may participate in the program to place a notice on a driver license.

4.1.3 Topic Three: Right-of-Way

Objective: The student reduces risk by legally and responsibly accepting or yielding the right-of-way.

Resource: Texas Driver Handbook, Chapter 4

4.1.3.1 Classroom Instruction Requirements:

(A) define right-of-way and list the responsibilities, obligations, and potential consequences for failure to accept or yield the right-of-way, including yielding the right-of-way to motorcyclists;

(B) define traditional and non-traditional intersections;

(C) describe when and the procedures to accept or yield the right-of-way at controlled intersections, uncontrolled intersections, intersecting roads with lesser or greater number of lanes, intersecting roads with different pavement surfaces, T-intersections, traffic circles, construction or maintenance work zones, controlled-access roads, railroad grade crossings, turns (left and right), and entering a public road from a private road;

(D) know when and the procedure to yield the right-of-way to emergency vehicles "Move Over and Slow Down Law" (HB 3319, 87th Regular Legislature 2021), as described in Transportation Code §545.157, school buses, and pedestrians;

(E) state the law and describe risk-reducing procedures when passing an emergency vehicle stopped on or by a roadway;

(F) know how the basic knowledge of right-of-way laws provides a driver the foundation to formulate and implement informed, legal, and responsible decisions to reduce risk; and

(G) reduce risk by legally and responsibly accepting or yielding the right-of-way.

4.1.4 Topic Four: Traffic Control Devices

Objective: The student reduces risk by legally and responsibly applying knowledge and understanding of traffic control devices.

Resource: Texas Driver Handbook, Chapter 5

4.1.4.1 Classroom Instruction Requirements:

(A) list and explain the meanings of the colors and shapes of signs, signals, and pavement markings;

(B) recognize and describe the purpose and appropriate response for traffic control devices including signs, signals, and pavement markings based on law, consequences, and driving conditions;

(C) recognize how basic knowledge of traffic control devices provides a driver the foundation to formulate and implement informed, legal, and responsible decisions to reduce risk; and

(D) reduce risk by legally and responsibly responding to traffic control devices.

4.1.5 Topic Five: Controlling Traffic Flow

Objective: The student reduces risk by legally and responsibly applying knowledge and understanding of laws and procedures for controlling traffic flow.

Resource: Texas Driver Handbook, Chapters 6-9

4.1.5.1 Classroom Instruction Requirements:

(A) define traffic flow;

(B) relate how traffic flow is managed by traffic control devices, law enforcement, and other persons;

(C) explain the appropriate communication to indicate a change in speed or position;

(D) state the laws for passing and being passed, basic and special turning situations, and for stopping, standing, parking, leaving a space, backing, and coasting;

(E) define and explain how to avoid blind spot driving;

(F) know the importance and how to establish a safe following interval;

(G) relate speed to stopping a vehicle based on roadway conditions;

(H) know the importance of adjusting speed, route planning, or not driving during poor driving conditions including traffic, weather, visibility, roadway, vehicle, and driver;

(I) state the legal minimum and maximum speed limits for Texas roadways and beaches;

(J) state the law and purpose of vehicle lights;

(K) state the laws and potential dangers for freeway entry, travel, and exit;

(L) know the importance of avoiding driving when fatigued including highway (roadway) hypnosis;

(M) describe procedures for managing a vehicle breakdown;

(N) describe procedures for controlling a vehicle in a skid, brake failure, running off pavement, blowout, or driving down a steep hill;

(O) explain potential dangers and countermeasures associated with winter driving; [~~and~~]

(P) reduce risk by legally and responsibly applying knowledge and understanding of laws and procedures for controlling traffic flow; and

(Q) define construction or maintenance work zones and identify inherent dangers associated with violating traffic laws in those zones such as bodily injury, death, and property damage and explain ways to promote safe driving practices.

4.1.6 Topic Six: Alcohol and Other Drugs

Objective: The student legally and responsibly performs reduced-risk driving practices by adopting zero tolerance driving and lifestyle practices related to the use of alcohol and other drugs, and applying knowledge and understanding of alcohol and other drug laws, regulations, penalties, and consequences.

Resource: Texas Driver Handbook, Chapter 10

4.1.6.1 Classroom Instruction Requirements:

(A) know the legal definition of intoxication in Texas;

(B) summarize how alcohol and other drugs affect driving ability;

(C) know laws, regulations, and penalties applicable to adults, over 21, for Improper Use of a Driver License, Driving Under the Influence, Public Intoxication, Driving While Intoxicated, Intoxication Assault, and Intoxication Manslaughter violations;

(D) know laws, regulations, and penalties applicable to minors and under 21 for Improper Use of a Driver License, Driving Under the Influence by a Minor, Public Intoxication, Minor in Possession, Driving While Intoxicated, Intoxication Assault, and Intoxication Manslaughter violations;

(E) know laws, regulations, and penalties applicable to minors and adults for Open Container Law, and Open Container Enhancement Law;

(F) know laws, regulations, and penalties applicable to minors and adults for Administrative License Revocation and Implied Consent violations; and

(G) reduce risk by legally and responsibly performing reduced-risk driving practices and adopt zero tolerance practices related to the use of alcohol and other drugs by applying knowledge and understanding of alcohol and other drug laws, regulations, penalties; and consequences to driving and lifestyles.

4.1.7 Topic Seven: Cooperating with Other Roadway Users

Objective: The student reduces risk by legally and responsibly cooperating with law enforcement and other roadway users including vulnerable roadway users in emergency and potential emergency situations, and safely operating a motor vehicle near an oversize or overweight vehicle, or in construction zones, including safe following distances and safe passing methods to reduce inherent dangers such as bodily injury, death, and property damage.

Resource: Texas Driver Handbook, Chapters 11-14

4.1.7.1 Classroom Instruction Requirements:

(A) summarize and categorize roadway users;

(B) understand the Good Samaritan Law and responsibilities at the scene of a traffic crash including aiding the injured;

(C) list the laws and responsibilities of sharing the road with other roadway users such as bicyclists, trucks, motorcyclists, light rail, person on horseback, horse driven conveyance, slow-moving vehicles, persons and vehicles in construction or maintenance work zones [~~work zone/construction workers, and pedestrians~~];

(D) describe the responsibilities of a defensive driver;

(E) state the laws and responsibilities regarding occupant restraints and open truck beds;

(F) describe the responsibilities if stopped by law enforcement;

(G) show and explain the Community Education Safety Act (Senate Bill 30) video and instructional materials;

(H) define aggressive driving and list ways to avoid personal or other roadway users aggressive driving;

(I) explain the responsibilities for transporting cargo, using safety chains, and towing;

(J) list the causes and consequences of carbon monoxide poisoning and state avoidance procedures;

(K) reduce risk by legally and responsibly cooperating with law enforcement and other roadway users including vulnerable roadway users including emergency and potential emergency situations;

(L) reduce risk by safely operating a motor vehicle near an oversize or overweight vehicle, including safe following distances and safe passing methods; and

(M) explain the Texas Driving with Disabilities Program. Curriculum is expected to instruct the student on the following:

1. How to participate in the program;

2. How to identify which diagnoses may be considered a "Communication Impediment" for the Texas Driving with Disability Program;

3. Identify which form the student should have their doctor fill out and take to DPS to have "Communication Impediment" added to the front of their Driver License or Texas State ID card;

4. Explain where to find the Communication Impediment with a Peace Officer on a Driver License or a Texas State ID card; and

5. Identify which forms a student would need to complete with the Texas Department of Motor Vehicles to disclose their Communication Impediment or Deaf/Hard of Hearing in The Texas Law Enforcement Telecommunication System (TLETS).

4.1.8 Topic Eight: Managing Risk

Objective: The student reduces and manages risk by legally and responsibly understanding the issues commonly associated with motor vehicle collisions, including poor decision-making, risk taking, impaired driving, distractions, speed, failure to use a safety belt, driving at night, and using a wireless communications device while operating a vehicle.

4.1.8.1 Classroom Instruction Requirements:

(A) recognize the value of responsible reduced-risk driving practices to manage issues commonly associated with motor vehicle collisions;

(B) recognize how poor decision-making and risk-taking increase the possibility of a collision;

(C) understand the dangers of impaired driving including but not limited to; mental, emotional, and physical fatigue and illnesses;

(D) list distractions that affect driving including but not limited to; vehicle navigation systems, music systems, vehicle controls, mobile phones, passengers and pets;

(E) understand the dangers of speed and its impact on reduced-risk driving practices, including the dangers and consequences of street racing in violation of Transportation Code §545.420;

(F) recognize how failure to use a safety belt while driving increases risk;

(G) explain the potential dangers associated with driving at night;

(H) understand the effect of using a wireless communications device or engaging in other actions that may distract a driver on the safe or effective operation of a motor vehicle including but not limited to; text messaging while driving, eating & drinking while driving, personal grooming, multi-tasking, working in the vehicle, reading while driving;

(I) reduce risk by legally and responsibly applying knowledge, understanding and safe driving practices to manage issues commonly associated with motor vehicle collisions; and

(J) recognize the key indicators of human trafficking by:

- identifying activities commonly associated with human trafficking;
- recognizing of potential victims of human trafficking; and
- learning methods for assisting victims of human trafficking, including how to report human trafficking.

4.1.9 Topic Nine: Classroom Progress Assessment

Objective: Texas Department of Public Safety Highway Sign and Traffic Law examination. The student reduces risk by legally and responsibly completing a Progress Assessment to evaluate classroom knowledge and understanding and measure progress (mastery equals 70 percent or above).

Required Exam: Texas Department of Public Safety Highway Sign and Traffic Law Examination

NOTICE

The Program of Organized Instruction (POI) is not curriculum. It is a manual created for providers, that includes the required course content for the six-hour classroom instruction for the adult driver education course. Providers using a third-party source, or their own curriculum will use that with the POI, Driver Education & Safety laws and rules, and the current Texas Driver Handbook to create a strong driver education course.

TRD-202504486
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Filed: December 9, 2025

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Program of Organized Instruction for Driver Education and Traffic Safety (POI-DE)

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure for Program of Organized Instruction for Driver Education and Traffic Safety is not included in the print version of the Texas Register. The figure is available in the on-line version of the December 19, 2025, issue of the Texas Register.)

The Texas Department of Licensing and Regulation publishes the proposed changes to the Program of Organized Instruction for Driver Education and Traffic Safety (POI-DE). The POI-DE is incorporated by reference and to be considered with the proposed amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 84, Subchapter A, §84.3; Subchapter M, §84.500 and §84.504; and Subchapter N, §84.600, regarding the Driver Education and Traffic Safety (DES) program, as published in the proposed rules section of this issue of the *Texas Register*.

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Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Filed: December 9, 2025

♦ ♦ ♦

Scratch Ticket Game Number 2715 "FIND $200"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2715 is "FIND $200". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2715 shall be $2.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2715.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol- The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 5X SYMBOL, 20X SYMBOL, $2.00, $5.00, $10.00, $20.00, $50.00 and $200.

D. Play Symbol Caption- The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2715 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI

30	TRTY
5X SYMBOL	WINX5
20X SYMBOL	WINX20
$2.00	TWO$
$5.00	FIV$
$10.00	TEN$
$20.00	TWY$
$50.00	FFTY$
$200	TOHN

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2715), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 2715-0000001-001.

H. Pack - A Pack of the "FIND $200" Scratch Ticket Game contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. Please note the Packs will be in an A, B, C and D configuration.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery and Charitable Bingo Division of the Texas Department of Licensing and Regulation (Texas Lottery) pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 140.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "FIND $200" Scratch Ticket Game No. 2715.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 140.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "FIND $200" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose twenty-two (22) Play Symbols. PLAY INSTRUCTIONS: If a player matches any of the YOUR NUMBERS Play Symbols to either of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If a player reveals a "5X" Play Symbol, the player wins 5 TIMES the PRIZE for that symbol. If the player reveals a "20X" Play Symbol, the player wins 20 TIMES the PRIZE for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly twenty-two (22) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly twenty-two (22) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the twenty-two (22) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the twenty-two (22) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director of the Texas Lottery (Executive Director) may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. KEY NUMBER MATCH: There will be no matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

D. KEY NUMBER MATCH: There will be no matching WINNING NUMBERS Play Symbols on a Ticket.

E. KEY NUMBER MATCH: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 02 and $2).

F. KEY NUMBER MATCH: A non-winning Prize Symbol will never match a winning Prize Symbol.

G. KEY NUMBER MATCH: A Ticket may have up to two (2) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

H. KEY NUMBER MATCH: The "5X" (WINX5) Play Symbol will only appear on winning Tickets, as dictated by the prize structure.

I. KEY NUMBER MATCH: The "20X" (WINX20) Play Symbol will only appear on winning Tickets, as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "FIND $200" Scratch Ticket Game prize of $2.00, $5.00, $10.00, $20.00, $50.00 or $200, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00 or $200 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B of these Game Procedures.

B. As an alternative method of claiming a "FIND $200" Scratch Ticket Game prize, the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

D. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "FIND $200" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "FIND $200" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 9,000,000 Scratch Tickets in Scratch Ticket Game No. 2715. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2715 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$2.00	936,000	9.62
$5.00	576,000	15.63
$10.00	216,000	41.67
$20.00	108,000	83.33
$50.00	22,575	398.67
$200	7,500	1,200.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.82. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2715 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §140.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2715, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 140, and all final decisions of the Executive Director.

TRD-202504497
Deanne Rienstra
Interim General Counsel Lottery and Charitable Bingo
Texas Department of Licensing and Regulation
Filed: December 10, 2025

♦ ♦ ♦

Scratch Ticket Game Number 2716 "DELUXE"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2716 is "DELUXE". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2716 shall be $50.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2716.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 2X SYMBOL, 5X SYMBOL, 10X SYMBOL, CHERRY SYMBOL, MOON SYMBOL, LEMON SYMBOL, COIN SYMBOL, CLUB SYMBOL, MELON SYMBOL, HEART SYMBOL, DIAMOND SYMBOL, ELEPHANT SYMBOL, BANANA SYMBOL, RAINBOW SYMBOL, SUN SYMBOL, $100, $150, $200, $300, $500, $2,500, $10,000, $1,000,000, 01, 03, 04, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54 and 55.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2716 - 1.2D

PLAY SYMBOL	CAPTION
2X SYMBOL	DBL
5X SYMBOL	WINX5
10X SYMBOL	WINX10
CHERRY SYMBOL	CHERRY
MOON SYMBOL	MOON
LEMON SYMBOL	LEMON
COIN SYMBOL	COIN
CLUB SYMBOL	CLUB
MELON SYMBOL	MELON
HEART SYMBOL	HEART
DIAMOND SYMBOL	DIAMND
ELEPHANT SYMBOL	ELPHT
BANANA SYMBOL	BANANA
RAINBOW SYMBOL	RAINBW
SUN SYMBOL	SUN
$100	ONHN
$150	ONFF
$200	TOHN
$300	THHN
$500	FVHN
$2,500	25HN
$10,000	10TH
$1,000,000	TPPZ
01	ONE
03	THR
04	FOR
06	SIX

07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX

37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
51	FFON
52	FFTO
53	FFTH
54	FFFR
55	FFFV

E. Serial Number- A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2716), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 020 within each Pack. The format will be: 2716-0000001-001.

H. Pack - A Pack of the "DELUXE" Scratch Ticket Game contains 020 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The back of Ticket 001 will be shown on the front of the Pack; the back of Ticket 020 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery and Charitable Bingo Division of the Texas Department of Licensing and Regulation (Texas Lottery) pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 140.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "DELUXE" Scratch Ticket Game No. 2716.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 140.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "DELUXE" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose eighty-six (86) Play Symbols. BONUS PLAY INSTRUCTIONS: If a player reveals 2 matching Play Symbols in the same BONUS, the

player wins the prize for that BONUS. DELUXE PLAY INSTRUCTIONS: If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "2X" Play Symbol, the player wins DOUBLE the prize for that symbol. If the player reveals a "5X" Play Symbol, the player wins 5 TIMES the prize for that symbol. If the player reveals a "10X" Play Symbol, the player wins 10 TIMES the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly eighty-six (86) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly eighty-six (86) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the eighty-six (86) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the eighty-six (86) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director of the Texas Lottery (Executive Director) may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. GENERAL: A Ticket can win as indicated by the prize structure.

C. GENERAL: A Ticket can win up to thirty-eight (38) times.

D. GENERAL: The "2X" (DBL), "5X" (WINX5) and "10X" (WINX10) Play Symbols will never appear in any of the three (3) BONUS play areas.

E. BONUS: A Ticket can win up to one (1) time in each of the three (3) BONUS play areas.

F. BONUS: Each BONUS play area will consist of two (2) Play Symbols and one (1) Prize Symbol.

G. BONUS: A Ticket will not have matching, non-winning Play Symbols or Prize Symbols across the three (3) BONUS play areas.

H. BONUS: A winning Ticket will have two (2) matching Play Symbols in the same BONUS play area.

I. BONUS: Non-winning Play Symbols in a BONUS play area will not be the same as winning Play Symbols from another BONUS play area.

J. BONUS: Non-winning Prize Symbols in a BONUS play area will not be the same as winning Prize Symbols from another BONUS play area.

K. BONUS: A non-winning BONUS play area will have two (2) different Play Symbols.

L. DELUXE: A Ticket can win up to thirty-five (35) times in the main play area.

M. DELUXE: All non-winning YOUR NUMBERS Play Symbols will be different.

N. DELUXE: Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

O. DELUXE: All WINNING NUMBERS Play Symbols will be different.

P. DELUXE: Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Symbols as possible to create matches, unless restricted by other parameters, play action or prize structure.

Q. DELUXE: On all Tickets, a Prize Symbol will not appear more than seven (7) times, except as required by the prize structure to create multiple wins.

R. DELUXE: On Non-Winning Tickets, a YOUR NUMBERS Play Symbol will never match a WINNING NUMBERS Play Symbol.

S. DELUXE: On winning and Non-Winning Tickets, the top cash prizes of $2,500, $10,000 and $1,000,000 will each appear at least one (1) time, except on Tickets winning thirty-eight (38) times and with respect to other parameters, play action or prize structure.

T. DELUXE: The "2X" (DBL) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

U. DELUXE: The "2X" (DBL) Play Symbol will never appear on a Non-Winning Ticket.

V. DELUXE: The "2X" (DBL) Play Symbol will win DOUBLE the prize for that Play Symbol and will win as per the prize structure.

W. DELUXE: The "2X" (DBL) Play Symbol will never appear more than one (1) time on a Ticket.

X. DELUXE: The "5X" (WINX5) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

Y. DELUXE: The "5X" (WINX5) Play Symbol will never appear on a Non-Winning Ticket.

Z. DELUXE: The "5X" (WINX5) Play Symbol will win 5 TIMES the prize for that Play Symbol and will win as per the prize structure.

AA. DELUXE: The "5X" (WINX5) Play Symbol will never appear more than one (1) time on a Ticket.

BB. DELUXE: The "10X" (WINX10) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

CC. DELUXE: The "10X" (WINX10) Play Symbol will never appear on a Non-Winning Ticket.

DD. DELUXE: The "10X" (WINX10) Play Symbol will win 10 TIMES the prize for that Play Symbol and will win as per the prize structure.

EE. DELUXE: The "10X" (WINX10) Play Symbol will never appear more than one (1) time on a Ticket.

FF. DELUXE: The "2X" (DBL), "5X" (WINX5) and "10X" (WINX10) Play Symbols will never appear on the same Ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "DELUXE" Scratch Ticket Game prize of $100, $150, $200, $300 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $100, $150, $200, $300 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "DELUXE" Scratch Ticket Game prize of $2,500, $10,000 or $1,000,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "DELUXE" Scratch Ticket Game prize, the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "DELUXE" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "DELUXE" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank

account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 5,040,000 Scratch Tickets in Scratch Ticket Game No. 2716. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2716 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$100	705,600	7.14
$150	302,400	16.67
$200	151,200	33.33
$300	50,400	100.00
$500	60,690	83.04
$2,500	336	15,000.00
$10,000	10	504,000.00
$1,000,000	4	1,260,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.97. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2716 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §140.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2716, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 140, and all final decisions of the Executive Director.

TRD-202504498

Deanne Rienstra
Interim General Counsel Lottery and Charitable Bingo
Texas Department of Licensing and Regulation
Filed: December 10, 2025

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Texas Parks and Wildlife Department

Notice of Proposed Real Estate Transactions

Land Acquisition- Brazoria County

Approximately 2500 Acres at Justin Hurst Wildlife Management Area

In a meeting on January 22, 2026, the Texas Parks and Wildlife Commission (the Commission) will consider approving an acquisition of land of approximately 2500 acres at Justin Hurst Wildlife Management Area. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Stan David, Executive Office, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, or by email to real.estate.comment@tpwd.texas.gov, or via the department's website at www.tpwd.texas.gov. Visit the TPWD website at tpwd.texas.gov for the latest information regarding the Commission.

Land Acquisition- Marion County

Approximately 78 Acres at Caddo Lake Wildlife Management Area

In a meeting on January 22, 2026, the Texas Parks and Wildlife Commission (the Commission) will consider approving an acquisition of land of approximately 78 acres at Caddo Lake Wildlife Management Area. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Stan David, Executive Office, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, or by email to real.estate.comment@tpwd.texas.gov, or via the department's website at www.tpwd.texas.gov. Visit the TPWD website at tpwd.texas.gov for the latest information regarding the Commission.

Disposition of Land- San Patricio County

Approximately 8.1 Acres at Lake Corpus Christi State Park

In a meeting on January 22, 2026, the Texas Parks and Wildlife Commission (the Commission) will consider approving a disposition of land of approximately 8.1 acres at Lake Corpus Christi State Park. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Trey Vick, Executive Office, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, or by email to real.estate.comment@tpwd.texas.gov, or via the department's website at www.tpwd.texas.gov. Visit the TPWD website at tpwd.texas.gov for the latest information regarding the Commission.

Exchange of Land- Bexar County

Approximately 3 Acres at Government Canyon State Natural Area

In a meeting on January 22, 2026, the Texas Parks and Wildlife Commission (the Commission) will consider approving an exchange of land of approximately 3 acres at Government Canyon State Natural Area. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Trey Vick, Executive Office, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, or by email to real.estate.comment@tpwd.texas.gov, or via the department's website at www.tpwd.texas.gov. Visit the TPWD website at tpwd.texas.gov for the latest information regarding the Commission.

Land Acquisition- Edwards County

Approximately 1200 Acres at Devil's Sinkhole State Natural Area

In a meeting on January 22, 2026, the Texas Parks and Wildlife Commission (the Commission) will consider approving an acquisition of land of approximately 1200 acres at Devil's Sinkhole State Natural Area. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Trey Vick, Executive Office, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, or by email to real.estate.comment@tpwd.texas.gov, or via the department's website at www.tpwd.texas.gov. Visit the TPWD website at tpwd.texas.gov for the latest information regarding the Commission.

Land Acquisition- Limestone County

Approximately 6 Acres at Fort Parker State Park

In a meeting on January 22, 2026, the Texas Parks and Wildlife Commission (the Commission) will consider approving an acquisition of land of approximately 6 acres at Fort Parker State Park. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Jacob Aston, Executive Office, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, or by email to real.estate.comment@tpwd.texas.gov, or via the department's website at www.tpwd.texas.gov. Visit the TPWD website at tpwd.texas.gov for the latest information regarding the Commission.

Request for Utility Easement- Jefferson County

Approximately 2.4 Acres at the J.D. Murphree Wildlife Management Area

In a meeting on January 22, 2026, the Texas Parks and Wildlife Commission (the Commission) will consider approving a request for a utility easement of approximately 2.4 acres at the J.D. Murphree Wildlife Management Area. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Whitney Gann, Ph.D., Wildlife Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, or by email to real.estate.comment@tpwd.texas.gov, or via the department's website at www.tpwd.texas.gov. Visit the TPWD website at tpwd.texas.gov for the latest information regarding the Commission.

TRD-202504496
James Murphy
General Counsel
Texas Parks and Wildlife Department
Filed: December 10, 2025

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Public Utility Commission of Texas

Notice of Application to Relinquish Designation as an Eligible Telecommunications Carrier

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on December 1, 2025, to relinquish its wireline eligible telecommunications provider and wireline eligible telecommunications carrier designation under 16 Texas Administrative Code (TAC) §26.418.

Docket Title and Number: Application of Terracom, Inc. dba Texas Terracom Global Reconnect, Inc. to Relinquish Its Eligible Telecommunications Carrier Designation, Docket Number 59039.

The Application: Terracom requests to relinquish its designation as a wireline eligible telecommunications provider and a wireline eligible telecommunications carrier in the State of Texas effective as soon as practicable, and a waiver of the notice requirements under 16 TAC §26.418(j)(1)(A).

Persons who wish to comment on this application should notify the Public Utility Commission by January 9, 2026. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the PUCT Consumer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals may contact the commission through Relay Texas at (800) 735-2989. All comments should reference Docket Number 59039.

TRD-202504436
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: December 5, 2025

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Texas Department of Transportation

Notice of Agreement on Identification of Future Transportation Corridors Within Caldwell County

The Texas Department of Transportation and Caldwell County, Texas, have entered into an agreement that identifies future transportation corridors within Caldwell County in accordance with Transportation Code, Section 201.619. Copies of the agreement and all plans referred to by the agreement are available at the department's Austin District Office, 7901 N. I-35, Austin, Texas 78753.

TRD-202504444
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Filed: December 8, 2025

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How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 50 (2025) is cited as follows: 50 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "50 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 50 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: https://www.sos.texas.gov. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC*) is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §91.1: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §91.1 is the section number of the rule (91 indicates that the section is under Chapter 91 of Title 1; 1 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
1 TAC §91.1…….....950 *(P)*

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