TEXAS REGISTER

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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 January 14, 2026

Appointed as the Jasper County Criminal District Attorney for a term to expire December 31, 2026, John E. Burt of Buna, Texas (replacing Anne Pickle of Jasper who resigned).

Appointments for January 15, 2026

Appointed to the Board of Pardons and Paroles for a term to expire February 1, 2031, Clinton M. "Clint" Gunnels of Jonesboro, Texas (replacing Carmella T. Jones of Huntsville whose term expired).

Appointed to the Board of Pardons and Paroles for a term to expire February 1, 2031, Marsha S. Moberley of The Hills, Texas (Chairman Moberley is being reappointed).

Appointed as the Chief Justice of the Seventh Court of Appeals, Place 1, Judy C. Parker of Lubbock, Texas (replacing Chief Justice Brian Quinn of Amarillo who resigned).

Appointed as Judge of the 236th Judicial District, Tarrant County, H. Dustin "Dusty" Fillmore, III of Fort Worth, Texas (replacing Judge Thomas W. "Tom" Lowe, III of Fort Worth who resigned).

Appointments for January 20, 2026

Appointed to the Governor's Task Force on the Governance of Early Childhood Education and Care for a term to expire September 1, 2027, Jeff Austin, III of Whitehouse, Texas.

Appointed to the Governor's Task Force on the Governance of Early Childhood Education and Care for a term to expire September 1, 2027, Leslie D. Callahan of Amarillo, Texas.

Appointed to the Governor's Task Force on the Governance of Early Childhood Education and Care for a term to expire September 1, 2027, Lori Gabbert Charney of Austin, Texas.

Appointed to the Governor's Task Force on the Governance of Early Childhood Education and Care for a term to expire September 1, 2027, Christopher G. "Grant" Coates of Fort Worth, Texas.

Appointed to the Governor's Task Force on the Governance of Early Childhood Education and Care for a term to expire September 1, 2027, Reagan A. Curran of Midland, Texas.

Appointed to the Governor's Task Force on the Governance of Early Childhood Education and Care for a term to expire September 1, 2027, Tracy L. Hanson, Ed.D. of Killeen, Texas.

Appointed as the presiding officer of the Governor's Task Force on the Governance of Early Childhood Education and Care for a term to expire September 1, 2027, Peter J. Holt of San Antonio, Texas.

Appointed to the Governor's Task Force on the Governance of Early Childhood Education and Care for a term to expire September 1, 2027, Marisela O. Nava of Brownsville, Texas.

Appointed to the Governor's Task Force on the Governance of Early Childhood Education and Care for a term to expire September 1, 2027, John P. "J." Puckett, III of Dallas, Texas.

Appointed to the Governor's Task Force on the Governance of Early Childhood Education and Care for a term to expire September 1, 2027, Jennifer A. Stockemer, Ph.D. of Prosper, Texas.

Appointed to the Governor's Task Force on the Governance of Early Childhood Education and Care for a term to expire September 1, 2027, Nancy C. Windham of Nacogdoches, Texas.

Appointed to the Texas Interagency Council for the Homeless for a term to expire at the pleasure of the Governor, Scott Charbonneau of Hurst, Texas (replacing Michael J. "Mike" Doyle of North Richland Hills).

Appointments for January 21, 2026

Appointed to the Texas Farm and Ranch Lands Conservation Council for a term to expire February 1, 2031, Lindsey R. Gohlke of Oglesby, Texas (replacing Abby L. Frank of Brenham whose term expired).

Appointed to the Texas Farm and Ranch Lands Conservation Council for a term to expire February 1, 2031, Romey L. Swanson of Austin, Texas (Mr. Swanson is being reappointed).

Greg Abbott, Governor

TRD-202600209

♦ ♦ ♦

Proclamation 41-4257

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on July 4, 2025, as amended and renewed in subsequent proclamations, certifying that the heavy rainfall and flooding event that began on July 2, 2025, that included heavy rainfall and flash flooding, caused widespread and severe property damage, injury, or loss of life in several counties;

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 Bandera, Bexar, Burnet, Caldwell, Coke, Comal, Concho, Edwards, Gillespie, Guadalupe, Hamilton, Kendall, Kerr, Kimble, Kinney, Lampasas, Llano, Mason, Maverick, McCulloch, Menard, Real, Reeves, San Saba, Schleicher, Sutton, Tom Green, Travis, Uvalde, and Williamson 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. Any statutes that might prevent the transfer of bodies to families as soon as possible are hereby suspended, including Sections 264.514 and 264.515 of the Texas Family Code and Articles 49.04, 49.05, 49.10, and 49.25 of the Texas Code of Criminal Procedure. Further, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 17th day of January, 2026.

Greg Abbott, Governor

TRD-202600206

♦ ♦ ♦

Proclamation 41-4258

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on May 31, 2021, certifying under Section 418.014 of the Texas Government Code that the surge of individuals unlawfully crossing the Texas-Mexico border posed an ongoing and imminent threat of disaster for a number of Texas counties and for all state agencies affected by this disaster; and

WHEREAS, I amended the aforementioned proclamation in a number of subsequent proclamations, including to modify the list of affected counties and therefore declare a state of disaster for those counties and for all state agencies affected by this disaster; and

WHEREAS, the certified conditions continue to exist and pose an ongoing and imminent threat of disaster as set forth in the prior proclamations;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the aforementioned proclamation and declare a disaster for Aransas, Atascosa, Bee, Brewster, Brooks, Caldwell, Calhoun, Cameron, Chambers, Coleman, Colorado, Crane, Crockett, Culberson, DeWitt, Dimmit, Duval, Edwards, El Paso, Frio, Galveston, Goliad, Gonzales, Hidalgo, Hudspeth, Jackson, Jeff Davis, Jim Hogg, Jim Wells, Karnes, Kenedy, Kerr, Kimble, Kinney, Kleberg, La Salle, Lavaca, Live Oak, Mason, Matagorda, Maverick, McCulloch, McLennan, McMullen, Medina, Menard, Midland, Pecos, Presidio, Real, Refugio, San Jacinto, San Patricio, Schleicher, Shackelford, Starr, Sutton, Terrell, Throckmorton, Upton, Uvalde, Val Verde, Victoria, Webb, Wharton, Wilbarger, Wilson, Zapata, and Zavala Counties and for all state agencies affected by this disaster. All orders, directions, suspensions, and authorizations provided in the Proclamation of May 31, 2021, as amended and renewed in subsequent proclamations, are in full force and effect.

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 17th day of January, 2026.

Greg Abbott, Governor

TRD-202600207

♦ ♦ ♦

Proclamation 41-4259

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on July 8, 2022, as amended and renewed in a number of subsequent proclamations, certifying that exceptional drought conditions posed a threat of imminent disaster in several counties; and

WHEREAS, the Texas Division of Emergency Management has confirmed that those same drought conditions persist in certain counties in Texas and that the presence of drought conditions in certain counties contributes to increased wildfire danger;

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 Aransas, Atascosa, Austin, Bandera, Bastrop, Bee, Bexar, Blanco, Brewster, Brooks, Burleson, Burnet, Caldwell, Calhoun, Cameron, Childress, Clay, Collingsworth, Colorado, Comal, Comanche, Culberson, DeWitt, Dimmit, Donley, Duval, Fayette, Foard, Frio, Gillespie, Goliad, Gonzales, Grayson, Guadalupe, Hall, Hardeman, Hays, Hidalgo, Jackson, Jim Hogg, Jim Wells, Karnes, Kenedy, Kendall, Kerr, Kinney, Kleberg, La Salle, Lavaca, Lee, Live Oak, Llano, Lubbock, Matagorda, Maverick, McMullen, Medina, Nueces, Pecos, Presidio, Real, Refugio, San Patricio, Starr, Terrell, Travis, Uvalde, Val Verde, Victoria, Washington, Webb, Wharton, Willacy, Williamson, Wilson, 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.

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 17th day of January, 2026.

Greg Abbott, Governor

TRD-202600208

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THE ATTORNEY GENERAL

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

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

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

Opinions

Opinion No. KP-0505

Re: "Diversity, Equity, and Inclusion" in Texas

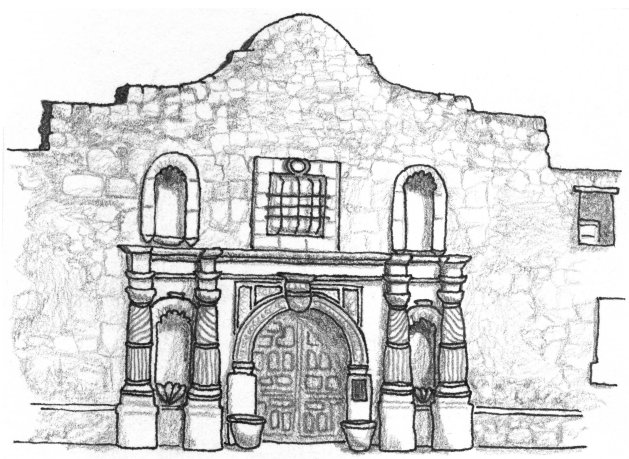
S U M M A R Y

Our nation was founded on the radical notion that all are created equal. Though we have often failed to live up to that promise, it remains as a constitutional lodestar-both in the U.S. and Texas Constitutions. The race-and sex-based, public sector preferences discussed in this opinion cannot survive strict scrutiny and are therefore unconstitutional. Furthermore, a large body of DEI practices in the private sector triggers liability under Title VII, the Texas Commission on Human Rights Act, and Section 1981 in addition to state and federal securities law.

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

TRD-202600198
Justin Gordon
General Counsel
Office of the Attorney General
Filed: January 20, 2026

♦ ♦ ♦



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

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

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 7. HOMELESSNESS PROGRAMS

SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §§7.1 - 7.12

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 7, Subchapter A, General Policies and Procedures, §§7.1 - 7.12. The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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

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

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed repeal would be in effect, the proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, General Policies and Procedures for the Department's Homelessness Programs.

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

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

4. The proposed repeal does not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

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

6. The proposed action will repeal an existing regulation but is associated with a simultaneous readoption making changes to an existing activity, General Policies and Procedures for the Department's Homelessness Programs.

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

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

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

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

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the proposed repeal as to its possible effects on local economies and has determined that for the first five years the proposed repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repealed section would be an updated and more germane rule. 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 also has determined that for each year of the first five years the proposed repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT The public comment period will be held January 30, 2026, to March 3, 2026, to receive input on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Rosy Falcon, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email homelessprograms@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin (Central) local time, MARCH 3, 2026.

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

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

§7.1. Purpose and Goals.

§7.2. Definitions.

§7.3. HHSP and EH Construction Activities.

§7.4. Subrecipient Contract.

§7.5. Subrecipient Reporting.

§7.6. Subrecipient Data Collection.

§7.7. Subrecipient Contact Information.

§7.8. Records Retention.

§7.9. Contract Termination and Deobligation.

§7.10. Inclusive Marketing.

§7.11. Compliance Monitoring.

§7.12. Waivers.

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 January 16, 2026.

TRD-202600163
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: March 1, 2026
For further information, please call: (512) 475-3959

♦ ♦ ♦

10 TAC §§7.1 - 7.12

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 7, Subchapter A, General Policies and Procedures, §§7.1 - 7.12. The purpose of the proposed new subchapter is to update the rule to include special allocations of funds and to further clarify program requirements.

Tex. Gov't Code §2001.0045(b) does not apply to the new rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

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

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

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

1. The proposed new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to an existing activity, General Policies and Procedures for the Department's Homelessness Programs.

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

3. The proposed new rule does not require additional future legislative appropriations.

4. The proposed new rule will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

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

6. The proposed new rule will not limit or repeal an existing regulation, but can be considered to "expand" the existing regulations on this activity because the proposed new rule provides a regulatory framework for instances where the Department receives an additional allocation of funds for homelessness programs not contemplated by the current rule. However, this addition to the rule is necessary to ensure compliance with federal and state fund commitment deadlines.

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

8. The proposed new rule will not negatively or positively affect the 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, in drafting this proposed new 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. The Department has evaluated this new rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

The Department has determined that because this rule only impacts nonprofits and units of local government by outlining administrative requirements of existing programs, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed new rule does not contemplate nor authorize a taking 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 new rule as to its possible effects on local economies and has determined that for the first five years the new rule will be in effect the proposed new rule has no economic effect on local employment because this rule only outlines administrative requirements of existing programs; therefore, no local employment impact statement is required to be prepared for the new rule.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the new rule on employment in each geographic region affected by this new rule…" Considering that these programs are offered in all areas of the state, there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the new rule is in effect, the public benefit anticipated as a result of

the new rule will be an updated and more germane rule. There will not be any economic cost to any individuals required to comply with the new rule because the processes described by the rule have already been in place through the rule found at this section being repealed.

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 rule is in effect, enforcing or administering the new rule does not have any foreseeable implications related to costs or revenues of the state or local governments because this rule only outlines administrative requirements of existing programs.

REQUEST FOR PUBLIC COMMENT AND INFORMATION RELATED TO COST, BENEFIT OR EFFECT. The Department requests comments on the rule and also requests information related to the cost, benefit, or effect of the proposed rule, including 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 will be held January 30, 2026, to March 3, 2026, to receive input on the newly proposed rule. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Rosy Falcon, Rule Comments, P.O. Box 13941, Austin, Texas 8711-3941, by fax to (512) 475-0220, or email homelessprograms@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin (Central) local time, MARCH 3, 2026.

STATUTORY AUTHORITY. The new rule(s) is/are proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

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

§7.1. Purpose and Goals.

(a) The rules established in this Chapter relate to Homelessness Programs, for which the General Provisions provided in this subchapter apply to all of the Homelessness Programs, unless otherwise noted. Additional program specific requirements are contained within each program subchapter.

(b) The Homelessness Programs administered by the Texas Department of Housing and Community Affairs (the "Department") support the Department's statutorily assigned mission to address homelessness among Texans.

(c) The Department accomplishes this mission by acting as a conduit for state and federal funds directed for homelessness programs. Ensuring program compliance with the state and federal laws that govern these programs is another important part of the Department's mission. Oversight and program mandates ensure state and federal resources are expended in an efficient and effective manner.

(d) Unless otherwise noted herein or required by federal law or regulation, or state statute, all provisions of this chapter apply to any Application received for federal funds and any Contract of state funds on or after the effective date of this rule.

§7.2. Definitions.

The words and terms in this chapter shall have the meanings described in this section unless the context clearly indicates otherwise. Other definitions may be found in Chapter 1 of this title, concerning Administration, Chapter 2 of this title, concerning Enforcement, or in federal or state law, including, but not limited to, 24 CFR Parts 91, 200, 576, 582, and 583, and TXGMS.

(1) Affiliate--An entity related to an Applicant that controls by contract or by operation of law the Applicant or has the power to control the Applicant or a third entity that controls, or has the power to control both the Applicant and the entity. Examples include but are not limited to entities submitting under a common application, or instrumentalities of a unit of government. This term also includes any entity that is required to be reported as a component entity under Generally Accepted Accounting Standards, is required to be part of the same Single Audit as the Applicant, is reported on the same IRS Form 990, or is using the same federally approved indirect cost rate.

(2) Allocation Formula--Mathematical relationship among factors, authorized by the Board, that determines, when applicable, how much funding is available in an area or region in Subchapters B, C, and D of this chapter, relating to Homelessness Programs.

(3) Applicant--A unit of local government, nonprofit corporation or other entity, as applicable, who has submitted to the Department an Application for Department funds or other assistance.

(4) Application--A request for a Contract award submitted by an Applicant to the Department, in a form prescribed by the Department, including any exhibits or other supporting material.

(5) At-risk of Homelessness--Defined by 24 CFR §576.2, except as otherwise defined by Contract, the income limits for Program Participants are determined by the Subrecipient but, at a minimum, do not exceed the moderate income level pursuant to Tex. Gov't Code §2306.152.

(6) CoC Lead Agency--CoC collaborative applicant in the HUD CoC Program per 24 CFR §578.3.

(7) 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*.

(8) Continuum of Care (CoC)--The group composed of representatives of relevant organizations, which generally includes nonprofit homeless providers; victim service providers; faith-based organizations; governments; businesses; advocates; public housing agencies; school districts; social service providers; mental health agencies; hospitals; universities; affordable housing developers; law enforcement; organizations that serve homeless and formerly homeless veterans, and homeless and formerly homeless persons that are organized to plan for and provide, as necessary, a system of outreach, engagement, and assessment; emergency shelter; rapid re-housing; transitional housing; permanent housing; and prevention strategies to address the various needs of homeless persons and persons at risk of homelessness for a specific geographic area. HUD funds a CoC Program designed to assist sheltered and unsheltered homeless people by providing the housing and/or services needed to help individuals move into transitional and permanent housing, with the goal of long-term stability.

(9) Contract--The executed written agreement between the Department and a Subrecipient performing a program activity that describes performance requirements and responsibilities assigned by the document.

(10) Contract Close Out Period--The period between the final date of Contract Term and the final reporting deadline.

(11) Contract System--The electronic recordkeeping system established by the Department, as required by the program.

(12) Contract Term--Period of time identified in the Contract during which program activities may be conducted.

(13) Cost Reimbursement--A Contract sanction whereby reimbursement of costs incurred by the Subrecipient occurs only after the Department has reviewed all relevant documentation provided by the Subrecipient to support Expenditures. Reimbursement will only be approved by the Department where the documentation clearly supports the eligible use of funds.

(14) Declaration of Income Statement (DIS)--A Department-approved form used only when it is not possible for a Subrecipient to obtain third-party or firsthand verification of income, per 24 CFR §576.500(e)(4).

(15) Dwelling Unit--A residence that meets Habitability Standards that is not an emergency shelter, hotel, jail, institution, or similar temporary lodging. Transitional Housing is included in this definition unless the context clearly states otherwise. Common areas supporting the Dwelling Unit are also included in this definition.

(16) Elderly Person--

(A) For state funds, a person who is 60 years of age or older; and

(B) For ESG, a person who is 62 years of age or older.

(17) Emergency Solutions Grants (ESG)--A HUD-funded program which provides funds for services necessary to help persons that are at risk of homelessness or homeless quickly regain stability in permanent housing.

(18) Ending Homelessness (EH) Fund--The voluntary-contribution state program established in Texas Transportation Code §502.415.

(19) ESG Interim Rule--The regulations with amendments promulgated at 24 CFR Part 576 as published by HUD for the ESG Program.

(20) Expenditure--An amount of money accounted for by a Subrecipient as spent.

(21) Finding--A Subrecipient's material failure to comply with rules, regulations, the terms of the Contract, or to provide services under each program to meet appropriate standards, goals, and other requirements established by the Department or funding source (including performance objectives). A Finding impacts the organization's ability to achieve the goals of the program and jeopardizes continued operations of the Subrecipient. Findings include the identification of an action or failure to act that results in disallowed costs.

(22) Head of Household--As defined in the most recent Homeless Management Information System (HMIS) Data Dictionary issued by HUD.

(23) HMIS Data Dictionary--The Dictionary published by HUD which defines terms for the use of HMIS and comparable databases.

(24) HMIS Data Standards Manual--Manual and guidance published by HUD which documents the requirements for the programming and use of all HMIS and comparable databases.

(25) HMIS Lead Agency--The entity designated by the CoC to operate the CoC's HMIS on its behalf.

(26) HMIS-Comparable Database--Database established and operated by a victim service provider or legal service provider that is comparable to HMIS and collects Program Participant-level data over time.

(27) Homeless Housing and Services Program (HHSP)--The state-funded program established under Tex. Gov't Code §2306.2585.

(28) Homeless Management Information System (HMIS)--Information system designated by the CoC to comply with the HUD's data collection, management, and reporting standards and used to collect Program Participant-level data and data on the provision of housing and services to homeless individuals and families and persons at-risk of homelessness.

(29) Homeless or Homeless Individual--An individual as defined by 42 U.S.C. §§11371 - 11378 and 24 CFR §576.2. For state-funded programs, a homeless individual may have right of occupancy because of a signed lease, but still qualify as homeless if his or her primary nighttime residence is an emergency shelter or place not meant for human habitation.

(30) Homelessness Programs--Reference to programs that have the specific purpose of addressing homelessness administered by the Department, including ESG Program, HHSP, EH Fund, and Special Allocation Programs.

(31) Homeless Subpopulations--Persons experiencing Homelessness who are part of the special population categories as defined by the most recent Point In Time Data Collection guidance issued by HUD.

(32) Household--A Household is a single individual or a group of persons who apply together for assistance and who live together in one Dwelling Unit, or, for persons who are not housed or in a shelter, who would live together in one Dwelling Unit if they were housed, or as defined in the most recent HMIS Data Dictionary issued by HUD.

(33) Households Served--A single individual or a group of persons who apply for Homelessness Program assistance, meets a Homelessness Program's eligibility requirements, receives a Homelessness Program's services, and whose data is entered into an HMIS or comparable database.

(34) Land Use Restriction Agreement (LURA)--An agreement, regardless of its title, between the Department and a property owner, including an emergency shelter, which is a binding covenant upon the property owner and successors in interest, that, when recorded, encumbers the property with respect to the requirements of the programs for which it receives funds.

(35) Match--A contribution to the ESG Program from a non-ESG source governed by 24 CFR §576.201.

(36) Monthly Expenditure Report (MER)--Information on Expenditures from Subrecipient to the Department.

(37) Monthly Performance Report (MPR)--Information on Program Participants and program activities from Subrecipient to the Department.

(38) Notice of Funding Availability (NOFA)--Notice of Funding Availability or announcement of funding published by the Department notifying the public of available funds for a Program with certain requirements.

(39) Outcome--A benefit or change achieved by a Program Participant served by the Department's Homeless Programs.

(40) Performance Target--Number of persons/Households to be served, outcomes to be reached, or construction/rehabilitation/conversion to be performed that the Subrecipient commits to accomplish during the Contract Term.

(41) Private Nonprofit Organization--An organization described in §501(c) of the Internal Revenue Code (the "Code") of 1986 and which is exempt from taxation under subtitle A of the Code, has an accounting system and a voluntary board, and practices nondiscrimination in the provision of assistance. This does not include a governmental organization such as a public housing authority or a housing finance agency.

(42) Program Participant--An individual or Household that is assisted by a Homelessness Program.

(43) Program Year--Contracts with funds from a specific federal allocation (ESG) or year of a state biennium (HHSP).

(44) Project--A group of eligible activities identified in an Application or Contract to the Department, and designated in HMIS or HMIS-comparable database.

(45) Recertification--Required review of a Program Participant's eligibility determination for continuation of assistance.

(46) Service Area--The city(ies), county(ies) and/or place(s) identified in the Application (as applicable), and Contract that the Subrecipient will serve.

(47) Special Allocation--Funding made available to the Department outside of its allocation cycle, authorized through federal or state legislation or other governmental action. Special Allocations provide funds for eligible activities consistent with the authorizing statute or funding notices, and may include, but are not limited to, allocations for disaster recovery, public health emergencies, or other time-limited initiatives.

(48) Special Allocation Program--A Department administered program that utilizes funds from a Special Allocation to carry out eligible activities in accordance with the terms and conditions established by the authorizing statute, regulation, or funding notice.

(49) State--The State of Texas or the Department, as indicated by context.

(50) Subcontract--A contract made between the Subrecipient and a purveyor of goods or services through a procurement relationship.

(51) Subcontractor--A person or an organization with whom the Subrecipient contracts to provide services.

(52) Subgrant--An award of financial assistance in the form of money made under a grant by a Subrecipient to an eligible Subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases.

(53) Subgrantee--The legal entity to which a Subgrant is awarded and which is accountable to the Subrecipient for the use of the funds provided.

(54) Subrecipient--An organization that receives federal or state funds passed through the Department to operate ESG and/or state funded Homelessness Programs.

(55) Texas Administrative Code (TAC)--A compilation of all state agency rules in Texas.

(56) Unit of General Purpose Local Government--A unit of government which has, among other responsibilities, the authority to assess and collect local taxes and to provide general governmental services.

(57) United States Code (U.S.C.)--A consolidation and codification by subject matter of the general and permanent laws of the United States.

(58) United States Department of Housing and Urban Development (HUD)--Federal department that provides funding for ESG.

(59) Youth Headed Household--Household that includes unaccompanied youth 24 years of age and younger, parenting youth 24 years of age and younger and children of parenting youth 24 years of age and younger.

§7.3. Construction Activities.

(a) A Subrecipient of Homelessness Program funds that constructs or rehabilitates a building or Dwelling Unit, or converts a building(s) for use as a shelter with HHSP, EH Fund, or Special Allocation Programs may be required to enter into a LURA.

(b) ESG funds that are not a Special Allocation must not be utilized for Renovation as defined in 24 CFR §576.102(a)(3).

(c) Tex. Gov't Code §2306.185 requires certain multifamily rental developments to have, among other provisions, a 30-year LURA.

(d) A Subrecipient that intends to expend funds for new construction, rehabilitation, or conversion must submit a copy of the activity budget inclusive of all sources and uses of funding, documents for a construction plan review, and identification of the entity and signature authorization of the individual (name and title) that will execute the LURA. These documents must be submitted no less than 90 calendar days prior to the end of the Contract Term under which funds for the activity are provided. The Department may elect to reconsider award amounts if financial resources other than those presented in the Application are subsequently committed to an activity.

(e) A Subrecipient must request a final construction inspection within 30 calendar days of construction completion. The inspection will cover the Shelter and Housing Standards, National Standards for the Physical Inspection of Real Estate, 2012 International Residential Code (or municipality adopted later version), Minimum Energy Efficiency Requirements for Single Family Construction Activities, and the Accessibility Standards in Chapter 1, Subchapter B, as applicable for the Homelessness Program and activity.

§7.4. Subrecipient Contract.

(a) Subject to prior Board approval, the Department and a Subrecipient shall enter into and execute a Contract for the disbursement of program funds. The Department, acting by and through its Executive Director or his/her designee, may authorize, execute, and deliver authorized modifications and/or amendments to the Contract, as allowed by state and federal laws and rules.

(b) Subrecipients of state funds may Subcontract for the delivery of Program Participant assistance without obtaining Department's prior approval, but must obtain the Department's written permission before entering into a Subgrant. Department ESG funds and ESG Match may not be Subgranted.

(c) The Subrecipient is responsible for ensuring that the performance rendered under all Subcontracts, Subgrants, and other agreements are rendered so as to comply with Homelessness Program requirements, as if such performance rendered were rendered by the Subrecipient. Department maintains the right to monitor and require the Subrecipient's full compliance with the terms of the Subrecipient Contract.

(d) A performance statement and budget are attachments to the Contract between the Subrecipient and the Department. Execution of the Contract enables the Subrecipient to access funds through the Department's Contract System.

(e) Amendments and Extensions to Contracts.

(1) Except for amendments that only move funds within budget categories, program staff will recommend denial of amendment requests if any of the following conditions exist:

(A) if the award for the Contract was competitively awarded and the amendment would materially change the scope of the Contract performance or affected the score;

(B) if the Subrecipient is delinquent in the submission of their Single Audit or their Single Audit Certification form required by §1.403 of this title (relating to Single Audit Requirements);

(C) for an amendment adding funds to the Contract, if the Subrecipient owes the Department disallowed amounts in excess of $1,000 and a Department-approved repayment plan is not in place or has been violated;

(D) for an amendment adding funds (not applicable to amendments for extending time), if the Department has cited the Subrecipient for violations within §7.11 of this subchapter (related to Compliance Monitoring) and the corrective action period has expired without correction of the issue or a satisfactory plan for correction of the issue;

(E) the Contract has expired, except for requests submitted during the Contract Close Out Period to extend the Contract Close Out Period; or

(F) a member of the Subrecipient's board has been debarred and has not been removed.

(2) Except for amendments that only move funds within budget categories, program staff may recommend denial of amendment requests if any of the following conditions exist:

(A) the request for an amendment was received in writing less than 30 calendar days from the end of the Contract Term; or

(B) if the funds associated with the Contract will reach their federal or state expiration date within 45 calendar days of the request.

(3) Denial of an amendment may be subject to §1.7 of this title (relating to Appeals Process).

(4) The Executive Director may on appeal approve an amendment where the Single Audit Certification Form has not been submitted as reflected in paragraph (1)(B) of this subsection. In addition, the Executive Director may on appeal approve an amendment where the conditions in paragraph (2)(A) and (B) of this subsection exist. The Subrecipient must demonstrate good cause for the amendment, and such an amendment must not cause the Department to miss a federal obligation or expenditure deadline, or a state expenditure deadline.

(5) Additional program specific requirements for amendments and extensions to Contracts are found in the program rules of this chapter, relating to Homelessness Programs.

(f) The Department reserves the right to request supporting Expenditure documentation at any time in reviewing an Expenditure report for approval. The Department will use full Cost Reimbursement method of payment whenever any of the following conditions exists:

(1) The Department determines that the Subrecipient has maintained cash balances in excess of need;

(2) The Department identifies significant deficiency in the cash controls or financial management system used by the Subrecipient; or

(3) The Subrecipient fails to comply with the reporting requirements in §7.5 (relating to Subrecipient Reporting) and §7.6 (relating to Subrecipient Data Collection) of this subchapter.

(g) Voluntary deobligation. The Subrecipient may fully relinquish funds in the form of a written request signed by the signatory, or successor thereto, of the Contract. The Subrecipient may partially relinquish funds under a Contract in the form of a written request from the signatory if the partial relinquishment in performance measures and budget would not have impacted the award of the Contract. Voluntary relinquishment of a Contract does not limit a Subrecipient's ability to participate in future funding.

(h) Funds provided under a Contract may not be used for sectarian or explicitly religious activities such as worship, religious instruction, or proselytization and must be for the benefit of persons regardless of religious affiliation.

§7.5. Subrecipient Reporting.

(a) Subrecipient will be reimbursed for the amount of actual cash disbursements as reflected in the approved Monthly Expenditure Reports.

(b) Subrecipient must submit a Monthly Performance Report and a Monthly Expenditure Report through the Contract System not later than the last day of each month which reflects performance and expenditures conducted in the prior month.

(c) For performance reports, Program Participants that are assisted continuously as a Contract ends and a new Contract begins in the same program will count as new Program Participants for the new Contract. However, the start of a new Contract does not require new eligibility determination or documentation for Program Participants, except as required for Recertification.

(d) Subrecipient shall reconcile their Expenditures with their performance at least monthly before seeking a request for funds for the following month. If the Subrecipient is unable to reconcile on a month-to-month basis, the Subrecipient must provide, at the request of the Department, a written explanation for the variance and take appropriate measures to reconcile the subsequent month. It is the responsibility of a Subrecipient to ensure that it has documented the compliant use of all funds provided prior to receipt of additional funds, or if this cannot be done to address the repayment of such funds.

(e) Failure of a Subrecipient to provide reports as required under Department rules or the Contract may be sufficient reason for the Department to deobligate funds for which a Monthly Expenditure Report has not been submitted.

(f) If the Subrecipient fails to submit within 45 calendar days of its due date, any report or response required by this section and responses to monitoring reports, Department may, in its sole discretion, suspend payments, place the Subrecipient on Cost Reimbursement method of payment, and initiate proceedings to terminate any active Contract.

(g) Subrecipient must report on all measures in the Monthly Performance Report for demographics and Program Participant Services for which they are awarded.

(h) Subrecipient must submit information requested by the Department for annual or biannual reporting. The annual reporting may extend over multiple Contracts.

(1) ESG Subrecipients will submit information yearly as required for the Consolidated Annual Performance and Evaluation Report (CAPER), including, but not limited to:

(A) HMIS exports as required per HUD;

(B) Narrative outcome results for emergency transfer requests received under VAWA; and

(C) Section 3 provision of the HUD Act of 1968, as required per HUD.

(2) Subrecipients of state funds will submit information for biennial reporting to the Texas Legislature, including, but not limited to:

(A) The successes and challenges of the program, including using state funding in ways that cannot be used by other funding sources; and

(B) How funds were used to leverage other funding sources to persons experiencing homelessness.

§7.6. Subrecipient Data Collection.

(a) Subrecipient must ensure that data on all persons served and all activities assisted under Homelessness Programs is entered into the applicable HMIS or HMIS-comparable database for domestic violence or legal service providers in order to integrate data from all homeless assistance and homelessness prevention projects in a CoC.

(b) The Performance Targets shall be indicated in the Contract.

§7.7. Subrecipient Contact Information.

(a) In accordance with §1.22 of this title (relating to Providing Contact Information to the Department), Subrecipient will notify the Department and provide contact information for staff that approve the Contract and submit/approve reports in the Contract System. A primary and secondary contact are required to be provided to the Department for submission and approval of reports. The notification will be sent to the Department by updating its Contract System access request information.

(b) If the organization is a nonprofit organization, contact information for the chair and vice-chair of the organization's governing board must be provided to the Department and shall include the:

(1) Board Member's name;

(2) Beginning and end dates of the member's term;

(3) Member's mailing address (which must be different from the organization's mailing address);

(4) Member's phone number (different from the organization's phone number); and

(5) Member's direct email address.

(c) Subrecipient will notify the Department and provide contact information for Subcontractors and Subgrantee within 30 calendar days of the effective date of the Subcontract or Subgrant. Contact information for the entities with which the Subrecipients' Subcontract or Subgrant must be provided to the Department, including the organization name, name and title of authorized person who entered into the Subgrant or Subcontract, phone number, e-mail address, and type of services provided.

(d) At the start of the Contract and within 30 calendar days of contact information changes, including entering into Subcontracts or Subgrants, Subrecipient will notify the Department of contact information used for the public to receive assistance through Homelessness Programs. The contact information for the public should include, but is not limited to, organization name, phone number to receive assistance, email to receive assistance, type of assistance offered, and Service Area in which the assistance is offered.

(e) The Department will rely solely on the contact information supplied by the Subrecipient as indicated in the Department's web-based Contract System. It is the Subrecipient's sole responsibility to ensure such information is current, accurate, and complete. Correspondence sent to the email or physical address shown in the Contract System will be deemed delivered to the Subrecipient. The Department is not required to send a paper copy and if it does so it does as a voluntary and non-precedential courtesy only.

§7.8. Records Retention.

(a) Records must be kept in accordance with §1.409 of this title (relating to Records Retention).

(b) Record retention for construction/rehabilitation/conversion of emergency shelters or Dwelling Units must be retained until the expiration of the LURA.

(c) For ESG, retention for records relevant to the ESG Contract (including but not limited to shelter and habitability inspections) shall be kept in accordance with 24 CFR §576.500 and TXGMS, as defined at §1.401 of this title (relating to Definitions), as applicable except if any litigation, claim, negotiation, audit, monitoring, inspection, or other action has started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later. The record retention period does not begin until one year after the expiration of the Contract.

(d) For state funds, retention for records relevant to the Contract (including but not limited to shelter and habitability inspections) shall be kept in accordance with UGMS or TXGMS, as applicable, and retained by the Subrecipient for a period of three years from the expiration of the Contract except if any litigation, claim, negotiation, audit, monitoring, inspection, or other action has started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later.

§7.9. Contract Termination and Deobligation.

(a) When a Contract is terminated or voluntarily relinquished, the procedures described in this section will be implemented.

(b) The terminology of a "terminated" Subrecipient is intended to include the Subrecipient that is voluntarily or involuntarily terminating their Contract, but does not include Contracts that expire without being sent a termination letter.

(1) The Department will issue a termination letter to the Subrecipient no less than 30 calendar days prior to terminating the Contract. The Department may determine to take any of the following actions: suspend funds immediately or allow a temporary transfer to another Subrecipient; or provide instructions to the Subrecipient to prepare a proposed budget and written plan of action that supports the closeout of the Contract. The plan must identify the name and current titles of staff that will perform the closeout and an estimated dollar amount to be incurred. The plan must identify the CPA or firm which will perform the Single Audit. The Department will issue an official termination date to allow all parties to calculate deadlines which are based on such date.

(2) No later than 30 calendar days after the Contract is terminated, the Subrecipient will take a physical inventory of Program Participant files, including case management files.

(3) The terminated Subrecipient will have 30 calendar days from the date of the physical inventory to make available to the Department all Program Participant files. Current and active case management files also must be inventoried.

(4) The terminated Subrecipient will prepare and submit, no later than 30 calendar days from the date the Department retrieves

the files, a final report containing a full accounting of all funds expended under the Contract.

(5) A Monthly Expenditure Report and a Monthly Performance Report for all remaining expenditures incurred during the closeout period must be received by the Department no later than 45 calendar days from the date the Department determines that the closeout of the program and the period of transition are complete.

(6) The Subrecipient will submit to the Department no later than 45 calendar days after the termination of the Contract, an inventory of the non-expendable personal property acquired in whole or in part with funds received under the Contract.

(7) The Department may require transfer of Equipment title to the Department or to any other entity receiving funds under the program in question. The Department will make arrangements to remove Equipment covered by this paragraph within 90 calendar days following termination of the Contract.

(8) A current year Single Audit must be performed for all entities that have exceeded the federal expenditure threshold under 2 CFR Part 200, Subpart F or the State expenditure threshold under TXGMS, as applicable. The Department will allow a proportionate share of program funds to pay for accrued audit costs, when an audit is required, for a Single Audit that covers the date up to the closeout of the Contract. To be reimbursed for a Single Audit, the terminated Subrecipient must have a binding contract with a CPA firm on or before the termination date of the Contract. The actual costs of the Single Audit and accrued audit costs including support documentation must be submitted to the Department no later than 45 calendar days from the date the Department determines the closeout is complete. See §1.403 of this title (relating to Single Audit Requirements) for more information.

(9) Subrecipient shall submit within 45 calendar days after the date of the closeout process all financial, performance, and other applicable reports to the Department. The Department may approve extensions when requested by the Subrecipient. However, unless the Department authorizes an extension, the Subrecipient must abide by the 45 calendar day requirement of submitting all referenced reports and documentation to the Department.

§7.10. Program Marketing.

(a) The purpose of this section is to highlight certain policies and/or procedures that are required to have written documentation. Other items that are required for written standards are included in the federal or state rules.

(b) Participant selection criteria:

(1) Selection criteria will be applied in a manner consistent with all applicable laws, including the Texas and Federal Fair Housing Acts, program guidelines, and the Department's rules.

(2) If the local CoC has adopted priority for certain Homeless subpopulations or a specific funding source has a statutory or regulatory preference, then those subpopulations may be given priority by the Subrecipient. Such priority must be listed in the participant selection criteria.

(3) For ESG and federally funded Special Allocations, Subrecipient may not deny admission on the basis that the applicant has been a victim of domestic violence, dating violence, sexual assault, or stalking.

(4) Notifications on denial, non-renewal, or termination of Assistance must:

(A) State that a Person with a Disability may request a reasonable accommodation in relation to such notice;

(B) Include any appeal rights the participant may have in regards to such notice; and

(C) For ESG and federally funded Special Allocations, inform Program Participants in any denial, non-renewal or termination notice information on rights they may have under VAWA.

(c) Other policies and procedures:

(1) Affirmative Fair Housing Marketing Plan. Subrecipients providing project-based rental assistance under ESG or federally funded Special Allocations must have an Affirmative Fair Housing Marketing Plan created in accordance with HUD requirements (if any) to direct specific marketing and outreach to potential tenants who are considered "least likely" to know about or apply for housing based on an evaluation of market area data. Subrecipient must comply with the Fair Housing Act and the Age Discrimination Act of 1975.

(2) Language Access Requirements. Subrecipient must follow federal regulations and guidance when interacting with Program Participants with Limited English Proficiency. In addition, consistent with Title VI of the Civil Rights Act of 1964 and the Civil Rights Restoration Act of 1987, Subrecipient must take reasonable steps to ensure meaningful access to programs and activities for LEP persons.

(3) Affirmative Outreach. If it is unlikely that outreach will reach persons of any particular race, color, religion, sex, age, national origin, familial status, or disability who may qualify for those facilities and services, the Subrecipient must establish policies and procedures that target outreach to those persons. Subrecipient must take appropriate steps to ensure effective communication with persons with disabilities including, but not limited to, adopting procedures that will make available to interested persons information concerning the location of assistance, services, and facilities that are accessible to persons with disabilities. Subrecipient must make known that use of the facilities, assistance, and services that are available to all on a nondiscriminatory basis.

(4) Reasonable Accommodation. Subrecipient must comply with state and federal fair housing and antidiscrimination laws. Subrecipient's policies and procedures must address Reasonable Accommodation, including, but not limited to, consideration of Reasonable Accommodations requested to apply for assistance. See Chapter 1, Subchapter B of this title, relating to Accessibility and Reasonable Accommodations, for more information.

§7.11. Compliance Monitoring.

(a) Purpose and Overview

(1) This section provides the procedures that will be followed for monitoring for compliance with the programs in this chapter.

(2) Any entity administering any or all of the programs detailed in this chapter is a Subrecipient. A Subrecipient may also administer other programs, including programs administered by other state or federal agencies and privately funded programs. If the Subrecipient has Contracts for other programs through the Department, including, but not limited to, the HOME Partnerships Program, the Neighborhood Stabilization Program, or the Texas Housing Trust Fund, the Department may, but is not required to and does not commit to, coordinate monitoring of those programs with monitoring of those programs under this Chapter.

(3) Any entity administering any or all of the programs provided for in subsection (a)(2) of this section as part of a Memorandum of Understanding (MOU), contract, or other legal agreement with a Subrecipient is a Subgrantee.

(b) Frequency of Reviews, Notification and Information Collection.

(1) In general, the Subrecipient or Subgrantee will be scheduled for monitoring based on state or federal monitoring requirements and/or a risk assessment. Factors to be included in the risk assessment include, but are not limited to: the number of Contracts administered by the Subrecipient or Subgrantee, the amount of funds awarded and expended, the length of time since the last monitoring, findings identified during previous monitoring, issues identified through the submission or lack of submission of a Single Audit, complaints received by the Department, and reports of fraud, waste, and/or abuse. The risk assessment will also be used to determine which Subrecipients or Subgrantees will have an onsite review and which may have a desk review.

(2) The Department will provide the Subrecipient or Subgrantee with written notice of any upcoming onsite or desk monitoring review, and such notice will be given to the Subrecipient and Subgrantee by email to the Subrecipient's and Subgrantee's Contract contact at the email address most recently provided to the Department by the Subrecipient or Subgrantee. In general, a 30 calendar day notice will be provided. However, if a credible complaint of fraud or other egregious noncompliance is received the Department reserves the right to conduct unannounced monitoring visits. It is the responsibility of the Subrecipients to provide to the Department the current contact information for the organization and the Board in accordance with §7.7 of this subchapter (relating to Subrecipient Contact Information) and §1.22 of this title (relating to Providing Contact Information to the Department).

(3) Upon request, Subrecipient and Subgrantee (if applicable) must make available to the Department all books and records that the Department determines are reasonably relevant to the scope of the Department's review. Typically, these records may include, but are not limited to:

(A) Minutes of the governing board and any committees thereof, together with all supporting materials;

(B) Copies of all internal operating procedures or other documents governing the Subrecipient's operations;

(C) The Subrecipient's Board approved operating budget and reports on execution of that budget;

(D) The Subrecipient's strategic plan or comparable document if applicable and any reports on the achievement of that plan;

(E) Correspondence to or from any independent auditor;

(F) Contracts with any third parties for goods or services and files documenting compliance with any applicable procurement and property disposition requirements;

(G) All general ledgers and other records of financial operations (including copies of checks and other supporting documents);

(H) Applicable Program Participant files with all required documentation;

(I) Applicable human resources records;

(J) Monitoring reports from other funding entities;

(K) Program Participant files regarding complaints, appeals, and termination of services; and

(L) Documentation to substantiate compliance with any other applicable state or federal requirements including, but not limited to, the Davis-Bacon Act, HUD requirements for environmental clearance, Lead Based Paint, the Personal Responsibility and Work Opportunity Act, VAWA, LEP requirements, and requirements imposed by Section 3 of the Housing and Urban Development Act of 1968.

(c) Post Monitoring Procedures.

(1) In general, within 30 calendar days of the last day of the monitoring visit, a written monitoring report will be prepared for the Subrecipient describing the monitoring assessment and any corrective actions, if applicable. The monitoring report will be emailed to the Subrecipient's Board Chair and Executive Director. All Department monitoring reports and Subrecipient responses to monitoring reports must be provided to the governing body of the Subrecipient within the next two regularly scheduled meetings. Issues of concern over which there is uncertainty or ambiguity may be discussed by the Department with the staff of cognizant agencies overseeing federal funding. Certain types of suspected or observed improper conduct may trigger requirements to make reports to other oversight authorities, state and federal, including, but not limited to, the State Auditor's Office and applicable Inspectors General.

(2) Subrecipient Response. If there are any Findings of noncompliance requiring corrective action, the Subrecipient will be provided 30 calendar days from the date of the email to respond, which may be extended for good cause. In order to receive an extension, the Subrecipient must submit a written request to the Director of Compliance within the corrective action period, stating the basis for good cause that justifies the extension. The Department will approve or deny the extension request within five calendar days.

(3) Monitoring Close Out. Within 45 calendar days after the end of the corrective action period, a close out letter will be issued to the Subrecipient. If the Subrecipient's response satisfies issues raised in the monitoring letter, the issue of noncompliance will be noted as resolved. If the Subrecipient's response does not correct all Findings, the follow-up letter will identify the documentation that must be submitted to correct the issue.

(4) Options for Review. If, following the submission of corrective action documentation, Compliance staff continues to find the Subrecipient or Subgrantee in noncompliance, and the Subrecipient disagrees, the Subrecipient may request or initiate review of the matter using the following options, where applicable:

(A) If the issue is related to a program requirement or prohibition of a federal program, the Subrecipient may contact the applicable federal program officer for guidance or request that the Department contact applicable federal program officer for guidance without identifying the Subrecipient.

(B) If the issue is related to application of a provision of the Contract or a requirement of the Texas Administrative Code, the Subrecipient may request to submit an appeal to the Executive Director consistent with §1.7 of this title (relating to Appeals Process).

(C) The Subrecipient may request Alternative Dispute Resolution (ADR). Subrecipient may send a proposal to the Department's Dispute Resolution Coordinator to initiate ADR pursuant to Chapter 1, Subchapter A of this title, relating to General Policies and Procedures.

(5) If the Subrecipient does not respond to a monitoring letter or fails to provide acceptable evidence of compliance, the matter will be handled through the procedures described in Chapter 2 of this title, relating to Enforcement.

§7.12. Waivers.

(a) The Department's Governing Board (the "Board") may waive rules in this chapter for good cause to meet the purpose of the Homelessness Programs described further in §7.1 of this title (relating

to Purpose and Goals). However, any waiver cannot conflict with the federal statutes or regulations, the Department's Action Plan, or state statutes governing any of the Homelessness Programs.

(b) A provision of a closed NOFA may not be waived except in the case of a disaster as described in §1.5 of this title (related to Waiver Applicability in the Case of Federally Declared Disasters) or a change in federal law that makes adherence to the requirements of the NOFA impossible or impracticable as determined by the Board.

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

Filed with the Office of the Secretary of State on January 16, 2026.

TRD-202600164
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: March 1, 2026
For further information, please call: (512) 475-3959

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SUBCHAPTER C. EMERGENCY SOLUTIONS GRANTS (ESG)

10 TAC §§7.31 - 7.43

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 7, Subchapter C, Emergency Solutions Grants (ESG) §§7.31 - 7.43. The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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

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

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed repeal would be in effect, the proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, administration of the Emergency Solutions Grants Program.

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

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

4. The proposed repeal does not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

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

6. The proposed action will repeal an existing regulation but is associated with a simultaneous readoption making changes to an existing activity, administration of the Emergency Solutions Grants Program.

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

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

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

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

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed repeal does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the proposed repeal as to its possible effects on local economies and has determined that for the first five years the proposed repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repealed section would be an updated and more germane rule. 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 also has determined that for each year of the first five years the proposed repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT The Department requests comments on the repeal. The public comment period will be held January 30, 2026, to March 3, 2026, to receive input on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Rosy Falcon, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email homelessprograms@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin (Central) local time, MARCH 3, 2026.

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

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

§7.31. Purpose.

§7.32. Use of ESG Funds.

§7.33. Apportionment of ESG Funds.

§7.34. Continuing Awards.

§7.35. Eligible Applicants.

§7.36. General Threshold Criteria.

§7.37. Application Review and Administrative Deficiency Process.

§7.38. Competitive Award and Funding Process.

§7.39. Uniform Selection Criteria.

§7.40. Competitive Program Participant Services Selection Criteria.

§7.41. Contract Term, Expenditure Benchmark, Return of Funds, and Performance Targets.

§7.42. General Administrative Requirements.

§7.43. Program Income.

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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10 TAC §§7.31 - 7.43

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 7, Subchapter C, Emergency Solutions Grants (ESG) §§7.31 - 7.43. The purpose of the proposed new subchapter is to update the rule to include special allocations of funds and to further clarify program requirements.

Tex. Gov't Code §2001.0045(b) does not apply to the new rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

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

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

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

1. The proposed new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to an existing activity, administration of the Emergency Solutions Grants Program.

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

3. The proposed new rule does not require additional future legislative appropriations.

4. The proposed new rule will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

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

6. The proposed new rule will not limit or repeal an existing regulation, but can be considered to "expand" the existing regulations on this activity because the proposed new rule provides a regulatory framework for instances where the Department receives an additional allocation of funds for homelessness programs not contemplated by the current rule. However, this addition to the rule is necessary to ensure compliance with federal and state fund commitment deadlines.

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

8. The proposed new rule will not negatively or positively affect the 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, in drafting this proposed new 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. The Department has evaluated this new rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

The Department has determined that [because this rule only impacts nonprofits and units of local government by outlining administrative requirements of an existing program, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed new rule does not contemplate or authorize a taking 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 new rule as to its possible effects on local economies and has determined that for the first five years the new rule will be in effect the proposed new rule has no economic effect on local employment because this rule only outlines administrative requirements of an existing program; therefore, no local employment impact statement is required to be prepared for the new rule.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the new rule on employment in each geographic region affected by this new rule…" Considering that these programs are offered in all areas of the state, there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the new rule is in effect, the public benefit anticipated as a result of the new rule will be an updated and more germane rule. There

will not be any economic cost to any individuals required to comply with the new rule because the processes described by the rule have already been in place through the rule found at this section being repealed.

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 rule is in effect, enforcing or administering the new rule does not have any foreseeable implications related to costs or revenues of the state or local governments because this rule only outlines administrative requirements of an existing program.

REQUEST FOR PUBLIC COMMENT AND INFORMATION RELATED TO COST, BENEFIT OR EFFECT. The Department requests comments on the rule and also requests information related to the cost, benefit, or effect of the proposed rule, including 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 will be held January 30, 2026, to March 3, 2026, to receive input on the newly proposed rule. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Rosy Falcon, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-0220, or email homelessprograms@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, March 3, 2026.

STATUTORY AUTHORITY. The new rule(s) is/are proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

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

§7.31. Purpose.

(a) The purpose of this rule is to provide guidance and procedures for the Emergency Solutions Grants (ESG) and Special Allocations of ESG funding as authorized by Tex. Gov't Code §2306.053. ESG and federally-funded Special Allocation Program funds are federal funds awarded to the State of Texas by HUD and administered by the Department under this Chapter.

(b) The regulations in this subchapter, relating to ESG , govern the administration of funds and establish policies and procedures for use of ESG funds to meet the purposes contained in Title IV of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. §§11371 - 11378) (the Act), as amended by the Homeless Emergency Assistance and Rapid Transition to Housing Act (HEARTH Act). This is also generally the case for federally-funded Special Allocation Programs administered under this Chapter.

(c) Federally-funded Special Allocation Programs are not subject to §7.33 of this title (relating to Apportionment of ESG Funds), §7.34 of this title (relating to Continuing Awards), §7.38 of this title (relating to Competitive Award and Funding Process), §7.39 of this title (relating to Uniform Selection Criteria), or §7.40 of this title (relating to Competitive Program Participant Services Section Criteria).

(d) In addition to this subchapter, a Subrecipient shall comply with the regulations applicable to the ESG and federally-funded Special Allocation programs as set forth in Chapters 1 and 2 of this title (relating to Administration and Enforcement, respectively), Subchapter A of Chapter 7 of this title (relating to General Policies and Procedures) and as set forth in 24 CFR Parts 5, 91, and 576 (the Federal Regulations). A Subrecipient must also follow all other applicable federal and state statutes and the regulations established in this chapter, relating to Homelessness Programs, as amended or supplemented.

(e) In the event that Congress, the Texas Legislature, or HUD add or change any statutory or regulatory requirements, special conditions, or waivers, concerning the use or administration of these funds, a Subrecipient shall comply with such requirements at the time they become effective.

§7.32. Use of ESG Funds.

(a) ESG Applications for provision of Program Participant services under emergency shelter, street outreach, homelessness prevention and/or rapid re-housing may include a request for funds for Homeless Management Information Systems (HMIS) activities. Applications proposing to provide only HMIS activities are not eligible for an award of funds.

(b) Subrecipient may not Subgrant funds, but may Subcontract for the provision of services. Such Subcontracts are subject to applicable procurement requirements.

(c) The Department's Governing Board of Directors, Executive Director, or his/her designee may limit activities in a NOFA, or by Contract.

(d) Program Participant services may be provided under street outreach, emergency shelter, homelessness prevention or rapid re-housing, as described in this subsection or otherwise permitted in Federal Regulations.

(e) The street outreach component may be provided to unsheltered Homeless persons as defined in 24 CFR §576.101(a). Eligible costs for Program Participants of street outreach include the following services:

(1) Engagement costs to locate, identify, and build relationships with unsheltered Homeless persons, including assessment of needs, crisis counseling, addressing urgent physical needs, provision of information and referrals;

(2) Case management costs to assess housing and service needs and coordinate delivery of services;

(3) Emergency health services to the extent that other health services are inaccessible or unavailable in the area;

(4) Emergency mental health services to the extent that other mental health services are inaccessible or unavailable in the area; and

(5) Transportation for outreach workers and Program Participants, not including the purchase or lease of vehicles.

(f) The emergency shelter component may be provided to Homeless persons per 24 CFR §576.102. Eligible emergency shelter costs are for Program Participant services and costs related to the shelter building, relocation, and operation.

(1) Eligible costs for Program Participants of emergency shelter services include:

(A) Case management to coordinate individualized services;

(B) Child care for children under the age of 13, and for disabled children under the age of 18;

(C) Education services providing instruction or training to enhance their ability to obtain and maintain housing, including but not limited to literacy, English literacy, General Educational Requirement (GED) preparation, consumer education, health education, and substance abuse prevention;

(D) Employment assistance and job training services;

(E) Outpatient health services to the extent that other health services are inaccessible or unavailable in the area;

(F) Legal services, to the extent that legal services are unavailable or inaccessible within the community, to assist with housing needs, excluding immigration and citizenship matters, matters related to mortgages, legal retainers and contingency fees;

(G) Life skills training including budgeting resources, managing money, managing a household, resolving conflict, shopping for food and need items, improving nutrition, using public transportation, and parenting;

(H) Outpatient mental health services to the extent that other mental health services are inaccessible or unavailable in the area;

(I) Outpatient substance abuse treatment services up to 30 days, excluding inpatient treatment; and

(J) Transportation for staff and Program Participants related to the provision of essential services, not including the purchase or lease of vehicles.

(2) Eligible emergency shelter costs related to the shelter building, relocation, and operation include:

(A) Certain costs for operation of emergency shelters, including provision of hotel or motel vouchers to Program Participants when no appropriate emergency shelter is available and minor or routine repairs to the shelter facility; and

(B) Assistance required under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

(g) The homelessness prevention component may be provided to Homeless persons and persons At-risk of Homelessness per 24 CFR §576.103, and the rapid re-housing component may be provided to Homeless persons per 24 CFR §576.104. Homelessness prevention and rapid re-housing may be provided for up to 24 months of assistance in a 36-month period. Eligible costs for homelessness prevention and rapid re-housing include housing relocation and stabilization for financial assistance, housing relocation and stabilization services, and rental assistance.

(1) Housing relocation and stabilization for financial assistance include:

(A) Rental application fees;

(B) Security deposits (equal to not more than two month's rent) and last month's rent;

(C) Utility deposits and/or utility payments;

(D) Moving costs, such as truck rental or hiring a moving company. Payment of arrearages for temporary storage is not an eligible cost; and

(E) Costs to break a lease to effect an emergency transfer per 24 CFR §5.2005(e), if Program Participant is receiving rental assistance under ESG.

(2) Housing relocation and stabilization services include:

(A) Housing search and placement costs to assist in locating, obtaining, and retaining suitable permanent housing;

(B) Housing stability case management for assessing, arranging, coordinating and monitoring the delivery of individual services to facilitate housing stability;

(C) Mediation between the Program Participant and the landlord/owner to prevent loss of current housing;

(D) Legal services for housing needs excluding immigration and citizenship matters, matters related to mortgages, legal retainers and contingency fees; and

(E) Credit repair and resolution, excluding payment or modification of debts.

(3) Non-duplicative rental assistance may be provided for up to 24 months within any 36-month period. Late payment penalties during the term of assistance are not eligible ESG expenses. Rental assistance includes:

(A) Short-term rental assistance which is up to three months of rent, inclusive of arrearages, late fees accrued prior to the term of assistance, and last month's rent; and

(B) Medium-term rental assistance which is more than three months of rent but not more than 24 months of rent, inclusive of up to six months of arrearages, late fees accrued prior to the term of assistance, and last month's rent.

(h) Costs to participate in HMIS are eligible ESG costs. Eligible costs related to HMIS include:

(1) Hardware, software, equipment, office space, utility costs;

(2) Salary and staff costs for operation of HMIS, including technical support;

(3) HMIS training and overhead costs, including travel to HUD sponsored and approved HMIS training programs and travel costs for staff to conduct intake;

(4) HMIS participation fees charged by the HMIS lead agency; and

(5) HMIS-comparable databases for victim services providers or legal services providers.

(i) Eligible administrative costs for ESG are:

(1) General management and oversight of the ESG award, excluding cost to purchase office space;

(2) Provision of ESG training and costs to attend HUD-sponsored ESG training; and

(3) Costs to carry out required environmental reviews.

(j) Eligible activities and costs for federally funded Special Allocation Programs not included in this section may be eligible or ineligible based on federal requirements specific to the Special Allocation, as further reflected in the Contract.

§7.33. Apportionment of ESG Funds.

(a) The Department will retain funds for Administrative activities. Funds for Administrative or Program Participant services may be retained by TDHCA to Subgrant specific ESG activities, such as legal services or as operating costs for non-congregate emergency shelters funded by the Department's allocation of funds from the HOME American Rescue Plan Act.

(b) If the Department receives ESG or other funding from the U.S. Department of Housing and Urban Development (HUD) that generally incorporates the ESG statutes and regulations, but that has additional activity or geographic restrictions, the Department may elect not to use the Allocation Formula. Funds retained under subsection (a) of this section are not subject to the Allocation Formula.

(c) ESG funds not retained for the purposes outlined or excluded from the Allocation Formula in subsections (a) and (b) of this section will be made available by CoC region based on an Allocation

Formula. Allocation Formula factors noted in paragraphs (1) - (4) of this subsection will be used to calculate distribution percentages for each CoC region as follows:

(1) Fifty percent weight will be apportioned to renter cost burden for Households with incomes less than 30% Area Median Family Income (AMFI), as calculated in the HUD Comprehensive Housing Affordability Strategy;

(2) Fifty percent weight will be apportioned for the number of persons in poverty from the most recent five-year estimate of the American Community Survey released by the U.S. Census Bureau;

(3) Fifty percent weight will be apportioned to point-in-time counts, which are annual counts of sheltered and unsheltered persons experiencing homelessness on one day during the last two weeks of January as required by HUD for CoCs. If a CoC did not conduct a point-in-time count or only completed a partial point-in-time count, the results of the most recent point-in-time count conducted that covered both the sheltered and unsheltered persons experiencing homelessness will be utilized for the purposes of the Allocation Formula; and

(4) Negative 50% weight will be apportioned based on a total of all ESG funding allocated by HUD to local jurisdictions within the CoC region, and ESG funding awarded by the Department within the region from the previous fiscal year.

(d) Each CoC region is allocated a minimum amount of $100,000. This is accomplished by taking the amounts of all regions with over $100,000 during the initial allocation and redistributing a proportional share to the regions with less than $100,000. If the Department distributes by Allocation Formula less than the amount required to provide all regions with $100,000, then the funds will be split evenly among the CoC regions.

(e) Not less than 70% of ESG funding allocated to the CoC regions shall be initially withheld from competition for use by Subrecipients eligible for continuing awards as described under §7.34 of this title (relating to Continuing Awards).

(f) Those ESG funds allocated based on the formula in subsection (c) of this section will be made available for the provision of Program Participant services; they will be made available through a NOFA for both continuing awards described in subsection (e) of this section and for competitive Applications which will be released on an annual basis.

(1) Not more than 60% of total ESG funds under direct Subgrants, continuing, and competitive awards may be awarded for the provision of street outreach and emergency shelter activities. Funds will first be made available to direct Subgrants, then continuing awards. Remaining funds will be made available for competitive awards.

(2) Contract funding limits include the funding request for all Program Participant services proposed in the Application, HMIS, and Administrative funds.

(A) Funding request minimums and maximums will be noted in the NOFA.

(B) Funds awarded for HMIS are limited to 12% of the amount of funds awarded for Program Participant services.

(C) Administrative activities are limited to three percent of the amount of funds awarded for Program Participant services.

(g) ESG funds that have been deobligated by the Department or that have been voluntarily returned from an ESG Contract may be reprogrammed at the discretion of the Department, and are not included in the Allocation Formula or award process detailed in subsections (c) - (f) or (h) - (j) of this section.

(h) An ESG Applicant may have the right to appeal funding decisions per §1.7 of this title (relating to Appeals Process).

(i) The Department reserves the right to negotiate the final Contract amount and local Match requirement with an Applicant.

(j) Percentages described in this subchapter will not be rounded up to the nearest whole number.

§7.34. Continuing Awards.

(a) TDHCA will withhold a portion of funds from the competition for funds to be used for continuing awards to prior Subrecipients of its ESG allocation, not including Special Allocations or Contracts for reallocated funds from prior years only, in accordance with §7.33 of this title (related to Apportionment of ESG Funds).

(b) ESG funds withheld for continuing awards by the Department will be allocated in accordance with the Allocation Formula, and are not subject to the award process and requirements outlined in §7.38 of this title (relating to Competitive Award and Funding Process).

(c) The subsequent years of allocation of ESG funds received by the Department will be offered to eligible Subrecipients of ESG funds (not including federally-funded Special Allocations) that were awarded funds from at least three of the prior four allocations of ESG. An ESG Subrecipient is eligible for an offer of a continuing award of funds if the Subrecipient meets the following requirements:

(1) Submits an abbreviated Application for funding within 21 days of the request from the Department as promulgated by the Department;

(2) Resolves administrative deficiencies within the timeframe and in the manner outlined in §7.37 of this title (relating to Application Review and Administrative Deficiency Process for Department NOFAs);

(3) Submitted two or fewer delinquent monthly reports for each of their active ESG Contracts or for the most recently closed ESG Contract if there are no active ESG Contracts, (not including federally-funded Special Allocations) for reports due in the six-month period preceding the application submission deadline;

(4) Satisfies the requirements of the Previous Participation Review as provided for in §1.302 of this title (relating to Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of this Subchapter);

(5) Does not have unresolved monitoring findings in any TDHCA funded program after the corrective action period;

(6) Does not have monitoring findings in any TDHCA funded program which resulted in disallowed costs in excess of $5,000;

(7) Does not apply for funds within the same COC Region under the competitive Application process for Program Participant service(s) in which they are already funded for a Continuing Award;

(8) Expended a minimum of 95% of their contracted award amount, as amended in their most recently closed ESG Contract (not including federally-funded Special Allocations);

(9) Did not voluntarily deobligate an amount that exceeds 5% of their contracted award amount, as amended for increases due to reallocated funds, on their most recently closed ESG Contract (not including federally-funded Special Allocations);

(10) Submitted the most recent yearly report information, as required in §7.5(h)(1) of this title (relating to Subrecipient Reporting), in SAGE by the deadline established by the Department for the

report due in the period preceding the application submission deadline; and

(11) Is approved by the Department's Governing Board.

(d) Any offer of ESG funds made under this section is contingent on retaining similar terms and conditions or agreeing to adjustments reflective of funding amount, including but not limited to performance and match requirements, in the active ESG annual Contract issued under a NOFA.

(e) Offers of funding will be based on the prior year's award, excluding Contracts comprised exclusively of reallocated funds, before amendments, and will be proportionally increased or decreased in proportion to the total amount of ESG funds available subject to the allocation formula.

(f) If additional funds are made available due to reduced continuing awards in the region, awards may be increased proportionate to the increased withheld funds. In any event, an increased award from funds made available from reduced awards may not exceed 115% of the award amount under the allocation or the maximum award amount established in the NOFA.

(g) Funds that remain available after all eligible continuing awards have been accepted will be transferred to the competition for funds for the regional competition in accordance with §7.38 of this title.

(h) Percentages identified in this section will not be rounded up to the nearest whole number.

§7.35. Eligible Subrecipients.

(a) An eligible Subrecipient is a Unit of Local Government as defined by HUD in CPD Notice 17-10, or a Private Nonprofit Organization, except as limited by subsection (c) of this section.

(b) For ESG-funded Special Allocation Programs, eligible Subrecipients include any entity type determined to be eligible by HUD, except as limited by subsection (c) of this section.

(c) The Department reserves the option to limit eligible Subrecipient entities in a given NOFA or in a Request for Application.

§7.36. General Threshold Criteria.

(a) Applications submitted to the Department are subject to general threshold criteria. Applications which do not meet the general threshold criteria or which cannot resolve an administrative deficiency related to general threshold criteria are subject to termination. Applicants applying directly to the Department to administer the ESG Program must submit an Application on or before the deadlines specified in the NOFA, notification of a direct Subgrant, or notification of availability of a continuing award, and must include items in paragraphs (1) - (13) of this subsection:

(1) Application materials as published by the Department including, but not limited to, program description, budget, and performance statement.

(2) An ESG budget that does not exceed the total amount available within the CoC region, other geographic limitation, Subgrant, or offer of continuing award, as applicable.

(3) A copy of the Applicant's written standards that comply with the requirements of 24 CFR §576.400 and certification of compliance with these standards. Any occupancy standard set by the Subrecipient must not conflict with local regulations or Texas Property Code §92.010.

(4) A copy of the Applicant's policy for termination of assistance that complies with the requirements of 24 CFR §576.402 and certification of compliance with these standards.

(5) A Service Area which consists of at least the entirety of one county or multiple counties within the CoC region under which Application is made, unless a CoC region does not include an entire county. When the CoC region does not encompass at least the entirety of one county, the Service Area must encompass the entire CoC region. The Service Area selected within an Application must be fully contained within one CoC region.

(6) Except for a federallyfunded Special Allocation that does not have a federal Match requirement, commitment in the budget to the provision of 100% Match, or request for a Match waiver, as applicable. Match waivers will be considered by the Department based on the rank of the Application. Applicants requesting an award of funds in excess of the minimum award amount as described in the NOFA for Program Participant services are not eligible to request or receive a Match waiver. In the event that the Match waivers requested exceed $100,000, the waivers will be considered only for the highest scoring eligible Applications, subject to availability of excess Match provided by ESG Applicants. Applicants that do not receive the waiver and are unable to provide a source of Match will be ineligible for an ESG award.

(7) Applicant certification of compliance with State and federal laws, rules and guidance governing the ESG Program as provided in the Application.

(8) Evidence of a Unique Entity Identifier (UEI) number for Applicant.

(9) Documentation of existing Section 501(c) tax-exempt status, as applicable.

(10) Completed previous participation review materials, as outlined in Chapter 1, Subchapter C of this title (relating to Previous Participation), for Applicant.

(11) Local government approval per 24 CFR §576.202(a)(2) for an Applicant that will be providing shelter activities with ESG or as ESG Match, as applicable. This documentation must be submitted not later than 30 calendar days after the Application submission deadline as specified in the NOFA, or prior to execution of a Contract for Subrecipients subject to a direct Subgrant, or continuing award. Receipt of the local government approval is a condition prior to the Department obligating ESG funding.

(12) A resolution or other governing body action from the Applicant's direct governing body which includes:

(A) Authorization of the submission of the Application;

(B) Title of the person authorized to represent the entity and who also has signature authority to execute a Contract; and

(C) Date that the resolution was passed by the governing body, which must be not older than 12 months preceding the date the Application is submitted.

(13) Applicants with an ESG Contract(s) must have submitted the most recent yearly report information, as required in §7.5(h)(1) of this title (relating to Subrecipient Reporting), in SAGE by the deadline established by the Department for the report due in the period preceding the application submission deadline.

(b) An Application must be substantially complete when received by the Department. An Application may be terminated if the Application is so unclear or incomplete that a thorough review cannot reasonably be performed, as determined by the Department. Such

Application will be terminated without being processed as an administrative deficiency. Specific reasons for a Department termination will be included in the notification sent to the Applicant but, because the termination may occur prior to completion of the full review, will not necessarily include a comprehensive list of all deficiencies in the Application. Termination of an Application may be subject to §1.7 of this title (relating to Appeals Process).

§7.37. Application Review and Administrative Deficiency Process.

(a) The Department will accept Applications on an ongoing basis during the Application acceptance period as specified in the NOFA or notification of an offer of a continuing award, as applicable. Applications will be reviewed for threshold criteria and selection criteria, if applicable, administrative deficiencies, and competitive Applications will be ranked based upon the score of the Application as determined by the Department upon completion of the review.

(b) The administrative deficiency process allows the Applicant to provide additional information with regard to an Application after the Application acceptance period has ended, but only if it is requested in writing by Department staff. Staff may request that an Applicant provide clarification, correction, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in evaluating the Application. Staff will request such information via a deficiency notice. Staff will send the deficiency notice via email and responses must be in kind unless otherwise defined in the notice. A review of the Applicant's response may reveal that additional administrative deficiencies are exposed or that issues initially identified as an administrative deficiency are actually determined to be beyond the scope of an administrative deficiency process, meaning that they are in fact matters of a material nature not susceptible to be resolved. For example, a response to an administrative deficiency that causes a new inconsistency which cannot be resolved without reversing or eliminating the need for the first deficiency response would be an example of an issue that is beyond the scope of an administrative deficiency. Department staff will make a good faith effort to provide an Applicant confirmation that an administrative deficiency response has been received and/or that such response is satisfactory. Communication from staff that the response was satisfactory does not establish any entitlement to points, eligibility status, or to any presumption of a final determination that the Applicant has fulfilled any other requirements as such is the sole determination of the Department's Board.

(c) An Applicant may not change or supplement any part of an Application in any manner after submission to the Department, except in response to a direct written request from the Department to remedy an administrative deficiency or by amendment of an Application after the Board approval of an ESG award. An administrative deficiency may not be cured if it would, in the Department's determination, substantially change an Application including score, or if the Applicant provides any new unrequested information to cure the deficiency.

(d) The time period for responding to a deficiency notice commences on the first day following the deficiency notice date.

(1) If an administrative deficiency is not resolved to the satisfaction of the Department by 5:00 p.m. on the seventh calendar day following the date of the deficiency notice, then one point shall be deducted from the selection criteria score for each additional day the deficiency remains unresolved. If administrative deficiencies are not resolved by 5:00 p.m. on the fourteenth calendar day following the date of the deficiency notice for an Application in response to a NOFA, then the Application shall be terminated

(2) If an administrative deficiency is not resolved to the satisfaction of the Department by 5:00 p.m. on the seventh calendar day following the date of the deficiency notice for an Application in response to a continuing award offer, then the Application shall be terminated.

§7.38. Competitive Award and Funding Process.

(a) An Application may by submitted requesting funds for Program Participant services under street outreach, emergency shelter, homelessness prevention, and/or rapid re-housing. Each Application submission will include one uniform Application with information applicable across all Program Participant service types, and then information on each Program Participant service requested. Each Program Participant service reflected in an Application will be treated as a separate Application, assigned a separate Application number per service type, and will be scored and ranked separately for each service type selected. Applicants may be awarded funds for one or more Program Participant services in accordance with this section. Because each Program Participant service is reviewed separately and competes separately, an award of funds for provision of one Program Participant service does not affect an award of funds in any other Program Participant service reflected in that same Application submission.

(b) Applications submitted directly to the Department for under this section will receive points based on experience, program design, budget, previous performance, and performance measures. Applications will be scored and ranked based on selection criteria described in this subchapter.

(c) Applicants for a competitive award will be required to submit a self-score within the Application. In no event will the points awarded to the Applicant exceed the point value of the self-score in any selection criterion.

(d) Tie breakers. Each Application submitted to the Department for a competitive award shall be assigned a number between one and the total number of applications. The number assignment will be determined in a random selection process to occur immediately following the close of the application acceptance period, and Applicants will be notified of said number assignment as soon as possible thereafter. The randomly assigned numbers will be used to resolve ties, with the highest assigned number having the highest priority.

(e) Partial awards. In order to maintain funding within the Allocation Formula amounts designated for each CoC region as determined in this subchapter, an Applicant for a competitive award may be offered a partial award of their requested funds. An Applicant offered a partial award of funds must confirm their acceptance of a partial award, and submit updated information related to the reduction within seven calendar days following the date of notification. Scoring criteria may be updated based on the reduced funding request, but any changes to the scoring criteria must allow the Application to maintain its rank.

(f) Regional Funding Competition. Funding will be recommended first for Applicants within the CoC region up to the Allocation Formula amount designated for the CoC region as determined in this subchapter.

(1) Eligible Applications will be ranked in descending order by score within the CoC region which the Application proposes to serve. Subsection (d) of this section will be used to determine the priority of tied scores.

(2) ESG funds allocated to each CoC region will be awarded starting with the highest ranking Application and continue until the funds allocated for that CoC region are fully utilized, but not exceeded, or until the Applicant for the last Application to be recommended in the region declines an offer of a partial award.

(3) Applications proposing street outreach or emergency shelter will be ranked alongside all Applications in the region, however, a recommendation for a full award of an Application for street outreach

or emergency shelter will not be made through the first level of funding if funding recommendations in the CoC region for street outreach and emergency shelter will exceed 60% of the funding remaining in the CoC region after direct Subgrants and acceptance of continuing awards. Applications proposing street outreach and emergency shelter services but causing awards for such services in the region to exceed 60% of the available funding in the region, will be offered a partial award of up to the amount remaining to reach 60% for the region. If no funds remain available that would not exceed 60% at the regional level for a partial award, or if they decline such partial award, the Application will be passed over and recommendation of funding would proceed to the next highest scoring Application(s) in the region in order to fully fund the Formula Allocation amount for the region. Applications that were passed over for funding may be eligible to compete in the statewide funding competition, if no more than 60% of funds have been awarded for street outreach and emergency shelter in the total allocated funds.

(4) A partial award may be offered to the last highest ranking Application which is otherwise eligible for funding within the regional competition to ensure that the amount of funds recommended for a region does not initially exceed the amount identified in the Formula Allocation. Partial awards will be offered under the regional competition only if the funding remaining in the CoC region is more than $30,000.

(A) The Applicant or Applicants that accept an offer of a partial award may be required to amend the Application if the reduction in funds is expected to impact scored items and to adjust performance deliverables based on the reduced amount of funding. The revised score based on the partial award must still ensure the Application ranking would not be affected. If a partial award or the Applicant's subsequent adjustments results in a reduced score that alters their scoring rank within the regional competition, the opportunity to be funded from the first level of funding recommendations will not be offered to the Application.

(B) The Applicant may decline the partial award of funds and instead request to be included for consideration in the statewide competition.

(g) Statewide Funding Competition. If any funds remain after recommendations for all eligible Applications in the regional funding competition, such funds shall collapse and be made available in the statewide competition.

(1) All eligible Applications not recommended to be awarded under the regional funding competition will be ranked in descending order of score with the highest scoring unfunded Application, regardless of region, having the highest priority rank. Subsection (e) of this section will be used to determine the outcome of tied scores.

(2) Funds will be awarded in the statewide funding competition starting with the highest ranked Application and continuing until no funds remain available to award or until there are no eligible Applications left to be recommended for funding.

(3) Applications proposing street outreach or emergency shelter will be ranked alongside all Applications. If the 60% of the allocated funds has been awarded to Applications proposing street outreach and emergency shelter, Applications proposing these activities will not be recommended and will be passed over to fund Applications proposing homeless prevention or rapid re-housing.

(4) The final award in the statewide funding competition and the 60% capped street outreach and emergency shelter funding may be a partial award if an Application cannot be fully funded.

(A) An Applicant that accepts an offer of a partial award may be required to amend the Application if the reduction in funds is expected to impact scored items and to adjust performance deliverables based on the reduced amount of funding. The revised score based on the partial award must still ensure the Application's ranking would not be affected. Partial awards may only be offered if the remaining funding exceeds the minimum award amount as stated in the NOFA.

(B) The Applicant may decline a partial award of funds. Applicants that decline a partial award of funding within the statewide competition will be withdrawn from competition, as there are not sufficient remaining funds to award the Application.

(C) If a partial award or the Applicant's subsequent adjustments result in a reduced score that alters the scoring rank or an Applicant declines a partial award, the next highest ranked Application will be presented with the opportunity to be funded.

(h) If there are still funds available after the statewide funding competition, the Department may offer and recommend award amounts in excess of the funds requested and in excess of the award amount limits identified in §7.33(c) of this title (relating to Apportionment of ESG Funds), starting with the highest scoring Applications already identified to be recommended for an award, not to exceed an award more than 50% greater than their original request. The Department will provide notice of the proposed increase to the impacted Applicants. The budget and Performance targets would increase proportionally to the additional funding received. An Applicant will have the opportunity to accept or reject the recommendation for increased funding prior to final award by the Department.

(i) The Department reserves the right to negotiate the final Contract amount and local Match with a Subrecipient.

§7.39. Uniform Selection Criteria.

An Application for funding allocated in accordance with §7.33(b) of this title (relating to Apportionment of ESG Funds) and made to the Department may be awarded points under the following uniform selection criteria. The total of the score under this part will be the uniform Application score. The uniform Application score will be comprised of points awarded under each of the following criteria:

(1) Homeless participation. An Application may receive a maximum of three points for the participation of persons who are Homeless in the Applicant's program design. Points may be earned under subparagraphs (A) and (B) of this paragraph for a total of up to three points.

(A) An Application may receive a maximum of two points when at least one person who is Homeless or formerly Homeless is a member of or consults with the Applicant's policy-making entity for facilities, services, or assistance under ESG; and

(B) An Application may receive a maximum of one point when at least one person who is Homeless or formerly Homeless is employed in a paid position with duties that include constructing, renovating, maintaining, or operating the Applicant's ESG facilities, or providing services for occupants of its ESG facilities.

(2) Organizational or management experience. An Application may receive a maximum of eight points for an Applicant or its management staff's experience administering federal or State homeless programs.

(A) An Application may receive a maximum of three points for an Applicant or its management staff with at least two but less than four years of experience;

(B) An Application may receive a maximum of five points for an Applicant or its management staff with at least four but less than six years of experience; or

(C) An Application may receive a maximum of eight points for an Applicant or its management staff with six or more years of experience.

(3) Percentage of prior ESG awarded funds expended. An Application may receive a maximum of six points for the Applicant's past expenditure performance of ESG funds proportionate to the award of funds from TDHCA to the Applicant. This will apply to any and all ESG Contract(s), exclusive of federally funded Special Allocation Contracts, administered by the Applicant that were closed within 12 months prior to the date of the Application deadline established in the by the Department. Contract Expenditures will be averaged among all ESG Contracts that were closed within 12 months of the Application deadline, without requiring an amendment if the Applicant was awarded multiple Contracts. The percentage of ESG funds expended will be calculated utilizing the amount of the Contract as of its closing as stated in the Contract prior to amendments, except where the Applicant voluntarily return funds in accordance with this subchapter. Expenditure will be defined as the Applicant having reported the funds as expended. Applications may receive:

(A) Two points if the Applicant expended 91-94% of its prior ESG Contract funds as of its closing as stated in the Contract prior to amendments;

(B) Three points if the Applicant expended 95% to less than 100% of its prior ESG Contract funds as of its closing as stated in the Contract prior to amendments; or

(C) Six points if the Applicant expended 100% of its prior ESG Contract funds as of its closing as stated in the Contract prior to amendments.

(4) Contract History on Reporting and percentage of Outcomes. An Applicant may receive a maximum of twelve points for its prior timeliness of reports and performance achieved for previously awarded ESG Contract(s), exclusive of federally funded Special Allocation Contracts, that closed within 12 months prior to the date of the Application deadline established by the Department. Points may be requested under subparagraphs (A) - (E) of this paragraph, not to exceed a total of ten points. The Outcome percentages will be averaged among all prior ESG Contracts, exclusive of federally funded Special Allocation Contracts, that closed within 12 months prior to the date of the Application deadline to determine the final percentage amount for this scoring criterion. Applications may receive points as follows:

(A) Two points if the Applicant submitted the last three reports on or before the Contract end date within the reports' respective reporting deadlines;

(B) Two points if the Applicant met 100% or more of their street outreach target of persons exiting to temporary or transitional or permanent housing destination;

(C) Two points if the Applicant met 100% or more of their emergency shelter exits to permanent housing;

(D) Two points if the Applicant met 100% or more of their Homelessness prevention target for maintaining housing for three months or more;

(E) Two points if the Applicant met 100% or more of their rapid re-housing target for maintaining housing for three months or more; and

(F) Two points if the Applicant met 100% or more of their Match obligation.

(G) Twelve points if the Applicant has not previously been awarded an ESG Contract closed within 12 months prior to the date of the Application deadline.

(5) Monitoring history. Applications may receive a maximum of five points for the Applicant's previous ESG and federally funded Special Allocation program monitoring history. The Department will consider the monitoring history for three years before the date that Applications are first accepted under the NOFA when determining the points awarded under this criterion. Findings that were subsequently rescinded will not be considered Findings for the purposes of this scoring criterion. Applications may be limited to a maximum of:

(A) Five points if the Applicant has not received any monitoring Findings, including Applicants with no previous monitoring history;

(B) Not more than three points if the monitoring history has a close-out letter that included Findings, but the Findings were not related to Household eligibility or violations of procurement requirements;

(C) Not more than two points if the monitoring history has a close-out letter that included Findings related to Household eligibility;

(D) Not more than one point if the monitoring history has a monitoring close-out letter that included Findings related to violations of procurement requirements; or

(E) Zero points may be requested under this criterion if the Applicant received a Finding resulting in disallowed costs in excess of $5,000 which required repayment to the Department.

(6) Priority for certain communities. Applications may receive two points if at least one Colonia, as defined in Tex. Gov't Code §2306.083, is included in the Service Area identified in the Application. Applicants awarded points under this criterion will be contractually required to maintain a Service Area that includes at least one Colonia as identified on the Office of Attorney General's website.

(7) Previously unserved areas. Applications may receive a maximum of 10 points for provision of ESG services if at least one county in the Service Area included in the Application has not received ESG funds from the Department or directly from HUD within the previous federal funding year for services. Applications may receive a maximum (of ten points if at least one county within the Service Area as stated in the Application did not receive an award of ESG annual funds from the Department within the previous federal funding year.

(8) Percentages identified in this section will not be rounded up to the nearest whole number.

§7.40. Competitive Program Participant Services Selection Criteria.

(a) An Application for competitive funding allocated under §7.33(b) of this title (relating to Apportionment of ESG Funds), and made to the Department, may be awarded points for Program Participant services under each category. Points awarded for Program Participant services will be separately tabulated and added to the uniform Application score to determine a score for each of the Program Participant services Applications submitted. All scoring criteria that are based upon measurable future performance expectations will be measured and expected to be fulfilled by being included as a performance requirement in the Contract should the Application be awarded funds.

(b) Street outreach. An Application proposing street outreach may receive points under the following criteria:

(1) Matching funds for street outreach. An Application may receive a maximum of three points if the Applicant commits

Matching funds equal to or greater than 110% of the total ESG funds requested for street outreach.

(2) Street outreach serving Homeless Subpopulations. An Application may receive a maximum of five points by proposing to serve persons who are in a Homeless Subpopulation, as defined in §7.2(31) of this title (relating to Definitions). An Applicant providing street outreach may receive a maximum of:

(A) One point based on a minimum target of 70% of persons served who are in one or more Homeless Subpopulation;

(B) Two points based on a minimum target of 80% of persons served who are in one or more Homeless Subpopulation;

(C) Three points based on a minimum target of 90% of persons served who are in one or more Homeless Subpopulation;

(D) Four points based on a minimum target of 95% of persons served who are in one or more Homeless Subpopulation; or

(E) Five points based on a minimum target of 100% of persons served who are in one or more Homeless Subpopulation.

(3) Street outreach exit to a positive housing destination. An Application may receive a maximum of five points based on the percentage of persons served within the 12 months prior to the Application due date who exited homelessness to a positive housing destination per HMIS data standards:

(A) Two points based on 25% of persons served with street outreach who exited to positive housing destinations;

(B) Three points based on 35% of persons served with street outreach who exited to positive housing destinations;

(C) Four points based on 45% of persons served with street outreach who exited to positive housing destinations; or

(D) Five points based on 55% of persons served with street outreach who exited to positive housing destinations.

(4) Street outreach staff qualifications. An Applicant may receive a maximum of six points if a member of the staff interacting with Program Participants in the street outreach component has one or more of the following qualifications:

(A) Two points if a member is a licensed mental health provider through the Texas Behavioral Executive Health Council;

(B) Two points if a member of staff is fluent in one or more languages identified in the Applicant's Language Access Plan as necessary to provide equitable, meaningful access for persons with Limited English Proficiency; and

(C) Two points if program includes a paid staff member who has formerly experienced homelessness.

(5) Street outreach temporary/transitional/permanent housing target. An Application may receive a maximum of three points based on the percentage of persons targeted to be served with street outreach who will be placed in temporary, transitional or permanent housing. An Application may receive a maximum of:

(A) One point based on a minimum target of 35% of persons served with street outreach who will be placed in temporary housing;

(B) Two points based on a minimum target of 45% of persons served with street outreach who will be placed in temporary housing; or

(C) Three points based on a minimum target of 55% of persons served with street outreach who will be placed in temporary housing.

(6) Street outreach services. An Application may receive a maximum of five points based on the number of street outreach services provided through ESG or other funds including engagement, case management, emergency health services, emergency mental health services, and transportation services. Emergency health services and emergency mental services may only be provided by ESG funds if these services are inaccessible or unavailable within the area. An Application may receive a maximum of:

(A) Two points if the Applicant provides street outreach engagement and case management;

(B) Three points if the Applicant provides street outreach engagement and case management, and one other service;

(C) Four points if the Applicant provides street outreach engagement and case management, and two other services; or

(D) Five points if the Applicant provides street outreach engagement and case management, and three other services.

(7) Experience providing street outreach. An Application may receive a maximum of 10 points based on the Applicant's experience providing street outreach services.

(A) Two points if the Applicant has provided street outreach for up to two years;

(B) Four points if the Applicant has provided street outreach for up to four years;

(C) Six points if the Applicant has provided street outreach for up to six years;

(D) Eight points if the Applicant has provided street outreach for up to eight years; or

(E) Ten points if the Applicant has provided street outreach for 10 or more years.

(c) Emergency shelter. An Application proposing emergency shelter may receive points under the following criteria:

(1) Matching funds for emergency shelter. An Application may receive a maximum of three points if the Applicant commits Matching funds equal to or greater than 110% of the total ESG funds requested for emergency shelter.

(2) Emergency shelter serving Homeless Subpopulations. An Application may receive a maximum of five points by proposing to serve persons who are in a Homeless Subpopulation, as defined in §7.2(31) of this title. An Applicant providing emergency shelter may receive a maximum of:

(A) One point based on a minimum target of 70% of persons served who are in one or more Homeless Subpopulation;

(B) Two points based on a minimum target of 80% of persons served who are in one or more Homeless Subpopulation;

(C) Three points based on a minimum target of 90% of persons served who are in one or more Homeless Subpopulation;

(D) Four points based on a minimum target of 95% of persons served who are in one or more Homeless Subpopulation; or

(E) Five points based on a minimum target of 100% of persons served who are in one or more Homeless Subpopulation.

(3) Emergency shelter exit to a positive housing destination. An Application may receive a maximum of five points based on the percentage of persons served within the 12 months prior to the Application due date exited homelessness to a positive housing destination per HMIS data standards:

(A) Two points based on 25% of persons served with emergency shelter who exited to positive housing destinations;

(B) Three points based on 35% of persons served with emergency shelter who exited to positive housing destinations;

(C) Four points based on 45% of persons served with emergency shelter who exited to positive housing destinations; or

(D) Five points based on 55% of persons served with emergency shelter who exited to positive housing destinations.

(4) Emergency shelter staff qualifications. An Applicant may receive a maximum of six points if a member of the staff interacting with Program Participants in the street outreach component has one or more of the following qualifications:

(A) Two points if a member is a licensed mental health provider through the Texas Behavioral Executive Health Council;

(B) Two points if a member of staff is fluent in one or more languages, other than English, identified in the Applicant's Language Access Plan as necessary to provide equitable, meaningful access for persons with Limited English Proficiency; and

(C) Two points if program includes a paid staff member who has formerly experienced homelessness.

(5) Emergency shelter permanent housing. An Applicant may receive a maximum of three points based on the percentage of persons served with emergency shelter targeted to be placed in permanent housing. An Application may receive a maximum of:

(A) One point based on a minimum target of 35% of persons served with emergency shelter who will be placed in permanent housing;

(B) Two points based on a minimum target of 45% of persons served with emergency shelter who will be placed in permanent housing; or

(C) Three points based on a minimum target of 55% of persons served with emergency shelter who will be placed in permanent housing.

(6) Emergency shelter services. An Applicant may receive a maximum of five points based on the number of emergency shelter services provided through ESG or other funds, as listed in 24 CFR §576.102. Emergency shelter services include case management, child care, education services, employment assistance and job training, outpatient health services, legal services, life skills training, outpatient mental health services, outpatient substance abuse treatment services, and transportation. Outpatient health services, mental services, and substance abuse treatment services should only be provided by ESG funds if these services are otherwise inaccessible or unavailable within the Service Area. This selection criterion will become a contractual requirement if the Applicant is awarded a Contract. An Application may receive a maximum of:

(A) Two points if the Applicant provides case management and two of the other services;

(B) Three points if the Applicant provides case management and three of the other services;

(C) Four points if the Applicant provides case management and four of the other services; or

(D) Five points if the Applicant provides case management and five of the other services.

(7) Experience providing emergency shelter. An Application may receive a maximum of 10 points based on the Applicant's experience providing emergency shelter services.

(A) Two points if the Applicant has provided emergency shelter for up to two years;

(B) Four points if the Applicant has provided emergency shelter for up to four years;

(C) Six points if the Applicant has provided emergency shelter for up to six years;

(D) Eight points if the Applicant has provided emergency shelter for up to eight years; or

(E) Ten points if the Applicant has provided emergency shelter for 10 or more years.

(d) Homelessness prevention. An Application proposing homelessness prevention may receive points under the following criteria:

(1) Matching funds for homelessness prevention. An Application may receive a maximum of three points if the Applicant commits Matching funds equal to or greater than 110% of the total ESG funds requested for homelessness prevention.

(2) Homelessness prevention serving Homeless Subpopulations. An Application may receive a maximum of five points by proposing to serve persons who are in a Homeless Subpopulation, as defined in §7.2(31) of this title. An Applicant providing homelessness prevention may receive a maximum of:

(A) One point based on a minimum target of 70% of persons served who have one or more special needs;

(B) Two points based on a minimum target of 80% of persons served who have one or more special needs;

(C) Three points based on a minimum target of 90% of persons served who have one or more special needs;

(D) Four points based on a minimum target of 95% of persons served who have one or more special needs; or

(E) Five points based on a minimum target of 100% of persons served who have one or more special needs.

(3) Homelessness prevention exit to a positive housing destination. An Application may receive a maximum of five points based on the percentage of persons served within the 12 months prior to the Application due date exited homelessness to a positive housing destination per HMIS data standards:

(A) Two points based on 25% of persons served with homelessness prevention who exited to positive housing destinations;

(B) Three points based on 35% of persons served with homelessness prevention who exited to positive housing destinations;

(C) Four points based on 45% of persons served with homelessness prevention who exited to positive housing destinations; or

(D) Five points based on 55% of persons served with homelessness prevention who exited to positive housing destinations.

(4) Homelessness prevention staff qualifications. An Applicant may receive a maximum of six points if a member of the staff interacting with Program Participants in the homelessness prevention component has one or more of the following qualifications:

(A) Two points if a member is a licensed mental health provider through the Texas Behavioral Executive Health Council;

(B) Two points if a member of staff is fluent in one or more languages, other than English, identified in the Applicant's Language Access Plan as necessary to provide equitable, meaningful access for persons with Limited English Proficiency; and

(C) Two points if program includes a paid staff member who has formerly experienced homelessness.

(5) Homelessness prevention maintaining housing. An Application may receive a maximum of three points based on the percentage of persons served with Homelessness prevention who are targeted to maintain their housing for three months or more after program exit. Applications may receive a maximum of:

(A) One point based on a minimum target of 50% of persons served with homelessness prevention maintaining housing for three months;

(B) Two points based on a minimum target of (60% of persons served with homelessness prevention maintaining housing for three months; or

(C) Three points based on a minimum target of 70% of persons served with homelessness prevention maintaining housing for three months.

(6) Homelessness prevention services and rental assistance. An Application may receive a maximum of five points based on the number of homeless prevention services and type of rental assistance provided through ESG or other funds. Homeless prevention services and rental assistance include rental application fees, security deposits and last month's rent, utility payments/deposits, moving costs, housing search and placement, housing stability case management, mediation, legal services, credit repair, short-term rental assistance, and medium-term rental assistance. An Application may receive a maximum of:

(A) Two points if the Applicant provides housing stability case management and three of the other services or rental assistance;

(B) Three points if the Applicant provides housing stability case management and four of the other services or rental assistance;

(C) Four points if the Applicant provides housing stability case management and five of the other services or rental assistance; or

(D) Five points if the Applicant provides housing stability case management and six of the other services or rental assistance.

(7) Experience providing homelessness prevention or rental assistance services. An Application may receive a maximum of 10 points based on the Applicant's experience providing homelessness prevention or tenant-based rental assistance services.

(A) Two points if the Applicant has provided homelessness prevention or tenant-based rental assistance services for up to two years;

(B) Four points if the Applicant has provided homelessness prevention or tenant-based rental assistance services for up to four years;

(C) Six points if the Applicant has provided homelessness prevention or tenant-based rental assistance services for up to six years;

(D) Eight points if the Applicant has provided homelessness prevention or tenant-based rental assistance services for up to eight years; or

(E) Ten points if the Applicant has provided homelessness prevention or tenant-based rental assistance services for 10 or more years.

(e) Rapid re-housing. An Application proposing rapid re-housing may receive points under the following criteria:

(1) Matching funds for rapid re-housing. Applications may receive a maximum of three points if the Applicant commits Matching funds equal to or greater than 110% of the total ESG funds requested for rapid re-housing.

(2) Rapid re-housing serving Homeless Subpopulations. An Application may receive a maximum of five points by proposing to serve persons who are in a Homeless Subpopulation, as defined in §7.2(31) of this title. Applicants providing rapid re-housing may receive a maximum of:

(A) One point based on a minimum target of 70% of persons served who are in one or more Homeless Subpopulation;

(B) Two points based on a minimum target of 80% of persons served who are in one or more Homeless Subpopulation;

(C) Three points based on a minimum target of 90% of persons served who are in one or more Homeless Subpopulation;

(D) Four points based on a minimum target of 95% of persons served who are in one or more Homeless Subpopulation; or

(E) Five points based on a minimum target of 100% of persons served who are in one or more Homeless Subpopulation.

(3) Rapid re-housing exit to a positive housing destination. An Application may receive a maximum of five points based on the percentage of persons served within the 12 months prior to the Application due date exited homelessness to a positive housing destination per HMIS data standards:

(A) Two points based on 25% of persons served with rapid re-housing exited to positive housing destinations;

(B) Three points based on 35% of persons served with rapid re-housing who exited to positive housing destinations;

(C) Four points based on 45% of persons served with rapid re-housing who exited to positive housing destinations; or

(D) Five points based on 55% of persons served with rapid re-housing who exited to positive housing destinations.

(4) Rapid re-housing staff qualifications. An Applicant may receive a maximum of six points if a member of the staff interacting with Program Participants in the rapid re-housing component has one or more of the following qualifications:

(A) Two points if a member is a licensed mental health provider through the Texas Behavioral Executive Health Council;

(B) Two points if a member of staff is fluent in one or more languages, other than English, identified in the Applicant's Language Access Plan as necessary to provide equitable, meaningful access for persons with Limited English Proficiency; and

(C) Two points if program includes a paid staff member who has formerly experienced homelessness.

(5) Rapid re-housing maintaining housing. Applicants may receive a maximum of three points based on the percentage of persons served with rapid re-housing targeted to maintain their housing for three months or more after program exit. Applications may receive a maximum of:

(A) One point based on a minimum target of 50% of persons served with rapid re-housing maintaining housing for three months;

(B) Two points based on a minimum target of 60% of persons served with rapid re-housing maintaining housing for three months; or

(C) Three points based on a minimum target of 70% of persons served with rapid re-housing maintaining housing for three months.

(6) Rapid re-housing services and rental assistance. Applicants may receive a maximum of five points based on the number of rapid re-housing services and type of rental assistance provided through ESG or other funds. Rapid re-housing services and rental assistance include rental application fees, security deposits/last month's rent, utility payments/deposits, moving costs, housing search and placement, housing stability case management, mediation, legal services, credit repair, short-term rental assistance, medium-term rental assistance. Applications may receive a maximum of:

(A) Two points if the Applicant provides housing stability case management and three of the other services or rental assistance;

(B) Three points if the Applicant provides housing stability case management and four of the other components;

(C) Four points if the Applicant provides housing stability case management and five of the other components; or

(D) Five points if the Applicant provides housing stability case management and six of the other components.

(7) Experience providing rapid re-housing or tenant-based rental assistance services. Applications may receive a maximum of 10 points based on the Applicant's experience providing homeless prevention or tenant-based rental assistance services.

(A) Two points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for up to two years;

(B) Four points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for up to four years;

(C) Six points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for up to six years;

(D) Eight points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for up to eight years; or

(E) Ten points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for 10 or more years.

§7.41. Contract Term, Expenditure Benchmark, Return of Funds, and Performance Targets.

(a) The initial Contract Term for ESG funds may not exceed 12 months, unless otherwise approved by the Board for a federally-funded Special Allocation Program. All funds awarded under the Contract must be expended by the Subrecipient on or before the expiration of the Contract, unless an extension has been granted in accordance with this section. A request to extend the Contract Term must show evidence that the extension is necessary to provide services required under the Contract, and provide good cause for failure to timely expend the funds. Extensions of Contract Terms are considered on a case-by-case basis, but are subject to §7.4(e) of this title (relating to Amendments and Extensions of Contracts).

(1) The Executive Director or his or her designee may approve an extension to the ESG Contract Term of up to six months from the original Contract Term.

(2) Board approval is required if the Subrecipient requests to extend an ESG Contract Term for more than six months from the original Contract Term.

(3) Amendments of Expenditure requirements will not be granted by the Executive Director or the Board when such action would cause the Department to miss a federal Expenditure deadline.

(b) Subrecipient is required to have reported Expenditures in its Monthly Expenditure Reports reflecting at least 50% of the Contracted funds by month nine of the original Contract Term. A Subrecipient that has not met this Expenditure benchmark must submit a plan to the Department evidencing the ability of the Subrecipient to expend the remaining funds by the expiration of the original Contract Term. This Expenditure benchmark may not be extended though amendment.

(c) Not later than 60 days prior to the end of the Contract Term, a Subrecipient may submit a written request to voluntarily return some or all of its funds to the Department. Voluntary return of funds prior to the Expenditure benchmark constitutes a reduction in the awarded amount, and returned funds at or prior to the Expenditure benchmark will not be considered deobligated funds for the purpose of future funding recommendations. Subrecipient must return any funds that would result in a violation of the administrative and HMIS expenditure limits of the Contract, as outlined in §7.33(f) of this title (relating to Apportionment of ESG Funds) prior to approval of a request to voluntarily deobligate funds for any Program Participant services.

(d) Funds remaining at the end of Contract which are not reflected in the last Monthly Expenditure Report will be automatically deobligated. Deobligation of funds may affect future funding recommendations.

(e) The Department may request information regarding the performance or status of a Contract prior to the Expenditure benchmark, at various times during the Contract, or during the record retention period. Subrecipient must respond within the time limit stated in the request. Prolonged or repeated failure to respond may result in suspension of funds, termination of the Contract by the Department, and could impact future funding recommendations.

(f) If additional funds become available through returned or deobligated amounts from an award made under the allocation formula or program income generated from an award made under the allocation formula, the funds may be offered to ESG Subrecipients with active Contracts that have not been amended to extend the Contract Term. Returned or deobligated funds will be offered with priority given to ESG Subrecipients with the highest Expenditure rate as of the most recent Monthly Expenditure Report. However, funds may not be offered to any Subrecipient that returned funds, or from whom funds were deobligated. The Executive Director or designee may increase the Contract of an ESG Subrecipient or authorize a new Contract with a Subrecipient by up to 25% of the original Contract amount. The increase of reallocated funds may not exceed 25% of the initial Contract award, unless approved by the Board.

(g) Funds that have been returned more than once or returned less than three months before the federal Expenditure deadline may be retained by the Department.

(h) The Contract will reflect the Performance Targets that were utilized as selection criteria for the award of funds. Requests to amend Performance Targets may not be submitted less than 60 days prior to the end of the Contract Term. Requests to amend Performance Targets will not be granted if such an amendment would have precluded the award to the Subrecipient.

§7.42. General Administrative Requirements.

(a) Subrecipient must have written policies and procedures to ensure that sufficient records are established and maintained to enable a determination that applicable federal and state requirements are met. The written standards must be applied consistently for all Program Participants. Written policies must include, but not be limited to, Inclusive Marketing outlined in §7.10 of this title (relating to Inclusive Marketing).

(b) Subrecipient must obtain the correct level of environmental clearance prior to expenditure of funds. Activities for which the Subrecipient does not properly complete the Department's environmental review process are ineligible, and funds will not be reimbursed or will be required to be repaid.

(c) Subrecipient is prohibited from charging occupancy fees for emergency shelter activities supported by funds covered by this subchapter.

(d) If a Private Nonprofit Organization Subrecipient wishes to expand the geographic scope of its emergency shelter activities after Contract execution, an updated certification of approval from the Unit of General Purpose Local Government with jurisdiction over the updated Service Area must be submitted to the Department before funds are spent on emergency shelter in those areas.

(e) Subrecipient must document compliance with the shelter and housing standards per 24 CFR §576.500(j) and (k), including but not limited to, maintaining sufficient construction and shelter inspection reports.

(f) Rental developments must comply with all construction or operational requirements governing the development or program to which funds are comingled, and must comply with local health and safety codes.

(g) Subrecipient may be required to complete Contract orientation training prior to submission of the first Monthly Expenditure Report. Subrecipient must also complete training as requested by the Department in response to Findings or other issues identified while managing the Contract.

(h) Subrecipient must develop and establish written procurement procedures that comply with federal, State, and local procurement requirements. A conflict of interest related to procurement is prohibited by 2 CFR §200.317-318 or Chapter 171 of the Local Government Code, as applicable.

(i) In instances where a potential conflict of interest exists related to a beneficiary of assistance to a Program Participant, Subrecipient must submit a request to the Department to grant an exception to any conflicts prohibited using the procedures at 24 CFR §576.404. The request submitted to the Department must include a disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict, a description of how the public disclosure was made, and an attorney's opinion that the conflict does not violate State or local law. No funds will be committed to assist a Household until HUD has granted an exception.

(j) Subrecipient will comply with the requirements under 24 CFR §576.409, "Protection for victims of domestic violence, dating violence, sexual assault, or stalking."

(1) Compliance with 24 CFR §576.409 includes, but is not limited to, providing two Departmental forms called "Notice of Occupancy Rights under the Violence Against Women Act" based on HUD form 5380 and "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking," HUD form 5382, to each of the following:

(A) All applicants for short- and medium-term rental assistance at the time of admittance or denial;

(B) Program Participants of short- and medium-term rental assistance prior to execution of a Rental Assistance Agreement;

(C) Program Participants of short- and medium-term rental assistance with any notification of eviction or notification of termination of assistance; and

(D) Program Participants of short- and medium-term rental assistance either during an annual Recertification or lease renewal process, whichever is applicable.

(2) Subrecipient will adopt and follow an Emergency Transfer Plan based on HUD's model Emergency Transfer Plan, pursuant to 24 CFR §5.2005(e). Within three calendar days after Program Participants request transfers, Subrecipient will inform Program Participants of their eligibility under their Emergency Transfer Plan and keep records of all outcomes.

§7.43. Program Income.

(a) Program income is gross income received by the Subrecipient or its Affiliates directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. Program income includes but is not limited to: income from fees for services performed, the use or rental of real or personal property acquired under this award, the sale of commodities or items fabricated under this award, and from payments of principal and interest on loans made with this award, where authorized. Except as outlined in the Contract, Program income does not include interest on federal grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

(b) Program income received and expended during the Contract Term will count toward meeting the Subrecipient's Matching requirements, per 24 CFR §576.201(f), provided the costs are eligible costs that supplement the program.

(c) Security and utility deposits paid on behalf of a Program Participant should be treated as a grant to the Program Participant. The deposit must remain with the Program Participant, and if returned, is to be returned only to the Program Participant. If the landlord or the utility service provider requires that the deposit be returned to the Subrecipient, Affiliate, Subcontractor, or Subgrantee, the deposit is program income, and must be treated as described in this subsection.

(d) In accounting for program income, the Subrecipient must accurately reflect the receipt of such funds separate from the receipt of federal funds and Subrecipient funds.

(e) Program income that is received after the end of the Contract Term, or not expended within the Contract Term, along with program income received two years following the end of the Contract Term must be returned to the Department within 10 calendar days of receipt. Income directly generated by a grant-supported activity after the two year period is no longer program income and may be retained by the Subrecipient.

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 January 16, 2026.

TRD-202600166
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: March 1, 2026
For further information, please call: (512) 475-3959

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CHAPTER 10. UNIFORM MULTIFAMILY RULES

SUBCHAPTER E. POST AWARD AND ASSET MANAGEMENT REQUIREMENTS

10 TAC §§10.400, 10.401, 10.405 - 10.408

The Texas Department of Housing and Community Affairs (the Department) proposes amendments to 10 TAC Chapter 10, Subchapter E, §10.400 Purpose, §10.401 Housing Tax Credit and Tax Exempt Bond Developments, §10.405 Amendments and Extensions, §10.406 Ownership Transfers, §10.407 Right of First Refusal, and §10.408 Qualified Contract Requirements. The purpose of the proposed amendments is to make corrections to gain consistency across other sections of rule, clarify existing language and processes that will ensure accurate processing of post award activities, and to communicate more effectively with multifamily Development Owners regarding their responsibilities after funding or award by the Department.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

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

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

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the amendments would be in effect, the amendments do not create or eliminate a government program, but relate to changes to an existing activity, concerning the post award activities of Low Income Housing Tax Credit (LIHTC) and other Department-funded multifamily Developments.

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

3. The amendments do not require additional future legislative appropriations.

4. The amendments do not result in an increase in fees paid to the Department or in a substantial decrease in fees paid to the Department.

5. The amendments are not creating a new regulation, but propose revisions to provide additional clarification. The purpose of the amendment to §10.401(b) is to ensure that Third Party construction inspections are not altered by other parties. The amendments to §10.405 are to be consistent with the removal of the experience requirement from §11.204 of the Qualified Allocation Plan; to add amendments to Contracts; to identify when an amendment to the LURA for an expiration of an Elderly restriction can be considered non-material; to identify that a request to opt into the updated 24 CFR Part 92 (2025 HOME final rule) in accordance with §10.601(g) of this chapter pertaining to Compliance Monitoring Objectives and Applicability would be a non-material amendment to the Contract; and require Development Owners to provide an explanation when a LURA amendment pertains to a right enforceable by a tenant or other third party. The amendments to §10.406(b) are to meet the requirement in the 2025 HOME final rule that requires tenants to be notified within 30 calendar days prior to a foreclosure and to require the notification to include the rent/income requirements post foreclosure; to require a Community Housing Development Organization (CHDO) to renew their certification using the new certification package that includes the 2025 HOME final rule requirements; and to add clarification that additional notification requirements may apply under §10.607 of this Chapter pertaining to Reporting Requirements. The amendments to §10.407 are to state that the right of first refusal process will not be required when the Multifamily Direct Loan LURA requires a new Owner to be a CHDO, but the Development is subject to the 2025 HOME final rule as identified in §10.601(g) of this chapter pertaining to Compliance Monitoring Objectives and Applicability, and the Development Owner is selling or conveying the Development to another CHDO approved by the Department, and to state that if a Multifamily Direct Loan LURA requires a 60-day posting and is subject to the 20205 HOME final rule as identified in §10.601(g) of this chapter pertaining to Compliance Monitoring Objectives and Applicability, then a CHDO approved by the Department may submit an offer to purchase the property. The purpose of including §§10.400 and 10.408 are to allow public comment on these sections to meet the four-year rule review requirement specified in Tex. Gov't Code §2001.039.

6. The amendments will not repeal an existing regulation.

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

8. The amendments 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.

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. This rule relates to the procedures for the handling of post award and asset management activities of multifamily Developments awarded funds through various Department programs. Other than in the case of a small or micro-business that is an owner or a party to one of the Department's properties, no small or micro-businesses are subject to the rule. If a small or micro-business is such an owner or participant, the new rule provides for a more clear, transparent process for doing so and do not result in a negative impact for those small or micro-busi-

nesses. There are not likely to be any rural communities subject to the amendments because this rule is applicable only to the owners or operators of properties in the Department's portfolio, not municipalities.

3. The Department has determined that because this rule relates only to the process in use for the post award and asset management activities of the Department's portfolio, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The amendments do not contemplate or authorize a taking 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 there will be no economic effect on local employment, because this rule only provides for administrative processes required of properties in the Department's portfolio. No program funds are channeled through this rule, so no activities under this rule would support additional local employment opportunities. Alternatively, the rule would also not cause any negative impact on employment. Therefore, no local employment impact statement is required to be prepared for the rule.

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 no impact is expected on a statewide basis, there are also no "probable" effects of the new rule on particular geographic regions.

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 amendments are in effect, the benefit anticipated as a result of the amended sections would be increased clarity and consistency across rule sections. There will not be economic costs to individuals required to comply with the amendment.

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

REQUEST FOR PUBLIC COMMENT AND INFORMATION RELATED TO COST, BENEFIT OR EFFECT. The Department requests comments on the rule and also requests information related to the cost, benefit, or effect of the proposed rule, including 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 will be held January 30, 2026, to March 3, 2026, to receive input on the proposed amended sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Lee Ann Chance, Asset Management Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email to leeann.chance@tdhca.texas.gov. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Central Time, on March 3, 2026.

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

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

§10.400. Purpose.

(a) The purpose of this subchapter is to establish the requirements governing the post award and asset management activities associated with awards of multifamily Development assistance pursuant to Tex. Gov't Code, Chapter 2306 and its regulation of multifamily funding provided through the Texas Department of Housing and Community Affairs (the Department [~~"Department"~~]) as authorized by the legislature. This subchapter is designed to ensure that Developers and Development Owners of low-income Developments that are financed or otherwise funded through the Department maintain safe, decent and affordable housing for the term of the affordability period. Therefore, unless otherwise indicated in the specific section of this subchapter, any uncorrected issues of noncompliance outside of the corrective action period or outstanding fees (related to the Development subject to the request) owed to the Department must be resolved to the satisfaction of the Department before a request for any post award activity described in this subchapter will be acted upon. Non-compliance issues that cannot be corrected will be taken into account and will be reviewed by Asset Management staff to determine if additional action is required by the Development Owner.

(b) The capitalized terms in this subchapter shall have the meaning as defined in this title in Chapter 1 relating to Administration, Chapter 2 relating to Enforcement, Chapter 10 relating to Uniform Multifamily Rules, Chapter 11 relating to the Qualified Action Plan (QAP), Chapter 12 relating to the Multifamily Housing Revenue Bond Rules, Chapter 13 relating to the Multifamily Direct Loan Rule, Tex. Gov't Code Chapter 2306, Internal Revenue Code (the Code) §42, the applicable HOME [~~Final~~] Rule, the NHTF Interim Rule, and other federal or Department rules, as applicable.

§10.401. Housing Tax Credit and Tax Exempt Bond Developments.

(a) 10% Test (Competitive HTC Only). No later than July 1 of the year following the submission of the Carryover Allocation Agreement or as otherwise specified in the applicable year's Qualified Allocation Plan, documentation must be submitted to the Department verifying that the Development Owner has expended more than 10% of the Development Owner's reasonably expected basis, pursuant to §42(h)(1)(E)(i) and (ii) of the Code and Treasury Regulations, 26 CFR §1.42-6. The Development Owner must submit, in the form prescribed by the Department, documentation evidencing paragraphs (1) - (7) of this subsection, along with all information outlined in the Post Award Activities Manual. Satisfaction of the 10% Test will be contingent upon the submission of the items described in paragraphs (1) - (7) of this subsection as well as all other conditions placed upon the Application in the Commitment. Requests for an extension will be reviewed on a case by case basis as addressed in §10.405(c) of this subchapter and §11.2 of this title, as applicable, and a point deduction evaluation will be completed in accordance with Tex. Gov't Code §2306.6710(b)(2) and §11.9(f) of this title. Documentation to be submitted for the 10% Test includes:

(1) An Independent Accountant's Report and Taxpayer's Basis Schedule form. The report must be prepared on the accounting firm's letterhead and addressed to the Development Owner or an Affiliate of the Development Owner. The Independent Accountant's Report and Taxpayers Basis Schedule form must be signed by the Development Owner. If, at the time the accountant is reviewing and preparing

their report, the accountant has concluded that the taxpayer's reasonably expected basis is different from the amount reflected in the Carryover Allocation agreement, then the accountant's report should reflect the taxpayer's reasonably expected basis as of the time the report is being prepared;

(2) Any conditions of the Commitment or Real Estate Analysis underwriting report due at the time of 10% Test submission;

(3) Evidence that the Development Owner has purchased, transferred, leased, or otherwise has ownership of the Development Site and a current title policy. The Development Site must be identical to the Development Site that was submitted at the time of Application submission. For purposes of this paragraph, any changes to the Development Site acreage between Application and 10% Test must be addressed by written explanation or, as appropriate, in accordance with §10.405 of this subchapter (relating to Amendments and Extensions);

(4) 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 flood plain boundary lines and show all easements and encroachments;

(5) For New Construction, Reconstruction, and Adaptive Reuse Developments, a certification from a Third Party civil engineer or architect stating that all necessary utilities will be available at the Development Site and that there are no easements, licenses, royalties, or other conditions on or affecting the Development that would materially or adversely impact the ability to acquire, develop, and operate as set forth in the Application. Copies of supporting documents may be required by the Department;

(6) For the Development Owner and on-site or regional property manager, training certificate(s) from a Department approved "property owner and manager Fair Housing trainer" showing that a controlling Principal in the Development Owner structure and an on-site or regional property manager attended and passed at least five hours of Fair Housing training. For architects and engineers, training certificate(s) 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. Certifications required under this paragraph must not be older than three years from the date of submission of the 10% Test Documentation, 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; and

(7) A Certification from the lender and syndicator identifying all known Guarantors. If identified Guarantors have changed from the Guarantors or Principals identified at the time of Application, a non-material amendment may be required in accordance with §10.405 of this subchapter (relating to Amendments and Extensions), and the new Guarantors or Principals must be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee).

(8) Evidence of submission of the CMTS Filing Agreement pursuant to §10.607(a) of this title (relating to Reporting Requirements).

(b) Construction Status Report (All Multifamily Developments). All multifamily Developments must submit a construction status report. Construction status reports shall be due by the tenth day of the month following each reporting quarter's end (January, April, July, and October) and continue on a quarterly basis until the entire Development is complete as evidenced by one of the following: Certificates of occupancy for each building, the Architect's Certificate(s) of Substantial Completion (AIA Document G704 or equivalent form) for the entire Development, the final Application and Certificate for Payment (AIA Document G702 and G703), or an equivalent form approved for submission by the construction lender and/or investor. For Competitive Housing Tax Credit Developments, the initial report is due by October 10th following the year of award (this includes Developments funded with HTC and TDHCA Multifamily Direct Loans), and for Developments awarded under the Department's Multifamily Direct Loan programs only, the initial report is due by the 90th calendar day after loan closing. For Tax Exempt Bond Developments, the initial construction status report must be submitted as part of the Post Bond Closing Documentation and is due by the 60th calendar day following closing on the bonds. A Construction Status Report not submitted by the due date will incur an extension fee in accordance with §11.901 of this title (relating to Fee Schedule). The initial report for all multifamily Developments shall consist of the items identified in paragraphs (1) - (6) of this subsection, unless stated otherwise. All subsequent reports shall contain items identified in paragraphs (4) - (6) of this paragraph and must include any changes or amendments to items in paragraphs (1) - (3) of this subsection if applicable:

(1) The executed partnership agreement with the investor or, for Developments receiving an award only from the Department's Direct Loan Program, other documents setting forth the legal structure and ownership. If identified Guarantors or Principals of a Guarantor entity were not already identified as a Principal of the Owner, Developer, or Guarantor at the time of Application, a non-material amendment must be requested in accordance with §10.405 of this subchapter, and the new Guarantors and all of its Principals, as applicable, must be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee);

(2) The executed construction contract for the General Contractor, prime subcontractor(s) and Affiliates or Related Party subcontractor(s);

(3) The construction loan agreement. If the loan has not closed, the anticipated closing date must be provided and, upon closing, the agreement must be provided to the Department;

(4) The most recent Application and Certificate for Payment (AIA Document G702 and G703) certified by the Architect of Record (or equivalent form approved for submission by the construction lender and/or investor) for the General Contractor, prime subcontractor(s) and Affiliates or Related Party subcontractor(s);

(5) All Third Party construction inspection reports not previously submitted. If the lender and/or investor does not require third party construction inspection reports, the Development Owner must hire a Third Party [~~third party~~] Party inspector to perform these inspections on a quarterly basis, and the Third Party inspector, or Third Party lender or investor, must [~~and~~] submit the inspection reports to the Department. Third Party construction inspection reports must include, at a minimum, the date construction started (initial submission only), a discussion of site conditions as of the date of the site visit, current photographs of the construction site and exterior and interior of buildings, an estimated percentage of construction completion as of the date of the site visit, identification of construction delays and other relevant progress issues, if any, and the anticipated construction completion date; and

(6) Minority Owned Business Report (HTC only) showing the 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 required and further described in Tex. Gov't Code §2306.6734.

(c) LURA Origination.

(1) The Development Owner must request origination of the HTC LURA as directed in the Post Award Activities Manual. The Department will draft a LURA for the Development Owner that will impose the income and rent restrictions identified in the Development's final underwriting report and other representations made in the Application, including but not limited to specific commitments to provide tenant services, to lease to Persons with Disabilities, and/or to provide specific amenities. After origination, the Department executed LURA and all exhibits and addendums will be sent to the Development Owner to execute and record in the real property records for the county in which the Development is located. A copy of the fully executed, recorded LURA must be returned to the Department no later than the end of the first year of the Credit Period. In general, no Housing Tax Credits are allowed to be issued for a building unless there is a properly executed and recorded LURA in effect at the end of the first year of the Credit Period. Nothing in this section negates a Development Owner's responsibility for full compliance with §42(h)(6) of the Code. The Department will not issue IRS Form(s) 8609 until it receives a copy of the fully executed, recorded LURA.

(2) LURAs for Direct Loan awardees will be prepared by the Department's Legal Division and executed at loan closing.

(d) Cost Certification (Competitive and Non-Competitive HTC, and related activities only). The Department conducts a feasibility analysis in accordance with §42(m)(2)(C)(i)(III) of the Code and Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy) to make a final determination on the allocation of Housing Tax Credits. For Non-Competitive HTC Developments, the amount of tax credits reflected in the IRS Form(s) 8609 may be greater or less than the amount set forth in the Determination Notice based upon the Department's determination as of each building's placement in service. Any increase of tax credits will only be permitted if it is determined necessary by the Department, as required by §42(m)(2)(D) of the Code through the submission of the Cost Certification package. Increases to the amount of tax credits that exceed 120% of the amount of credits reflected in the Determination Notice must be approved by the Board. Increases to the amount of tax credits that do not exceed 120% of the amount of credits reflected in the Determination Notice may be approved administratively by the Executive Director or designee. All credit increases are subject to the Tax-Exempt Bond Credit Increase Request Fee as described in Chapter 11, Subchapter E of this Part (relating to Fee Schedule, Appeals, and other Provisions). The requirements for cost certification include those identified in paragraphs (1) - (3) of this subsection.

(1) For Competitive HTC Developments, Development Owners must file cost certification documentation no later than January 15 following the first year of the Credit Period, as defined in §42(f)(1) of the Code. For Tax-Exempt Bond Developments, Development Owners must file cost certification documentation no later than May 15 following the first year of the Credit Period.

(2) The Department will evaluate the cost certification documentation and notify the Development Owner of any additional required documentation needed to complete the review. The Department reserves the right to request additional documents or certifications as it deems necessary or useful in the determination of the Development's eligibility for a final Housing Tax Credit allocation amount. Any communication issued to the Development Owner pertaining to the cost certification documentation may also be sent to the syndicator. In accordance with Tex. Gov't Code §2306.6724(g), IRS Form(s) 8609 will be issued no later than the 120th day following the date on which the Department receives a complete cost certification package, and the Development Owner has fulfilled any requests for information.

(3) The cost certification package must meet the conditions as stated in subparagraphs (A) - (G) of this paragraph. The Development Owner has:

(A) Provided evidence that all buildings in the Development have been placed in service by:

(i) December 31 of the year the Commitment was issued;

(ii) December 31 of the second year following the year the Carryover Allocation Agreement was executed; or

(iii) the approved Placed in Service deadline;

(B) Provided a complete final cost certification package in the format prescribed by the Department. As used herein, a complete final cost certification package means a package that meets all of the Department's criteria with all required information and exhibits listed in clauses (i) - (xxxiv) of this subparagraph, and pursuant to the Post Award Activities Manual. If any item on this list is determined to be unclear, deficient, or inconsistent with the cost certification review completed by the Department, a Request for Information (RFI) will be sent to the Development Owner. Requirements include:

(i) Owner's signed and notarized Statement of Certification verifying the CPA firm's licenses and validity, including any restrictions;

(ii) Owner Summary & Organization Charts for the Owner, Developer, and Guarantors;

(iii) Evidence of Qualified Nonprofit or CHDO Participation;

(iv) Certification and evidence of Historically Underutilized Business (HUB) Participation;

(v) Development Team List;

(vi) Development Summary with Architect's Certification;

(vii) Development Change Documentation;

(viii) As Built Survey;

(ix) A copy of the fully executed Closing Statement for each parcel of land and/or buildings purchased and included in the Development;

(x) Development Owner's Title Policy for the Development;

(xi) Title Policy Update;

(xii) Placement in Service;

(xiii) Evidence of Placement in Service;

(xiv) Architect's Certification of Completion Date and Date Ready for Occupancy (for Developments located in areas where Certificates of Occupancy (COs) are not issued by a local government or rehabilitation Developments that cannot provide COs);

(xv) Auditor's Certification of Acquisition/Rehabilitation Placement in Service Election;

(xvi) Independent Auditor's Report;

(xvii) Independent Auditor's Report of Bond Financing;

(xviii) Development Cost Schedule;

(xix) Contractor's Application for Final Payment (G702/G703) for the General Contractor, all prime subcontractors, Affiliated Contractors, and Related Party Contractors;

(xx) Additional Documentation of Offsite Costs;

(xxi) Rent Schedule;

(xxii) Utility Allowances;

(xxiii) Annual Operating Expenses;

(xxiv) 30 Year Rental Housing Operating Pro Forma;

(xxv) Current Operating Statement in the form of a trailing twelve month statement;

(xxvi) Current Rent Roll;

(xxvii) Summary of Sources and Uses of Funds;

(xxviii) Final Limited Partnership Agreement with all amendments and exhibits;

(xxix) All Loan Agreements and Promissory Notes (except for Agreements and Notes issued directly by the Department);

(xxx) Architect's Certification of Accessibility Requirements;

(xxxi) Development Owner Assignment of Individual to Compliance Training;

(xxxii) TDHCA Compliance Training Certificate (not older than two years from the date of cost certification submission);

(xxxiii) TDHCA Final Inspection Clearance Letter or evidence of submitted final inspection request to the Compliance Division (IRS Form(s) 8609 will not be issued without a TDHCA Final Inspection Clearance Letter); and

(xxxiv) Other Documentation as Required, including but not limited to conditions to be satisfied at cost certification as reflected in the Development's latest Underwriting Report;

(C) Informed the Department of and received written approval for all amendments, extensions, and changes in ownership relating to the Development in accordance with §10.405 of this subchapter (relating to Amendments and Extensions) and §10.406 of this subchapter (relating to Ownership Transfers (§2306.6713));

(D) Paid all applicable Department fees, including any past due fees;

(E) Met all conditions noted in the Department underwriting report, Determination Notice, and Commitment;

(F) Corrected all issues of noncompliance, including but not limited to noncompliance status with the LURA (or any other document containing an Extended Low-income Housing Commitment) or the program rules in effect for the subject Development, as described in this chapter. Developments in the corrective action period and/or with any uncorrected issues of noncompliance outside of the corrective action period will not be issued IRS Form(s) 8609s until all events of noncompliance are corrected or otherwise approved by the Executive Director or designee; and

(G) Completed an updated underwriting evaluation in accordance with Chapter 11, Subchapter D of this Part based on the most current information at the time of the review.

§10.405. Amendments and Extensions.

(a) Amendments to Housing Tax Credit (HTC) Application or Award Prior to Land Use Restriction Agreement (LURA) recording or amendments that do not result in a change to the LURA (§2306.6712). The Department expects the Development Owner to construct or rehabilitate, operate, and own the Development consistent with the representations in the Application. The Department must receive notification of any amendments to the Application. Regardless of development stage, the Board shall re-evaluate a Development that undergoes a material change, as identified in paragraph (3) of this subsection at any time after the initial Board approval of the Development (§2306.6731(b)). The Board may deny an amendment request and subsequently may rescind any Commitment or Determination Notice issued for an Application, and may reallocate the credits to other Applicants on the waiting list.

(1) Requesting an amendment. The Department shall require the Applicant to file a formal, written request for an amendment to the Application. Such request must include a detailed explanation of the amendment request and other information as determined to be necessary by the Department, and the applicable fee as identified in Chapter 11, Subchapter E of this title (relating to Fee Schedule, Appeals, and other Provisions) in order to be received and processed by the Department. Department staff will evaluate the amendment request to determine if the change would affect an allocation of Housing Tax Credits by changing any item that received points, by significantly affecting the most recent underwriting analysis, or by materially altering the Development as further described in this subsection.

(2) Notification Items. The Department must be notified of the changes described in subparagraphs (A) - (F) of this paragraph. The changes identified are subject to staff agreement based on a review of the amendment request and any additional information or documentation requested. Notification items will be considered satisfied when an acknowledgment of the specific change(s) is received from the Department and include:

(A) Changes to Development Site acreage required by the City or other local governmental authority, or changes resulting from survey discrepancies, as long as such change does not also result in a modification to the residential density of more than 5%;

(B) Minor modifications to the site plan that will not significantly impact development costs, including, but not limited to, relocation or rearrangement of buildings on the site (as long as the number of residential and non-residential buildings remains the same), and movement, addition, or deletion of ingress/egress to the site;

(C) Increases or decreases in net rentable square footage or common areas that do not result in a material amendment under paragraph (4) of this subsection;

(D) Changes in amenities that do not require a change to the recorded LURA and do not negatively impact scoring, including changes to outdated amenities that could be replaced by an amenity with equal benefit to the resident community;

(E) Changes in Developers or Guarantors (notifications for changes in Guarantors that are also the General Contractor or are only providing guaranties during the construction period are not required) with no new Principals (who were not previously checked by Previous Participation review [~~that retain the natural person(s) used to meet the experience requirement in Chapter 11 of this title (relating to Qualified Allocation Plan)~~]); and

(F) Any other amendment not identified in paragraphs (3) and (4) of this subsection.

(3) Non-material amendments. The Executive Director or designee may administratively approve all non-material amendments, including, but not limited to:

(A) Any amendment that is determined by staff to exceed the scope of notification acknowledgement, as identified in paragraph (2) of this subsection but not to rise to a material alteration, as identified in paragraph (4) of this subsection;

(B) Changes in Developers or Guarantors (excluding changes in Guarantors that are also the General Contractor or are only providing guaranties during the construction period) not addressed in §10.405(a)(2)(E). Changes in Developers or Guarantors will be subject to Previous Participation requirements as further described in Chapter 11 of this title and the credit limitation described in §11.4(a) of this title; and

(C) For Exchange Developments only, requests to change elections made on line 8(b) of the IRS Form(s) 8609 to group buildings together into one or more multiple building projects. The request must include an attached statement identifying the buildings in the project. The change to the election may only be made once during the Compliance Period.

(4) Material Amendments [~~amendments~~]. Amendments considered material pursuant to this paragraph must be approved by the Board. When an amendment request requires Board approval, the Development Owner must submit the request and all required documentation necessary for staff's review of the request to the Department at least 45 calendar days prior to the Board meeting in which the amendment is anticipated to be considered. Before the 15th day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and Department staff regarding the amendment will be posted to the Department's website and the Applicant will be notified of the posting (§2306.6717(a)(4)). Material Amendment requests may be denied if the Board determines that the modification proposed in the amendment would materially alter the Development in a negative manner or would have adversely affected the selection of the Application in the Application Round. Material alteration of a Development includes, but is not limited to:

(A) A significant modification of the site plan;

(B) A modification of the number of Units or bedroom mix of Units;

(C) A substantive modification of the scope of tenant services;

(D) A reduction of 3% or more in the square footage of the Units or common areas;

(E) A significant modification of the architectural design of the Development;

(F) A modification of the residential density of at least 5%;

(G) A request to implement a revised election under §42(g) of the Code prior to filing of IRS Form(s) 8609;

(H) Exclusion of any requirements as identified in Chapter 11, Subchapter B of this title (relating to Site and Development Requirements and Restrictions) and Chapter 11, Subchapter C of this title (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules); or

(I) Any other modification considered material by the staff and therefore required to be presented to the Board as such.

(5) Amendment requests will be denied if the Department finds that the request would have changed the scoring of an Application in the competitive process such that the Application would not have received a funding award or if the need for the proposed modification was reasonably foreseeable or preventable by the Applicant at the time the Application was submitted, unless good cause is found for the approval of the amendment.

(6) This section shall be administered in a manner that is consistent with §42 of the Code. If a Development has any uncorrected issues of noncompliance outside of the corrective action period (other than the provision being amended) or otherwise owes fees to the Department, such non-compliance or outstanding payment must be resolved to the satisfaction of the Department before a request for amendment will be acted upon.

(7) In the event that an Applicant or Developer seeks to be released from the commitment to serve the income level of tenants identified in the Application and Credit Underwriting Analysis Report at the time of award and as approved by the Board, the procedure described in subparagraphs (A) and (B) of this paragraph will apply to the extent such request is not prohibited based on statutory and/or regulatory provisions:

(A) For amendments that involve a reduction in the total number of Low-Income Units, or a reduction in the number of Low-Income Units at any rent or income level, as approved by the Board, evidence noted in either clause (i) or (ii) of this subparagraph must be presented to the Department to support the amendment:

(i) In the event of a request to implement (rent to a household at an income or rent level that exceeds the approved AMI limits established by the minimum election within the Development's Application or LURA) a revised election under §42(g) of the Code prior to an Owner's submission of IRS Form(s) 8609 to the IRS, Owners must submit updated information and exhibits to the Application as required by the Department; or

(ii) For all other requests for reductions in the total number of Low-Income Units or reductions in the number of Low-Income Units at any rent or income level, prior to issuance of IRS Form(s) 8609 by the Department, the lender and syndicator must submit written confirmation that the Development is infeasible without the adjustment in Units. The Board may or may not approve the amendment request; however, any affirmative recommendation to the Board is contingent upon concurrence from Department staff that the Unit adjustment is necessary for the continued financial feasibility of the Development; and

(B) If it is determined by the Department that the loss of low-income targeting points would have resulted in the Application not receiving an award in the year of allocation, and the amendment is approved by the Board, the approved amendment will carry a penalty that prohibits the Applicant and all Persons or entities with any ownership interest in the Application (excluding any tax credit purchaser/syndicator), from participation in the Housing Tax Credit Program (for both the Competitive Housing Tax Credit Developments and Tax-Exempt Bond Developments) for 24 months from the time that the amendment is approved.

(b) Amendments to Contracts and LURAs. Department approval shall be required for any amendment to a LURA in accordance with this section. An amendment request shall be submitted in writing, containing a detailed explanation of the request, the reason the change is necessary, the good cause for the change, financial information related to any financial impact on the Development, information related to whether the necessity of the amendment was reasonably foreseeable at the time of application, and other information as deter-

mined to be necessary by the Department, along with any applicable fee as identified in Chapter 11, Subchapter E of this title (relating to Fee Schedule, Appeals, and other Provisions). The Department may order or require the Development Owner to order a Market Study or appraisal at the Development Owner's expense. If a Development has any uncorrected issues of noncompliance outside of the corrective action period (other than the provision being amended) or otherwise owes fees to the Department, such non-compliance or outstanding payment must be resolved to the satisfaction of the Department[,] before a request for amendment will be acted upon. The Department will not approve changes that would violate state or federal laws including the requirements of §42 of the Code, 24 CFR Part 92 (HOME Final Rule), 24 CFR Part 93 (NHTF Interim Rule), Chapter 1 of this title (relating to Administrative Requirements), Chapter 11 of this title (relating to Qualified Allocation Plan), Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules), Chapter 13 of this title (relating to Multifamily Direct Loan Rule), Tex. Gov't Code, Chapter 2306, and the Fair Housing Act. For Tax-Exempt Bond Developments, compliance with their Regulatory Agreement and corresponding bond financing documents. Prior to staff taking a recommendation to the Board for consideration, the procedures described in paragraph (3) of this subsection must be followed.

(1) Non-Material LURA Amendments. The Executive Director or designee may administratively approve all LURA amendments not defined as Material LURA Amendments pursuant to paragraph (2) of this subsection. A non-material LURA amendment may include but is not limited to:

(A) HUB participation removal. Removal of a HUB participation requirement will only be processed as a non-material LURA amendment after the issuance of IRS Form(s) 8609 and requires that the Department find that:

(i) The HUB is requesting removal of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

(ii) the participation by the HUB has been substantive and meaningful, or would have been substantive or meaningful had the HUB not defaulted under the organizational documents of the Development Owner, enabling it to realize not only financial benefit but to acquire skills relating to the ownership and operating of affordable housing; and

(iii) where the HUB will be replaced as a general partner or special limited partner that is not a HUB and will sell its ownership interest, an ownership transfer request must be submitted as described in §10.406 of this subchapter;

(B) A change resulting from a Department work out arrangement as recommended by the Department's Asset Management Division;

(C) A change in the Right of First Refusal period as described in amended §2306.6726 of the Tex. Gov't Code;

(D) Where the Board has approved a de minimis modification of the Unit Mix or bedroom mix of Units to increase the Development's accessibility;

(E) In accordance with HOMEFires, Vol. 17 No. 1 (January 2023, as may be amended from time to time) bifurcation of the term of a HOME or NSP LURA with the Department that requires a longer affordability period than the minimum federal requirement, into a federal and state affordability period;

(F) A change in Target Population if the Elderly restrictions in the LURA expired at the end of the Compliance Period or the Federal Affordability Period (as applicable), and the amendment is requested within one year of expiration and contains a certification from the Development Owner that the Development still qualifies as Elderly;

(G) Amendments necessary to opt into the 2025 HOME final rule in accordance with §10.601(g) of this chapter, relating to the 2025 HOME final rule; or
A correction of error.

(2) Material LURA Amendments. Development Owners seeking LURA amendment requests that require Board approval must submit the request and all required documentation necessary for staff's review of the request to the Department at least 45 calendar days prior to the Board meeting at which the amendment is anticipated to be considered. Before the 15th day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and Department staff regarding the amendment will be posted to the Department's website and the Applicant will be notified of the posting (§2306.6717(a)(4)). The Board must consider the following material LURA amendments:

(A) Reductions to the number of Low-Income Units;

(B) Changes to the income or rent restrictions;

(C) Changes to the Target Population;

(D) The removal of material participation by a Nonprofit Organization as further described in §10.406 of this subchapter;

(E) The removal of material participation by a HUB prior to filing of IRS Form(s) 8609;

(F) Any amendment that [affects] pertains to a right enforceable by a tenant or other third party under the LURA; or

(G) Any LURA amendment deemed material by the Executive Director.

(3) Prior to staff taking a recommendation to the Board for consideration, the Development Owner must provide reasonable notice and hold a public hearing regarding the requested amendment(s) at least 20 business days prior to the scheduled Board meeting where the request will be considered. A Development Owner is [Owners will be] required to submit a copy of the notification with the amendment request. If the amendment pertains to a right enforceable by a tenant or other third party, the Development Owner must explain why performance of the original condition is impossible or demonstrate that Development would no longer be financially feasible, in accordance with the rules adopted in Chapter 11 Subchapter D of this part relating to Underwriting and Loan Policy. If a LURA amendment is requested prior to issuance of IRS Form(s) 8609 by the Department, notification must be provided to the recipients described in subparagraphs (A) - (E) of this paragraph. If an amendment is requested after issuance of IRS Form(s) 8609 by the Department, notification must be provided to the recipients described in subparagraph (A) - (B) of this paragraph. Notifications include:

(A) Each tenant of the Development;

(B) The current lender(s) and investor(s);

(C) The State Senator and State Representative of the districts whose boundaries include the Development Site;

(D) The chief elected official for the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction); and

(E) The county commissioners of the county in which the Development Site is located (if the Development Site is located outside of a municipality).

(4) Contents of Notification. The notification must include, at a minimum, all of the information described in subparagraphs (A) - (D) of this paragraph:

(A) The Development Owner's name, address and an individual contact name and phone number;

(B) The Development's name, address, and city;

(C) The change(s) requested; and

(D) The date, time, and location of the public hearing where the change(s) will be discussed.

(5) Verification of public hearing. Minutes of the public hearing and attendance sheet must be submitted to the Department within three business days after the date of the public hearing.

(6) Approval. Once the LURA Amendment has been approved administratively or by the Board, as applicable, Department staff will provide the Development Owner with a LURA amendment for execution and recording in the county where the Development is located. For some Programs, a Contract Amendment or amendment to the Loan Documents may also be needed, in the determination of the Department's Legal Division.

(c) HTC Extensions. Extensions must be requested if the original deadline associated with Carryover, the 10% Test (including submission and expenditure deadlines), construction status reports, or cost certification requirements will not be met. Extension requests submitted at least 30 calendar days in advance of the applicable original deadline will not be required to submit an extension fee as described in §11.901 of this title. Any extension request submitted fewer than 30 days in advance of the applicable original deadline or after the original deadline will not be processed unless accompanied by the applicable fee. Extension requests will be approved by the Executive Director or designee, unless, at staff's discretion it warrants Board approval due to extenuating circumstances stated in the request. The extension request must specify a requested extension date and the reason why such an extension is required. If the Development Owner is requesting an extension to the Carryover submission or 10% Test deadline(s), a point deduction evaluation will be completed in accordance with Tex. Gov't Code, §2306.6710(b)(2), and §11.9(f) of this title (relating to Factors Affecting Scoring and Eligibility in current and future Application Rounds). Therefore, the Development Owner must clearly describe in their request for an extension how the need for the extension was beyond the reasonable control of the Applicant/Development Owner and could not have been reasonably anticipated. Carryover extension requests will not be granted an extended deadline later than December 1st of the year the Commitment was issued.

§10.406. Ownership Transfers (§2306.6713).

(a) Ownership Transfer Notification. All multifamily Development Owners must provide written notice and a completed Ownership Transfer packet, if applicable, to the Department at least 45 calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Except as otherwise provided herein, the Executive Director's prior written approval of any such transfer is required. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section.

(b) Exceptions. The exceptions to the ownership transfer process in this subsection are applicable.

(1) A Development Owner shall be required to notify the Department but shall not be required to obtain Executive Director approval when the transferee is an Affiliate of the Development Owner with no new Principals, or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.

(2) Transfers that are the result of an involuntary removal of the general partner by the investment limited partner do not require advance approval, but must be reported to the Department as soon as possible due to the sensitive timing and nature of this decision. In the event the investment limited partner has proposed a new general partner or will permanently replace the general partner, a full Ownership Transfer packet must be submitted.

(3) Changes to the investment limited partner, non-Controlling limited partner, or other non-Controlling partners affiliated with the investment limited partner do not require Executive Director approval. A General Partner's acquisition of the interest of the investment limited partner does not require Executive Director approval, unless some other change in ownership is occurring as part of the same overall transaction.

(4) Changes resulting from foreclosure do not require advance approval but acquiring parties must notify the Department as soon as possible of the revised ownership structure and ownership contact information.

(5) Changes resulting from a deed-in-lieu of foreclosure do not require Executive Director approval. However, advance notification must be provided to both the Department and to the tenants at least 30 days prior to finalizing the transfer. This notification must include information regarding the applicable rent/income requirements post deed-in-lieu of foreclosure.

(6) Changes resulting from a foreclosure do not require Executive Director approval. However, a Development that is subject to the 2025 HOME final rule as described in §10.601(g) of this chapter must provide advance notification to both the Department and to all households at least 30 days prior to the foreclosure sale. This notification must include information regarding the applicable rent/income requirements post foreclosure.

(c) General Requirements.

(1) Any new Principal in the ownership of a Development must be eligible under §11.202 of Subchapter C (relating to Ineligible Applicants and Applications). In addition, Persons and Principals will be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee).

(2) Changes in Developers or Guarantors must be addressed as non-material amendments to the application under §10.405 of this Subchapter.

(3) To the extent an investment limited partner or its Affiliate assumes a Controlling interest in a Development Owner, such acquisition shall be subject to the Ownership Transfer requirements set forth herein. Principals of the investment limited partner or Affiliate will be considered new Principals and will be reviewed as stated under paragraph (1) of this subsection.

(4) Simultaneous transfer or concurrent offering for sale of the General Partner's and Limited Partner's control and interest will be subject to the Ownership Transfer requirements set forth herein and will trigger a Right of First Refusal, if applicable.

(5) Any initial operating, capitalized operating, or replacement reserves funded with an allocation from the HOME American Rescue Plan (HOME-ARP) and Special Reserves required by the Department must remain with the Development.

(d) Transfer Actions Warranting Debarment. If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure or the Department at risk for financial exposure as a result of non-compliance, staff will refer the matter to the Enforcement Committee for debarment consideration pursuant to §2.401 of this title (relating to Enforcement, Debarment from Participation in Programs Administered by the Department). In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), prior to recommending any new financing or allocation of credits.

(e) Transfers Prior to 8609 Issuance or Construction Completion. Prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs), an Applicant may request a change to its ownership structure to add Principals or to remove Principals provided not all controlling Principals identified in the Application will be removed. The party(ies) reflected in the Application as having Control must remain in the ownership structure and retain Control, unless approved otherwise by the Executive Director. A development sponsor, General Partner or Development Owner may not sell the Development in whole or voluntarily end their Control prior to the issuance of 8609s. In addition, for Competitive HTC Developments, changes in the ownership structure for the addition of a public facility corporation, a housing finance corporation, or a public housing authority prior to the issuance of 8609s that will result in a 100% property tax exemption that was not previously reflected in the Application, require a resolution of support from the municipality, or if the Development is not within a municipality or its Extra Territorial Jurisdiction (ETJ), a resolution of support from the commissioners court.

(f) Nonprofit Organizations. If the ownership transfer request is to replace a nonprofit organization within the Development ownership entity, the replacement nonprofit entity must adhere to the requirements in paragraph (1) or (2) of this subsection.

(1) If the LURA requires ownership or material participation in ownership by a Qualified Nonprofit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Nonprofit Organization that meets the requirements of §42(h)(5) of the Code and Tex. Gov't Code §2306.6706, if applicable, and can demonstrate planned participation in the operation of the Development on a regular, continuous, and substantial basis.

(2) If the LURA requires ownership or material participation in ownership by a nonprofit organization or CHDO, the Development Owner must show that the transferee is a nonprofit organization or CHDO, as applicable, that complies with the LURA. If the transferee has been certified as a CHDO by TDHCA prior to 2016 or has not previously been certified as a CHDO by TDHCA, a new CHDO certification package must be submitted for review. If the transferee was certified as a CHDO by TDHCA after 2016, provided no new federal guidance or rules concerning CHDO have been released and the proposed ownership structure at the time of review meets the requirements in 24 CFR Part 92, the CHDO may instead submit a CHDO Self-Certification form with the Ownership Transfer package. However, for ownership transfers that occur on or after April 30, 2026, the Department will require the CHDO to renew their certification using the new certification package that will include the 2025 HOME final rule requirements.

(3) Exceptions to paragraphs (1) and (2) of this subsection may be made on a case by case basis if the Development (for MFDL) is past its Federal Affordability Period or (for HTC Developments) is past its Compliance Period, was not reported to the IRS as part of the Department's Nonprofit Set Aside in any HTC Award year, and follows the procedures outlined in §10.405(b)(1) - (5) of this subchapter. The Board must find that:

(A) The selling nonprofit is acting of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

(B) The participation by the nonprofit was substantive and meaningful during the full term of the Compliance Period but is no longer substantive or meaningful to the operations of the Development; and

(C) The proposed purchaser is an affiliate of the current Owner or otherwise meets the Department's standards for ownership transfers.

(g) Historically Underutilized Business (HUB) Organizations. If a HUB is the general partner or special limited partner of a Development Owner and it determines to sell its ownership interest, after the issuance of IRS Form(s) 8609, the purchaser of that partnership interest or the general or special limited partner is not required to be a HUB as long as the LURA does not require it or the procedure described in §10.405(b)(1) of this chapter (relating to Non-Material LURA Amendments) has been followed and approved. The removal of a HUB requirement prior to filing of IRS Form(s) 8609 is subject to the procedure described in §10.405(b)(2) of this Chapter (relating to Material LURA Amendments).

(h) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances pertaining to the transfer and the effects of approval or denial. Documentation must be submitted as directed in the Post Award Activities Manual, which includes but is not limited to:

(1) A written explanation outlining the reason for the request;

(2) Ownership transfer information, including but not limited to the type of sale, terms of any new financing introduced as a result of the transfer, amount of Development reserves to transfer in the event of a property sale, and the prospective closing date;

(3) Pre- and post-transfer organizational charts with TINs of each organization down to the level of natural persons in the ownership structure as described in §11.204(12)(B) of Subchapter C of this title (relating to Required Documentation for Application Submission);

(4) A list of the names and contact information for transferees and Related Parties;

(5) Previous Participation information for any new Principal as described in §11.204(12)(C) of this title (relating to Required Documentation for Application Submission);

(6) Agreements among parties associated with the transfer;

(7) Owners Certifications with regard to materials submitted as further described in the Post Award Activities Manual;

(8) Detailed information describing the organizational structure, experience, and financial capacity of any party holding a controlling interest in any Principal or Controlling entity of the prospective Development Owner;

(9) Evidence and certification that the tenants in the Development have been notified in writing of the proposed transfer at least 30 calendar days prior to the date the transfer is approved by the Department. The ownership transfer approval letter will not be issued until this 30-day period has expired. Additional notification requirements may apply under 10 TAC §10.607, relating to Reporting Requirements; and

(10) Any required exhibits and the list of exhibits related to specific circumstances of transfer or Ownership as detailed in the Post Award Activities Manual.

(i) Once the Department receives all necessary information under this section and as required under the Post Award Activities Manual, staff shall initiate a qualifications review of a transferee, in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter and §11.202 of this title (relating to Ineligible Applicants and Applications).

(j) Credit Limitation. As it relates to the Housing Tax Credit amount further described in §11.4(a) of this title (relating to Tax Credit Request and Award Limits), the credit amount will not be applied in circumstances described in paragraphs (1) and (2) of this subsection:

(1) In cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the general partner; or

(2) In cases where the general partner is being replaced if the award of credits was made at least five years prior to the transfer request date.

(k) Penalties, Past Due Fees, and Underfunded Reserves. The Development Owner must comply with any additional documentation requirements as stated in Subchapter F of this chapter (relating to Compliance Monitoring) and Subchapter G of this chapter (relating to Affirmative Marketing Requirements and Written Policies and Procedures). The Development Owner on record with the Department will be liable for any penalties or fees imposed by the Department (even if such penalty can be attributable to the new Development Owner) unless an ownership transfer has been approved by the Department. In the event a transferring Development has a history of uncorrected UPCS or NSPIRE violations, ongoing issues related to keeping housing sanitary, safe, and decent, an account balance below the annual reserve deposit amount as specified in §10.404(a) (relating to Replacement Reserve Accounts), or that appears insufficient to meet capital expenditure needs as indicated by the number or cost of repairs included in a PNA or SCR, the prospective Development Owner may be required to establish and maintain a replacement reserve account or increase the amount of regular deposits to the replacement reserve account by entering into a Reserve Agreement with the Department. The Department may also request a plan and timeline relating to needed repairs or renovations that will be completed by the departing and/or incoming Owner as a condition to approving the Transfer. A PNA or SCR may be requested if one has not already been received under §10.404 of this section (relating to Reserve Accounts).

(l) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by the corresponding ownership transfer fee as outlined in §11.901 of this title (relating to Fee Schedule).

§10.407. Right of First Refusal.

(a) General. This section applies to Development Owners that agreed to offer a Right of First Refusal (ROFR) to a Qualified Entity or as applicable a Qualified Nonprofit Organization, as memorialized in the applicable LURA. For the purposes of this section, a Qualified Nonprofit Organization also includes an entity 100% owned by a Qualified Nonprofit Organization pursuant to §42(h)(5)(C) of the Code and operated in a similar manner. The purpose of this section is to provide administrative procedures and guidance on the process and valuation of properties under the LURA. All requests for ROFR submitted to the Department, regardless of existing regulations, must adhere to this process.

(1) The Development Owner may market the Property for sale and enter into an agreement to sell the Property to a Qualified Entity, or as applicable a Qualified Nonprofit Organization without going through the ROFR process outlined in this section, unless otherwise restricted or prohibited and only in the following circumstances:

(A) The LURA includes a 90-day ROFR and the Development Owner is selling to a Qualified Nonprofit Organization;

(B) The LURA includes a two-year ROFR and the Development Owner is selling to a Qualified Nonprofit Organization that meets the definition of a Community Housing Development Organization (CHDO) under 24 CFR Part 92, as approved by the Department; [~~or~~]

(C) The LURA includes a 180-day ROFR, and the Development Owner is selling to a Qualified Entity that meets the definition of a CHDO under 24 CFR Part 92, or to an entity that includes a CHDO as one of its controlling members, as approved by the Department, or to the public housing authority or public facility corporation that owns the fee title to the Development Owner's leasehold estate; or

(D) The Multifamily Direct Loan LURA requires a new Owner to be a qualified CHDO or has a ROFR Period for purchase by a CHDO, [~~but~~] and the Development is subject to the 2013 or 2025 HOME final rule, and the Development Owner is selling or conveying the Development to another CHDO approved by the Department. The entity will have to be structured in accordance with the applicable HOME rule, and the requirements in Chapter 13 of this title.

(2) A ROFR request must be made in accordance with the LURA for the Development. If there is a conflict between the Development's LURA and this subchapter, every effort will be made to harmonize the provisions. If the conflict cannot be resolved, requirements in the LURA will supersede this subchapter. If there is a conflict between the Development's LURA and Tex. Gov't Code Chapter 2306, every effort will be made to harmonize the provisions. A Development Owner may request a LURA amendment to make the ROFR provisions in the LURA consistent with Tex. Gov't Code Chapter 2306 at any time.

(3) If a LURA includes the ROFR provision, the Development Owner may not request a Preliminary Qualified Contract (if such opportunity is available under the applicable LURA and §10.408 of this Subchapter) until the requirements outlined in this section have been satisfied.

(4) The Department reviews and approves all ownership transfers pursuant to §10.406 of this subchapter. Thus, if a proposed purchaser is identified by the Owner in accordance with paragraph (1) of this subsection or in the ROFR process, the Development Owner and proposed purchaser must complete the ownership transfer process. A Development Owner may not transfer a Development to a Qualified Nonprofit Organization or Qualified Entity that is considered an ineligible entity under the Department's rules. In addition, ownership transfers to a Qualified Entity or as applicable a Qualified Nonprofit Organization pursuant to the ROFR process are subject to Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee).

(5) Satisfying the ROFR requirement does not terminate the LURA or the ongoing application of the ROFR requirement to any subsequent Development Owner.

(6) If there are multiple buildings in the Development, the end of the 15th year of the Compliance Period will be based upon the date the last building(s) began their credit period(s). For example, if five buildings in the Development began their credit periods in 2007 and one in 2008, the 15th year would be 2022. The ROFR process is triggered upon:

(A) The Development Owner's determination to sell the Development to an entity other than as permitted in paragraph (1) of this subsection; or

(B) The simultaneous transfer or concurrent offering for sale of a General Partner's and limited partner's interest in the Development Owner's ownership structure.

(7) The ROFR process is not triggered if a Development Owner seeks to transfer the Development to a newly formed entity:

(A) That is under common control with the Development Owner; and

(B) The primary purpose of the formation of which is to facilitate the financing of the rehabilitation of the Development using assistance administered through a state financing program.

(8) This section applies only to a Right of First Refusal memorialized in the Department's LURA. This section does not authorize a modification of any other agreement between the Development Owner and a Qualified Nonprofit Organization or Qualified Entity. The enforceability of a contractual agreement between the Development Owner and a Qualified Nonprofit Organization or Qualified Entity may be impacted by the Development Owner's commitments at Application and recorded LURA.

(b) Right of First Refusal Offer Price. There are two general expectations of the ROFR offer price identified in the outstanding LURAs. The descriptions in paragraphs (1) and (2) of this subsection do not alter the requirements or definitions included in the LURA but provide further clarification as applicable:

(1) Fair Market Value is established using either a current appraisal (completed within three months prior to the ROFR request and in accordance with §11.304 of this title (relating to Appraisal Rules and Guidelines)) of the Property or an executed purchase offer that the Development Owner would like to accept. In either case the documentation used to establish Fair Market Value will be part of the ROFR property listing on the Department's website. The purchase offer must contain specific language that the offer is conditioned upon satisfaction of the ROFR requirement. If a subsequent ROFR request is made within six months of the previously approved ROFR posting, the lesser of the prior ROFR posted value or new appraisal/purchase contract amount must be used in establishing Fair Market Value;

(2) Minimum Purchase Price, pursuant to §42(i)(7)(B) of the Code, is the sum of the categories listed in subparagraphs (A) and (B) of this paragraph:

(A) The principal amount of outstanding indebtedness secured by the project (other than indebtedness incurred within the five year period immediately preceding the date of said notice); and

(B) All federal, state, and local taxes incurred or payable by the Development Owner as a consequence of such sale. If the Property has a minimum Applicable Fraction of less than one, the offer must take this into account by multiplying the purchase price by the applicable fraction and the fair market value of the non-Low-Income Units. Documentation submitted to verify the Minimum Purchase Price calculation will be part of the ROFR property listing on the Department's website.

(c) Required Documentation. Upon establishing the ROFR offer price, the ROFR process is the same for all types of LURAs. To proceed with the ROFR request, documentation must be submitted as directed in the Post Award Activities Manual, which includes:

(1) ROFR fee as identified in §11.901 of this title (relating to Fee Schedule);

(2) A notice of intent to the Department;

(3) Certification that the Development Owner has provided, to the best of their knowledge and ability, a notice of intent to all additional required persons and entities in subparagraph (A) of this paragraph and that such notice includes, at a minimum the information in subparagraph (B) of this paragraph;

(A) Copies of the letters or emailed notices provided to all persons and entities listed in clauses (i) to (vi) of this subparagraph as required by this paragraph and applicable to the Development at the time of the submission of the ROFR documentation must be attached to the Certification:

(i) All tenants and tenant organizations, if any, of the Development;

(ii) Mayor of the municipality (if the Development is within a municipality or its extraterritorial jurisdiction);

(iii) All elected members of the Governing Body of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

(iv) Presiding officer of the Governing Body of the county in which the Development is located;

(v) The local housing authority, if any; and

(vi) All prospective buyers maintained on the Department's list of prospective buyers.

(B) Letters must include, at a minimum, all of the information required in clauses (i) to (vii) of this subparagraph and must not contain any statement that violates Department rules, statute, Code, or federal requirements:

(i) The Development's name, address, city, and county;

(ii) The Development Owner's name, address, individual contact name, phone number, and email address;

(iii) Information about tenants' rights to purchase the Development through the ROFR;

(iv) The length of the ROFR posting period;

(v) The ROFR offer price;

(vi) A physical description of the Development, including the total number of Units and total number of Low-Income Units; and

(vii) Contact information for the Department staff overseeing the Development's ROFR application.

(4) Documentation evidencing any contractual ROFR between the Development Owner and a Qualified Nonprofit Organization or Qualified Entity, along with evidence that such Qualified Nonprofit Organization or Qualified Entity is in good standing in the state of its organization;

(5) Documentation verifying the ROFR offer price of the Property:

(A) If the Development Owner receives an offer to purchase the Property from any buyer other than a Qualified Entity or Qualified Nonprofit Organization that the Development Owner would like to accept, the Development Owner may execute a sales contract, conditioned upon satisfaction of the ROFR requirement, and submit the executed sales contract to establish fair market value; or

(B) If the Development Owner chooses to establish fair market value using an appraisal, the Development Owner must submit an appraisal of the Property completed during the last three months prior to the date of submission of the ROFR request, establishing a value for the Property in compliance with Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy) in effect at the time of the request. The appraisal should take into account the existing and continuing requirements to operate the Property under the LURA and any other restrictions that may exist. Department staff will review all materials within 30 calendar days of receipt. If, after the review, the Department does not agree with the fair market value proposed in the Development Owner's appraisal, the Department may order another appraisal at the Development Owner's expense; or

(C) If the LURA requires valuation through the Minimum Purchase Price calculation, submit documentation verifying the calculation of the Minimum Purchase Price as described in subsection (b)(2) of this section regardless of any existing offer or appraised value;

(6) Description of the Property, including all amenities;

(7) Copies of all documents imposing income, rental and other restrictions (non-TDHCA), if any, applicable to the operation of the Property;

(8) A current title commitment or policy not older than six months prior to the date of submission of the ROFR request or the most recent title policy along with a title endorsement or nothing further certificate not older than six months prior to the date of submission of the ROFR request;

(9) The most recent Physical Needs Assessment, pursuant to Tex. Gov't Code §2306.186(e) conducted by a Third-Party. If the PNA/SCR identifies the need for critical repairs that significantly impact habitability and tenant safety, the identified repairs and replacements must be resolved to the satisfaction of the Department before the Development will be considered eligible to proceed with a Right of First Refusal Request;

(10) Copy of the monthly operating statements, including income statements and balance sheets for the Property for the most recent 12 consecutive months (financial statements should identify amounts held in reserves);

(11) The three most recent consecutive annual operating statements (audited would be preferred);

(12) Detailed set of photographs of the Property, including interior and exterior of representative units and buildings, and the Property's grounds;

(13) Current and complete rent roll for the Property; and

(14) If any portion of the land or improvements is leased for other than residential purposes, copies of the commercial leases.

(d) Posting and offers. Within 30 business days of receipt of all required documentation, the Department will review the submitted documents and notify the Development Owner of any deficiencies. During that time, the Department will notify any Qualified Entity or as applicable any Qualified Nonprofit Organization identified by the Development Owner as having a contractual ROFR of the Development Owner's intent to sell. Once any deficiencies are resolved and the Development Owner and Department come to an agreement on the ROFR offer price of the Property, the Department will list the Property for sale on the Department's website and notify entities registered to the email list maintained by the Department of the availability of the Property at a price as determined under this section. The Department will notify the Development Owner when the Property has been listed. The ROFR posting period commences on the date the Property is posted for sale on the Department's website. During the ROFR posting period, a Qualified Nonprofit Organization or Qualified Entity can submit an offer to purchase as follows:

(1) if the LURA requires a 90-day [~~90 day~~] ROFR posting period with no priority for any particular kind of Qualified Nonprofit Organization or tenant organization, any Qualified Nonprofit Organization or tenant organization may submit an offer to purchase the property; or

(2) If the LURA requires a two-year [~~two year~~] ROFR posting period, a Qualified Nonprofit Organization may submit an offer to purchase the Property as follows:

(A) During the first six months of the ROFR posting period, only a Qualified Nonprofit Organization that is a Community Housing Development Organization (CHDO) under 24 CFR Part 92, or that is 100% owned by a CHDO, as approved by the Department, may submit an offer;

(B) During the next six months of the ROFR posting period, only a Qualified Nonprofit Organization as described by Tex. Gov't Code §2306.6706, or that is 100% owned by Qualified Nonprofit Organization as described by Tex. Gov't Code §2306.6706, or a tenant organization may submit an offer; and

(C) During the final 12 months of the ROFR posting period, any Qualified Nonprofit Organization may submit an offer; or

(3) If the LURA requires a 180-day ROFR posting period, a Qualified Entity may submit an offer to purchase the Property consistent with the subparagraphs of this paragraph.

(A) During the first 60 days of the ROFR posting period, only a Qualified Entity that is:

(i) a CHDO under 24 CFR Part 92, or to an entity that includes a CHDO as one of its controlling members or general partners, as approved by the Department, may submit an offer. In accordance with 24 CFR Part 92, Developments committed HOME CHDO funding on or after August 23, 2013, and still within the Federal Affordability Period must have a CHDO or its wholly owned entity (as applicable) as its only controlling entities and no other entities are eligible;

(ii) if the public housing authority or public facility corporation owns the fee title to the Development Owner's leasehold estate:

(I) a public housing authority; or

(II) a public facility corporation created by a public housing authority under Chapter 303, Local Government Code; or

(iii) controlled by an entity described by either clause (i) or (ii) of this subparagraph.

(B) During the second 60 days of the ROFR posting period, only a Qualified Entity as described by Tex. Gov't Code §2306.6706, or that is controlled by Qualified Entity as described

by Tex. Gov't Code §2306.6706, or a tenant organization such may submit an offer.

(C) During the final 60 days of the ROFR posting period, any Qualified Entity may submit an offer.

(4) If the Multifamily Direct Loan LURA for a property funded out of the CHDO set-aside and subject to the 2025 HOME final rule requires a 60-day ROFR posting period, a CHDO approved by the Department may submit an offer to purchase the property.
If the LURA does not specify a required ROFR posting timeframe or is unclear on the required ROFR posting timeframe and the required ROFR value is determined by the Minimum Purchase Price method, any Development that received a tax credit allocation prior to September 1, 1997, is required to post for a 90-day ROFR period, and any Development that received a tax credit allocation on or after September 1, 1997, and until September 1, 2015, is required to post for a two year ROFR, unless the LURA is amended under §10.405(b), or after September 1, 2015, is required to post for a 180-day ROFR period as described in Tex. Gov't Code, §2306.6726.

(e) Acceptance of offers. A Development Owner may accept or reject any offer received during the ROFR posting period; provided however, that to the extent the LURA gives priority to certain classifications of Qualified Nonprofit Organizations or Qualified Entities to make offers during certain portions of the ROFR posting period, the Development Owner can only negotiate a purchase contract with such classifications of entities during their respective periods. For example, during the CHDO priority period, the Development Owner may only accept an offer from and enter into negotiations with a Qualified Nonprofit Organization or Qualified Entity in that classification. A property may not be transferred under the ROFR process for less than the Minimum Purchase Price, but if the sequential negotiation created by statute yields a higher price, the higher price is permitted.

(f) Satisfaction of ROFR.

(1) A Development Owner that has posted a Property under the ROFR process is deemed to have satisfied the ROFR requirements in the following circumstances:

(A) The Development Owner does not receive any bona fide offers at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation) from a Qualified Nonprofit Organization or Qualified Entity during the required ROFR posting period;

(B) A bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation), the Development Owner accepts the offer, the Qualified Nonprofit Organization or Qualified Entity fails to close the purchase, the failure is determined to not be the fault of the Development Owner, and the Development Owner received no other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the required ROFR posting period;

(C) A bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation), the Qualified Nonprofit Organization or Qualified Entity is not approved by the Department during the ownership transfer review due to issues identified during the Previous Participation Review process pursuant to Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), and the Development Owner received no other bona fide offers at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation) from a Qualified Nonprofit Organization or Qualified Entity during the required ROFR posting period; or

(D) An offer from a Qualified Nonprofit Organization or Qualified Entity is received at a price below the posted ROFR offer price, and the Development Owner received no other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the required ROFR posting period at or above the posted ROFR offer price; or

(2) A Development Owner with a LURA that identifies a specific Qualified Nonprofit Organization or Qualified Entity to be the beneficiary of the ROFR will satisfy the ROFR if:

(A) The identified beneficiary is in existence and conducting business;

(B) The Development Owner offers the Development to the identified beneficiary pursuant to the terms of the ROFR;

(C) If the ROFR includes a priority for a certain type of Qualified Entity (such as a CHDO) to have the first opportunity make an offer to acquire the Development, the identified beneficiary meets such classification; and

(D) The identified entity declines to purchase the Development in writing, and such evidence is submitted to and approved by the Department.

(g) Non-Satisfaction of ROFR. A Development Owner that has posted a Property under the ROFR process does not satisfy the ROFR requirements in the following circumstances:

(1) A bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation), and the Development Owner does not accept the offer;

(2) The LURA identifies a specific Qualified Nonprofit Organization or Qualified Entity to be the beneficiary of the ROFR, and such entity no longer exists or is no longer conducting business and the Development Owner received other bona fide offers at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation) from a Qualified Nonprofit Organization or Qualified Entity during the ROFR posting period and fails to accept any of such other offers;

(3) A bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation), the Development Owner accepts the offer, the Qualified Nonprofit Organization or Qualified Entity fails to close the purchase, the failure is determined to not be the fault of the Development Owner, the Development Owner received other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the ROFR posting period and then fails to accept any of such other offers;

(4) A bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation), the Development Owner accepts the offer, the Qualified Nonprofit Organization or Qualified Entity fails to close the purchase, and such failure is determined to be the fault of the Development Owner;

(5) A bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer

price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation), the Qualified Nonprofit Organization or Qualified Entity is not approved by the Department during the ownership transfer review due to issues identified during the Previous Participation Review process pursuant to Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), the Development Owner received other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the ROFR posting period and fails to accept any of such other offers; or

(6) An offer from a Qualified Nonprofit Organization or Qualified Entity is received at a price below the posted ROFR offer price, the Development Owner received other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the ROFR posting period at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation), and the Development Owner fails to accept any of such offers.

(h) Activities Following ROFR.

(1) If a Development Owner satisfies the ROFR requirement pursuant to subsection (f)(1) - (2) of this section, it may request a Preliminary Qualified Contract (if such opportunity is available under §10.408 of this Subchapter) or proceed with the sale to an entity that is not a Qualified Nonprofit Organization or Qualified Entity at or above the ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation).

(2) Following notice that the ROFR requirement has been met, if the Development Owner does not post the Property for Qualified Contract in accordance with §10.408 of this Subchapter or sell the Property to an entity that is not a Qualified Nonprofit Organization or Qualified Entity within 24 months of the Department's written indication that the ROFR has been satisfied, the Development Owner must follow the ROFR process for any subsequent transfer.

(3) If the Department determines that the ROFR requirement has not been met during the ROFR posting period, the Owner may not re-post under this provision at a ROFR offer price that is higher than the originally posted ROFR offer price until 24 months has expired from the Department's written indication that the ROFR has not been satisfied. The Development Owner may market the Property for sale and sell the Property to a Qualified Nonprofit Organization or Qualified Entity during this 24-month [~~24 month~~] period in accordance with subsection (a)(1) of this section.

(i) Sale and closing.

(1) Prior to closing a sale of the Property, the Development Owner must obtain Department approval of the transfer through the ownership transfer process in accordance with §10.406 of this Subchapter (relating to Ownership Transfers (§2306.6713)). The request should include, among other required transfer documents outlined in the Post Award Activities Manual, the final sales contract with all amendments.

(2) If the closing price is materially less than the ROFR offering price or the terms and conditions of the sale change materially from what was submitted in the ROFR posting, in the Department's sole determination, the Development Owner must go through the ROFR process again with a revised ROFR offering price equal to the reduced closing price or adjusted terms and conditions based upon the revised terms, before disposing of the Property.

(j) Appeals. A Development Owner may appeal a staff decision in accordance with §11.902 of this title (relating to Appeals Process).

§10.408. Qualified Contract Requirements.

(a) General. Pursuant to §42(h)(6) of the Code, after the end of the 14th year of the Compliance Period, the Development Owner of a Development utilizing Housing Tax Credits can request that the allocating agency find a buyer at the Qualified Contract Price. If a buyer cannot be located within one year, the Extended Use Period will expire. This section of this subchapter provides the procedures for the submittal and review of a Qualified Contract Request.

(b) Eligibility. Development Owners who received an award of credits on or after January 1, 2002, are not eligible to request a Qualified Contract prior to the 30 year anniversary of the date the property was placed in service (§2306.185); if the property's LURA indicates a commitment to an Extended Use Period beyond 30 years, the Development Owner is not eligible to request a Qualified Contract until the expiration of the Extended Use Period. Development Owners awarded credits prior to 2002 may submit a Qualified Contract Request at any time after the end of the year preceding the last year of the Initial Affordability Period, provided it is not precluded by the terms of the LURA, following the Department's determination that the Development Owner is eligible. The Initial Affordability Period starts concurrently with the credit period, which begins at placement-in-service or is deferred until the beginning of the next tax year, if there is an election. Unless the Development Owner has elected an Initial Affordability Period longer than the Compliance Period, as described in the LURA, this can commence at any time after the end of the 14th year of the Compliance Period. References in this section to actions which can occur after the 14th year of the Compliance Period shall refer, as applicable, to the year preceding the last year of the Initial Affordability Period, if the Development Owner elected an Initial Affordability Period longer than the Compliance Period.

(1) If there are multiple buildings placed in service in different years, the end of the Initial Affordability Period will be based upon the date the last building placed in service. For example, if five buildings in the Development began their credit periods in 2005 and one began in 2006, the 15th year would be 2020.

(2) If a Development received an allocation in multiple years, the end of the Initial Affordability Period will be based upon the last year of a multiple allocation. For example, if a Development received its first allocation in 2004 and a subsequent allocation and began the credit period in 2006, the 15th year would be 2020.

(c) Preliminary Qualified Contract Request. All eligible Development Owners must file a Preliminary Qualified Contract Request.

(1) In addition to determining the basic eligibility described in subsection (b) of this section, the pre-request will be used to determine that:

(A) The Development does not have any uncorrected issues of noncompliance outside the corrective action period;

(B) There is a Right of First Refusal (ROFR) connected to the Development that has been satisfied; and

(C) The Compliance Period under the LURA has expired; and

(2) In order to assess the validity of the pre-request, the Development Owner must submit:

(A) Preliminary Request Form;

(B) Qualified Contract Pre-Request fee as outlined in §11.901 of this title (relating to Fee Schedule);

(C) Copy of all regulatory agreements or LURAs associated with the Property (non-TDHCA); and

(D) Copy of a Physical Needs Assessment (PNA), conducted by a Third Party, that is no more than 12 months older than the request date. If the PNA identifies the need for critical repairs that significantly impact habitability and tenant safety, the identified repairs and replacements must be resolved to the satisfaction of the Department before the Development will be considered eligible to submit a Qualified Contract Request.

(3) The pre-request will not bind the Development Owner to submit a Qualified Contract Request and does not start the One Year Period (1YP). A review of the pre-request will be conducted by the Department within 90 days of receipt of all documents and fees described in paragraph (2) of this subsection. If the Department determines that this stage is satisfied, a letter will be sent to the Development Owner stating that they are eligible to submit a Qualified Contract (QC) Request.

(d) Qualified Contract Request. A Development Owner may file a QC Request any time after written approval is received from the Department verifying that the Development Owner is eligible to submit the Request.

(1) Documentation that must be submitted with a Request is outlined in subparagraphs (A) - (P) of this paragraph:

(A) A completed application and certification;

(B) The Qualified Contract price calculation worksheets completed by a licensed Third-Party certified public accountant (CPA). The CPA shall certify that they have reviewed annual partnership tax returns for all years of operation, loan documents for all secured debt, and partnership agreements. They shall also certify that they are not being compensated for the assignment based upon a predetermined outcome;

(C) A thorough description of the Development, including all amenities;

(D) A description of all income, rental and other restrictions (non-TDHCA), if any, applicable to the operation of the Development;

(E) A current title report;

(F) A current appraisal with the effective date within six months of the date of the QC Request and consistent with Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy);

(G) A current Phase I Environmental Site Assessment (and Phase II, if necessary) with the effective date within six months of the date of the QC Request and consistent with Chapter 11, Subchapter D of this title;

(H) A copy of the most recent Physical Needs Assessment of the property conducted by a Third Party, if different from the assessment submitted during the preliminary qualified contract request, consistent with Chapter 11, Subchapter D of this title;

(I) A copy of the monthly operating statements for the Development for the most recent 12 consecutive months;

(J) The three most recent consecutive annual operating statements (audited would be preferred) for the Development;

(K) A detailed set of photographs of the Development, including interior and exterior of representative units and buildings, and the property's grounds;

(L) A current and complete rent roll for the Development;

(M) A certification that all tenants in the Development have been notified in writing of the request for a Qualified Contract. A copy of the letter used for the notification must also be included;

(N) If any portion of the land or improvements is leased, copies of the leases;

(O) The Qualified Contract Fee as identified in §11.901 of this title (relating to Fee Schedule); and

(P) Additional information deemed necessary by the Department.

(2) Unless otherwise directed by the Department pursuant to subsection (g) of this section, the Development Owner shall contract with a broker to market and sell the Property. The Department may, at its sole discretion, notify the Owner that the selected Broker is not approved by the Department. The fee for this service will be paid by the seller, not to exceed 6% of the QC Price.

(3) Within 90 days of the submission of a complete Request, the Department will notify the Development Owner in writing of the acceptance or rejection of the Development Owner's QC Price calculation. The Department will have one year from the date of the acceptance letter to find a Qualified Purchaser and present a QC. The Department's rejection of the Development Owner's QC Price calculation will be processed in accordance with subsection (e) of this section and the 1YP will commence as provided therein.

(e) Determination of Qualified Contract Price. The QC Price calculation is not the same as the Minimum Purchase Price calculation for the ROFR. The CPA contracted by the Development Owner will determine the QC Price in accordance with §42(h)(6)(F) of the Code taking the following into account:

(1) Outstanding indebtedness secured by, or with respect to, the building;

(2) Distributions to the Development Owner of any and all cash flow, including incentive management fees, capital contributions not reflected in outstanding indebtedness or adjusted investor equity, and reserve balance distributions or future anticipated distributions, but excluding payments of any eligible deferred developer fee. These distributions can only be confirmed by a review of all prior year tax returns for the Development;

(3) All equity contributions will be adjusted based upon the lesser of the consumer price index or 5% for each year, from the end of the year of the contribution to the end of year fourteen or the end of the year of the request for a QC Price if requested at the end of the year or the year prior if the request is made earlier than the last month of the year; and

(4) These guidelines are subject to change based upon future IRS Rulings and/or guidance on the determination of Development Owner distributions, equity contributions and/or any other element of the QC Price.

(f) Appeal of Qualified Contract Price. The Department reserves the right, at any time, to request additional information to document the QC Price calculation or other information submitted. If the documentation does not support the price indicated by the CPA hired by the Development Owner, the Department may engage its own CPA to perform a QC Price calculation and the cost of such service will be paid for by the Development Owner. If a Development Owner disagrees with the QC Price calculated by the Department, a Development Owner may appeal in writing in accordance with §11.902 of this title (relating to Appeals Process). A meeting will be arranged with representatives of the Development Owner, the Department and the CPA contracted by the Department to attempt to resolve the discrepancy.

The 1YP will not begin until the Department and Development Owner have agreed to the QC Price in writing. Further appeals can be submitted in accordance with §11.902 of this title (relating to Appeals Process) and Tex. Gov't Code §2306.0321 and §2306.6715.

(g) Marketing of Property. By submitting a Request, the Development Owner grants the Department the authority to market the Development and provide Development information to interested parties. Development information will consist of pictures of the Development, location, amenities, number of Units, age of building, etc. Development Owner or broker contact information will also be provided to interested parties. The Development Owner is responsible for providing staff any requested information to assist with site visits and inspections. Marketing of the Development will continue until such time that a Qualified Contract is presented or the 1YP has expired. Notwithstanding subsection (d)(2) of this section, the Department reserves the right to contract directly with a Third Party in marketing the Development. Cost of such service, including a broker's fee, will be paid for by the existing Development Owner. The Department must have continuous cooperation from the Development Owner. Lack of cooperation will cause the process to cease and the Development Owner will be required to comply with requirements of the LURA for the remainder of the Extended Use Period. Responsibilities of the Development Owner include but are not limited to the items described in paragraphs (1) - (3) of this subsection. The Development Owner must:

(1) Allow access to the Property and tenant files;

(2) Keep the Department informed of potential purchasers; and

(3) Notify the Department of any offers to purchase.

(h) Presentation of a Qualified Contract. If the Department finds a Qualified Purchaser willing to present an offer to purchase the property for an amount at or above the QC Price, the Development Owner may accept the offer and enter into a commercially reasonable form of earnest money agreement or other contract of sale for the property and provide a reasonable time for necessary due diligence and closing of the purchase. If the Development Owner chooses not to accept the QC offer that the Department presents, the QC request will be closed and the possibility of terminating the Extended Use Period through the Qualified Contract process is eliminated; the Property remains bound by the provisions of the LURA for the remainder of the Extended Use Period. If the Development Owner decides to sell the development for the QC Price pursuant to a QC, the purchaser must complete all requirements of an ownership transfer request and be approved by the Department prior to closing on the purchase, but the consummation of such a sale is not required for the LURA to continue to bind the Development for the remainder of the Extended Use Period.

(1) The Department will attempt to procure a QC only once during the Extended Use Period. If the transaction closes under the contract, the new Development Owner will be required to fulfill the requirements of the LURA for the remainder of the Extended Use Period.

(2) If the Department fails to present a QC before the end of the 1YP, the Department will file a release of the LURA and the Development will no longer be restricted to low-income requirements and compliance. However, in accordance with §42(h)(6)(E)(ii) of the Code, for a three-year period commencing on the termination of the Extended Use Period, the Development Owner may not evict or displace tenants of Low-Income Units for reasons other than good cause and will not be permitted to increase rents beyond the maximum tax credit rents. Additionally, the Development Owner should submit to the Department a request to terminate the LURA and evidence, in the form of a signed certification and a copy of the letter, to be approved by the Department, that the tenants in the Development have been notified in writing that the LURA will be terminated and have been informed of their protections during the three-year time frame.

(3) Prior to the Department filing a release of the LURA, the Development Owner must correct all instances of noncompliance at the Development.

(i) Compliance Monitoring during Extended Use Period. For Developments that continue to be bound by the LURA and remain affordable after the end of the Compliance Period, the Department will monitor in accordance with the applicable requirements in Subchapters F and G of this chapter (relating to Uniform Multifamily Rules).

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

Filed with the Office of the Secretary of State on January 15, 2026.

TRD-202600136
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: March 1, 2026
For further information, please call: (512) 475-3959

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SUBCHAPTER F. COMPLIANCE MONITORING

10 TAC §§10.601, 10.607, 10.611, 10.613, 10.614, 10.621, 10.622, 10.625

The Texas Department of Housing and Community Affairs (the Department) proposes amendments to §10.601 Compliance Monitoring Objectives and Applicability; §10.607 Reporting Requirements; §10.611 Determination, Documentation and Certification of Annual Income; §10.613 Lease Requirements; §10.614 Utility Allowances; §10.621 Property Condition Standards; §10.622 Special Rules Regarding Rents and Rent Limit Violations; and §10.625 Events of Noncompliance. The amendments will add new program requirements to developments that are subject to the new HOME Final rule. Additionally, the amendments will clarify that non-operable elevators must be reported to the Department within 24 hours and rent payment made on time and in full must be accepted.

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

GOVERNMENT GROWTH IMPACT STATEMENT. Mr. Wilkinson also has determined that, for the first five years the amendment would be in effect:

1. The proposed amendment to the rule will not create or eliminate a government program;

2. The proposed amendment to the rule will not require a change in the number of employees of the Department;

3. The proposed amendment to the rule will not require additional future legislative appropriations;

4. The proposed amendment to the rule will result in neither an increase nor a decrease in fees paid to the Department;

5. The proposed amendment to the rule will not create a new regulation;

6. The proposed amendment to the rule will not repeal an existing regulation;

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

8. The proposed amendment to the rule will neither positively nor negatively affect this state's economy.

PUBLIC BENEFIT/COST NOTE. Mr. Wilkinson also has determined that, for each year of the first five years the amendment to the rule is in effect, the public benefit anticipated as a result of the action will be a rule in compliance with the new HOME Final rule. There will not be any economic cost to any individual required to comply with the amendment.

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

REQUEST FOR PUBLIC COMMENT AND INFORMATION RELATED TO COST, BENEFIT OR EFFECT. The Department requests comments on the proposed amendment and also requests information related to the cost, benefit, or effect of the proposed amendment, including any applicable data, research, or analysis from any person required to comply with the proposed amendment or any other interested person. The public comment period will be held from January 30, 2026 to March 3, 2026, to receive comments on the proposed action. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Wendy Quackenbush, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or email wendy.quackenbush@tdhca.texas.gov. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local (Central) time, March 3, 2026.

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

Except as described herein the proposed amendment affects no other code, article, or statute.

§10.601. Compliance Monitoring Objectives and Applicability.

(a) The objectives of the Department in performing regular monitoring of affordable rental housing are:

(1) To provide for monitoring that meets applicable requirements of:

(A) The U.S. Department of Housing and Urban Development (HUD);

(B) The U.S. Department of the Treasury (Treasury);

(C) The Internal Revenue Service (the IRS); and

(D) Applicable state laws and rules;

(2) To enable the Department to report information to HUD, Treasury, the IRS, and the Governing Board, as required, regarding the condition and operations of such developments;

(3) To enable the Department to communicate with responsible persons regarding the condition and operation of their developments and understand clearly, with a documented record, how they are performing in meeting their obligations;

(4) To identify matters of noncompliance so that they can be appropriately addressed and to assist in targeting issues that may require compliance assistance education;

(5) To ensure that responsible persons understand the compliance status of their developments and the implications of such status;

(6) To articulate and communicate clear standards to promote the maintenance and operation of such developments in a manner that meets the high standards of the Department's affordable rental programs; and

(7) To provide a transparent system whereby all interested parties, including residents, community organizations, local governmental entities, and the affordable housing industry, may find accountability, consistency, and an awareness of the high quality standards of affordable housing in the State of Texas.

(b) This subchapter applies to the monitoring of affordable rental housing under the programs described in paragraphs (1) - (11) of this subsection:

(1) The Housing Tax Credit Program (HTC);

(2) The HOME Investment Partnerships Program (HOME), inclusive of HOME Match Units;

(3) The Tax Exempt Bond Program, inclusive of 501c3 bonds (Bond);

(4) The Texas Housing Trust Fund Program (HTF, SHTF, or THTF), inclusive of Preservation;

(5) The Tax Credit Assistance Program (TCAP);

(6) The Tax Credit Exchange Program (Exchange);

(7) The Neighborhood Stabilization Program (NSP);

(8) Section 811 Project Rental Assistance (811 PRA or 811) Program;

(9) Tax Credit Assistance Program Repayment Funds (TCAP RF);

(10) The National Housing Trust Fund (NHTF)

(11) HOME American Rescue Plan (HOME-ARP); and

(12) Emergency Rental Assistance (ERA).

(c) Monitoring activity evaluates the physical condition of the Developments and whether they are being operated in documented compliance with program requirements.

(d) The results of the Department's monitoring activities will be documented and, communicated to the owner in writing within 90 days of the monitoring visit.

(e) The Department may contract with an independent third party to monitor a Development during its construction or rehabilitation and during its operation for compliance with any conditions imposed by the Department in connection with the award of any Department funds, including allocations of housing tax credits, and appropriate state and federal laws, rules, regulations, orders, and other applicable legal requirements.

(f) The capitalized terms or phrases used herein are defined in this title. Any other capitalized terms in this subchapter 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.

(g) A Development with one or more HOME, TCAP-RF or HOME Match Units is subject to the 2025 HOME Final rule if a Contract with the Department is executed by both Parties on or after April 30, 2026; a Development with HOME, TCAP-RF and HOME Match Units with a Contract or a LURA executed prior to April 30, 2026, that has executed the applicable amendment(s) to opt-in the entirety of rule (to the extent allowed under federal or state law determined by the Department's Legal Division) are also subject to the HOME Final Rule. A Development with one or more NSP Units with a Contract executed on or after April 30, 2026, may be subject to elements of the HOME Final rule as further described in the Department's Consolidated Plan Amendment, and as outlined in the Contract and the LURA. A Development with one or more NSP Units with a Contract executed prior to April 30, 2026, that also has one or more Units subject to the 2025 HOME Final Rule may be allowed to opt into elements of the HOME Final rule, as determined by the Department's Legal Division.

§10.607. Reporting Requirements.

(a) The Department requires reports to be submitted electronically through CMTS and in the format prescribed by the Department. The Electronic Compliance Reporting Filing Agreement and the Owner's Designation of Administrator of Accounts forms must be emailed to cmts.requests@tdhca.texas.gov for:

(1) 9% Housing Tax Credit Developments - no later than the 10% Test;

(2) 4% Housing Tax Credit Developments - no later than Post Bond Closing Documentation Requirements;

(3) For all other rental Developments - no later than September 1st of the year following the award; or

(4) For all rental Developments that have received Department approval of Ownership transfer - no later than 10 days following the completion of Ownership transfer.

(b) Each Development is required to submit an Annual Owner's Compliance Report (AOCR). Depending on the Development, some or all of the Report must be submitted. The first AOCR is due the second year following the award in accordance with the deadlines set out in subsection (e) of this section. Example 607(1): A Development was allocated Housing Tax Credits in July 2022. The first report is due April 30, 2024, even if the Development has not yet commenced leasing activities.

(c) The AOCR is comprised of four parts:

(1) Part A "Owner's Certification of Program Compliance." All Owners must annually certify compliance with applicable program requirements. The AOCR Part A shall include answers to all questions required by the U. S. Department of the Treasury to be addressed, including those required by Treasury Regulation 1.42-5(b)(1) or the applicable program rules;

(2) Part B "Unit Status Report." All Developments must annually report and certify the information related to individual household income, rent, certification dates and other necessary data to ensure compliance with applicable program regulations. In addition, Owners are required to report on the race and ethnicity, family composition, age, use of rental assistance, disability status, and monthly rental payments of individuals and families applying for and receiving assistance or if the household elects not to disclose the information, such election;

(3) Part C "Housing for Persons with Disabilities." The Department is required to establish a system that requires Owners of state or federally assisted housing Developments with 20 or more housing Units to report information regarding housing Units designed for persons with disabilities. The certified answers to the questions on Part C satisfy this requirement; and

(4) Part D "Form 8703." Tax exempt bond properties funded by the Department must file Form 8703 each calendar year of the qualified project period. The form is due to the IRS by March 31 after the close of the calendar year for which the certification is made. The Department requires Tax Exempt Bond Development Owners to submit a copy of the filed Form 8703 for the preceding calendar year.

(d) The Owner is required to report certain financial information to the Department electronically through CMTS. If supplemental information is required, it must be uploaded to the Development's CMTS account. "Annual Owner's Financial Certification" (formerly Part D of the AOCR). Developments funded by the Department must annually provide and certify to the data represented in the Annual Owner's Financial Certification (AOFC).

(e) Parts A, B, C, and D of the AOCR and the AOFC must be provided to the Department no later than April 30th of each year, reporting data current as of December 31st of the previous year (the reporting year).

(f) Periodic Unit Status Reports. All Developments must submit a Quarterly Unit Status Report to the Department through the Compliance Monitoring and Tracking System. Quarterly reports are due in January, April, July, and October on the 10th day of the month. The report must report occupancy as of the last day of the previous month for the reporting period. For example, the report due October 10th should report occupancy as of September 30th of the preceding month. The first quarterly report is due on the first quarterly reporting date after leasing activity commences. Failure to report occupancy timely will result in a finding of noncompliance.

(g) Owners are encouraged to continuously maintain current resident data in the Department's CMTS. Under certain circumstances, such as in the event of a natural disaster, the Department may alter the reporting schedule and require all Developments to provide current occupancy data through CMTS.

(h) All rental Developments funded or administered by the Department will be required to submit an accurate Unit Status Report prior to a monitoring review and/or a physical inspection.

(i) Housing Tax Credit and Tax Credit Exchange Developments must submit IRS Form(s) 8609 with Part II complete through CMTS by the second monitoring review. If an owner elects to group buildings together into one or more multiple building projects, the owner must attach a statement identifying the buildings within the project.

(j) Within six (6) months but at least 90 days prior to the end of the Affordability Period and/or the end of the Land Use Restriction Term, the Owner must provide written notice to the current tenants and applicants. If the Development Owner has been approved for new funding, through the Department, and/or awarded new credits such notice is not required. The Notice must contain the following: proposed new rents, any rehabilitation plans and information on how to access the Departments Vacancy Clearinghouse to locate other affordable housing options.

(k) For Developments subject to the 2025 HOME Final Rule, within five (5) business days of a change to the Development Owner or management company, the new Owner or management company shall issue a written notice to all households of such a change.

§10.611. Determination, Documentation, and Certification of Annual Income.

(a) For all rental programs administered by the Department, annual income shall be determined by the Development Owner consistent with the Section 8 Program administered by HUD, using the definitions of annual income described in 24 CFR §5.609 as further described in the HUD Handbook 4350.3, as amended from time to time. For the Housing Tax Credit program, where there is a conflict between the HUD Handbook 4350.3 and the IRS Guide for Completing IRS Form 8823, the IRS guidance will be controlling. For the BOND program, documentation of income and assets shall be determined in accordance with the HUD Handbook 4350.3 or the IRS guidance for the §42 Housing Tax Credit program (if applicable). At the time of program designation as a low income household, Owners must certify and document household income. In general, all low income households must be certified prior to move in. Certification and documentation of household income is an Owner's responsibility, even if the Owner is using the services of a manager or management company to handle tenant intake and leasing. Accordingly, Owners should ensure that they hire competent and properly trained managers or management companies and that they exercise appropriate oversight of any managers or management companies.

(b) For every certification, requiring verification of income and assets, of a household residing in a HOME, NHTF, NSP, TCAP RF, or HOME-ARP assisted Unit, Owners must examine at least two months (60 days) of source documents evidencing annual income (e.g., wage statement, interest statement, unemployment compensation). Qualified populations in HOME-ARP Units may not need to meet an income requirement upon move-in, but will have their income verified to determine rental portion of payment.

(c) Department administered programs are permitted to utilize the Section 8 Verification of income process, available on the Department website, for the verification of household income at initial or subsequent annual certifications for households currently utilizing a tenant based Housing Choice Voucher or project-based Housing Choice Voucher issued under 24 CFR Part 983. This permission is removed if any entity that is in the Control of the operation of the Development or is in any way associated with the certifying Housing Authority. [~~This permission is only granted for households that currently are utilizing a Housing Choice Voucher.~~] No other means tested verifications are allowable.

(d) A household's lowest designation, as recorded on the Income Certification, at the time of move in, cannot be increased unless the household was found to never have income qualified for the Unit, no longer income qualifies for the Unit, or program rules required the change. In addition, a household's low income status cannot be removed because of an increase in income at recertification unless the increase causes the Unit to go over income as defined in §10.615 of this subchapter (relating to Elections under IRC §42(g) and Additional Income and Rent Restrictions for HTC, Exchange, and TCAP Developments), IRC §42(g), or the HOME Final Rule.

(e) For all programs, for every certification that requires verification of income and assets, those verifications must be dated within 120 days of the certification effective date. The only exceptions are lifetime benefits (e.g. pension, annuities, Social Security).

§10.613. Lease Requirements.

(a) Eviction and/or termination of a lease. HTC, TCAP, and Exchange Developments must specifically state in the lease or in an addendum attached to the lease that evictions or terminations of tenancy for other than good cause are prohibited. To terminate tenancy, the Owner must serve written notice to the tenant specifying the grounds for the action. For nonpayment of rent, HTC, TCAP, Exchange, and NHTF Developments require a thirty (30) day written notice. If the CARES Act is modified to eliminate the 30-day notice requirement, HUD or Treasury requirements will supersede this 30-day notice requirement for nonpayment of rent.

(b) HOME, ERA, TCAP RF, NHTF, NSP, and HOME-ARP Developments are prohibited from evicting low income residents or refusing to renew a lease except for serious or repeated violations of the terms and conditions of the lease, for violations of applicable federal, state or local law, for completion of the tenancy period for Transitional Housing (if applicable), for households that were found to never have income qualified for the highest income designation under the program or for other good cause. It must be specifically stated in the lease or in an addendum attached to the lease that evictions or non-renewal of leases for other than good cause are prohibited (24 CFR §92.253 and 24 CFR §93.303). Owners must also comply with all other lease requirements and prohibitions stated in 24 CFR §92.253 or 24 CFR §93.303, as applicable. To terminate or refuse to renew tenancy in HOME, TCAP RF, NSP, and HOME-ARP Developments, the Owner must serve written notice to the tenant specifying the grounds for the action at least 30 days before the termination of tenancy. For HOME-ARP, Owners may not terminate the tenancy or refuse to renew the lease of the Qualifying Household in any Unit that is supported by capitalized operating costs because of the household's inability to pay rent of more than 30 percent of the qualifying household's income toward rent during the longer of the federal affordability period or the time period identified in the Contract.

(c) In accordance with the Violence Against Women Act, an incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking against the documented victim of such actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be construed as a serious or repeated violation of a lease or good cause for termination of tenancy of the victim(s). Additionally, it shall not be construed as a serious or repeated violation of a lease or action eligible for termination of tenancy if a person has opposed any act or practice made unlawful by the Violence Against Women Act 2022, or because that person testified, assisted, or participated in any matter covered by the Violence Against Women Act 2022.

(d) A Development must use a lease or lease addendum that requires households to report changes in student status; this does not apply for NHTF Units when NHTF Units are fixed and not layered with HTC or another program with a student rule, or when NHTF Units are floating but under the LURA cannot be layered with HTC or another program with a student rule.

(e) Owners of HTC, TCAP, [~~and~~] Exchange Developments and Developments subject to the 2025 HOME Final Rule are prohibited from locking out or threatening to lock out any Development resident, except by judicial process, unless the exclusion is necessary for the purpose of performing repairs or construction work, or in cases of emergency. Owners are further prohibited from seizing or threatening to seize the personal property of a resident except by judicial process unless the resident has abandoned the premises. These prohibitions must be included in the lease or lease addendum.

(f) For HOME, TCAP, TCAP RF, NHTF, 811 PRA, NSP, ERA and HOME-ARP Developments, properties that were initially built for occupancy prior to 1978 must include in their lease or lease addendum a Lead Warning Statement. To demonstrate compliance, the Department will monitor that all households at HOME, TCAP, TCAP RF, NHTF, NSP, ERA, and HOME-ARP Developments have signed the Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards. (24 CFR §92.355, 24 CFR §93.361 and §570.487(c), and Section 1018 of Title X, as applicable). The addendum and disclosure are not required if all lead has been certified to have been cleared from the Development in accordance with 24 CFR §35.130, and the Owner has the required certification in its on-site records.

(g) An Owner may bifurcate a lease to terminate the tenancy of an individual who is a tenant or lawful occupant and engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against another lawful occupant living in the Unit or other affiliated individual as defined in the VAWA 2022 and as further described in 24 CFR §5.2003 or subsequent federal regulation, and also for HOME ARP QP households persons described under 22 U.S.C. 7102 [~~2013~~].

(h) All NHTF, TCAP RF, NSP, HOME, ERA, and HOME-ARP Developments for which the Contract [~~contract~~] is executed on or after December 16, 2016, must use the Department created VAWA lease addendum which provides the ability for the tenant to terminate the lease without penalty if the Department determines that the tenant qualifies for an emergency transfer under 24 CFR §5.2005(e). 811 PRA Units are prohibited from using the expired 2005 VAWA lease addendum. After OMB approval of a VAWA lease addendum, all 811 PRA households must have a valid and executed VAWA lease addendum. For the 811 PRA program certain addenda for the HUD model lease may be required such as Lead Based Paint Disclosure form, house rules, and pet rules. No other attachments to the lease are permissible without approval from the Department's 811 PRA staff.

(i) Leasing of HOME, TCAP RF, or NHTF Units to an organization that, in turn, rents those Units to individuals is not permissible for Developments with Contracts [~~contracts~~] dated on or after August 23, 2013. Leases must be between the Development and an eligible household. NSP and HOME-ARP Developments may only utilize Master Leases, if specifically allowed in the Development's LURA.

(j) Housing Tax Credit, TCAP, and Exchange Units leased to an organization through a supportive housing program where the owner receives a rental payment for the Unit regardless of physical occupancy will be found out of compliance if the Unit remains vacant for over 60 days. The Unit will be found out of compliance under the Event of Noncompliance "Violation of the Unit Vacancy Rule."

(k) It is a Development Owner's responsibility at all times to know what it has agreed to provide by way of common amenities, Unit amenities, and services.

(l) A Development Owner shall post in a common area of the leasing office a copy and provide each household, during the application process and upon a subsequent change to the items described in paragraph (2) of this subsection, the brochure made available by the Department, A Tenant Rights and Resources Guide, which includes:

(1) Information about Fair Housing and tenant choice;

(2) Information regarding common amenities, Unit amenities, and services;

(3) A certification that a representative of the household must sign prior to, but no more than 120 days prior to, the initial lease execution acknowledging receipt of this brochure;

(4) In the event this brochure is not provided timely or the household does not certify to receipt of the brochure, correction will be achieved by providing the household with the brochure and receiving a signed certification that it was received; and

(5) A Development Owner must state in the Tenant Rights and Resources Guide if part or all of the Development Site is located in the 100 year floodplain. Developments where all or part of the Development Site is located in a 100 year floodplain where the latest award from the Department is after 2019, under a Project-Based Voucher HAP Contract or 811 PRA Use Agreement with the Department, within any federal affordability period (including a HOME Match affordability period), that have a loan with the Department with an outstanding loan balance, or that has flood insurance as a contractual requirement or requirement in its LURA must maintain flood insurance, and provide evidence to the Department upon request.

(m) For Section 811 PRA Units, Owners must use the HUD Model lease, HUD form 92236-PRA.

(n) Except as identified in federal or state statute or regulation for Direct Loans, or as otherwise identified in this Chapter, the Department does not determine if an Owner has good cause or if a resident has violated the lease terms. Challenges to evictions or terminations of tenancy must be determined by a court of competent jurisdiction or an agreement of the parties (including an agreement made in arbitration), and the Department will rely on that determination.

(o) A Development subject to the 2025 HOME Final Rule must comply with all provisions outlined within this section and the following:

(1) Surety bonds, security deposit insurance, and instruments similar to surety bonds or security deposit insurance may not be used in lieu of or in addition to a security deposit for any Unit in a Development with floating Units or for fixed Units in the Designated Units. All security deposits must be fully refundable and may not be greater than two months' rent.

(2) A Designated Unit must use the HOME tenancy addendum published by HUD. If HUD does not publish a tenancy addendum, then the Department's version must be used.

(3) Leases for Designated Units:

(A) A copy of the lease template must be submitted to the Department prior to being implemented or upon any revision;

(B) The lease must provide more than one method to communicate directly with the Owner and the property management, including in person, by telephone, email or through a web portal;

(C) For a Development with one or more floating Units, if the Development is not using the same lease template for all Units in the Development, the lease must provide the provisions that will go into effect upon the Unit becoming a Designated Unit; and

(D) The lease must provide the following Department contact information: mail: TDHCA P.O. Box 13941 Austin, Texas 78711 phone: (512) 475-3800 email:info@tdhca.texas.gov.

(4) All Notices to Vacate must be submitted to the Department no later than 14 days after the notice is issued (in the case of a 30-day notice). In cases where a shorter Notice to Vacate is issued due to imminent threats to other tenants, employees, or property, a copy of the notice must be provided to the Department upon issuance.

(p) For all Developments that have or had direct loan funds from the Department, surety bonds, security deposit insurance, and instruments similar to surety bonds or security deposit insurance may not be used in lieu of or in addition to a security deposit for any Unit in a Development with floating Units or for fixed Units in the Designated Units.

§10.614. Utility Allowances.

(a) Purpose. The purpose of this section is to provide the guidelines for calculating a Utility Allowance under the Department's multifamily programs. The Department will cite noncompliance and/or not approve a Utility Allowance if it is not calculated in accordance with this section. An Owner is [~~Owners are~~] required to comply with the provisions of this section as well as any existing federal or state program guidance.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise. Other capitalized terms used in this section herein have the meanings assigned in Chapters 1, 2, 10, 11, 12, and 13 [~~and 12~~] of this title.

(1) Building Type. The HUD Office of Public and Indian Housing (PIH) characterizes building and unit configurations for HUD programs. The Department will defer to the guidance provided by HUD found at: http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_11608.pdf (or successor Uniform Resource Locator (URL)) when making determinations regarding the appropriate building type(s) at a Development.

(2) Power to Choose. The Public Utility Commission of Texas database of retail electric providers in the areas of the state where the sale of electricity is open to retail competition: http://www.powertochoose.org/ (or successor URL). In areas of the state where electric service is deregulated, the Department will verify the availability of residential service through Power to Choose. If the Utility Provider is not listed as a provider of residential service in the Development's ZIP code for an area that is deregulated, the request will not be approved. It is the Owner's responsibility to ensure that a Development in a deregulated area, but within the boundaries of a regulated municipality, is using the appropriate provider.

(3) Component Charges. The actual cost associated with the billing of a residential utility. Each Utility Provider may publish specific utility service information in varying formats depending on the service area. Such costs include, but are not limited to:

(A) Rate(s). Any cost incurred for the actual unit of measure for the utility (e.g., base cost per kilowatt hour for electricity, TDU delivery charges, rate per gallon of water, etc.);

(B) Fees. The cost associated with a residential utility that is incurred regardless of the amount of the utility the household consumes (e.g., Customer Charge);

(C) Taxes. Taxes for electricity and gas are regulated by the Texas Comptroller of Public Accounts and can be found http://comptroller.texas.gov/ (or successor URL). Local Utility Providers have control of the tax structure related to water, sewer and trash. To identify if taxes are imposed for these utilities, obtain documentation directly from the Utility Provider.

(4) Multifamily Direct Loan (MFDL). Funds provided through the HOME, NSP, NHTF, TCAP RF, HOME-ARP, ERA, or other program available through the Department, local political subdivision, or administrating agency for multifamily development that require a Utility Allowance. MFDLs may also include deferred forgivable loans or other similar direct funding, regardless if it is required to be repaid. Housing Tax Credits, Tax Exempt Bonds, CDBG, and Project Based Vouchers are not MFDLs.

(5) Renewable Source. Energy produced from energy property described in IRC §48 or IRC §45(d)(1) through (4), (6), (9), or (11). The manner in which a resident is billed is limited to the rate at which the local Utility Provider would have charged the residents for the utility if that entity had provided it to them, and as may be further limited by the Texas Utilities Code or by regulation.

(6) Submetered Utility. A utility purchased from or through a local Utility Provider by the building Owner where the resident is billed directly by Owner of the building or to a third party billing company and the utility is:

(A) Based on the residents' actual consumption of that utility and not an allocation method or Ratio Utility Billing System (RUBS);

(B) The rate at which the utility is billed does not exceed the rate incurred by the building Owner for that utility; and

(C) Tenants receiving a tenant-based Housing Choice Voucher or residing in a Housing Tax Credit Development may not be charged a service fee for submetered utilities. For MFDL Developments where tenants are being charged a service fee for submetered utilities, the fee must either be included in the Utility Allowance or be included in the gross rent calculation as a mandatory fee.

(7) Utility Allowance. An estimate of the expected monthly cost of any utility for which a resident is financially responsible, other than telephone, cable television, or internet. A utility allowance is considered implemented once the Unit Status Report is updated and rents are restricted.

(A) For HTC, TCAP, Exchange buildings, Bonds, and THTF include:

(i) Utilities paid by the household directly to the Utility Provider;

(ii) Submetered Utilities; and

(iii) Renewable Source Utilities.

(B) For a Development with an MFDL, unless otherwise prescribed in the program's Regulatory Agreement, include all utilities regardless of how they are paid.

(8) Utility Provider. The company that provides residential utility service (e.g., electric, gas, water, wastewater, and/or trash) to the buildings. If the Utility Provider offers more than one rate plan, the plan selected must be available to all households in the building.

(c) Methods. The following options are available to establish a Utility Allowance for all programs except most Developments funded with MFDL funds, which are addressed in subsection (d) of this section. A Development with HOME-ARP Units or Units subject to the 2025 HOME Final Rule, and that does not have Units subject to the 2013 HOME Rule, may use methods in this subsection or subsection (d) of this section, but cannot combine two methods in one building.

(1) Rural Housing Services (RHS) buildings or buildings with RHS assisted residents. The applicable Utility Allowance for the Development will be determined under the method prescribed by the RHS (or successor agency). No other utility method described in this section can be used by RHS buildings or buildings with RHS assisted residents.

(2) HUD-Regulated buildings layered with any Department program. If neither the building nor any resident in the building receives RHS rental assistance payments, and the rents and the Utility Allowances of the building are regulated by HUD (HUD-regulated building), the applicable Utility Allowance for all rent restricted Units in the building is the applicable HUD Utility Allowance. No other utility method described in this section can be used by HUD-regulated buildings. Unless further guidance is received from the U.S. Department of Treasury or the Internal Revenue Service (IRS), the Department considers Developments awarded an MFDL (e.g., HOME) to be HUD-Regulated buildings.

(3) Other Buildings. For all other rent-restricted Units, Development Owners must use one of the methods described in subparagraphs (A) - (E) of this paragraph:

(A) Public Housing Authority (PHA). The Utility Allowance established by the applicable PHA for the Housing Choice Voucher Program. The Department will utilize the Texas Local Government Code, Chapter 392 to determine which PHA is the most applicable to the Development.

(i) If the PHA publishes different schedules based on Building Type, the Owner is responsible for implementing the correct schedule based on the Development's Building Type(s). Example 614(1): The applicable PHA publishes a separate Utility Allowance schedule for Apartments (5+ units), one for Duplex/Townhomes and another for Single Family Homes. The Development consists of 20 buildings, 10 of which are Apartments (5+ units) and the other 10 buildings are Duplexes. The Owner must use the correct schedule for each Building Type.

(ii) In the event the PHA publishes a Utility Allowance schedule specifically for energy efficient units, and the Owner desires to use such a schedule, the Owner must demonstrate that the building(s) meet the housing authority's specifications for energy efficiency once every five years.

(iii) If the applicable PHA allowance lists flat fees for any utility, those flat fees must be included in the calculation of the Utility Allowance if the resident is responsible for that utility.

(iv) If the individual components of a Utility Allowance are not in whole number format, the correct way to calculate the total allowance is to add each amount and then round the total up to the next whole dollar. Example 614(2): Electric cooking is $8.63, Electric Heating is $5.27, Other Electric is $24.39, Water and Sewer is $15. The Utility Allowance in this example is $54.00. If the PHA schedule reflects a rounded amount, then the PHA method of rounding should be used.

(v) If an Owner chooses to implement a methodology as described in subparagraph (B), (C), (D), or (E) of this paragraph, for Units occupied by Section 8 voucher holders, the Utility Allowance remains the applicable PHA Utility Allowance established by the PHA from which the household's voucher is received.

(vi) If the Development is located in an area that does not have a municipal, county, or regional housing authority that publishes a Utility Allowance schedule for the Housing Choice Voucher Program, Owners must select an alternative methodology, unless the building(s) is located in the published Housing Choice Voucher service area of:

(I) A Council of Government created under Texas Local Government Code, Chapter 303, that operates a Housing Choice Voucher Program;

(II) The Department's Housing Choice Voucher Program; or

(III) Another PHA which publishes a separate utility allowance schedule specific to the Development's location.

(B) Written Local Estimate. The estimate must come from the local Utility Provider, be signed by the Utility Provider representative, and specifically include all Component Charges for providing the utility service.

(C) HUD Utility Schedule Model. The HUD Utility Schedule Model and related resources can be found at http://www.huduser.gov/portal/resources/utilallowance.html (or successor URL). Each item on the schedule must be displayed out two decimal places. The total allowance must be rounded up to the next whole dollar amount. The Component Charges used can be no older than those in effect 60 days prior to the beginning of the 90 day period described in subsection (f)(3) of this section related to Effective Dates.

(i) The allowance must be calculated using the MS Excel version available at http://www.huduser.org/portal/resources/utilmodel.html (or successor URL), as updated from time to time, with no changes or adjustments made other than entry of the required information needed to complete the model.

(ii) In the event that the zip code for the Development is not listed in "Location" tab of the workbook, the Department will default to the PHA code from the PHA that is closest in distance to the Development using online mapping tolls (e.g. Google Maps). If neither the zip code nor the PHA code is listed, a zip code that borders the Development's zip code will be used The Department will obtain the PHA codes from https://www.hud.gov/sites/dfiles/PIH/documents/PHA_Contact_Report_TX.pdf (or successor Uniform Resource Locator (URL)).

(iii) Green Discount. If the Owner elects any of the Green Discount options for a Development, documentation to evidence that the units and the buildings meet the Green Discount standard as prescribed in the model is required for the initial approval and every subsequent annual review. Energy Star certifications will require the certificates for each Unit at the time of the initial Utility Allowance review and a letter from a properly licensed engineer annually thereafter. The engineer letter will be accepted for a period of five (5) years and must be updated thereafter.

(I) In the event the allowance is being calculated for an application of Department funding (e.g., 9% Housing Tax Credits), upon request, the Department will provide both the Green Discount and the non-Green Discount results for application purposes.

(II) At lease up, the owner may use the utility allowance taking into consideration the green discount if they obtain written documentation from a qualified professional (e.g., a qualified energy efficiency consultant) indicating that the Units and buildings will meet the qualifications for the Green Discount within six months of the placed in service date or for MFDL within six months of the construction completion date.

(iv) Do not take into consideration any costs (e.g., penalty) or credits that a consumer would incur because of their actual usage. Example 614(3): The Electric Fact Label for ABC Electric Utility Provider provides a Credit Line of $40 per billing cycle that is applied to the bill when the usage is greater than 999 kWh and less than 2000 kWh. Example 614(4): A monthly minimum usage fee of $9.95 is applied when the usage is less than 1000 kWh in the billing cycle. When calculating the allowance, disregard these types of costs or credits.

(D) Energy Consumption Model. The model must be calculated by a properly licensed mechanical engineer. The license of the engineer must be submitted along with the model. The individual must not be related to the Owner within the meaning of §267(b) or §707(b) of the Code. The utility consumption estimate must, at minimum, take into consideration specific factors that include, but are not limited to, Unit size, building type and orientation, design and materials, mechanical systems, appliances, characteristics of building location, and available historical data. Component Charges used must be no older than those in effect 60 days prior to the beginning of the 90 day period described in subsection (f)(3) of this section related to Effective Dates; and

(E) An allowance based upon an average of the actual use of similarly constructed and sized Units in the building using actual utility usage data and Component Charges, provided that the De-

velopment Owner has the written permission of the Department. This methodology is referred to as the "Actual Use Method." For a Development Owner to use the Actual Use Method they must:

(i) Provide a minimum sample size of usage data for at least five Continuously Occupied Units of each Unit Type or 20% of each Unit Type, whichever is greater. If there are less than five Units of any Unit Type, data for 100% of the Unit Type must be provided; and

(ii) Upload the information in subclauses (I) - (IV) of this clause to the Development's CMTS account no later than the beginning of the 90 day period after which the Owner intends to implement the allowance, reflecting data no older than 60 days prior to the 90 day implementation period described in described in subsection (f)(3) of this section related to Effective Dates.

(I) An Excel spreadsheet listing each Unit for which data was obtained to meet the minimum sample size requirement of a Unit Type, the number of bedrooms, bathrooms and square footage for each Unit, the household's move-in date, the utility usage (e.g., actual kilowatt usage for electricity) for each month of the 12 month period for each Unit for which data was obtained, and the Component Charges in place at the time of the submission;

(II) All documentation obtained from the Utility Provider (or billing entity for the utility provider) and/or copies of actual utility bills gathered from the residents, including all usage data not needed to meet the minimum sample size requirement and any written correspondence from the utility provider;

(III) The rent roll showing occupancy as of the end of the month for the month in which the data was requested from the utility provider; and

(IV) Documentation of the current Utility Allowance used by the Development.

(iii) Upon receipt of the required information, the Department will determine if the Development Owner has provided the minimum information necessary to calculate an allowance using the Actual Use Method. If so, the Department shall calculate the Utility Allowance for each bedroom size using the guidelines described in subclauses (I) - (V) of this clause;

(I) If data is obtained for more than the sample requirement for the Unit Type, all data will be used to calculate the allowance;

(II) If more than 12 months of data is provided for any Unit, only the data for the most current 12 will be averaged;

(III) The allowance will be calculated by multiplying the average units of measure for the applicable utility (i.e., kilowatts over the last 12 months by the current rate) for all Unit Types within that bedroom size. For example, if sufficient data is supplied for 18 two bedroom/one bath Units, and 12 two bedroom/two bath Units, the data for all 30 Units will be averaged to calculate the allowance for all two bedroom Units;

(IV) The allowance will be rounded up to the next whole dollar amount. If allowances are calculated for different utilities, each utility's allowance will be rounded up to the next whole dollar amount and then added together for the total allowance; and

(V) If the data submitted indicates zero usage for any month, the data for that Unit will not be used to calculate the Utility Allowance.

(iv) The Department will complete its evaluation and calculation within 45 days of receipt of all the information requested in clause (ii) of this subparagraph;

(d) In accordance with 24 CFR §§92.252 and 93.302, for an MFDL in which the Department is the funding source, the Utility Allowance will be established in the following manner:

(1) For Developments with fixed MFDL Units, only one utility allowance may be used in buildings with MFDL units. For Developments with floating MFDL Units, only one utility allowance may be used for the entire Development.

(2) For Developments that, as a result of funding, must calculate the Utility Allowance under HUD Multifamily Notice H-2015-4, as revised from time to time, the applicable Utility Allowance for all rent restricted Units in the building is the applicable Utility Allowance calculated under that Notice. No other utility method described in this section can be used.

(3) Other Buildings. The Utility Allowance may be initiated by the Owner using the methodologies described in subsection (c)(3)(B), (C), (D), or (E) of this section related to Methods. Buildings for which the only source of MFDL funding is HOME-ARP and which contain no Units subject to the 2013 HOME Rule [~~HOME-Match Units~~] may calculate the Utility Allowance using the methodology described in subsection (c)(3)(A) of this section. A Development that is subject to the 2025 HOME Final Rule may also use the methodology described in subsection (c)(3)(A) of this section, if the Development does not also contain Units subject to the 2013 HOME rule. The methodology must be annually reviewed and approved by the Department.

(4) If a request is not received by October 1st, the Department will calculate the Utility Allowance using the HUD Utility Schedule Model. For property specific data, the Department will use:

(A) The information submitted in the Annual Owner's Compliance Report;

(B) Monitor Review Questionnaires submitted with prior monitoring reviews; or

(C) The owner may be contacted and required to complete the Utility Allowance Questionnaire. In such case, a five day period will be provided to return the completed questionnaire.

(D) Utilities will be evaluated in the following manner:

(i) For regulated utilities, the Department will contact the Utility Provider directly and apply the Component Charges in effect no later than 60 days before the allowance will be effective.

(ii) For deregulated utilities:

(I) The Department will use the Power to Choose website and search available Utility Providers by ZIP code;

(II) The plan chosen will be the median cost per kWh based on average price per kWh for the average monthly use of 1000 kWh of all available plans; and

(III) The actual Component Charges from the plan chosen in effect no later than 60 days before the allowance will be effective will be entered into the Model.

(E) The Department will notify the Owner contact in CMTS of the new allowance and, if requested, provide the backup for how the allowance was calculated. The owner will be provided a five day period to review the Department's calculation and note any errors. Only errors related to the physical characteristics of the building(s) and utilities paid by the residents will be reconsidered; the utility plan and Utility Provider selected by the Department and Component Charges used in calculating the allowance will not be changed. During this five

day period, the owner also has the opportunity to submit documentation and request use of any of the available Green Discounts.

(F) The allowance must be implemented for rent due in all program Units thirty days after the Department notifies the Owner of the allowance.

(5) Buildings in which there are Units under an MFDL program are considered HUD-Regulated buildings and the applicable Utility Allowance for all rent restricted Units in the building is the Utility Allowance calculated under the MFDL program. If the Department is the awarding entity, no other utility method described in this section can be used. If the Department is not the awarding jurisdiction, Owners are required to obtain, annually, the Utility Allowance established by the awarding jurisdiction, and to document all efforts to obtain such allowance to evidence due diligence in the event that the jurisdiction is nonresponsive. In such an event, provided that sufficient evidence of due diligence is demonstrated, the Department, in its sole discretion, may allow for the use of the methods described in subsection (c)(3)(B), (C), (D) or (E) of this section related to Methods to calculate and establish its utility allowance.

(e) Acceptable Documentation. For the Methods where utility specific information is required to calculate the allowance (e.g., base charges, cost per unit of measure, taxes) Owners should obtain documentation directly from the Utility Provider and/or Regulating State Agency. Any Component Charges related to the utility that are published by the Utility Provider and/or Regulating State Agency must be included. In the case where a utility is billed to the Owner of the building(s) and the Owner is billing residents through a third party billing company, the Component Charges published by the Utility Provider and not the third party billing company will be used.

(f) Changes in the Utility Allowance. An Owner may not change Utility Allowance methods, start or stop charging residents for a utility without prior written approval from the Department. Example 614(5): A Housing Tax Credit Development has been paying for water and sewer since the beginning of the Compliance Period. In year eight, the Owner decides to require residents to pay for water and sewer. Prior written approval from the Department is required. Any such request must include the Utility Allowance Questionnaire found on the Department's website and supporting documentation. Developments may not start or stop charging residents for a utility during a lease term.

(1) The Department will review all requests, with the exception of the methodology prescribed in subsection (c)(3)(E) of this section related to Methods, within 90 days of the receipt of the request.

(2) If the Owner fails to post the notice to the residents and simultaneously submit the request to the Department by the beginning of the 90 day period, the Department's approval or denial will be delayed for up to 90 days after Department notification. Example 614(6): The Owner has chosen to calculate the electric portion of the Utility Allowance using the written local estimate. The annual letter is dated July 5, 2022, and the notice to the residents was posted in the leasing office on July 5, 2022. However, the Owner failed to submit the request to the Department for review until September 15, 2022. Although the Notice to the Residents was dated the date of the letter from the utility provider, the Department was not provided the full 90 days for review. As a result, the allowance cannot be implemented by the owner until approved by the Department.

(3) Effective dates. If the Owner uses the methodology as described in subsection (c)(3)(A) of this section related to Methods, no posting is required, and any changes to the allowance can be implemented immediately, but must be implemented for rent due at least 90 days after the change. For methodologies as described in subsection (c)(3)(B), (C), (D) and (E) of this section related to Methods, the allowance cannot be implemented until the estimate is submitted to the Department and is made available to the residents by posting in a common area of the leasing office at the Development. This action must be taken by the beginning of the 90 day period in which the Owner intends to implement the Utility Allowance. Nothing in this section prohibits an Owner from reducing a resident's rent prior to the end of the 90 day period when the proposed allowance would result in a gross rent issue. Figure: 10 TAC §10.6214(f)(3) (No change.)

(g) Requirements for Annual Review.

(1) RHS and HUD-Regulated Buildings. Owners must demonstrate that the utility allowance has been reviewed annually and in accordance with the RHS or HUD regulations.

(2) Buildings using the PHA Allowance. Owners are responsible for periodically determining if the applicable PHA released an updated schedule to ensure timely implementation. When the allowance changes or a new allowance is made available by the PHA, it can be implemented immediately, but must be implemented for rent due 90 days after the PHA published effective date.

(3) Written Local Estimate, HUD Utility Model Schedule and Energy Consumption Model. Owners must update the allowance once a calendar year. The update and all back up documentation required by the method must be submitted to the Department no later than October 1st of each year. However, Owners are encouraged to submit prior to the deadline to ensure the Department has time to review. At the same time the request is submitted to the Department, the Owner must post, at the Development, the Utility Allowance estimate in a common area of the leasing office where such notice is unobstructed and visible in plain sight. The Department will review the request for compliance with all applicable requirements and reasonableness. If, in comparison to other approved Utility Allowances for properties of similar size, construction and population in the same geographic area, the allowance does not appear reasonable or appears understated, the Department may require additional support and/or deny the request. With the exception of MFDL developments, if an Owner fails to submit for annual review during the calendar year, the Development's Utility Allowance will default to the applicable PHA allowance. If the Development is located in an area that does not have a PHA, the Development fails to have a properly calculated Utility Allowance. The Utility Allowance for MFDL Developments that fail to submit for annual review will be calculated pursuant to subsection (d) of this section.

(4) Actual Use Method. Owners must update the allowance once a calendar year. The update and all back up documentation required by the method must be submitted to the Department no later than August 1st of each year. However, Owners are encouraged to submit prior to the deadline to ensure the Department has time to review. With the exception of MFDL developments, if an Owner fails to submit for annual review during the calendar year, the Development's Utility Allowance will default to the applicable PHA allowance. If the Development is located in an area that does not have a PHA, the Development fails to have a properly calculated Utility Allowance. The Utility Allowance for MFDL Developments that fail to submit for annual review will be calculated using the HUD Utility Model Schedule.

(h) For Owners participating in the Department's Section 811 Project Rental Assistance (PRA) Program, the Department's 811 division staff will approve the Utility Allowance for all 811 Units. On an annual basis, the Owner is responsible for submitting a Utility Allowance to the Department's 811 division for review. Once approved, the 811 division will provide the Owner with a property-specific rent schedule containing the approved Utility Allowance. The allowance

listed on the rent schedule only applies to 811 PRA Units, not the entire building, and is the only allowance approved for use on 811 PRA Units. Failure to obtain an updated rent schedule for changes in utility allowances and gross rents will result in noncompliance and will require the Department to monitor tenant rents using the current approved rent schedule.

(i) Combining Methods. In general, Owners may combine any methodology described in this section for each utility service type paid directly by the resident and not by or through the Owner of the building (e.g., electric, gas). For example, if residents are responsible for electricity and gas, an Owner may use the appropriate PHA allowance to determine the gas portion of the allowance and use the Actual Use Method to determine the electric portion of the allowance. RHS and certain HUD-Regulated buildings (e.g., buildings with MFDL funds) are not allowed to combine methodologies.

(j) The Owner shall maintain and make available for inspection by the resident all documentation, including, but not limited to, the data, underlying assumptions and methodology that was used to calculate the allowance. Records shall be made available at the resident manager's office during reasonable business hours or, if there is no resident manager, at the dwelling Unit of the resident at the convenience of both the Owner and resident.

(k) Utility Allowances for Applications.

(1) If the application includes RHS assisted buildings or tenants, the utility allowance is prescribed by the RHS program. No other method is allowed.

(2) If the application includes HUD-Regulated buildings for HUD programs other than an MFDL program the applicable Utility Allowance for all rent restricted Units in the building is the applicable HUD Utility Allowance. No other utility method is allowed.

(3) If the application includes MFDL funds from the Department, Applicants may calculate the utility allowance in accordance with subsection (c)(3)(B), (C), (D) or (E) of this section related to Methods. A Development with HOME-ARP Units that is subject to the 2025 HOME Final Rule may use subsection (c)(3)(A) of this section, if the Development does not also contain one or more Units subject to the 2013 HOME Final Rule. Applicants must submit their utility allowance to the Compliance Division prior to full application submission. In the event that the application has an MFDL from the Department, and receives federal funds from a unit of local government, the Department will require the use of the allowance approved by the Department. [~~HOME-ARP may use subsection (c)(3)(A) of this section.~~]

(4) If the application includes federal funds from a unit of local government but no MFDL from the Department, Applicants are required to request in writing the Utility Allowance from the awarding jurisdiction. If the awarding jurisdiction does not respond or requests the Department calculate the allowance, the Department will establish the initial Utility Allowance in accordance with subsection (d)(3) of this section.

(5) For all other applications, Applicants may calculate the utility allowance in accordance with subsection (c)(3)(A), (B), (C), (D), or (E) of this section related to Methods. If using the method described in subsection (c)(3)(B), (C), (D), or (E) of this section, applicants must submit their utility allowance to the Compliance Division prior to full application submission.

(A) Upon request, the Compliance Division will calculate or review an allowance for application. The request must be submitted to the Compliance Division no later than 21 days, but no earlier than 90 days, from when the application is due.

(B) Example 614(7): An application for a 9% HTC is due March 1, 2022. The applicant would like Department approval to use an alternative method by February 15, 2022. The request must be submitted to the Compliance Division no later than January 25, 2022, three weeks before February 15, 2022.

(C) Example 614(8): An Applicant intends to submit an application for a 4% HTC with Tax Exempt Bonds on August 11, 2022, and would like to use an alternative method. Because approval is needed prior to application submission, the request can be submitted no earlier than May 13, 2022, (90 days prior to August 11, 2022) and no later than July 21, 2022, (21 days prior to August 11, 2022).

(D) Any requests for new resources (either additional funds or tax credits) on a Development with an existing Department LURA must use the method that is in effect on the existing Development. If the Owner wishes to change or if for an MFDL application is required to change the methods for the purposes of the application, a request for the existing Development must first be submitted to the Compliance Division for approval.

(6) All Utility Allowance requests related to applications of funding must:

(A) Be submitted directly to UA-Application@tdhca.texas.gov. Requests not submitted to this email address will not be recognized.

(B) Include the "Utility Allowance Questionnaire for Applications" along with all required back up based on the method. If back-up is not submitted the Utility Allowance will be calculated using the HUD Utility Schedule Model as described in subsection (d)(3) of this section.

(l) If Owners want to change to a utility allowance other than what was used for underwriting the Owner must submit Utility Allowance documentation for Department approval, at minimum, 90 days prior to the commencement of leasing activities. The Owner is not required to review the utility allowances, or implement new utility allowances, until the building has achieved 90% occupancy for a period of 90 consecutive days or the end of the first year of the Credit Period (if applicable), whichever is earlier. Once a request to change the utility allowance is approved or implemented, the utility allowance used at underwriting is no longer valid.

(m) Department review and approval of Renewable Sources (e.g. solar):

(1) Methods outlined in subsection (c)(3)(A), (B), (C), (D) and (E) of this section are allowable if the Utility Provider or PHA publishes a rate plan or schedule specific to Renewable Sources. The method outlined in subsection (c)(3)(E) of this section is allowable only after occupancy is established as outlined in subsection (c)(3)(E) of this section;[.]

(2) Only buildings benefitting from Renewable Sources can use a Renewable Source utility allowance;[.]

(3) Tenants (not Owners) must benefit from the Renewable Source in a manner that is not a discount or credit. To evidence the benefit, 20% of current tenant bills must be submitted with the request; and[.]

(4) An Owner [~~Owners~~] must submit both the Renewable Source allowance and the non-Renewable Source allowance for approval regardless of methodology or current occupancy. If the Renewable Source is damaged or inoperable for more than 30 days, the non-Renewable Source allowance must be implemented. At the time of the first review or the first annual utility allowance review, whichever is first, the Owner must be able to demonstrate with tenant bills that

the tenants are benefitting from the Renewable Source; otherwise the non-Renewable allowance must be used.

(n) The Department reserves the right to outsource to a third party the review and approval of all or any Utility Allowance requests to use the Energy Consumption Model or when review requires the use of expertise outside the resources of the Department. In accordance with Treasury Regulation §1.42-10(c) any costs associated with the review and approval shall be paid by the Owner.

(o) All requests described in this subsection must be complete and uploaded directly to the Development's CMTS account using the "Utility Allowance Documents" in the type field and "Utility Allowance" as the TDHCA Contact. The Department will not be able to approve requests that are incomplete and/or are not submitted correctly.

§10.621. Property Condition Standards.

(a) All Developments funded by the Department must be decent, safe, sanitary, in good repair, and suitable for occupancy throughout the Affordability Period. The Department will use HUD's National Standards for the Physical Inspection of Real Estate (NSPIRE) to determine compliance with property condition standards. In addition, Developments must comply with all local health, safety, and building codes. Timelines for correcting deficiencies under the NSPIRE standards are as follows:

(1) Life-Threatening and Severe deficiencies must be corrected within 24 hours.

(2) Moderate deficiencies must be corrected within 30 days.

(3) Low deficiencies must be corrected within 60 days.

(b) HTC Development Owners are required by Treasury Regulation §1.42-5 to report (through the Annual Owner's Compliance Report) any local health, safety, or building code violations. HTC Developments that fail to comply with local codes shall be reported to the IRS.

(c) The Department is required to report any HTC Development that fails to comply with any requirements of the NSPIRE or local codes at any time during the compliance period to the IRS on IRS Form 8823. Accordingly, the Department will submit IRS Form 8823 for any NSPIRE violation.

(d) Acceptable evidence of correction of deficiencies is a certification from an appropriate licensed professional that the item now complies with the inspection standard or other documentation that will allow the Department to reasonably determine when the repair was made and whether the repair sufficiently corrected the violation(s) of NSPIRE standards. Acceptable documentation includes: copies of work orders (listing the deficiency, action taken or repairs made to correct the deficiency, date of corrective action, and signature of the person responsible for the correction), invoices (from vendors, etc.), or other proof of correction. Photographs are not required but may be submitted if labeled and only in support of a work order or invoice. The Department will determine if submitted materials satisfactorily document correction of noncompliance.

(e) Selection of Units for Inspection.

(1) Vacant Units will not be inspected (alternate Units will be selected) if a Unit has been vacant for fewer than 30 days.

(2) Units vacant for more than 30 days are assumed to be ready for occupancy and may be inspected. No deficiencies will be cited for inspectable items that require utility service, if utilities are turned off and the inspectable item is present and appears to be in working order.

(f) The Department will consider a request for review of a NSPIRE score using a process similar to the process established by the U. S. Department of Housing and Urban Development Real Estate Assessment Center. The request must be submitted in writing within 45 calendar days of receiving the initial NSPIRE inspection report and score. The request must be accompanied by evidence that supports the claim, which if corrected will result in a significant improvement in the overall score of the property. Upon receipt of this request from the Owner the Department will review the inspection and evidence. If the Department's review determines that an objectively verifiable and material error (or errors) or adverse condition(s) beyond the Owner's control has been documented and that it is likely to result in a significant improvement in the Development's overall score, the Department will take one or a combination of the following actions:

(1) Undertake a new inspection;

(2) Correct the original inspection; or

(3) Issue a new physical condition score.

(g) The responsibility rests with the Owner to demonstrate that an objectively verifiable and material error (or errors) or adverse conditions occurred in Department's inspection through submission of materials, which if corrected will result in a significant improvement in the Development's overall score. To support its request for a technical review of the physical inspection results, the Owner may submit photographic evidence, written material from an objective source with subject matter expertise that pertains to the item being reviewed such as a local fire marshal, building code official, registered architect, or professional engineer, or other similar third party-documentation.

(h) Examples of items that can be adjusted include, but are not limited to:

(1) Building Data Errors--The inspection includes the wrong building or a building that is not owned by the Development.

(2) Unit Count Errors--The total number of units considered in scoring is incorrect as reported at the time of the inspection.

(3) Non-Existent Deficiency Errors--The inspection cites a deficiency that did not exist at the time of the inspection.

(4) Local Conditions and Exceptions--Circumstances include inconsistencies between local code requirements and the NSPIRE inspection protocol, such as conditions permitted by local variance or license (e.g., child guards allowed on sleeping room windows by local building codes) or preexisting physical features that do not conform to or are inconsistent with the Department's physical condition protocol.

(5) Ownership Issues--Items that were captured and scored during the inspection that are not owned and not the responsibility of the Development. Examples include sidewalks, roads, fences, retaining walls, and mailboxes owned and maintained by adjoining properties or the city/county/state and resident-owned appliances that are not maintained by the Owner. However, if the Owner has an agreement with the city/county/state for the responsibility of maintenance on accessible routes including sidewalks, then the Owner will be responsible for any repairs.

(6) Modernization Work In Progress--Developments undergoing extensive modernization work in progress, underway at the time of the physical inspection, may qualify for an adjustment. All elements of the Unit that are not undergoing modernization at the time of the inspection (even if modernization is planned) will be subject

to the Department's physical inspection protocol without adjustment. Any request for a technical review process for modernization work in progress must include proof the work was contracted before any notice of inspection was issued by the Department.

(i) Examples of items that cannot be adjusted include, but are not limited to:

(1) Deficiencies that were repaired or corrected during or after the inspection; or

(2) Deficiencies recorded with no associated point loss (for example, inoperable smoke detectors) or deficiencies for survey purposes only (for example, fair housing accessibility).

(j) All Life-Threatening and Severe deficiencies must be corrected within 24 hours. Project Owner's Certification That All Life Threatening and Severe Deficiencies Have Been Corrected must be completed and uploaded to CMTS within 72 hours (three Department business days).

(k) An Owner must report to the Department any non-operable elevators within 24 hours using the Department's form, which is posted on the website.

§10.622. Special Rules Regarding Rents and Rent Limit Violations.

(a) Rent or Utility Allowance Violations of the maximum allowable limit for the HTC, TCAP, and Exchange programs. Under the HTC, TCAP, and Exchange programs, the amount of rent paid by the household plus an allowance for utilities, plus any mandatory fees, cannot exceed the maximum applicable limit (as determined by the minimum set-aside elected by the Owner) published by the Department. If it is determined that an HTC Development, during the Compliance Period, collected rent in excess of the rent limit established by the minimum set-aside, the Owner must correct the violation by reducing the rent charged. The Department will report the violation as corrected on January 1st of the year following the violation. The refunding of overcharged rent does not avoid the disallowance of the credit by the IRS.

(b) Rent or Utility Allowance Violations of additional rent restrictions under the HTC, TCAP, and Exchange programs. If Owners agreed to additional rent and occupancy restrictions, the Department will monitor to confirm compliance. If noncompliance is discovered, the Department will require the Owner to refund or credit the affected residents the amount of rent that was overcharged. The Owner must obtain in writing, from the household, the election to receive a full refund check or to have the entire overpaid amount credited to their household's account. In the absence of a household's election, a full refund check must be presented to the household within thirty days.

(c) Rent Violations of the maximum allowable limit due to application fees. Under the HTC, TCAP, and Exchange programs, Owners may not charge tenants any overhead costs as part of the application fee. Owners must only charge the actual cost for application fees as supported by invoices from the screening company the Owner uses.

(1) The amount of time Development staff spends checking an applicant's income, credit history, and landlord references may be included in the Development's application fee. Development Owners may add up to $5.50 per Unit for their other out-of-pocket costs for processing an application without providing documentation. The $5.50 will be adjusted annually based on the Cost of Living increased published by the Social Security Administration. Example 622(1): A Development's out-of-pocket cost for processing an application is $17.00 per adult. The property may charge $22.50 for the first adult and $17.00 for each additional adult.

(2) Documentation of Development costs for application processing or screening fees must be made available during monitoring reviews or upon request. The Department will review application fee documentation during monitoring reviews. If the Development pays a flat monthly fee to a third party for credit or criminal background checks, Owners must calculate the appropriate fee to be charged applicants by using the total number of applications processed, not just approved applications. Developments that pay a flat monthly fee must determine the appropriate application fee at least annually based on the prior year's activity. If the Department determines from a review of the documentation that the Owner has overcharged residents an application fee or collected impermissible deposits, the noncompliance will be reported to the IRS on Form 8823 under the category "gross rent(s) exceeds tax credit limits." The noncompliance will be corrected on January 1st of the next year.

(3) Owners are not required to refund the overcharged fee amount. To correct the issue, Owners must reduce the application fee for prospective applicants. Once the fee is reduced for prospective applicants, the Department will report the affected Units back in compliance on January 1st of the year after they were overcharged the application fee or an impermissible deposit.

(4) Throughout the Affordability Period, Owners may not charge a deposit or any type of fee (other than an application fee) for a household to be placed on a waiting list.

(d) Rent or Utility Allowance Violations on MFDL programs. The amount of rent paid by the household plus an allowance for utilities, plus any mandatory fees and any rental assistance (unless otherwise described in the LURA) cannot exceed the designated applicable limit published by the Department. If it is determined that the Development collected rent in excess of the allowable limit, the Department will require the Owner to refund or credit the affected residents the amount of rent that was overcharged. The Owner must obtain in writing, from the household, the election to receive a full refund check or to have the entire overpaid amount credited to their household's account. In the absence of a household's election, a full refund check must be presented to the household within thirty days.

(e) Rent or Utility Allowance Violations on HTC, TCAP, and Exchange Developments after the Compliance Period, HTC, TCAP, and Exchange Developments for three years after the LURA is released as a result of a foreclosure or deed in lieu of foreclosure (as applicable), BOND Developments, and THTF Developments. The amount of rent paid by the household plus an allowance for utilities, plus any mandatory fees cannot exceed the designated applicable limit published by the Department. If it is determined that the Development collected rent in excess of the allowable limit, the Department will require the Owner to refund or credit the affected residents the amount of rent that was overcharged. The Owner must obtain in writing, from the household, the election to receive a full refund check or to have the entire overpaid amount credited to their household account. In the absence of a tenant election, a full refund check must be presented to the household within thirty days.

(f) Trust Account to be established. If the Owner is required to refund rent under subsection (b), (d) or (e) of this section and cannot locate the resident, the excess monies must be deposited into a trust account for the household. If the violation effects multiple households, the Owner may set up a single account with all of the unclaimed funds. The account must remain open for the shorter of a four year period, until all funds are claimed, or the expiration of the Extended Use Agreement. If funds are not claimed after the required period, the unclaimed funds must be remitted to the Texas Comptroller of Public Accounts Unclaimed Property Holder Reporting Section to be disbursed as required by Texas unclaimed property statutes. All unclaimed property remissions to the Comptroller must be broken out by individuals and particular amounts.

(g) Rent Adjustments for HOME, TCAP RF, and HOME-ARP Units [~~Developments~~]:

(1) 100% HOME/TCAP-RF/HOME-ARP assisted Developments and that contain no HTC Units. If a household's income exceeds 80% at recertification, the Owner must charge a gross rent equal to 30% of the household's adjusted income;

(2) HOME/TCAP-RF/HOME-ARP Units in Developments with any Market Rate Units and where the Unit is not layered with HTC. If a household's income exceeds 80% at recertification, the Owner must charge a gross rent equal to the least [~~lesser~~] of 30% of the household's adjusted income, the comparable Market rent, or the rent being charged for the same Unit Type on a Market Rate Unit; and

(3) HOME/TCAP-RF/HOME-ARP Units [~~Developments~~] layered with HTC Units [~~other Department affordable housing programs~~]. If a household's income exceeds 80% at recertification, the Owner [~~owner~~] must charge a gross rent equal to or less than the applicable HTC limit [~~the lesser of 30% of the household's adjusted income or the rent allowable under the other Program~~].

(h) Rent Adjustments for HOME-ARP Qualified Populations:

(1) Units restricted for occupancy by Qualifying Populations with incomes equal to or less than 50% will have gross rents equal to the lesser of 30% of the adjusted income of the household, or the Low HOME rent limit with adjustments for number of bedrooms in the unit.

(2) Units restricted for occupancy by Qualifying Populations with incomes greater than 50% of median income but at or below 80% of the median income must pay rent not greater than the rent specified in 24 CFR §92.252(a), high HOME rent.

(3) Units restricted for occupancy by Qualifying Populations with incomes greater than 80% of median income will follow the rent adjustments of subsection (g) of this section.

(i) Employee Occupied Units (HTC, TCAP, Exchange, and HTF [~~THTF~~] Developments). IRS Revenue Rulings 92-61, 2004-82 and Chief Counsel Advice Memorandum POSTN-111812-14 provide guidance on employee occupied units. In general, employee occupied units are considered facilities reasonably required for the project(s) and not residential rental units. Since the building's applicable fraction is calculated using the residential rental units/space in a building, employee occupied units are taken out of both the numerator and the denominator.

(j) Owners of HOME, NSP, TCAP-RF, NHTF, and HOME-ARP must comply with §10.403 of this chapter (relating to Review of Annual HOME, NSP, TCAP-RF, and National Housing Trust Fund Rents) which requires annual rent review and approval by the Department's Asset Management Division or Department-procured vendor. Failure to do so will result in an Event of Noncompliance.

(k) Owners are not permitted to increase the household portion of rent more than once during a 12 month period, even if there are increases in rent limits or decreases in utility allowances, unless the Unit or household is governed by a federal housing program that requires such changes or the household transfers to a Unit with additional Bedrooms. If it is determined that the Development increases rent more than once in a 12-month period, the Department will require the Owner to refund or credit the affected household. The Owner must obtain in writing, from the household, the election to receive a full refund check or to have the entire overpaid amount credited to their household account. In the absence of a tenant election, a full refund check must be presented to the household.

(l) If an Owner is increasing a household's rent $75 or more per month, the Owner is required to provide the household a 75-day written notice of such increase, unless the Unit or household is governed by a federal housing program that allows for such a change. If an Owner increases the household's rent $75 or more without providing a 75-day notice, any amounts in excess of $75 per month must be refunded or credited to the affected household(s). The Owner must obtain in writing, from the household, the election to receive a full refund check or to have the entire overpaid amount credited to their household account. In absence of a tenant election, a full refund check must be presented to the household.

(m) A Development subject to the 2025 HOME Final Rule that contains one or more floating Units must provide all households a 60-day written notice before implementing any rent increase. A Development with Units subject to the 2025 HOME Final Rule with one or more fixed Units must provide a 60-day written notice to the Designated Units. If an Owner increases the household's rent without providing a 60-day notice, any increases must be refunded or credited to the affected household(s). The Owner must obtain in writing, from the household, the election to receive a full refund check or to have the entire overpaid amount credited to their household account. In absence of a tenant election, a full refund check must be presented to the household.

(n) [~~(m)~~] An Owner [~~Owners~~] must provide an option to pay rent in a manner that does not involve additional out of pocket costs to the household.

(o) An Owner may not refuse to accept rental payment made on time and in full.

(p) An Owner that controls utilities, may not stop service on utilities during the longer of the required period identified by the applicable federal program, or as directed by state law.

§10.625. Events of Noncompliance.

Figure: 10 TAC §10.625 lists events for which a multifamily rental Development may be found to be in noncompliance for compliance monitoring purposes. This list is not an exclusive list of events and issues for which an Owner may be subject to an administrative penalty, debarment or other enforcement action. The first column of the chart identifies the noncompliance event. The second column indicates to which program(s) the noncompliance event applies. The last column indicates whether the issue is reportable on IRS Form 8823 for HTC Developments.

Figure: 10 TAC §10.625

[~~Figure: 10 TAC §10.625~~]

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 January 15, 2026.

TRD-202600158
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: March 1, 2026
For further information, please call: (512) 475-3959

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SUBCHAPTER G. AFFIRMATIVE MARKETING REQUIREMENTS AND WRITTEN POLICIES AND PROCEDURE

10 TAC §10.802

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 10, Subchapter G, Section 10.802 Written Policies and Procedures. The purpose of the proposed repeal is to eliminate an outdated rule and replace it simultaneously with a new rule that addresses new federal HOME regulations.

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 has determined that, for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program but relates to changes to an existing activity: the administration of the HOME Program.

2. The repeal does not require a change in work that creates new employee positions nor does it create savings that would allow for a reduction in employee positions.

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

4. The repeal will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

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

6. The repeal is not considered to expand an existing regulation.

7. The repeal does not increase the number of individuals subject to the rule's applicability.

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the changed sections would be an updated and more germane rule. 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 also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The Department requests comments on the repeal of the rule. The public comment period will be held January 30, 2026 to March 3, 2026, to receive input on the proposed action. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Housing Resource Center, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email Jeremy.stremler@tdhca.texas.gov. ALL COMMENTS AND INFORMATION MUST BE RECEIVED BY 5:00 p.m. Central time March 3, 2026.

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 repeal affects no other code, article, or statute.

§10.802. Written Policies and Procedures.

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 January 16, 2026.

TRD-202600161
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: March 1, 2026
For further information, please call: (512) 475-3959

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10 TAC §10.802

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 10, Subchapter G, §10.802 Written Policies and Procedures. The purpose of the proposed new section is to bring the rule up to date by including updates from the new federal HOME final rule and clarifying and correcting language.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for repeal because there are no additional costs associated with this action. No additional funds will be needed to implement this rule.

The Department has analyzed this 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 has determined that, for the first five years the new sections would be in effect:

1. The rule does not create or eliminate a government program but relates to changes to an existing activity: the administration of the HOME Program.

2. The rule does not require a change in work that creates new employee positions nor does it create savings that would allow for a reduction in employee positions.

3. The new section will not require additional future legislative appropriations.

4. The new section will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The new section is not creating a new regulation.

6. The new section does expand on an existing regulation.

7. The new section does not increase the number of individuals subject to the rule's applicability.

8. The new section will not negatively or positively affect the 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 the new section and determined that it 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 new section does not contemplate or authorize a taking 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 new section as to its possible effects on local economies and has determined that for the first five years the new section would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has 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 would be a rule compliant with the federal regulations for the HOME Program. There will not be economic costs to individuals required to comply with the new section.

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 sections will have no economic costs.

REQUEST FOR PUBLIC COMMENT AND INFORMATION RELATED TO COST, BENEFIT OR EFFECT. The Department requests comments on the rule and also requests information related to the cost, benefit, or effect of the proposed rule, including 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 will be held from January 30, 2026 to March 3, 2026. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Housing Resource Center, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by email to Jeremy.stremler@tdhca.texas.gov. ALL COMMENTS AND INFORMATION MUST BE RECEIVED BY 5:00 p.m. Central time, March 3, 2026.

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

Except as described herein the proposed new section affects no other code, article, or statute.

§10.802. Written Policies and Procedures.

(a) The purpose of this section is to outline the policies and/or procedures of the Department (also called tenant section criteria) that are required to have written documentation. If an Owner fails to have such Written Policies and Procedures, or fails to follow their Written Policies and Procedures it will be handled as an Event of Noncompliance as further provided in §10.803 of this subchapter (relating to Compliance and Events of Noncompliance).

(1) Owners must inform applicants/tenants in writing, at the time of application, or at the time of other actions described in this section, that such policies/procedures as described in this section are available, and that the Owner will provide copies upon request to applicants/tenants or their representatives.

(2) The Owner must have all policies and related documentation required by this section and the TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation" available in the leasing office and anywhere else where applications are taken; Developments that accept electronic applications must maintain on their website these Written Policies and Procedures and the same noted forms.

(3) All policies must have an effective date. Any changes made to the policies require a new effective date, and a notice regarding the availability of new policies must be communicated to tenants in writing. Acceptable forms of notification in writing are:

(A) Written notice to each household through an active communications portal or online rental payment portal, if either are used at the Development;

(B) written notice via hard copy placed on the door to each occupied Unit;

(C) a notice online on the Development's website, if the Development has one; or

(D) a hard copy notice posted in the leasing office's public area for at least 30 calendar days.

(4) In general, policies addressing credit, criminal history, and occupancy standards cannot be applied retroactively. Tenants who already reside in the Development or applicants on the waitlist at the time new or revised tenant selection criteria are applied, and who are otherwise in good standing under the lease or waitlist, must not receive notices of termination or non-renewal based solely on their failure to meet the new or revised tenant selection criteria or be passed over on the waitlist. However, criteria related to program eligibility may be applied retroactively when a market rate development receives a new award of tax credits, federal, or state funds and a household is not eligible under the new program requirements, or when prior criteria violate federal or state law.

(b) Tenant Selection Criteria. A Development Owner must maintain current and prior versions of the written Tenant Selection Criteria, for the longer of the records retention period that applies to the program, or for as long as tenants who were screened under the historical criteria are occupying the Development.

(1) The criteria identified by a Development must be reasonably related to an applicant's ability to perform under the lease (for a Development with MFDL funding this means to pay the rent, not to damage the housing, and not to interfere with the rights and quiet enjoyment of other tenants) and include at a minimum:

(A) Requirements that determine an applicant's basic eligibility for the Development, including any preferences, restrictions (such as the Occupancy Standard Policy), the Waitlist Policy, Changes in Housing Designation Policy, low income unit designations utilized, and any other tenancy requirements. Any restrictions on student occupancy and any exceptions to those restrictions, as documented in the tenant file as provided for in 10 TAC §10.612(b)(2) of this chapter (relating to Tenant File Requirements) must be stated in the policies;

(B) Applicant screening criteria, including what applicant attributes are screened and what scores or findings would result in ineligibility;

(C) The following statement: Screening criteria will be applied in a manner consistent with all applicable laws, including the Texas and Federal Fair Housing Acts, the Federal Fair Credit Reporting Act, program guidelines, and TDHCA's rules;

(D) Specific age requirements if the Development is operating as an Elderly Property either under the Housing for Older Persons Act of 1995 as amended (HOPA), or the age related eligibly criteria required by its use of federal funds.

(2) The criteria must not:

(A) Include preferences for admission, unless it is in a recorded LURA which has been approved by the Department (preferences are required to be in a LURA when a Development has federal or state funding, except for the preference allowed by paragraph (3) of this subsection), is required by a program in which the Owner is participating which requires the preference, or is allowed by paragraph (3) of this subsection. Owners that include preferences in their leasing criteria due to other federal financing must provide to the Department either written approval from HUD, USDA, or VA for such preference, or identify the statute, written agreement, or federal guidance documentation that permits the adoption of this preference;

(B) Exclude an individual or family from admission to the Development solely because the household participates in the HOME Tenant Based Rental Assistance Program, the housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. §1-437), or other federal, state, or local government rental assistance program. If an Owner adopts a minimum income standard for households participating in a voucher program, it is limited to the greater of a monthly income of 2.5 times the household's share of the total monthly rent amount or $2,500 annually; or

(C) In accordance with VAWA, deny admission on the basis that the applicant has been a victim of domestic violence, dating violence, sexual assault, or stalking.

(3) If the Development is funded with HOME, HOME ARP, TCAP RF, NHTF, or NSP funds, in accordance with 24 CFR §93.356 and 24 CFR §92.359, the criteria may have a preference for persons who have experienced domestic violence, dating violence, sexual assault, or stalking.

(4) Occupancy Standard Policy.

(A) If the Development restricts the number of occupants in a Unit in a more restrictive manner than found in Section 92.010 of the Texas Property Code, the Occupancy Standard Policy must allow at least two persons per Bedroom plus one additional person per Unit. An Efficiency Unit that is greater than 600 square feet, must also have an Occupancy Standard Policy of at least three persons per Unit. In an SRO or in an Efficiency that is less than 600 square feet, the Occupancy Standard Policy must allow at least two persons per Unit. Supportive housing or transitional housing Developments where all Units in the Development are SROs or Efficiencies, are not required by the Department to have an Occupancy Standard Policy, except as required for the 811 PRA Program or as reflected in the Development's LURA.

(B) A Development may adopt a more restrictive standard than described in subparagraph (A) of this paragraph, if the Development is required to utilize a more restrictive standard by a local governmental entity, or a federal funding source. However, the Development must have this information available onsite for Department review.

(C) Except for an Elderly Development that meets the requirements of the Housing for Older Persons Act exception under the Fair Housing Act, the Occupancy Standard Policy must state that children that join the household after the start of a lease term will not cause a household to be in violation of the lease.

(c) Reasonable Accommodations Policy. Owners must maintain a written Reasonable Accommodations policy. The policy must be maintained at the Development. Owners are responsible for ensuring that their employees and contracted third party management companies are aware of and comply with the reasonable accommodation policy.

(1) The policy must provide:

(A) Information on how an applicant or current resident with a disability may request a reasonable accommodation;

(B) How transfers related to a reasonable accommodation will be addressed; and

(C) A timeframe in which the Owner will respond to a request that is compliant with §1.204(b)(3) and (d) of this title (relating to Reasonable Accommodations).

(2) The policy must not:

(A) Require a household to make a reasonable accommodation request in writing;

(B) Require a household whose need is readily apparent to provide third party documentation of a disability;

(C) Require a household to provide specific medical or disability information other than the disability verification that may be requested to verify eligibility for reasonable accommodation;

(D) Exclude a household with person(s) with disabilities from admission to the Development because an accessible unit is not currently available; or

(E) Require a household to rent a unit that has already been made accessible.

(d) Waitlist Policy. Owners must maintain a written waitlist policy, regardless of current Unit availability. The policy must be maintained at the Development. The policy must include procedures the Development uses in:

(1) Opening, closing, and selecting applicants from the waitlist, including but not limited to the requirements in §10.615(b) of this title (relating to Elections under IRC §42(g) and Additional Income and Rent Restrictions for HTC, Exchange, and TCAP Developments);

(2) Determining how lawful preferences are applied; and

(3) Procedures for prioritizing applicants needing accessible Units in accordance with 24 CFR §8.27, and Chapter 1, Subchapter B of this title (relating to Accessibility and Reasonable Accommodations).

(e) Changes in Household Designation Policy. This is applicable if a Development has adopted a policy in accordance with §10.611(c) of this subchapter (relating to Determination, Documentation and Certification of Annual Income).

(f) Denied Application Policies. Owners must maintain a written policy regarding the procedures they will follow when denying an application and when notifying denied applicants of their rights.

(1) The policy must address the manner by which rejections of applications will be handled, including timeframes and appeal procedures, if any.

(2) Within seven days after the determination is made to deny an application, the owner must provide any rejected or ineligible applicant that completed the application process a written notification of the grounds for rejection. The written notification must include:

(A) The specific reason for the denial and reference the specific leasing criteria upon which the denial is based;

(B) Contact information for any third parties that provided the information on which the rejection was based and information on the appeals process, if one is used by the Development. An appeals procedure is required for HOME Developments that are owned by Community Housing Development Organizations, and Units at Developments that lease Units under the Department's Section 811 PRA program. The appeals process must provide a 14-day period for the applicant to contest the reason for the denial, and comply with other requirements of the HUD Handbook 4350.3 4-9; and

(C) The TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation."

(3) The Development must keep and may periodically be requested to submit to the Department a log of all denied applicants that completed the application process to include:

(A) Basic household demographic and rental assistance information, if requested during any part of the application process; and

(B) The specific reason for which an applicant was denied.

(4) If an 811 applicant is being denied, within three calendar days of the denial the Department's 811 PRA Program point of contact must be notified and provided with a copy of the written notice that was provided to the applicant.

(g) Non-renewal and/or Termination Notices. A Development Owner must maintain a written policy regarding procedures for providing households non-renewal and termination notices.

(1) The Owner must provide in any non-renewal or termination notice, a specific and lawful reason for the termination or non-renewal.

(2) The notification must:

(A) Be delivered as required under applicable program rules and the lease. For HOME, HOME ARP, TCAP RF, NHTF, NSP, HTC, TCAP, ERA, and Exchange Developments, see 10 TAC §10.613(a) - (b) of this chapter (relating to Lease Requirements). For Section 811 PRA, see 24 CFR §247.4(a) - (f);

(B) Include the TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation." To avoid providing applicants and residents with duplicate information, TDHCA administered Developments layered with other federal funds are permitted to amend the TDHCA VAWA forms to incorporate requirements of other funders. However, none of the information included in the TDHCA created form may be omitted;

(C) State how a person with a disability may request a reasonable accommodation in relation to such notice;

(D) Include information on the appeals process if one is used by the Development (this process is required under some LURAs, for HOME Developments that are owned or sponsored by Community Housing Development Organizations, and for 811 PRA units); and

(E) For Units subject to the 2025 HOME Final Rule as identified in §10.601(g), of this chapter relating to 2025 HOME Final Rule applicability,

(i) Such notice should be provided in a translated format when needed to ensure meaningful access for limited English proficient (LEP) persons; and

(ii) Be provided to TDHCA within the timeframe identified in §10.613(o)(4) if this chapter, relating to Notices to Vacate.

(h) At the time of application Owners must provide each adult in the household the TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation." To avoid providing applicants and residents with duplicate information, TDHCA administered Developments layered with other federal funds are permitted to amend the TDHCA VAWA forms to incorporate requirements of other funders. However, none of the information included in the TDHCA created form may be omitted.

(i) Policies and procedures will be reviewed periodically by the Department's Fair Housing staff, as a result of complaints, or through an owner initiated written policies and procedures review. Owners may request a review of the written policies and procedures for a portfolio of Developments by submitting a request to fair.housing@tdhca.state.tx.us. After review by the Department, an Owner may make non-substantive changes to the policies.

(j) A Development Owner must allow applicants to submit applications via mail and at the Development site or leasing office; if the Development is electronically equipped, the Development may also allow applications to be submitted via email, website form, or fax. The Development's tenant selection criteria must state available alternate means of submission and include address, email, or other necessary contact information on the form or its attached leasing criteria.

(k) If the Development has ever been funded via Direct Loan or has HOME Match units, the Development's written policies and procedures must list at least two methods to contact the Development.

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 January 16, 2026.

TRD-202600162

Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: March 1, 2026
For further information, please call: (512) 475-3959

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CHAPTER 13. MULTIFAMILY DIRECT LOAN RULE

10 TAC §§13.1 - 13.13

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 13, Multifamily Direct Loan Rule, §§13.1 - 13.13. The purpose of the proposed repeal is to provide for clarification of the existing rule through new rulemaking action.

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

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

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

1. The proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption of rules, with changes, regarding an existing activity: administration of the Multifamily Direct Loan Program.

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

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

4. The proposed repeal does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.

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

6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity: administration of the Multifamily Direct Loan Program.

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

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

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

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

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed repeal does not contemplate or authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6). The Department has evaluated the proposed repeal as to its possible effects on local economies and has determined that for the first five years the proposed repeal would be in effect there would be no economic effect on local employment; therefore no local employment impact statement is required to be prepared.

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 proposed repeal is in effect, the public benefit anticipated as a result of the repealed section would be increased clarity and improved access to the Multifamily Direct Loan funds. 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 also has determined that for each year of the first five years the proposed repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The Department requests comments on the proposed repeal. The public comment period will be held January 30, 2026, through March 3, 2026, to receive input on the proposed repealed sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Priscilla Stevenson, Multifamily Direct Loan Program Specialist, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email priscilla.stevenson@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local (Central) time March 3, 2026.

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

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

§13.1. Purpose.

§13.2. Definitions.

§13.3. General Loan Requirements.

§13.4. Set-Asides, Regional Allocation, and NOFA Priorities.

§13.5. Application and Award Process.

§13.6. Scoring Criteria.

§13.7. Maximum Funding Requests and Minimum Number of MFDL Units.

§13.8. Loan Structure and Underwriting Requirements.

§13.9. Construction Standards.

§13.10. Development and Unit Requirements.

§13.11. Post-Award Requirements.

§13.12. Pre-Closing Amendments to Direct Loan Terms.

§13.13. Post-Closing Amendments to Direct Loan Terms.

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 January 15, 2026.

TRD-202600140
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: March 1, 2026
For further information, please call: (512) 475-3959

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10 TAC §§13.1 - 13.13

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 13, Multifamily Direct Loan Rule, §§13.1 - 13.13. The purpose of the proposed new sections is to gain consistency with federal rules.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

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

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

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

1. The proposed rule does not create or eliminate a government program, but relates to the readoption of this rule, with changes, to an existing activity: administration of the Multifamily Direct Loan Program.

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

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

4. The proposed rule changes will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

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

6. The proposed rule will not expand, limit, or repeal an existing regulation.

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

8. The proposed rule will not negatively or positively affect the 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, in drafting this proposed rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code §2306.111.

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. This rule relates to the procedures for multifamily direct loan applications and award through various Department fund sources. Other than in the case of a small or micro-business that is an applicant for such a loan product, no small or micro-businesses are subject to the rule. It is estimated that approximately 200 small or micro-businesses are such applicants; for those entities the new rule does not result in a negative impact for those small or micro-businesses. There are not likely to be any rural communities subject to the proposed rule because this rule is applicable only to direct loan applicants for development of properties, which are not generally municipalities. The fee for applying for a Multifamily Direct Loan product is $1,000, unless the Applicant is a nonprofit that provides supportive services or the Applicant is applying for Housing Tax Credits in conjunction with Multifamily Direct Loan funds, in which case the application fee may be waived. These 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.

There are 1,363 rural communities potentially subject to the proposed rule for which the economic impact of the rule is projected to be $0. 10 TAC Chapter 13 places no financial burdens on rural communities, as the costs associated with submitting an Application are born entirely by private parties. In an average year the volume of applications for MFDL resources that are located in rural areas is approximately ten. In those cases, a rural community securing a loan will experience an economic benefit, including, potentially, increased property tax revenue from a multifamily Development.

3. The Department has determined that because there are rural MFDL 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 MFDL awards and successfully use those awards to construct multifamily housing, although the specific impact is not able to be quantified in advance.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed rule does not contemplate or authorize a taking 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 MFDL Developments, layered with housing tax credits, often involve a typical minimum investment of $10 million in capital, and more commonly an investment from $20 million to $30 million. Such a capital investment has direct, indirect, and induced effects on the local and regional economies and local employment. However, because the exact location of

where program funds or developments are directed is not determined in rule, and is driven by real estate demand, there is no way to predict during rulemaking where these positive effects may occur. Furthermore, while the Department believes that any and all impacts are positive, that impact is not able to be quantified for any given community until MFDL awards and LIHTCs are actually awarded to a proposed Development, given the unique characteristics of each proposed multifamily Development.

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 MFDL Development layered with LIHTC and 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 MFDL 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 sections are in effect, the public benefit anticipated as a result of the new sections will be improved clarity of program requirements in multiple sections, codification in rule practices of the Department, and changed citations to align with changes to other multifamily rules. There will not be any economic cost to any individuals required to comply with the new sections because this rule does not have any new requirements that are not required by changes to federal law that would cause additional costs to applicants.

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 sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to costs or revenues of the state or local governments because it does not have any new requirements that would cause additional costs to applicants.

REQUEST FOR PUBLIC COMMENT AND INFORMATION RELATED TO COST, BENEFIT OR EFFECT. The Department requests comments on the rule and also requests information related to the cost, benefit, or effect of the proposed rule, including 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 will be held January 30, 2026, through March 3, 2026, to receive input on the proposed action. Comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Priscilla Stevenson at priscilla.stevenson@tdhca.texas.gov. ALL COMMENTS AND INFORMATION MUST BE RECEIVED BY 5:00 p.m., Austin local (Central) time, March 3, 2026.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

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

§13.1. Purpose.

(a) Authority. The rules in this chapter apply to the funds provided to Multifamily Developments through the Multifamily Direct Loan Program (MFDL or Direct Loan Program) by the Texas Department of Housing and Community Affairs (the Department). Notwithstanding anything in this chapter to the contrary, loans and grants issued to finance the development of multifamily rental housing are subject to the requirements of the laws of the State of Texas, including but not limited to Tex. Gov't Code, Chapter 2306, and federal law pursuant to the requirements of Title II of the Cranston-Gonzalez National Affordable Housing Act, Division B, Title III of the Housing and Economic Recovery Act (HERA) of 2008 - Emergency Assistance for the Redevelopment of Abandoned and Foreclosed Homes, Section 1497 of the Dodd-Frank Wall Street Reform and Consumer Protection Act: Additional Assistance for Neighborhood Stabilization Programs, Title I of the Housing and Economic Recovery Act of 2008, Section 1131 (Public Law 110-289), and the implementing regulations 24 CFR Parts 91, 92, 93, and 570 as they may be applicable to a specific fund source. The Department is authorized to administer Direct Loan Program funds pursuant to Tex. Gov't Code, Chapter 2306.

(b) General. This chapter applies to Applications submitted for, and award of, MFDL funds by the Department and establishes the general requirements associated with the application and award process for such funds. Applicants pursuing MFDL assistance from the Department are required to certify, among other things, that they have familiarized themselves with all applicable rules that govern that specific program including, but not limited to this chapter, 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 11 of this title (relating to Qualified Allocation Plan (QAP)), and Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules) as applicable. The Applicant is also required to certify that it is familiar with the requirements of any other federal, state, or local financing sources that it identifies in its Application. Any conflict with rules, regulations, or statutes will be resolved on a case-by-case basis that allows for compliance with all requirements. Conflicts that cannot be resolved may result in Application ineligibility, with the right to an Appeal as provided in 10 TAC §1.7 of this title (relating to Appeals Process) or 10 TAC §11.902 of this title (relating to Appeals Process for the Housing Tax Credit program), as applicable.

(c) Waivers. Requests for waivers of any program rules or requirements must be made in accordance with 10 TAC §11.207 of this title (relating to Waiver of Rules), as limited by the rules in this chapter. Waiver requirements are provided in paragraphs (1) through (3) of this subsection:

(1) Rule Waivers and NOFA Amendments prior to Construction Completion. For Direct Loan Developments, an Applicant may request, at the latest at Application submission, that the Department amend its NOFA, amend its Consolidated Plan or One Year Action Plan, or ask HUD to grant a waiver of its regulations, if such request will not impact the timing of the Application's review, nor alter the scoring or satisfaction of threshold requirements for the Housing Tax Credits or other Department resources. Such requests will be presented to the Department's Board. The Board may not waive rules that are federally required, or that have been incorporated as a required part of the Department's Consolidated Plan or One Year Action Plan (OYAP) to the U.S. Department of Housing and Urban Development (HUD), unless those Plans are so amended by the earlier of a date the NOFA is closed or by an earlier date that is identified by the Board. Such items include §13.8 of this chapter, relating to Loan Structure and Underwriting Requirements, the interest rate published in the NOFA, the maximum subsidy limits as published in the NOFA, the priorities listed in the NOFA, the eligibility requirements of applicants described in rule or the NOFA, scoring, and the tiebreaker procedure. Prior to Contract, except as otherwise described in rule, the Application Acceptance Date will then be the date the Department completes the amendment process or receives a waiver from HUD, if funds are still available in the NOFA. After Contract, but prior to Construction Completion staff will not recommend a waiver or NOFA Amendment;

(2) Build America, Buy America (BABA) Waiver. If the Applicant intends to request a waiver of BABA, such request must be submitted no later than the date on which the Application is submitted. The Department will submit this waiver request to HUD. This waiver, if granted by HUD the earlier of 90 days before the NHTF Commitment deadline or one year from Board Award, will not require the Development to receive a new Application Acceptance Date;

(3) Waivers under Closed NOFAs. The Board may not waive any portion of a closed NOFA prior to Construction Completion. Thereafter, the Board may only waive any portion of a closed NOFA as part of an approved Asset Management Division work out. Allowable Post-Closing Amendments are described in 10 TAC §13.13 of this chapter (relating to Post-Closing Amendments to Direct Loan Terms).

(d) Eligibility and Threshold Requirements. Applications for Multifamily Direct Loan funds must meet all applicable eligibility and threshold requirements of Chapter 11 of this title (relating to the Qualified Allocation Plan (QAP)), unless otherwise excepted in this rule or NOFA.

§13.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Any capitalized terms not specifically mentioned in this section shall have the meaning as defined in Tex. Gov't Code, Chapter 2306; §§141, 142, and 145 of the Internal Revenue Code; 24 CFR Parts 91, 92, and 93; 2 CFR Part 200; and 10 TAC Chapters 1 of this title regarding Administration, 2 of this title regarding Enforcement, 10 of this title regarding Uniform Multifamily Rules, and 11 of this title regarding the Qualified Allocation Plan.

(1) Application Acceptance Date--The date the MFDL Application is considered received by the Department as described in this chapter, Chapter 11 of this title, or in the NOFA.

(2) Community Housing Development Organization (CHDO)--A private nonprofit organization with experience developing or owning affordable rental housing that meets the requirements in 24 CFR Part 92 for purposes of receiving HOME Investment Partnerships Program (HOME) funds under the CHDO Set-Aside. A member of a CHDO's board cannot be a Principal of the Development beyond their role as a board member of the CHDO or be an employee of the development team, and may not receive financial benefit other than reimbursement of expenses from the CHDO (e.g., a voting board member cannot also be a paid executive). A CHDO's service area may not be the entire state; however, a CHDO that services the entire state, minus one Metropolitan Area, may qualify.

(3) Development Period--The Development Period is the time allowed to complete construction, which includes, without limitation, that necessary title transfer requirements and construction work has been fully performed, the certificate(s) of occupancy (if New Construction or reconstruction), Certificate of Substantial Completion (AIA Form G704), Form HUD-92485 (for instances in which a federally insured HUD loan is utilized), or equivalent notice has been issued, and that all deficiencies have been corrected. It includes the construction term, but could be longer.

(4) 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.

(5) Federal Affordability Period--The period commencing on the later of the date after Construction Completion and after all Direct Loan funds have been disbursed for the project, or the date of Project Completion as defined in 24 CFR §92.2 or §93.3, as applicable, and ending on the date which is the required number of years as defined by the federal program.

(6) HOME--the HOME Investment Partnership Program, authorized by Title II of the Cranston-Gonzalez National Affordable Housing Act,

(7) HOME Match-Eligible Unit--A Unit in the Development that is not assisted with HOME Program funds, but would qualify as eligible for Match under 24 CFR Part 92. The restrictions on Qualified Units combined with Project Based Vouchers subject to the 2013 HOME Final Rule also apply to HOME Match Units subject to the 2013 HOME Final Rule. Unless otherwise identified by the provisions in the NOFA, TCAP RF and matching contribution on TCAP-RF, NSP and NHTF Developments must meet all criteria to be classified as HOME-Match Eligible Units.

(8) 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 by the Department for Direct Loan Programs administered by the Department.

(9) Land Use Restriction Agreement (LURA) Term--The period commencing on the effective date of the LURA and ending on the date which, at a minimum, is the greater of the loan term or 30 years. The LURA may include the Federal Affordability Period, in addition to the State Affordability Period requirements and State restrictive criteria.

(10) Matching Contribution (Match)--A contribution to a Development from nonfederal sources that may be in one or more of the forms provided in subparagraphs (A) through (E) of this paragraph:

(A) Cash contribution (grant), except for cash contributions made by investors in a limited partnership or other business entity subject to pass through tax benefits in a tax credit transaction or owner equity (including Deferred Developer Fee and General Partner advances);

(B) Reduced fees or donated labor from certain eligible contractors, subcontractors, architects, attorneys, engineers, excluding any contributions from a party related to the Developer or Owner;

(C) Net present value of yield foregone from a below market interest rate loan as described in HUD Community Planning and Development (CPD) Notice 97-03 or subsequent HUD written guidance;

(D) Waived or reduced fees or taxes from cities or counties not related to the Applicant in connection with the proposed Development. In accordance with 24 CFR §92.219(b)(2)(iv), this form of Match is not available for a Development that is not assisted with HOME funds; or

(E) Donated land or land sold by an unrelated third party at a price below market value, as evidenced by a third party appraisal.

(11) NHTF--National Housing Trust Fund.

(12) NOFA--Notice of Funding Availability.

(13) NSP--Neighborhood Stabilization Program.

(14) Qualifying Unit--means a Unit designated for Multifamily Direct Loan use and occupancy in compliance with State and federal regulations, as set forth in the Contract. For Developments subject to the 2013 HOME final rule, unless the Development is all-bills paid, Qualifying Units may not also have a Project-Based Voucher

issued under 24 CFR Part 983, unless the Application contains permission from the Public and Indian Housing Division of HUD for the layered units to use a utility allowance that is not the Public Housing Utility Allowance, or the Applicant has received permission from the Community Planning and Development Division of HUD for the layered units to use the Public Housing Utility Allowance.

(15) Relocation Plan--A residential anti-displacement and relocation assistance plan and budget in an Application that addresses residential and non-residential displacement and complies with the Uniform Relocation Assistance and Real Property Act as implemented at 49 CFR Part 24, HUD Handbook 1378, and the TDHCA Relocation Handbook. Additionally, some HOME and NSP funded Developments must comply with Section 104(d) of the Housing and Community Development Act of 1974 (as amended), and 24 CFR Part 42 (as modified for NSP and HOME American Rescue Plan (ARP) funds), which requires a one-for-one replacement of occupied and vacant, occupiable low- and moderate-income dwelling units demolished or converted. Guidance is on the Department's website at https://www.tdhca.state.tx.us/multifamily/home/index.htm. The Relocation Plan must be in form and substance consistent with requirements of the Department.

(16) Section 234 Condominium Housing Basic Mortgage Limits (Section 234 Condo Limits)--The per-unit subsidy limits for all MFDL funding. These limits take into account whether or not a Development is elevator served and any local conditions that may make development of multifamily housing more or less expensive in a given metropolitan statistical area. If the high cost percentage adjustment applicable to the Section 234 Condo Limits for HUD's Fort Worth Multifamily Hub is applicable for all Developments that TDHCA finances through the MFDL Program, then confirmation of that applicability will be included in the applicable NOFA.

(17) Site and Neighborhood Standards--HUD requirements for New Construction or reconstruction Developments funded by NHTF (24 CFR §93.150) or New Construction Developments funded by HOME (24 CFR §92.202). Proposed Developments must provide evidence that the Development will comply with these federal regulations in the Application. Guidance for successful submissions is provided on the Department website at https://www.tdhca.state.tx.us/multifamily/apply-for-funds.htm. Applications that are unable to comply with requirements in 24 CFR §983.57(e)(2) and (3) will not be eligible for HOME or NHTF.

(18) State Affordability Period--The LURA Term as described in the MFDL contract and loan documents and as required by the Department in accordance with Chapter 2306, Texas Gov't Code which may be an additional period after the Federal Affordability Period.

(19) Surplus Cash--Except when the first lien mortgage is a federally insured HUD mortgage that is subject to HUD's surplus cash definition, Surplus Cash is any cash remaining:

(A) After the payment of:

(i) All sums due or currently required to be paid under the terms of any superior lien;

(ii) All amounts required to be deposited in the reserve funds for replacement;

(iii) Operating expenses actually incurred by the borrower for the Development during the period with an appropriate adjustment for an allocable share of property taxes and insurance premiums;

(iv) Recurring maintenance expenses actually incurred by the borrower for the Development during the period; and

(v) All other obligations of the Development approved by the Department; and

(B) After the segregation of an amount equal to the aggregate of all special funds required to be maintained for the Development; and

(C) Excluding payment of:

(i) All sums due or currently required to be paid under the terms of any subordinate liens against the property;

(ii) Any development fees that are deferred including those in eligible basis; and

(iii) Any payments or obligations to the borrower, ownership entities of the borrower, related party entities; any payment to the management company exceeding 5% of the effective gross income; incentive management fee; asset management fees; or any other expenses or payments that shall be negotiated between the Department and the borrower.

(20) TCAP Repayment Funds (TCAP RF)-- The Tax Credit Assistance Payment program funds.

§13.3. General Loan Requirements.

(a) Funding Availability. Direct Loan funds may be made available through a NOFA or other similar governing document that includes the method for applying for funds and funding requirements.

(b) Oversourced Developments. A Direct Loan request may be reduced or not recommended if the Department's Underwriting Report concludes the Development does not need all or part of the MFDL funds requested in the Application because it is oversourced, and for which a timely appeal has been completed, as provided in 10 TAC §1.7 of this title (relating to Appeals Process) or 10 TAC §11.902 of this title (relating to Appeals Process for Competitive HTC Applications), as applicable.

(c) Funding Sources. Direct Loan funds are composed of annual HOME and National Housing Trust Fund (NHTF) allocations from HUD and associated Program Income, repayment of TCAP or TCAP RF loans, HOME Program Income, NSP Program Income (NSP PI or NSP), and any other similarly encumbered funding that may become available, except as otherwise noted in this chapter. Similar funds include any funds that are identified by the Board to be loaned or granted for the development of multifamily property and are not governed by another chapter in this title, with the exception of State funds appropriated for a specific purpose.

(d) Eligible and Ineligible Activities.

(1) Eligible Activities. Direct Loan funds may be used for the predevelopment, acquisition, New Construction, reconstruction, Adaptive Reuse, rehabilitation, or preservation of affordable housing with suitable amenities, including real property acquisition, site improvements, conversion, demolition, or operating cost reserves, subject to applicable HUD guidance. Other expenses, such as financing costs, relocation expenses of any displaced persons, families, businesses, or organizations may be included. MFDL funds may be used to assist Developments previously awarded by the Department when approved by specific action of the Board. Eligible Activities may have fund source restrictions or may be restricted by a NOFA.

(2) Ineligible Activities. Direct Loan funds may not be awarded to a Development:

(A) Layered with Housing Tax Credits that have elected the income averaging election under Section 42(g)(1)(C) of the Internal Revenue Code that have more than 15% of the Units designated as Market Rate Units;

(B) In which the Applicant will not be directly leasing Units to residents, except as specifically described in the NOFA;

(C) Applicants applying for HOME or NSP funds may not commit any choice limiting activities as defined by HUD in 24 CFR Part 58 prior to obtaining environmental clearance, and will be subject to termination of the Direct Loan award if such action is undertaken. For an Applicant applying for NHTF funds, choice limiting activities prior to full execution of a Contract with the Department are not prohibited, but the eligibility of costs associated with these activities will be impacted in keeping with 24 CFR §93.201(h) and all applicable federal regulations. Furthermore, certain activities which prohibit environmental mitigation may cause the Development to be ineligible and will cause the termination of the Direct Loan award.

(e) Ineligible Costs. All costs associated with the Development and known by the Applicant must be disclosed as part of the Application. Other federal funds will be included in the Final Direct Loan Eligible Costs located in Table 1 of the Direct Loan Calculator as part of the required per-unit subsidy limit calculation. Costs ineligible for reimbursement with Direct Loan funds in accordance with 24 CFR Parts 91, 92, 93, and 570, and 2 CFR Part 200, as federally required or identified in the NOFA, include, but are not limited to:

(1) Offsite costs;

(2) Stored Materials;

(3) Site Amenities, such as swimming pools and decking, landscaping, playgrounds, and athletic courts;

(4) The purchase of equipment required for construction;

(5) Furnishings and Furniture, Fixtures and Equipment (FF&E) required for the Development;

(6) Detached Community Buildings;

(7) Carports and/or parking garages, unless attached as a feature of the Unit;

(8) Commercial Space costs;

(9) Personal Property Taxes;

(10) TDHCA fees;

(11) Syndication and organizational costs;

(12) Reserve Accounts, except Initial Operating Deficit Reserve Accounts;

(13) Delinquent fees, taxes, or charges;

(14) Costs incurred more than 24 months prior to the effective date of the Direct Loan Contract, unless the Application is awarded TCAP RF, and if specifically allowed by the Board;

(15) Costs that have been allocated to or paid by another fund source (except for soft costs that are attributable to the entire project as specifically identified in the applicable federal rule, or for TCAP RF if specifically allowed by the NOFA), including but not limited to, contingency, including soft cost contingency, and general partner loans and advances;

(16) Deferred Developer Fee;

(17) Texas Bond Review Board (BRB) fees;

(18) Community Facility spaces that are not for the exclusive use of tenants and their guests;

(19) The portion of soft costs that are allocated to support ineligible hard costs;

(20) Other costs limited by Award or NOFA, or as established by the Board;

(21) Interest on Construction Loans; and

(22) Acquisition that occurred before the Application Acceptance Date and environmental clearance for HOME and NSP projects. For NHTF, acquisition that occurred prior to Contract signing.

§13.4. Set-Asides, Regional Allocation, and NOFA Priorities.

(a) Set-Asides. Specific types of Activities or Developments for which a portion of MFDL funds may be reserved in a NOFA will be grouped in categories called Set-Asides. Not all Set-Asides will be available in every NOFA, and the Board may approve Set-Asides not described in this section. The amount of a single award may be credited to multiple Set-Asides, in which case the credited portion of funds may be repositioned into an oversubscribed Set-Aside prior to a defined collapse deadline. Applications under any and all Set-Asides may or may not be layered with other Department Multifamily programs except as provided in this section or as determined by the Board to address unique circumstances not addressed by these rules.

(1) General / Soft Repayment Set-Aside.

(A) Applicants seeking to qualify for NHTF under this set-aside must propose Developments in which all Units assisted with MFDL funds are available for households earning the greater of the poverty rate or 30% AMI, and have rents no higher than the rent limits for extremely low-income tenants in 24 CFR §93.302(b).

(B) Applicants seeking to qualify for HOME under this set-aside must propose Developments in which all Units assisted with MFDL funds are available to households earning no more than 80% AMI and have rents no higher than the rent limits under 24 CFR §92.2.

(C) A portion of the General / Soft Repayment Set-Aside may be reallocated into the CHDO Set-Aside in order to fully fund a CHDO award that exceeds the remaining amount in the CHDO Set-Aside.

(2) CHDO Set-Aside. Unless waived or reduced by HUD, a portion of the Department's annual HOME allocation will be set aside for eligible CHDOs meeting the requirements of the definition of Community Housing Development Organization in 24 CFR §92.2 and 10 TAC §13.2(2) of this chapter. Applicants under the CHDO Set-Aside must be proposing to develop housing on Development Sites located outside Participating Jurisdictions (PJ), unless the award is made within a Persons with Disabilities (PWD) Set-Aside, or the requirement under Tex. Gov't Code §2306.111(c)(1) has been waived by the Governor. A grant for CHDO operating expenses may be awarded in conjunction with an award of MFDL funds under this Set-Aside, if no other CHDO operating grants have been awarded to the Applicant in the same Calendar year, in accordance with 24 CFR §92.208. Applications under the CHDO Set-Aside may not have a for-profit special limited partner within the ownership organization chart.

(b) Regional Allocation and Collapse. All funds subject to Tex. Gov't Code §2306.111 or as described to HUD in planning documents will be allocated to regions and potentially subregions based on a Regional Allocation Formula (RAF) within the applicable Set-Asides (unless the funds have already been through a RAF of the annual NOFA and/or Special Purpose NOFA). The RAF methodology may differ by fund source. HOME funds will be allocated in accordance with Tex.

Gov't Code Chapter 2306. The end date and Application Acceptance Date for the regionally allocated funds will be identified in the NOFA but in no instance shall it be less than 30 days from the date a link to the Board approved NOFA or NOFA Amendment is published on the Department's website.

(1) After funds have been made available regionally and the period for regional allocation has expired, remaining funds within each respective Set-Aside may collapse and be pooled together on a date identified in the NOFA. All Applications received prior to these collapse dates will continue to hold their priority unless they are withdrawn, terminated, suspended, or funded.

(2) Funds remaining after expiration of the Set-Asides on the end date identified in the NOFA, which have not been requested in the form of a complete Application, may be collapsed and pooled together to be made available statewide on a first-come first-served basis to Applications submitted after the collapse dates, as further described in the NOFA.

(3) In instances where the RAF would result in regional or subregional allocations insufficient to fund an Application, the Department may use an alternative method of distribution, including an early collapse, revised formula or other methods as approved by the Board, and reflected in the NOFA.

(c) Notice of Funding Availability (NOFA). MFDL funds will be distributed pursuant to the terms of a published NOFA that provides the specific collapse dates and deadlines as well as Set-Aside and RAF amounts applicable to each NOFA, along with scoring criteria, priorities, award limits, and other Application information. Set-asides, RAFs, and total funding amounts may increase or decrease in accordance with the provisions herein without further Board action as authorized by the Board.

§13.5. Application and Award Process.

(a) Applications. MFDL Applicants must follow the applicable requirements in 10 TAC Chapter 11, Subchapter C (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules) and the Notice of Funding Availability for which the Application is submitted.

(b) Application Acceptance Date. Applications will be considered received on the business day of receipt, unless a different time period is described in the Department's rules or NOFA. If an Application is received after 5:00 p.m., Austin local time, it will be determined to have been received on the following business day. Applications received on a non-business day will be considered received on the next day the Department is open. Applications will be considered complete at the time all Application materials, required third party reports and application fee(s) are received by the Department. Within certain Set-Asides or priorities, the date of receipt may be fixed, regardless of the earlier actual date a complete Application is received, if so specified in the Department's rules or NOFA. If multiple Applications have the same Application Acceptance Date, in the same region or subregion (as applicable), within the same Set-Aside, and for 9%, then score and tiebreaker factors, as described in 10 TAC §11.7 of this title (relating to Tie Breaker Factors) will be used to determine the Application's rank, unless another priority is described in the NOFA.

(c) Market Analysis. Applications proposing Rehabilitation that request MFDL as the only source of Department funding may be exempted from the Market Analysis requirement in 10 TAC §11.205(2) (relating to Required Third Party Reports) if the Development's rent rolls for the most recent six months reflect occupancy of at least 80% of all Units.

(d) Required Site Control Agreement Provisions. All Applicants for MFDL funds must include the following provisions in the purchase contract or site control agreement if the subject property is not already owned by the Applicant:

(1) "Notwithstanding any other provision of this Contract, Purchaser shall have no obligation to purchase the Property, and no transfer of title to the Purchaser may occur, unless and until the Department has provided Purchaser and/or Seller with a written notification that: (A) It has completed a federally required environmental review and its request for release of federal funds has been approved and, subject to any other Contingencies in this Contract, (i) the purchase may proceed, or (ii) the purchase may proceed only if certain conditions to address issues in the environmental review shall be satisfied before or after the purchase of the property; or (B) It has determined that the purchase is exempt from federal environmental review and a request for release of funds is not required."; and

(2) "The Buyer does not have the power of eminent domain relating to the purchase and acquisition of the Property. The Buyer may use federal funds from the U.S. Department of Housing and Urban Development (HUD) to complete this purchase. HUD will not use eminent domain authority to condemn the Property. All parties entered this transaction voluntarily and the Buyer has notified the Seller of what it believes the value of the Property to be in accordance with 49 CFR Part 24 Appendix A. If negotiations between both parties fail, Buyer will not take further action to acquire the Property."

(e) Oversubscribed Funds for Competitive HTC-Layered Applications. Should MFDL funds be oversubscribed in a Set-Aside or for a fund source that has geographic limitations within a Set-Aside, Applications concurrently requesting Competitive HTC will be notified and may amend their Application to accommodate another fund source and make changes that still meet threshold requirements in 10 TAC Chapters 11 and 13 of this title, if such changes do not impact scoring under 10 TAC §11.9 (relating to Competitive HTC Selection Criteria). The Department will provide notice to all impacted Applicants in the case of oversubscription, which will include a deadline by which the Applicant must respond to the Department. Multiple Applications from a single or affiliated Applicants do not constitute oversubscription, and the Applicant(s) will not be able to amend their Applications as described in this subsection. If MFDL funds become available between the Market Analysis Delivery Date, and the date of the Department's Board meeting at which final Competitive HTC awards are made, the MFDL funds will not be reserved for Competitive HTC-layered Applications, unless the reservation is described in the NOFA.

(f) Availability of funds for Non-Competitive HTC-layered Applications. If an Application requesting layered Non-Competitive HTC and Direct Loan funds is terminated under 10 TAC §11.201(2)(E) (relating to Withdrawal of Certificate of Reservation), the Application will receive a new Application Acceptance Date for purposes of Direct Loan funds upon submission to the Department of the new Certificate of Reservation if the Board has not made an award. Direct Loan funds will not be reserved for terminated Applications, and may not be available for the Application with a new Reservation.

(g) Eligibility Criteria and Determinations.

(1) The Department will evaluate Applications received under a NOFA for eligibility and threshold pursuant to the requirements of this chapter and Chapter 11 of this title (relating to the Qualified Allocation Plan). The Department may terminate the Application if there are changes at any point prior to MFDL loan closing that would have had an adverse effect on the score and ranking order of the Application that would have resulted in the Application not

being recommended for an award or being ranked below another Application received prior to the subject Application.

(2) Applicants requesting MFDL as the only source of Department funds must be able to demonstrate that a Principal of the Developer, Development Owner, or General Partner has previously developed and placed into service a minimum of 50 multifamily housing units. It is the Applicant's responsibility to identify and submit sufficient evidence of this experience in the Application. If the Department determines that the evidence submitted is not substantial, additional evidence may be submitted through the Administrative Deficiency process, if it is available. If the Applicant is unable to provide satisfactory evidence, the Applicant will be ineligible for funding.

(h) Effective rules and contractual terms. The contractual terms of an award will be governed by and reflect the rules in effect at the time of Application; however, any changes in federal requirements will be reflected in the contractual terms. Further provided that, if after award, but prior to execution of such Contract, there are new rules in effect, the Direct Loan awardee may elect to be governed by the new rules, provided the Application would continue to have been eligible for award under the rules and NOFA in effect at the time of Application.

§13.6. Scoring Criteria and Tie Breaker Factors.

(a) Scoring. The scoring items used to calculate the score for a Competitive HTC-Layered Application will be utilized for scoring for an MFDL Application, and evaluated in the same manner. For all other Applications, the Tie Breaker described below will be utilized to determine which Applications to recommend for an award if multiple Applications are given the same Application Acceptance Date within the same Set-Aside and with the same Priority as described in the NOFA.

(b) Tie Breaker. In the event that two or more Applications receive the same Application Acceptance Date, within the same Set-Aside and having the same Priority, staff will utilize the Tie Breaker Factors established in §11.7, unless another tie-breaker is described in the NOFA.

§13.7. Maximum Funding Requests and Minimum Number of MFDL Units.

(a) Maximum Funding Request. The maximum funding request for an Application will be identified in the NOFA, and may vary by development type, set-aside, Priority, or fund source.

(b) Maximum New Construction or Reconstruction Per-Unit Subsidy Limits. The per-Unit subsidy limit for a Development will be determined by the Department as the Section 234 Condo limits with the applicable high-cost percentage adjustment in effect at the start date of the NOFA, which are the maximum MFDL eligible cost per-Unit subsidy limits that an Applicant may use to determine the amount of MFDL funds combined with other federal funds that may subsidize a Unit.

(c) Maximum Rehabilitation Per-Unit Subsidy Limits. The MFDL eligible cost per-Unit to rehabilitate a Development may not exceed the HUD 221(d)(4) statutory limits, subject to high cost factors as published in the NOFA.

(d) Minimum Number of MFDL Units. The minimum required number of MFDL Units will be determined by the MFDL per-Unit subsidy limits and the cost allocation analysis, which will ensure that the amount of MFDL Units as a percentage of total Units is equal to or greater than the percentage of MFDL funds requested as a percentage of total eligible MFDL Development costs.

§13.8. Loan Structure and Underwriting Requirements.

(a) Loan Structures. Loan structures must meet the criteria described in this section and as further described in a NOFA. The interest rate, amortization period, and term for the loan will be approved by the Board at the time of award, and can only be amended prior to loan closing by the process in 10 TAC §13.12 (relating to Pre-Closing Amendments to Direct Loan Terms).

(b) Criteria for Construction-to-Permanent Loans. Direct Loans awarded through the Department must adhere to the criteria as identified in paragraphs (1) - (7) of this subsection if being requested as construction-to-permanent loans, for which the interest rate will be specified in the NOFA and approved by the Board:

(1) The construction term for MFDL loans shall generally be coterminous with any superior construction loans, but no greater than 36 months. In the event the MFDL loan is the only loan with a construction term or is the superior construction loan, the construction term may be up to 36 months. Shorter timeframes may be required to meet federal project completion or expenditure deadlines;

(2) No interest will accrue during the construction term; the Department may extend the Development Period without extending the construction term if the first lien permanent lender does not extend its loan term, or if the Development Period is approved by the Board to be over 36 months;

(3) The loan term shall be no less than 15 years and no greater than 40 years, and the amortization period shall be between 30 to 40 years. The Department's loan must mature at the same time or within six months of the shortest term of any senior debt, so long as neither exceeds 40 years. The permanent loan term generally commences following the end of the construction term;

(4) Loans shall be secured with a deed of trust with a lien position, and for loans with monthly or annual payment provisions, a repayment position that is superior to any other sources for financing including hard repayment debt that is in an amount less than or equal to the Direct Loan amount and superior to any other sources that have soft repayment structures, non-amortizing notes, have deferred forgivable provisions, or in which the lender has an identity of interest with any member of the Development Team. Parity liens may only be considered with federal loan funds from USDA Rural Development;

(5) In general, up to 50% of the MFDL loan may be advanced at loan closing, should there be sufficient eligible costs to reimburse that amount; however, this amount may be proportionally exceeded for a Development being awarded additional MFDL funds, if the Development is past 50% at loan closing, so long as the required Mid-Construction Inspection has been completed. In all cases, at least 10% of the funds will be reserved for the final Draw. Requests for funding at loan closing must be received by the Department at least 45 days prior to the closing.

(c) Criteria for Construction Only Loans. MFDL Loans through the Department must adhere to the following criteria as identified in paragraphs (1) - (2) of this subsection if being requested as construction only loans:

(1) The term of the construction loan shall generally be coterminous with any superior construction loan(s), but no greater than 36 months. In the event that the MFDL loan is the only construction loan or is the superior construction loan, the term may not exceed 36 months. Shorter timeframes may be required to meet federal project completion or expenditure deadlines; and

(2) Loans shall be secured with a deed of trust that is superior to any other sources for financing, including hard repayment debt that is in an amount less than or equal to the Direct Loan amount and superior to any other sources that have soft repayment structures, non-amortizing notes, have deferred forgivable provisions, or in which

the lender has an identity of interest with any member of the Development Team.

(d) Criteria for Permanent Refinance Loans. If 90% of the Department's loan will repay existing debt, the first payment will be due the month after the month of loan closing; 90% of the loan may be advanced at loan closing, unless the Board approves another date.

(e) Evaluations. All Direct Loan Applicants in which third-party financing entities are part of the sources of funding must include a pro forma and lender approval letter evidencing review of the Development and the Principals, as described in 10 TAC §11.9(f)(1) of this title (relating to Competitive HTC Selection Criteria). Where no third-party financing exists, the Department reserves the right to procure a third-party evaluation which will be required to be prepaid by the Applicant.

(f) Pass-Through Loans. Department funds may not be used as pass-through financing. The Department's Borrower must be the Development Owner.

§13.9. Construction Standards.

All Developments financed with Direct Loans will be required to meet at a minimum the applicable requirements in Chapter 11 of this title (relating to the Qualified Allocation Plan). In addition, Developments must meet all applicable state and local codes, ordinances, and standards; the 2021 International Existing Building Code (IEBC) or International Building Code (IBC), as applicable. Should IEBC be more restrictive than local codes, or should local codes not exist, then the Development must meet the requirements imposed by IEBC or IBC, as applicable. Developments must also meet the requirements in paragraphs (1) - (5) of this section:

(1) Third-Party Recommendations. Recommendations made in 10 TAC §11.306 of this title (relating to Environmental Site Assessment Rules and Guidelines) and 10 TAC §11.306 of this title (relating to Scope of Work and Cost Review Guidelines) with respect to health and safety issues, life expectancy of major systems (structural support; roofing; cladding and weatherproofing; plumbing; electrical; and heating, ventilation, and air conditioning) must be implemented;

(2) Lead and Asbestos Testing. For properties originally constructed prior to 1978, the Scope of Work and Cost Review must be provided to the party conducting the lead-based paint and/or asbestos testing, and the Development Owner must implement the mitigation recommendations of the testing report;

(3) Broadband Infrastructure. The broadband infrastructure requirements described in 24 CFR §92.251(a)(2)(vi) or (b)(1)(x) for HOME, NSP, or TCAP RF; or 24 CFR §93.301(a)(2)(vi) or 24 CFR §93.301(b)(2)(vi) for NHTF, as applicable;

(4) Properties in Catastrophe Areas. Developments located in the designated catastrophe areas specified in 28 TAC §5.4008 (relating to Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After September 1, 1998, and before February 1, 2003) must comply with 28 TAC §5.4012 (relating to Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After April 1, 2020); and

(5) Minimum Construction Standards. Rehabilitation Developments funded with federal sources may also be required to meet Minimum Rehabilitation Standards, as required by HUD. Rehabilitation Developments funded by the National Housing Trust Fund are required to meet the Multifamily Minimum Rehabilitation Standards approved by HUD, as posted on the Department's website at https://www.tdhca.state.tx.us/multifamily/home/index.htm, in addition to the Department's rules and NOFA requirements.

§13.10. Development and Unit Requirements.

(a) Proportionality. The bedroom/bathroom/amenities and square footages for Direct Loan Units must be comparable to the bedroom/bathroom/amenities and square footages for the total number of Units in the Development based on the amount of Direct Loan funds requested as a percentage of total MFDL eligible costs. As a result of this requirement, the Department will use the Proration Method as the Cost Allocation Method in accordance with HUD CPD Notice 16-15, except as described in subsection (b) of this section. Additionally, the amount of Direct Loan funds requested cannot exceed the per-unit subsidy limit described in this chapter or in the applicable NOFA. Direct Loan Units must be provided as a percentage of each Unit Type, in proportion to the percentage of total costs included in the Direct Loan.

(b) Floating Units. Floating Direct Loan Units and Match Units may only float among the Units as described in the Direct Loan Contract and Direct Loan LURA. The possibility of a designation of a Direct Loan Unit or Match Unit must be reflected in the Household's lease.

(1) For HOME, NSP, and TCAP RF, Direct Loan Units must float throughout the Development unless the Development also contains public housing Units that will receive Operating Fund or Capital Fund assistance under Section 9 of the 1937 Act as defined in 24 CFR §5.100.

(2) For NHTF, Direct Loan Units must float throughout the Development, except as prohibited by 24 CFR §93.203, concerning public housing units.

(c) Unit Match Requirements.

(1) For a Development funded with NSP and/or NHTF, a required matching contribution will result in at least one HOME Match-Eligible Unit, in addition to the NSP and/or NHTF Units.

(2) For a Development funded with HOME, a required matching contribution may or may not result in a HOME Match-Eligible Unit, beyond the Department's HOME assisted Units.

(3) For a Development funded with TCAP RF in the annual NOFA, a matching contribution in addition to the Match that the Department counts from the TCAP RF investment will result in some amount of TCAP RF assisted Units being considered HOME Match-Eligible Units.

(d) Minimum Affordability Period. The minimum affordability period for all Direct Loan Units awarded under a NOFA will match the greater of the term of the loan, or 30 years unless a lesser period is approved by the Board. The Department reserves the right to extend the Affordability Period for Developments that fail to meet Program requirements.

(e) Restricted Units. If the Department is the only source of permanent funding for the Development by virtue of equity from HTC and MFDL funding, all Units must be income and rent restricted under a combination of HTC and Direct Loan LURAs, regardless of the amount of deferred Developer Fee as a permanent source. If the MFDL funding is the only source of permanent funding for the Development, all Units must be income and rent restricted by the Direct Loan LURA, and all costs must be MFDL eligible, regardless of the amount of deferred Developer Fee as a permanent source.

(f) Income Levels Committed at Time of Application. If the Direct Loan funds are used in a Competitive or non-Competitive HTC-Layered Development that is electing Income Averaging to qualify un-

der IRC §42, the Direct Loan Units required by the LURA must continue to be provided at the income levels committed at the time of Application. Direct Loan Unit designations may not change to meet Income Averaging requirements.

(g) Mandatory Development Features. Development features described under 10 TAC §11.101(b)(4) (relating to Mandatory Development Amenities) may be selected to meet federal or state requirements, without a change to the number or description of features (e.g. selection of Broadband).

(h) Designation of Direct Loan Units and HOME Match Units. For a Development with fixed Units the Contract and the LURA will describe the Direct Loan Units and HOME Match Units by Unit Number or Property Address, as applicable. For a Development with floating Units the Contract and the LURA will describe the Direct Loan Units and HOME Match Units by Unit Type and Income and Rent Restrictions, as applicable, and the Owner must designate the Units as further described in §13.11(c)(11) of this Chapter (relating to Post-Award Requirements).

§13.11. Post-Award Requirements.

(a) Direct Loan awardees must satisfactorily complete the Post-Award Requirements identified in this section after the Board approval date.

(b) If a Direct Loan award is declined by the Direct Loan awardee and returned after Board approval, or if the Direct Loan awardee or Affiliates fail to timely enter into the Contract, close the loan, begin and complete construction, or leave a portion of the Direct Loan award unexpended, penalties may apply under 10 TAC §11.9(f) (relating to Competitive HTC Selection Criteria), and/or the Department may prohibit the Applicant and all Affiliates from applying for MFDL funds for a period of two years.

(c) Benchmarks. Extensions to the benchmarks in paragraphs (1) - (8) of this subsection may only be approved by the Executive Director or authorized designee in accordance with §13.12 or §13.13 of this chapter (relating to Pre-Closing and Post-Closing Amendments), as applicable.

(1) Environmental Clearance. In order to obtain environmental clearance required by the National Environmental Policy Act (NEPA) and other related Federal and state environmental laws (if applicable), Direct Loan Applicants, including those previously awarded HTC, must submit a fully completed environmental review, including any applicable reports to the Department within 90 days of the Application Acceptance Date. This includes required environmental clearance for FHA and HUD funding. If the NOFA is still open, a new Application Acceptance Date may be given if this Benchmark is not met.

(2) Contract Execution. After a Development receives environmental clearance (if applicable), the Department will draft a Contract to be emailed to the Direct Loan awardee. Direct Loan awardees must execute and return a Contract to the Department within 30 calendar days after receipt of the Contract or the Department may terminate the award.

(3) Loan Closing and Construction Commencement. Loan closing must occur and construction must begin on or before the dates described in the Contract. If construction has not commenced within 12 months of the Contract Effective Date, the award may be terminated.

(4) Loan Closing. In preparation for closing any Direct Loan, the Development Owner must submit the items described in subparagraphs (A) - (F) of this paragraph. Providing incomplete documents, or not responding timely to subsequent Department requests for materials needed to facilitate closing, may significantly delay closing. Any request to change the financing structure of the Development, or the ownership structure, will in most cases extend the amount of time it will take for the Department to meet closing timelines, and may move prioritization of the closing below that of other Developments.

(A) Documentation of the prior closing or concurrent closing with all sources of funds necessary for the long-term financial feasibility of the Development.

(B) Due diligence items determined by the Department to be prudent and necessary to meet the Department's rules and to secure the interests of the Department, as requested by Staff.

(C) When Department funds have a first lien position during the construction term, or if the Development is a public work under state law, assurance of completion of the Development in the form of payment and performance bonds in the full amount of the construction contract or equivalent guarantee as allowable under state law in the sole determination of the Department is required. Development Owners utilizing the USDA §515 program for a Development that is not a public work are exempt from this requirement, but must meet the alternative requirements set forth by USDA.

(D) Documentation required for preparation of closing loan documents includes, but is not limited to:

(i) Substantially final information necessary for REA staff to reevaluate the transaction prior to loan closing, including but not limited to a substantially final development cost schedule, sources and uses, operating pro forma, annual operating expenses, rent schedule, updated written financial commitments or term sheets, and any additional financing exhibits that have changed since the time of Application;

(ii) Substantially final Draft Owner/General Contractor agreement and draft Owner/Architect agreement prior to closing with final executed copies required by the day of closing;

(iii) Survey of the Property that includes a certification to the Department, Development Owner, Title Company, and other lenders;

(iv) Plans and specifications for review by the Department's inspection staff. Inspection staff will issue a plan review letter that is intended to assist in identifying early concerns associated with the Department's final construction requirements; and

(v) If layered with Housing Tax Credits, a substantially final draft limited partnership agreement between the General Partner and the tax credit investor entity.

(E) If required by the fund source, prior to Contract Execution unless an earlier period is described in Chapters 10, 11, or 12 of this title, the Development Owner must provide verification of:

(i) Environmental clearance from the Department or HUD, as applicable;

(ii) Site and Neighborhood clearance from the Department;

(iii) Documentation necessary to show compliance with the Uniform Relocation Assistance and Property Act and any other relocation requirements that may apply;

(iv) Title Insurance Commitment or Policy showing the Department as Lender, with copies of all Schedule B documents; and

(v) Any other documentation that is necessary or prudent to meet program requirements or state or federal law in the sole determination of the Department.

(F) The Direct Loan Contract as executed, which will be drafted by the Department's counsel or its designee for the Department. No changes proposed by the Developer or Developer's counsel will be accepted unless approved by the Department's Legal Division or its designee.

(6) Loan Documents. The Development Owner is required to execute all loan closing documents required by and in the form and substance acceptable to the Department's Legal Division.

(A) Loan closing documents include but are not limited to a promissory note, deed of trust, construction loan agreement (if the proceeds of the loan are to be used for construction), LURA, Architect and/or licensed engineer certification of understanding to complete environmental mitigation if such mitigation is identified in HUD's environmental clearance or the Underwriting Report and assignment and security instruments whereby the Developer, the Development Owner, and/or any Affiliates (if applicable) grants the Department their respective right, title, and interest in and to other collateral, including without limitation the Owner/Architect agreement and the Owner/General Contractor agreement, to secure the payment and performance of the Development Owner's obligations under the loan documents. Additional loan terms and conditions may be imposed by the loan closing documents.

(B) Loan terms and conditions may vary based on the type of Development, Real Estate Analysis Underwriting Report, and the Set-Aside under which the award was made.

(7) Quarterly Construction Status Reports. The Development Owner is required to submit quarterly Construction Status Reports to the Asset Management Division as described and by the deadlines specified in 10 TAC §10.401(e) of this title (relating to Construction Status Report).

(8) Mid-Construction Development Inspection Letter. In addition to any other obligations required as the result of any other Department funding sources, the Development Owner must submit a Mid-Construction Development Inspection Request once the Development has met at least 25% construction completion as indicated on the G703 Continuation Sheet or HUD equivalent form. Department inspection staff will issue a Mid-Construction Development Inspection Letter that confirms work is being done in accordance with the applicable codes, the construction contract, and construction documents.

(9) Construction Completion. Construction must be completed, as reflected by the Development's certificate(s) of occupancy (if new construction and/or reconstruction) and Certificate of Substantial Completion (AIA Form G704) or Form HUD-92485 for instances in which a federally insured HUD loan is being utilized, within the construction term of any superior construction loan(s) or up to 36 months of the actual loan closing date if no superior construction loan(s) exists, unless a shorter timeline is necessitated by the federal funding source.

(10) Closed Final Development Inspection Letter. The Closed Final Development Inspection Letter must be issued by the Department within 36 months of loan closing, unless a shorter timeline is necessitated by the federal funding source. This letter will verify committed amenities have been provided and confirm compliance with all applicable accessibility requirements; this letter may include deficiencies that require resolution. The Closed Final Development Inspection may be conducted concurrently with a NSPIRE inspection. However, any letters associated with an NSPIRE inspection will not satisfy the Closed Final Development Inspection Letter required by this subsection.

(11) Initial Occupancy. Initial occupancy and for floating Units designation of NHTF Units by and for eligible households shall occur within 120 days, or for all other MFDL assisted Units or HOME Match Units, within six months of the final Direct Loan draw. Requests to extend the initial occupancy period must be accompanied by documentation of marketing efforts and a marketing plan. The marketing plan may be submitted to HUD for final approval, if required by the MFDL fund source.

(12) Per Unit Repayment. Repayment may be required on a per Unit basis for Units that have not been rented to eligible households within 120 days or 18 months of the final Direct Loan draw, depending on the fund source.

(13) Termination and Repayment for Failure to Complete. Termination of the Direct Loan award and repayment of all disbursed funds will be required for any Development that is not completed within four years of the effective date of a Direct Loan Contract.

(14) Disbursement of Funds. The Borrower must comply with the requirements in subparagraphs (A) - (K) of this paragraph in order to receive a disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Borrower's compliance with these requirements is required with a request for disbursement:

(A) All requests for disbursement must be submitted using the MFDL draw workbook or such other format as the Department may require;

(B) Documentation of the total construction costs incurred and costs incurred since the last disbursement of funds must be submitted. Such documentation must be signed by the General Contractor and certified by the Development architect and is generally in the form of an AIA Form G702/G703 or HUD equivalent form;

(C) Disbursement requests must include a down-date endorsement to the Direct Loan (mortgagee) title policy or Nothing Further Certificate that includes a title search through the date of the Architect's signature on AIA form G702 or HUD equivalent form. For release of retainage, the down-date endorsement to the Direct Loan title policy or Nothing Further Certificate must be dated at least 30 calendar days after the date of the completion as certified on the Certificate of Substantial Completion (AIA Form G704) with $0 as the work remaining to be completed. If AIA Form G704 or HUD equivalent form indicates an amount of work remaining to be completed, the Architect must provide confirmation that all work has been completed. Disbursement requests for acquisition and closing costs are exempt from this requirement;

(D) Table Funding (the wiring of Direct Loan funds to the title company at loan closing) may be permitted at the time of closing, for disbursement of funds related to eligible acquisition costs and eligible soft costs incurred, and in an amount not to exceed 50% of the total funds. Table Funding must be requested in writing at least 30 calendar days prior to the anticipated closing date, and will not be considered unless the Direct Loan Contract has been executed and all necessary documentation has been submitted to and accepted by the Department at least 10 calendar days prior to the anticipated closing date;

(E) At least 50% of Direct Loan funds (except as otherwise allowed for Permanent Refinance Loans described in 10 TAC §13.8(e)) will be withheld from the initial disbursement of loan funds to allow for periodic disbursements;

(F) The initial draw request for the Development (excluding Table Funding) must be entered into the Department's Housing Contract System no later than 180 days after loan closing;

(G) Developer Fee disbursement shall be limited by subparagraph (I) of this paragraph and is further conditioned upon clauses (i) - (iii), as applicable:

(i) For Developments in which the loan is secured by a first lien deed of trust against the Property, 75% shall be disbursed in accordance with percent of construction completed. 75% of the total allowable fee will be multiplied by the percent completion, as documented by the construction contract and as may be verified by an inspection by the Department. The remaining 25% shall be disbursed at the time of release of retainage; or

(ii) For Developments in which the loan is not secured by a first lien deed of trust or the Development is also utilizing Housing Tax Credits, Developer Fees will not be reimbursed by the Department, except as follows. If all other lenders and the syndicator in a Housing Tax Credit Development (if applicable) provide written confirmation that they do not have an existing or planned agreement to govern the disbursement of Developer Fees and expect that Department funds shall be used to fund Developer Fees, they shall be reimbursed in the same manner as described in subparagraph (A) of this paragraph; and

(iii) The Department may reasonably withhold any disbursement in accordance with the Loan Documents and if it is determined that the Development is not progressing as reasonably necessary to meet the benchmarks for the timely completion of construction of the Development as set forth in the loan documents, or that cost overruns have put the Development Owner's ability to repay its Direct Loan or complete the construction at risk in accordance with the terms of the loan documents and within budget. If disbursement has been withheld under this subsection, the Development Owner must provide evidence to the satisfaction of the Department that the Development will be timely completed and occupied in order to continue receiving funds. If disbursement is withheld for any reason, disbursement of any remaining Developer Fee will be made only after construction of the Development has been completed, and all requirements for expenditure and occupancy have been met;

(H) Expenditures must be allowable and reasonable in accordance with federal and state rules and regulations. The Department shall review each expenditure requested for reasonableness. The Department may request the Development Owner make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of Department funds to Development Owner as may be necessary or advisable for compliance with all program requirements;

(I) Following 50% construction completion, any funds will be released in accordance with the percentage of construction completion as documented on AIA Form G702/703 or HUD equivalent form. 10% of requested Hard Costs will be retained and will not be released until the final draw request. If the Development is receiving funds from more than one MFDL source, the retainage requirement will apply to each fund source individually.

(J) All of the items described in clauses (i) - (ix) of this subparagraph are required in order to approve the final draw request. The Executive Director or authorized designee may for good cause allow for the final draw to be released prior to the receipt of the items unless prohibited by state or federal statute. Such allowances are not guaranteed:

(i) Fully executed Certificate of Substantial Completion (AIA Form G704) or Form HUD-92485 (for instances in which a federally insured HUD loan is being utilized) with $0 as the cost estimate of work that is incomplete. If AIA Form G704 or Form HUD-92485 indicates an amount of work remaining to be completed, the Architect must provide confirmation that all work has been completed;

(ii) A down date endorsement to the Direct Loan title policy or Nothing Further Certificate dated at least 30 calendar days after the date of completion as certified on the Certificate of Substantial Completion (AIA Form G704) or Form HUD-92485;

(iii) For Developments not layered with Housing Tax Credits, a Closed Final Development Inspection Letter from the Department;

(iv) For NHTF Developments layered with HTCs, a separate, additional cost certification form completed by an independent, licensed, certified public accountant of all Development costs (including project costs), subject to the conditions and limitations set forth in the executed Direct Loan Contract, commonly known as a cost certification;

(v) For Developments subject to the Davis-Bacon Act, written documentation that the Department's Notice to Proceed was sent and final wage compliance report was received and approved, or confirmation that HUD or other entity maintains Davis-Bacon oversight;

(vi) Certificate(s) of Occupancy (for New Construction or Reconstruction Units);

(vii) Development completion reports, which includes, but is not limited to, documentation of full compliance with the Uniform Relocation Act/104(d), Match Documentation requirements, and Section 3 of the Housing and Urban Development Act of 1968, as applicable to the Development, and any other applicable requirement;

(viii) If applicable to the Development, certification from Architect or a licensed engineer that all HUD environmental mitigation conditions have been met; and

(ix) evidence of Match being credited to the Development.

(K) No disbursement of funds will be approved without receipt of all closing documents in the form and substance required by the Department's Legal Division;

(L) The final draw request must be submitted within the Development Period;

(M) Annually, Borrowers must submit at least one draw, and may not submit more than four draws, unless previously approved by the Executive Director or designee for good cause; and

(N) If allowed by NOFA, requests for draws to be disbursed at the time of closing (i.e., table funding) must be received by the Department at least 45 days prior to the closing of the MFDL loan.

(15) Annual Audits and Cost Certifications under 24 CFR §93.406(b).

(A) Annual Audits under 24 CFR §93.406(b). Unless otherwise directed by the Department, the Development Owner shall arrange for the performance of an annual financial and compliance audit of funds received and performances rendered under the Direct Loan Contract, subject to the conditions and limitations set forth in the executed Direct Loan Contract. All approved audit reports will be made available for public inspection within 30 days after completion of the audit.

(B) Cost Certifications under 24 CFR §93.406(b).

(i) Non-HTC-Layered Developments. Within 180 calendar days of the later of all title transfer requirements and con-

struction work having been performed, as reflected by the Development's Certificate(s) of Occupancy (if New Construction) or Certificate of Substantial Completion (AIA Form G704 or HUD equivalent form), or when all modifications required as a result of the Department's Final Construction Inspection are cleared as evidenced by receipt of the Closed Final Development Inspection Letter, the Development Owner will submit to the Department a cost certification done by an independent licensed certified public accountant of all Development costs (including project NHTF eligible costs), subject to the conditions and limitations set forth in the executed Direct Loan Contract.

(ii) HTC-Layered Developments. With the Cost Certification required by the Low Income Housing Tax Credit Program, the Development Owner must submit to the Department a cost certification completed by an independent licensed certified public accountant of all Development costs (including NHTF project eligible costs), subject to the conditions and limitations set forth in the executed Direct Loan Contract.

§13.12. Pre-Closing Amendments to Direct Loan Terms.

(a) Closing Memo to Underwriting Report. Any changes to the total development cost, expenses, income, and/or other sources of funds from time of the publication of the initial Underwriting Report at the time of award to the time of loan closing, if the type or amount of the sources and uses have changed, must be reevaluated by the Real Estate Analysis division, which will typically publish a Closing Memo to the Underwriting Report. The Report may recommend changes to the principal amount and/or the repayment structure for the Multifamily Direct Loan pursuant to §11.302 of this title (relating to Underwriting Rules and Guidelines), except that the change must have been an available option in the rule or NOFA (as applicable), and may not be made to awards that were competitively scored to the extent that change would have caused the Development to lose points. This will allow the Department to uphold the competitive process, mitigate any increased risk, and to ensure that the Development is not oversubsidized. Where the Department determines such risk is not adequately mitigated, the award may be terminated or reconsidered by the Board. If the changes cause the total Debt Coverage Ratio (DCR) to no longer comply with 10 TAC §11.302 of this title, the award may be subject to termination. The Department may require the Closing Memo to be completed before providing a Contract to the Development Owner.

(b) Executive Approval Required Pre-Closing. The Executive Director or authorized designee may approve amendments to loan terms prior to closing as described in paragraphs (1) - (6) of this subsection. Under no circumstances may an amendment cause the Department to violate or be at risk of violating a federal requirement or deadline.

(1) Extensions to the loan closing date required in 10 TAC §13.11(c)(4) of this chapter (relating to Post-Award Requirements) may be approved prior to closing. An Applicant must submit sufficient evidence documenting good cause, including but not limited to, documented delays caused by circumstances outside the control of the applicant or constraints in arranging a multiple fund source closing.

(2) Changes to the construction term and/or loan maturity date to accommodate the requirements of other lenders or to maintain parity of term may be approved prior to closing.

(3) Extensions to the Construction Completion date or date of receipt of a Closed Final Development Inspection Letter required in 10 TAC §13.11(c)(10) of this chapter may be requested but generally are not approved prior to initial loan closing. Extensions under this paragraph are determined based on documentation that the extension is necessary to complete construction and that there is good cause for the extension.

(4) Only to the extent determined necessary by Real Estate Analysis to maintain financial feasibility, changes to the amortization period (not to exceed 40 years) or interest rate (to not less than the minimum specified in rule or NOFA) may be approved if such changes continue to meet all requirements of Chapter 11, Chapter 13, and the NOFA.

(5) Decreases in the Direct Loan amount, provided the decrease does not jeopardize the financial viability of the Development in the determination of Real Estate Analysis may be approved prior to closing, though the Development Owner may be subject to penalties as further described in 10 TAC §13.11 of this chapter (relating to Post-Award Requirements). Increases will not generally be approved unless the Applicant applies for the additional funding under an open NOFA.

(6) Changes to other loan terms or requirements that would not require a waiver, as necessary to facilitate the loan closing without exposing the Department to undue financial risk.

(c) Board Approval Required Pre-Closing. Board approval is necessary for any other changes prior to closing.

§13.13. Post-Closing Amendments to Direct Loan Terms.

(a) Good Cause Extensions. The Executive Director or authorized designee may approve extensions under 10 TAC §13.11(c)(1) - (8) of this chapter (relating to Post-Award Requirements) based on documentation that there is good cause for the extension and the extension would not cause the Department to violate or be at risk of violating a federal requirement or deadline.

(b) Amendments to MFDL Awards. Except in cases of Force Majeure, changes to terms of awards subject to mandatory HUD reporting requirements will only be processed after the Construction Completion is reported to the federal oversight entity as completed, and the last of the MFDL funds have been drawn.

(c) Executive Amendments. The Executive Director or authorized designee may approve amendments to loan terms post-closing as described in paragraphs (1) - (3) of this subsection. Board approval is necessary for any other changes post-closing.

(1) Changes in Terms. Changes to the amortization or maturity date to accommodate the requirements of other lenders or maintain parity of term may be approved post-closing, provided the changes result in the Direct Loan continuing to meet the requirements of 10 TAC §13.8(c)(1) and (3) of this chapter (relating to Loan Structure and Underwriting Requirements), and NOFA requirements.

(2) Post-Closing Subordinations or Re-subordinations of MFDL Liens where no Ownership Transfer is Occurring. Re-subordination of the Direct Loan in conjunction with refinancing may be approved post-closing, provided the conditions in subparagraphs (A) - (F) of this paragraph are met:

(A) The Borrower is current with loan payments to the Department, and no notice has been given of any Event of Default on any MFDL loan. Histories of late or non-payment on any other MFDL loan may result in denial of the request;

(B) The refinance does not propose payment to any of the Development Owner or Developer parties (including the Limited Partners);

(C) A proposal for partial repayment of the MFDL lien is made with the request, but this is not required if the Borrower is proposing to apply at least $35,000 a Unit to property improvements;

(D) The loan documents do not state that the MFDL lien is due upon refinance;

(E) The new superior lien is in an amount that is equal to or less than the original senior lien and does not negatively affect the financial feasibility of the Development.

(i) For purposes of this section, a negative effect on the financial feasibility of the Development shall mean a reduction in the total Debt Coverage Ratio (DCR) of more than 0.05, or if the DCR no longer meets the requirements of 10 TAC §11.302 of this title (relating to Underwriting Rules and Guidelines); and

(ii) Changes to accommodate refinancing with a new superior lien that is in an amount that exceeds the original senior lien and which will be directly applied to property improvements, as evidenced by the loan or security agreements (exclusive of fees associated with the refinance and any required reserves), will be considered on a case by case basis; and

(F) The subordination or re-subordination request does not include a request to subordinate or resubordinate any MFDL LURA, with the exception of partial subordination or re-subordination of receivership rights (subject to the proposed receiver entity or Affiliate not having been Debarred by the Department or on the Federal Suspended or Debarred Listing).

(3) Workout Arrangements. Changes required to the Department's loan terms or amounts that are part of an approved Asset Management Division workout arrangement may be approved after Construction Completion.

(d) Contract Assignments and Assumptions of MFDL Liens. The Executive Director or authorized designee may approve the Contract Assignment and Assumption of MFDL Liens following approval of an Ownership Transfer request if the conditions in paragraphs (1) - (3) of this subsection are met and the conditions in (c)(2) of this section are met:

(1) The assignment or assumption is not prohibited by the Contract, Loan Documents, or regulations and the loan documents do not state that the MFDL loan is due upon sale, transfer, or refinance;

(2) The assignment or assumption request is based on either subparagraph (A) or (B) of this paragraph:

(A) There are insufficient funds available in the transaction to fully repay the Direct Loan at the time of acquisition, for which Deferred Developer Fee, Development Owner or Affiliate Contributions, or other similar liabilities will not be considered in determining whether the Direct Loan could be repaid at the time of acquisition; or

(B) The new superior lien will be directly applied to property improvements as evidenced by the loan or security agreements, exclusive of fees associated with the new financing and any required reserves; and

(3) The corresponding Ownership Transfer has been approved in accordance with all requirements in 10 TAC §10.406 of this title (relating to Ownership Transfers), and no prospective Owner including any person, or affiliate, as those terms are defined in 2 CFR Part 180 and 2 CFR Part 2424, Subpart I, has been subject to state Debarment or are on the Federal Suspended or Debarred Listing. This includes Board Members and Limited Partners.

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 January 15, 2026.

TRD-202600141

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 25. HEALTH SERVICES

PART 15. COUNCIL ON CARDIOVASCULAR DISEASE AND STROKE

CHAPTER 1051. RULES

25 TAC §1051.1

The Texas Council on Cardiovascular Disease and Stroke proposes an amendment to §1051.1, concerning Conduct of Meetings.

BACKGROUND AND PURPOSE

The purpose of the proposal is to make necessary revisions to the rule identified during the four-year rule review required by Texas Government Code §2001.039. The amendment to the rule specifies voting eligibility, clarifies the role the Texas Department of State Health Services (DSHS) has in providing administrative support to the Texas Council on Cardiovascular Disease and Stroke (Council), and updates public participation best practices.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §1051.1 updates the language to indicate that DSHS will be responsible for publishing a notice of each meeting. In addition, the language is updated to indicate DSHS will provide notice of the public meeting to Council members. The proposed amendment also clarifies language regarding voting and reflects public participation best practices.

FISCAL NOTE

Suzanne, Hildebrand, Council Chair, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

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

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

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

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

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

Suzanne Hildebrand, Council Chair, has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rule does not apply to small or micro-businesses, or rural communities.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Suzanne Hildebrand, Council Chair, has determined that for each year of the first five years the rule is in effect, the public benefit will be a clarified understanding of how the Texas Council on Cardiovascular Disease and Stroke meetings are conducted.

Suzanne Hildebrand has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the proposed rule amendment merely clarifies the existing rule.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal, including information related to the cost, benefit, or effect of the proposed rule, as well as any applicable data, research, or analysis, may be submitted to cardio@dshs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule Section 1051.1" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Health and Safety Code §93.012 which provides that the Texas Council on Cardiovascular Disease and Stroke will adopt rules for the conduct of its meetings.

The amendment affects Texas Health and Safety Code Chapter 93.

§1051.1. Procedures [~~Conduct of Meetings~~].

(a) Applicable law. The Texas Council on Cardiovascular Disease and Stroke (council) is created by Texas Health and Safety Code, Chapter 93.

(b) Officers. Council members will elect a vice-chair each fall.

[~~(b) Officers and their duties.~~]

[~~(1) The governor shall designate a member of the council as the presiding officer of the council to serve in that capacity at the will of the governor.~~]

[~~(2) The presiding officer shall preside at all council meetings at which he or she is in attendance, call meetings in accordance with this section, assist in the preparation of the agenda, appoint subcommittees or workgroups of the council as necessary and with council consensus, cause proper reports to be made to the governor, lieutenant governor and speaker of the house and serve as spokesperson for the council. The presiding officer may serve as an ex-officio member of any subcommittee or workgroup of the council. The presiding officer may invite guests or speakers.~~]

[~~(3) The members of the council shall elect a vice-chairman each year.~~]

[~~(4) The vice-chairman shall perform the duties of the presiding officer in the absence or disability of the presiding officer. Should the office of the presiding officer become vacant, the vice-chairman shall serve until a successor is appointed.~~]

(c) Notice of Meetings.

[~~(1) The council shall meet at least quarterly. A meeting may be called with the agreement of Department of State Health Services staff and the presiding officer.~~]

(1) [~~(2)~~] Each meeting of the council must [~~shall~~] be announced and conducted in accordance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.

(2) The Texas Department of State Health Services (DSHS) must publish notice of each meeting as required by the Texas Open Meetings Act.

(3) DSHS will provide the notice to each council member at least seven days before the public meeting.

[~~(3) A simple majority of the members of the council shall constitute a quorum for the purpose of transacting official business.~~]

[~~(4) The council is authorized to transact official business only when in a legally constituted meeting with a quorum present.~~]

[~~(5) Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.~~]

[~~(6) Any action taken by the council must be approved by a majority vote of the public members present once quorum is established. Each public member shall have one vote. A public member may not authorize another individual to represent the member by proxy.~~]

(d) Transaction of Business.

(1) The council is authorized to transact official business only when in a legally constituted meeting with a quorum present.

(2) A simple majority of the members of the council constitutes a quorum for the purpose of transacting official business.

(3) Any action taken by the council must be approved by a majority vote of the voting members present once quorum is established. Each voting member will have one vote.

(4) A member may not authorize another individual to represent the member by proxy.

(e) Public Participation. Members of the public may submit a request to provide public comment at council meetings at least 48 hours before the beginning of a meeting to the chair. Information on how to submit a request is on the publicly posted agenda. Health or confidential information must not be in the comments. The chair has the option to allow or refuse public comment. If the chair allows public comment, the chair decides the manner and time limits of public comment.

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 January 13, 2026.

TRD-202600108
Suzanne Hildebrand
Council Chair
Council on Cardiovascular Disease and Stroke
Earliest possible date of adoption: March 1, 2026
For further information, please call: (512) 695-3846

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 293. WATER DISTRICTS
SUBCHAPTER C. SPECIAL REQUIREMENTS FOR GROUNDWATER CONSERVATION DISTRICTS

30 TAC §293.23

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to 30 Texas Administrative Code (TAC) §293.23.

Background and Summary of the Factual Basis for the Proposed Rules

The purpose of this rule proposal is to implement the provisions of House Bill (HB) 2080, passed during the 89th Legislature's Regular Session in 2025. This bill provides additional information and requirements regarding TCEQ's process for reviewing a petition for inquiry filed by an affected person pertaining to the actions of a groundwater conservation district (GCD).

HB 2080 amended Texas Water Code (TWC) §36.3011(d) and added §36.3011 (d-1), (d-2), (d-3), (e-1), (e-2), (e-3), and (e-4). Specifically, HB 2080 amended TWC §36.3011(d) to require the recording secretary of a review panel to be an employee of the commission. HB 2080 also adds §36.3011(d-1) clarifying that the review panel is an advisory board and not a governmental body. TWC §36.3011(d-2) requires TCEQ to reimburse a member appointed to the review panel for actual expenses incurred. TWC §36.3011(d-3) requires the records and documents of the recording secretary to be provided to the executive director and specifies that these records are public information. TWC §36.3011(e-1) requires the executive director to provide notice of review panel public meetings and public hearings. TWC §36.3011(e-2) states that the review panel may request technical assistance related to the petition from the Texas Water Development Board (TWDB) and that if assistance is requested, the deadline for the review is extended. TWC §36.3011(e-3) states that a member of the review panel can request legal advice and assistance on a matter pertaining to the petition from the TCEQ's Office of Public Interest Counsel (OPIC). Lastly, TWC §36.3011(e-4) states that subsections (e-2) and (e-3) do not prohibit members of the review panel from using their own technical consultants or legal counsel.

Section by Section Discussion

The proposed amendment to §293.23, Petition Requesting Commission Inquiry, updates subsection (g) to implement HB 2080. Specifically, it amends paragraph §293.23(g) to clarify that the panel is an advisory board and not a governmental body. It also amends subsection §293.23(g)(2) to require that the recording secretary be a TCEQ employee and to specify that records maintained by the recording secretary must be provided to the executive director and are public documents. Section §293.23(g)(3) is amended to include notice requirements for meetings or hearings held by the review panel. The proposal also adds subsection §293.23(g)(5) to require the commission to reimburse review panel members for actual expenses incurred while engaging in activities on behalf of the panel. Reimbursable expenses will be limited to those associated with meals, travel, and lodging. Once the Commission appoints a panel, information about reimbursable expenses and the process for getting reimbursed will be provided and will generally follow agency procedures.

The proposed amendment also adds §293.23(g)(6) which extends the timeframe for the commission's review of the petition if the review panel seeks technical assistance from TWDB. The proposed amendment also adds §293.23(g)(7) to specify that the review panel may request legal assistance from the commission's OPIC. Lastly, the proposed amendment adds §293.23(g)(8) which clarifies that the review panel is not prohibited from seeking technical assistance or legal advice from entities other than TWDB and OPIC.

Fiscal Note: Costs to State and Local Government

Kyle Girten, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rule is in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule.

Public Benefits and Costs

Mr. Girten determined that for each year of the first five years the proposed rules are in effect, the public benefit will be rule language that is consistent with state law, specifically HB 2080 from the 89th Regular Legislative Session (2025). The proposed rulemaking is not anticipated to result in fiscal implications for individuals or businesses during the first five-year period the proposed rule is in effect.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect

rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rules are in effect.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking amends an existing regulation, and it does not create, expand, repeal, or limit this regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

Written comments concerning the cost, benefit, or effect of the proposed rule, including any applicable data, research, or analysis may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state."

First, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The purpose of this rulemaking is to amend existing rules to implement HB 2080, 89th Texas Legislature (2025), which provided revised requirements for TCEQ's review of a petition filed by an affected person pertaining to the actions of a GCD.

Second, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because the proposed rule would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the proposed rule will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the proposed rule will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the proposed rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: "1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This proposed rulemaking does not meet any of the four preceding applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law for the regulation of groundwater conservation districts; 2) does not exceed any express requirements of state law related to the regulation of groundwater conservation districts; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not proposed solely under the general powers of the agency.

Since this proposed rulemaking does not meet the statutory definition of a "Major environmental rule" nor does it meet any of the four applicability requirements for a "Major environmental rule," this rulemaking is not subject to Texas Government Code, §2001.0225.

The commission invites public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated this rulemaking and performed an analysis of whether the proposed rule would constitute a taking. Texas Government Code, §2007.002(5), defines a taking as either: 1) a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Sections 17 or 19, Article I, Texas Constitution; or 2) a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. The commission determined that the proposed rule would not constitute a taking as that term is defined under Texas Government Code, §2007.002(5). Specifically, the proposed rule would not affect any landowner's rights in private real property, and there are no burdens that would be imposed on private real property by the proposed amendments to 30 TAC § 293.23. The

proposed amendments solely address the review of the duties of a groundwater conservation district.

Consistency with the Coastal Management Program

The commission reviewed the amended rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program (CMP).

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a hybrid virtual and in-person public hearing on this proposal in Austin on February 24, 2026 at 2:00 p.m. in building E, room 201S at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing at 1:30 p.m.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by Friday, February 20, 2026. To register for the hearing, please email Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on Monday, February 23, 2026, to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:

https://events.teams.microsoft.com/event/9ca36b32-14f2-4295-b5f6-94987017d629@871a83a4-a1ce-4b7a-8156-3bcd93a08fba

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Vanessa Onyskow-Lang, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov*. Electronic comments may be submitted at: *https://tceq.commentinput.com/comment/search*. File size restrictions may apply to comments being submitted via the TCEQ Public Comments system. All comments should reference Rule Project Number 2026-001-293-OW. The comment period closes on March 3, 2026. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html*. For further information, please contact Cindy Hooper, Rule Project Manager, Water Availability Division, (512) 239-4271.

Statutory Authority

These amendments are proposed under the authority granted to the commission in Texas Water Code (TWC), §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to conservation of natural resources and protection of the environment; §5.013, which establishes the commission's authority over groundwater; §5.103 and §5.105, which establish the commission's general authority to adopt rules; and §36.3011, which establishes the commission's authority to, upon petition by an affected person, select a review panel to review activities regarding the management planning or rules of a groundwater conservation district.

These proposed amendments implement House Bill 2080, 89th Texas Legislature (2025).

§293.23. Petition Requesting Commission Inquiry.

(a) Purpose and applicability. This section provides procedures for commission review of a petition filed by an affected person requesting an inquiry into a groundwater conservation district's (GCD) activities regarding management planning or rules; commission appointment of the review panel; review panel actions; and executive director actions under Texas Water Code (TWC), §36.3011. An affected person means, with respect to a management area:

(1) an owner of land in the management area;

(2) a GCD or subsidence district in or adjacent to the management area;

(3) a regional water planning group with a water management strategy in the management area;

(4) a person who holds or is applying for a permit from a district in the management area; or

(5) a person with a legally defined interest in groundwater in the management area.

(b) Petition requesting commission inquiry. An affected person may file a petition with the commission to request an inquiry for any of the reasons in paragraphs (1) - (9) of this subsection:

(1) a district fails to submit its management plan to the executive administrator of the Texas Water Development Board;

(2) a district fails to participate in the joint planning process under TWC, §36.108;

(3) a district fails to adopt rules;

(4) a district fails to adopt the applicable desired future conditions adopted by the management area at a joint meeting;

(5) a district fails to update its management plan before the second anniversary of the adoption of desired future conditions by the management area;

(6) a district fails to update its rules to implement the applicable desired future conditions before the first anniversary of the date the district updated its management plan with the adopted desired future conditions;

(7) the rules adopted by a district are not designed to achieve the adopted desired future conditions;

(8) the groundwater in the management area is not adequately protected by the rules adopted by a district; or

(9) the groundwater in the management area is not adequately protected due to the failure of a district to enforce substantial compliance with its rules.

(c) The petition must include supporting documentation for each of the individual reasons the affected person identifies in subsection (b) of this section demonstrating that a commission inquiry is necessary.

(d) The petition must include a certified statement from the affected person that describes why the petitioner believes that a commission inquiry is necessary.

(e) The petitioner shall provide a copy of the filed petition to all GCDs within and adjacent to the GMA within five days of the date the petition was filed. Within 21 days of filing the petition, the petitioner shall file with the chief clerk of the commission an affidavit or other evidence, such as a return receipt for certified mail service, that a copy of the petition was mailed to each GCD within and adjacent to the petitioner's GMA.

(f) Any GCD that is within and adjacent to the GMA that is the subject matter of the petition may file a response to the validity of the specific claims raised in the petition. The responding entity shall file its response with the chief clerk of the commission within 35 days of the date that the petition is filed, and shall also on the same day serve the petitioner, the executive director, the public interest counsel, and any other GCD in and adjacent to the GMA. The chief clerk shall accept a response that is filed after the deadline but shall not process the late documents. The chief clerk shall place the late documents in the file for the petition.

(g) Commission review of petition. The commission shall review the petition and any timely filed responses, no sooner than 35 days, but not later than 90 days after the date the petition was filed. The commission may dismiss the petition if it finds that the evidence required by subsections (c) and (d) of this section is not sufficient to show that the items contained in subsection (b)(1) - (9) of this section exist. If the commission does not dismiss the petition, it shall appoint a review panel to prepare a written report. A review panel established under this section is an advisory body to the commission and not a governmental body under Chapter 551 or 552, Government Code.

(1) The review panel shall consist of five members.

(A) The commission shall appoint one of the members to serve as the chairman of the review panel. The chairman shall schedule and preside over the proceedings and meetings of the panel.

(B) A director or general manager of a district that is not an affected person as defined by subsection (a) of this section and is not the subject of the petition may be appointed to the review panel.

(C) The commission may not appoint more than two members of the review panel from any one district.

(2) The commission shall appoint a disinterested person to serve as a nonvoting recording secretary for the review panel. The recording secretary must [~~may~~] be an employee of the commission. The recording secretary shall record and document the proceedings of the review panel. The records and documents of the recording secretary of the proceedings of the review panel must be provided to the executive director and are public information under Chapter 552, Texas Government Code.

(3) The commission may direct the review panel to conduct public hearings at a location in the groundwater management area to take evidence on the petition. The executive director shall provide notice of any public meeting or public hearing the review panel is directed to conduct not later than the seventh day before the date of a public meeting or public hearing. The executive director shall provide notice by:

(A) Posting notice on the commission's Internet website; and

(B) Delivering notice by regular mail to:

(i) the district that is the subject of the petition;

(ii) the petitioner; and

(iii) the county clerk of each county in the district that is the subject of the petition.

(4) In accordance with TWC, §36.3011, the review panel shall review the petition and any evidence relevant to the petition and consider and adopt a report to the commission.

(5) The commission shall reimburse a member appointed to the review panel for actual expenses incurred while engaging in activities on behalf of the review panel.

(A) To be eligible for reimbursement, a review panel member must file with the executive director a signed verified statement which shall include any relevant receipts describing the expenses incurred.

(B) A member appointed to the review panel is not entitled to a fee of office or other compensation for serving on the review panel.

(6) The commission or the review panel may submit a written request to the executive administrator of the Texas Water Development Board for assistance on a technical issue related to the petition. A deadline under subsections (g), (h), and (i) of this section is extended by 120 days if a request for technical assistance is submitted to the executive administrator during the review phase under that subsection.

(7) On request from a member of the review panel, the office of public interest counsel of the commission shall provide legal advice and assistance to the review panel. The office of public interest counsel:

(A) may not participate as a party in an inquiry under this section; and

(B) has no duty or responsibility to represent the public interest or otherwise in an inquiry except as provided by this subsection.

(8) Paragraphs (6) and (7) of this subsection do not prohibit a member of the review panel from using the member's own technical consultant or legal counsel.

(h) Review panel report. The review panel's report must be submitted to the executive director no later than 120 days after the review panel was appointed by the commission. The review panel's report shall include:

(1) if a public hearing is conducted, a summary of evidence taken on the petition;

(2) a list of findings and recommended actions appropriate for the commission to take under TWC, §36.303 and §293.22(e) of this title (relating to Noncompliance Review and Commission Action) and the reasons it finds those commission actions appropriate; and

(3) any other information the panel considers appropriate for commission consideration.

(i) Commission action on review panel report. The executive director or the commission shall take action to implement any or all of the review panel's recommendations if a cause contained in subsection

(b)(1) - (9) of this section applies. The executive director shall, no later than 45 days after the date the review panel report was received, recommend to the commission or initiate any action considered necessary under TWC, §36.303 and §293.22(b) - (h) of this title.

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

Filed with the Office of the Secretary of State on January 15, 2026.

TRD-202600135
Amy L. Browning
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: March 1, 2026
For further information, please call: (512) 239-0682

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 16. COMPTROLLER GRANT PROGRAMS

SUBCHAPTER C. TEXAS OPIOID ABATEMENT FUND PROGRAM

34 TAC §§16.200 - 16.203, 16.205, 16.206, 16.208, 16.212, 16.214, 16.215, 16.217 - 16.219, 16.222, 16.223

The Comptroller of Public Accounts proposes amendments to §16.200, concerning definitions; §16.201, concerning opioid abatement strategies; §16.202, concerning grant issuance plan; §16.203, concerning notice and applications; §16.205, concerning engage in business in Texas; §16.206, concerning peer review panel members; §16.208, concerning grant application review; §16.212, concerning grant requirements; §16.214, concerning conflicts of interest; code of ethics; §16.215, concerning reporting; §16.217, concerning extensions and amendments; §16.218, concerning noncompliance; §16.219, concerning monitoring grant award performance and expenditures; and §16.222, concerning hospital district allocations. The comptroller proposes the amendments to simplify the council's operations, align the rules with the council's experiences and with Senate Bill 1901, 89th Legislature, R.S., 2025, and clarify requirements related to grant issuance plans, notices of funding availability (NOFA), grant applicants, grant agreements, peer review panels, conflicts of interest, and distributions to hospital districts. The comptroller also proposes new §16.223, concerning grants to certain political subdivisions.

The legislation enacted within the last four years that provides the statutory authority for the rules is Senate Bill 1901, 89th Legislature, R.S., 2025.

The amendments to §16.200 authorize the director to determine the size of peer review panels.

The amendments to §16.201 remove the requirement that the council rank abatement strategies in order of priority for grant funding.

The amendments to §16.202 clarify the requirements for grant issuance plans, authorize the council to modify the allocation of funding to regional healthcare partnership regions, and remove the requirement that the council rank the parameters related to funding for targeted interventions.

The amendments to §16.203 clarify the requirements for NOFAs, authorize the director to require a grant applicant to submit additional information, and remove the requirement that grant applications must comply with the applicable NOFA and statutory requirements, which is already required by the NOFAs and grant agreements.

The amendments to §16.205 clarify the requirement that a grant applicant "engage in business" in the state.

The amendments to §16.206 clarify the requirements regarding the location of peer review panel members.

The amendments to §16.208 authorize the director to determine the size of peer review panels.

The amendments to §16.212 clarify that grant applicants must comply with applicable provisions of the Texas Grant Management Standards and the State of Texas Procurement and Contract Management Guide.

The amendments to §16.214 add a conflict of interest standard consistent with Government Code, §403.5041, added by Senate Bill 1901, 89th Legislature, R.S., 2025, and clarify that the council may adopt a code of ethics for council members and peer review panel members.

The amendments to §16.215 provide that the director will receive periodic reports from grant recipients and that the director or the council may determine the requirements of such reports.

The amendments to §16.217 authorize the director to approve amendments to grant agreements without further action of the council.

The amendments to §16.218 provide that the director may monitor and address any noncompliance by a grant recipient and removes the force majeure provision, which is addressed in the applicable grant agreements.

The amendments to §16.219 provide that the director shall monitor the performance of grant recipients.

The amendments to §16.222 clarify when unclaimed or disclaimed distributions to hospital districts may be cancelled and reallocated to other hospital districts.

New §16.223 provides the council with authority to award non-competitive grants to political subdivisions, including streamlined, targeted grants to small counties and municipalities whose distributions under Government Code, §403.506(c)(1), are too small to fund meaningful opioid abatement.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed new rule and amendments are in effect, the new and amended rules will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed new rule and amendments would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed new rule and amendments would benefit the public by improving the clarity and implementation of the section. There would be no anticipated economic cost to the public. The proposed new rule and amendments would have no significant fiscal impact on small businesses or rural communities.

You may submit comments on the proposal or information related to the cost, benefit, or effect of the proposal, including any applicable data, research or analysis, to Katy Fallon-Brown, Director, Opioid Abatement Fund Council, P.O. Box 13528 Austin, Texas 78711 or to the email address: OAFC.Public@cpa.texas.gov. The comptroller must receive your comments or other information no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed under Government Code, §403.511, which authorizes the comptroller to adopt rules to implement Government Code, Chapter 403, Subchapter R, concerning the statewide opioid settlement agreement.

The amendments implement Government Code, Chapter 403, Subchapter R, concerning statewide opioid settlement agreements.

§16.200. Definitions.

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

(1) Authorized official--The individual, including designated alternates, named by a grant applicant or grant recipient, who is authorized to act for the grant applicant or grant recipient in submitting the grant application and executing the grant agreement and associated documents or requests.

(2) Comptroller--The Texas Comptroller of Public Accounts.

(3) Council--The Texas Opioid Abatement Fund Council established by Government Code, §403.503, to manage the distribution of money allocated to the council from the Opioid Abatement Trust Fund, established by Government Code, §403.506 in accordance with a statewide opioid settlement agreement. A reference in this subchapter to the council includes the director and program staff members unless the provision indicates otherwise.

(4) Council member--An appointed member of the council.

(5) Director--The program staff member designated by the comptroller to serve as the director for the council who performs duties as necessary to manage the day-to-day operations of the council. This term includes the director's designees.

(6) Grant agreement--A legal agreement executed by a grant recipient and the director, on behalf of the council, setting forth the terms and conditions for a grant award approved by the council.

(7) Grant applicant--A person or entity that has submitted through an authorized official an application for a grant award under this subchapter.

(8) Grant application--A written proposal submitted by a grant applicant to the director in the form required by the council that, if successful, will result in a grant award.

(9) Grant award--Funding awarded by the council pursuant to a grant agreement providing money to the grant recipient to carry out a grant project in accordance with statutes, rules, regulations, and guidance provided by the council.

(10) Grant recipient--A grant applicant that receives a grant award under this subchapter.

(11) NOFA--Notice of funding availability.

(12) Peer review--The review process performed by the peer review panel and used to provide guidance and recommendations to the council in making decisions for grant awards. The process involves the consistent application of standards and procedures to produce a fair, equitable, and objective evaluation of grant applications, based on the evidence-based opioid abatement strategies developed by the council under Government Code, §403.509, as well as other relevant requirements of the NOFA and the grant application.

(13) Peer review panel--A group of experts in the field of opioid abatement who are selected to conduct peer review of grant applications. A peer review panel may consist of one or more members as determined by the director [~~council~~].

(14) Peer review panel member--A member of the peer review panel.

(15) Program staff member--A member of the comptroller's staff assigned by the comptroller to provide assistance to the council. This term includes the director.

(16) Statewide opioid settlement agreement--A settlement agreement and related documents entered into by this state through the attorney general, political subdivisions that have brought a civil action for an opioid-related harm claim against an opioid manufacturer, distributor, or retailer, and opioid manufacturers, distributors, or retailers relating to illegal conduct in the marketing, promotion, sale, distribution, and dispensation of opioids that provide relief for this state and political subdivisions of this state.

§16.201. Opioid Abatement Strategies.

(a) The council shall determine and approve one or more evidence-based opioid abatement strategies that are eligible for grant funding. To be approved as eligible for funding, a strategy must be:

(1) an opioid abatement strategy provided in the opioid abatement settlement agreements;

(2) supported with evidence-based data; and

(3) in compliance with all applicable state and federal law.

(b) For each strategy approved as an eligible strategy, the council shall categorize the strategy as:

(1) treatment and coordination of care;

(2) prevention and public safety;

(3) recovery support services; or

(4) workforce development and training.

[~~(c) Within each category, the council shall rank each strategy in order of priority for grant funding.~~]

[~~(d) The council may, from time to time, review and amend the list of eligible strategies, the categorization of strategies, or the ranking of strategies within each category.~~]

§16.202. Grant Issuance Plan.

(a) The council shall adopt an annual [~~a~~] grant issuance plan [~~that allocates grant funds among one or more grant cycles~~].

(b) The grant issuance plan shall include:

[~~(1) the number and order of grant cycles;~~]

(1) [~~(2)~~] the category or categories, and one or more eligible strategies within each category, that may [~~will~~] be eligible for grant funding [~~during each grant cycle~~];

(2) [~~(3)~~] the total annual amount of grant funds allocated [~~to each grant cycle~~];

(3) [~~(4)~~] the parameters for the regional component, including the amounts allocated for regional funding [~~of each grant cycle~~];

(4) [~~(5)~~] the parameters for the targeted intervention component, including the amounts allocated for targeted interventions [~~of each grant cycle~~]; and

(5) [~~(6)~~] any other information or council-mandated requirements necessary to implement the grant issuance plan[~~, such as any matching or volunteer requirements, any limitations to the types of eligible applicants, or other requirements~~].

[~~(c) Grant awards made each grant cycle will include one or more of the categories listed in §16.201(b) of this subchapter.~~]

[~~(d) The council shall designate one or more eligible strategies within each category for each grant cycle in accordance with the priority ranking adopted under §16.201(c) of this subchapter.~~]

(c) [~~(e)~~] Each grant issuance plan [~~cycle~~] will be divided into two main funding components:

(1) Of the funds allocated pursuant to a grant issuance plan [~~cycle,~~] 75% shall be allocated among the regional healthcare partnership regions. Unless the council provides for a different method to allocate funding in the annual plan, the funding provided under this section shall be allocated to the regional healthcare partnership regions using the following percentages [~~regional allocations~~]:

(A) Each region's allocation will be determined using the following regional allocations:

(i) 5.515633% allocated to region 1.

(ii) 7.813739% allocated to region 2.

(iii) 17.455365% allocated to region 3.

(iv) 3.902955% allocated to region 4.

(v) 2.542550% allocated to region 5.

(vi) 9.845317% allocated to region 6.

(vii) 7.285670% allocated to region 7.

(viii) 3.495025% allocated to region 8.

(ix) 9.594819% allocated to region 9.

(x) 9.457202% allocated to region 10.

(xi) 1.372268% allocated to region 11.

(xii) 3.390769% allocated to region 12.

(xiii) 0.749727% allocated to region 13.

(xiv) 1.749546% allocated to region 14.

(xv) 2.596578% allocated to region 15.

(xvi) 1.363928% allocated to region 16.

(xvii) 3.325101% allocated to region 17.

(xviii) 5.741368% allocated to region 18.

(xix) 1.827600% allocated to region 19.

(xx) 0.974842% allocated to region 20.

(B) Within each region and provided there are a sufficient number of eligible grant applicants, no single grant recipient will receive 100% of the funds allocated to a respective region.

(2) Of the funds allocated pursuant to a grant issuance plan [~~cycle~~], 25% shall be allocated for council-directedtargeted interventions. The council shall establish parameters for the authorized uses of the targeted intervention component [~~of each grant cycle.~~].

[~~(A)~~] The parameters may include:

(A) [~~(i)~~] a limitation to one or more geographic areas based on opioid incidence information; and

(B) [~~(ii)~~] a limitation to one or more eligible strategies based on opioid incidence information.

[~~(B) The council shall rank the parameters relating to geographic areas and eligible strategies in order of priority for grant funding. For example, if the council limits targeted intervention grants to, in order of priority, locations A, B, C, and D and to, in order of priority, strategies X and Y, the council shall also specify whether a grant application from location A for strategy Y is a higher priority than a grant application from location B for strategy X.~~]

(d) [~~(f)~~] The council may, as necessary [~~from time to time~~], review and amend the annual grant issuance plan.

§16.203. Notice and Applications.

(a) The [~~For each grant cycle in the grant issuance plan adopted under §16.202 of this subchapter, the~~] council shall provide notice of competitive grant opportunities by publishing NOFAs [~~, as necessary, publish a NOFA~~] on the Electronic State Business Daily [~~Texas.gov eGrants~~] website and the comptroller's website.

(b) The NOFA may include:

(1) the amount of any grant funds available for grant awards for each regional healthcare partnership region under the regional component;

(2) the amount of any grant funds available for grant awards and any limitations on the number of grant awards under the targeted intervention component;

(3) the strategy or strategies that are eligible for grant funding [~~and the order of priority for grant funding~~];

(4) the minimum and maximum amount of grant funds available for each grant application;

(5) any limitations on the geographic distribution of grant funds [~~under the regional component and under the targeted intervention component~~];

(6) eligibility requirements;

(7) grant application requirements;

(8) grant award and evaluation criteria; and

[~~(9) the date by which grant applications must be submitted to the council;~~]

[~~(10) the anticipated date of grant awards;~~]

[~~(11) any preferred criteria relevant to the grant application;~~]

[~~(12) parameters for allowable costs reimbursable under the grant awards; and~~]

(9) [~~(13)~~] any other [~~necessary~~] information necessary to implement the grant or grant issuance plan.

(c) All grant applications submitted under this subchapter must comply with the requirements contained in this subchapter and in the relevant NOFA published by the council.

(d) Grant applicants must apply for a grant award using the procedures, forms, and certifications prescribed by the council.

(e) During the review of a grant application, the director [~~a program staff member~~] may require a grant applicant to submit additional information necessary to complete the review. Such requests for information do not serve as notice that the council intends to fund a grant application; however, failure to respond to requests for additional information may impact the ability to review and evaluate the grant application.

(f) Grant applications shall[~~:~~]

[~~(1)~~] seek to remediate the opioid crisis in this state by using efficient and cost-effective methods that are directed to regions of this state experiencing opioid-related harms.[~~; and~~]

[~~(2) satisfy the requirements set forth in this subchapter; Government Code, Chapter 403, Subchapter R; and the relevant NOFA published by the council~~].

§16.205. Engage in Business in Texas.

(a) Except as addressed by a NOFA, to be eligible to receive a grant award, a grant applicant must engage in business in the state of Texas by:

(1) maintaining employees in the state of Texas; or

(2) having a fixed place of business in the state of Texas.[~~; or~~]

[~~(3) providing any service in the state of Texas, whether or not the individuals performing the service are residents of the state~~].

(b) Grant applicants responding to a NOFA may be located outside the state of Texas when the grant application is submitted and reviewed; however, the grant applicant must demonstrate that it engages in business in the state of Texas as a condition of the grant award.

(c) A grant recipient's failure to engage in business in the state of Texas is a violation of these rules for the purpose of §16.218 of this subchapter.

§16.206. Peer Review Panel Members.

(a) To minimize the potential for conflicts of interest in the peer review of grant applications, the council shall give preference to [~~may select and compensate~~] individuals who live and work outside of the state of Texas to serve as peer review panel members[~~, unless a special need justifies selecting one or more individuals living or working in Texas~~].

[~~(b) If an individual who lives or works in Texas is selected to serve as a peer review panel member, the director must provide an explanation of the special need and how any potential for conflict of interest will be mitigated to the council at the time the peer review panel member is selected.~~]

(b) [~~(c)~~] A peer review panel member shall immediately disclose to the director a present relationship with a grant applicant or any benefit the peer review panel member has received or knows the member will receive from a grant applicant.

(c) [~~(d)~~] A peer review panel member who has a present relationship with a grant applicant, or has received or knows the member will receive any benefit from a grant applicant, may not review that grant application.

§16.208. Grant Application Review.

(a) The grant application review process shall consist of the following:

(1) initial screening;

(2) director review or, if required, peer review; and

(3) council review and approval.

(b) Initial screening.

(1) The director shall review each grant application to determine whether the grant application complies with the requirements contained in this subchapter and the relevant NOFA published by the council. Grant applications that do not meet these requirements may not be eligible for a grant award and will not be submitted for further review under this section. The council may participate in the initial screening of any grant application.

(2) Following the initial screening, the director shall submit each grant application that meets the requirements described in subsection (b)(1) of this section for review under subsection (c) of this section.

(c) Director review or peer review.

(1) Each grant application that is submitted for review under subsection (b)(2) of this section shall be reviewed by the director or a peer review panel.

(A) If the total amount of the grant is greater than $750,000, the grant application shall be reviewed by a peer review panel.

(B) If the total amount of the grant is $750,000 or less, the grant application may be reviewed by the director or a peer review panel.

(2) Applications shall be scored based on the application's merit and the criteria in the relevant NOFA published by the council. The reviewer shall submit this information to the director.

(3) Scores, rankings and other information submitted for the council's consideration are recommendations and are advisory only.

(4) For each NOFA, the director [~~council~~] will determine the number of members that will serve on the peer review panels for any grant applications subject to peer review.

(d) Council review and approval.

(1) Upon completion of the evaluation described in subsection (c) of this section, the director shall compile a ranked order list of grant applications and submit it to the council for consideration. If an application is reviewed by more than one person, the final evaluation score is determined by averaging together all reviewers' scores.

(2) For each application, the director shall submit to council members:

(A) the grant application's final overall evaluation score;

(B) the grant application's ranking;

(C) a summary of the grant application;

(D) other information submitted by the reviewers for the council's consideration; and

(E) any other information required for the council's consideration of the grant application.

(3) In making grant award decisions, the council:

(A) shall ensure that grant funds are allocated fairly and spent to remediate the opioid crisis in this state by using efficient and cost-effective methods in accordance with the opioid strategies approved by the council under Government Code, §403.509(a)(1) and §16.201 of this subchapter, and the grant issuance plan adopted by the council under §16.202 of this subchapter; and

(B) may consider factors including:

(i) a grant applicant's experience;

(ii) a grant project's estimated timeline;

(iii) matching funds or sustainability plan, if any;

(iv) cost effectiveness, efficacy and overall impact of the grant project;

(v) geographic location of the grant project;

(vi) community partnerships; and

(vii) any additional factors listed in the relevant NOFA published by the council.

(4) The council shall vote on grant applications in accordance with Government Code, Chapter 403, Subchapter R. The council may determine the voting procedures for grant applications and may vote on multiple grant applications at one time.

(5) All grant funding decisions are final and are not subject to appeal.

(6) The approval of a grant award shall not obligate the council to make any additional, supplemental, or other grant award.

§16.212. Grant Requirements.

(a) Grant recipients must comply with:

(1) the terms and conditions of the grant agreement;

(2) the requirements of Government Code, Chapter 403, Subchapter R;

(3) the applicable [~~relevant~~] provisions of the Texas Grant Management Standards and the State of Texas Procurement and Contract Management Guide, or their successors, adopted in accordance with Texas law; and

(4) all applicable state or federal statutes, rules, regulations, or guidance applicable to the grant award.

(b) A grant recipient is the entity legally and financially responsible for compliance with the grant agreement, and state and federal laws, rules, regulations, and guidance applicable to the grant award.

(c) Grant funds may not be used for costs that will be reimbursed by another funding source. The director may require a grant applicant or grant recipient to demonstrate through accounting records that funds received from another funding source are not used for costs that will be reimbursed by the council.

§16.214. Conflicts of Interest; Code of Ethics.

(a) All council members, peer review panel members, and program staff members shall avoid acts which are improper or give the appearance of impropriety in the disposition of funds administered by the council.

(b) A council member shall recuse himself or herself from participating in the review, discussion, deliberation, or vote on a grant application if the council member knows that the council member or a person who is related to the council member within the first degree of affinity or consanguinity has a professional or financial interest in an entity that is directly receiving or applying to receive money from the council.

(c) [~~(b)~~] The council may [~~shall~~] adopt a code of ethics to provide guidance related to the ethical conduct required of council members and [~~,~~] peer review panel members[~~, and program staff members~~].

(d) [~~(c)~~] Any [~~The~~] code of ethics adopted by the council shall be distributed to each council member and [~~,~~] peer review panel member, as applicable [~~and program staff member~~].

§16.215. Reporting.

(a) Grant recipients must submit [~~to a program staff member designated by the director~~] periodic reports for each funded grant project for the duration of the grant agreement to the director. The frequency, format and requirements of the reports shall be determined at the discretion of the director or at the direction of the council.

(b) At the director's sole discretion and at any time, the director, upon reasonable notice, may request any additional data and reporting information that the director deems necessary to substantiate that grant funds are being used for the intended purpose and that the grant recipient has complied with the terms, conditions, and requirements of the grant agreement.

§16.217. Extensions and Amendments.

(a) The director may, without further action of the council, approve:

(1) a grant recipient's written request for a no cost time extension of the termination date of the grant agreement to permit the grant recipient additional time to complete the work of the grant project if the grant recipient is in good fiscal and programmatic standing, and

(2) any amendment to a grant agreement.

(b) A written request for a no cost time extension must include:

(1) a timeline of events beginning on the date of grant award;

(2) a detailed explanation why the grant project is not expected to be completed within the grant term; and

(3) if applicable, supporting documentation demonstrating extenuating circumstances.

(c) The director may approve one or more no cost time extensions. The duration of each no cost time extension may be no longer than six months from the termination date of the grant agreement, unless the director finds that special circumstances justify authorizing additional time to complete the work of the grant project.

(d) Approval of a no cost time extension request must be supported by a finding of good cause and the grant agreement shall be amended to reflect the change.

(e) The director's decision to grant or deny a no cost time extension request or an amendment to a grant agreement is final and is not subject to appeal.

§16.218. Noncompliance.

(a) If the director [~~council~~] has reason to believe that a grant recipient has violated any term or condition of the grant recipient's grant agreement or any applicable laws, rules, regulations, or guidance relating to the grant award, the director shall provide written notice of the allegations to the grant recipient and provide the grant recipient with an opportunity to respond to the allegations.

(b) If the director [~~council~~] finds that a grant recipient has failed to comply with any term or condition of a grant agreement, or

any applicable laws, rules, regulations, or guidance relating to the grant award, the director [~~council~~] may:

(1) require the grant recipient to refund the grant award or a portion of the grant award;

(2) withhold grant award amounts to a grant recipient pending correction of the deficiency;

(3) disallow all or part of the cost of the activity or action that is not in compliance;

(4) terminate the grant award in whole or in part;

(5) bar the grant recipient from future consideration for grant funds under this subchapter; or

(6) exercise any other legal remedies available at law.

[~~(c) A grant recipient shall not be required to forfeit grant funds received if it fails to perform due to acts of war, terrorism, natural disaster declared by the governor of this state, an act of God, force majeure, a catastrophe, or such other occurrence over which the grant recipient has no control.~~]

§16.219. Monitoring Grant Award Performance and Expenditures.

The director [~~council~~] shall monitor grant awards to ensure that grant recipients comply with applicable financial, administrative, and programmatic terms and conditions and exercise proper stewardship over grant award funds. Such terms and conditions include requirements set forth in the grant agreement, and applicable laws, rules, regulations, or guidance relating to the grant award.

§16.222. Hospital District Allocations.

(a) The council shall make periodic distributions of money allocated to hospital districts under Government Code, §403.508(a)(2).

(b) The council shall distribute money under subsection (a) of this section when, based on the total amount of money to be distributed, the smallest amount of the money that would be allocated to an individual hospital district equals at least $1,000. Additionally, the council may, at the council's discretion, distribute money under subsection (a) of this section when, based on the total amount of money to be distributed, an individual hospital district would receive less than $1000.

(c) The total amount of each distribution of money under subsection (a) of this section shall be determined by the council.

(d) The initial distribution of money under subsection (a) of this section shall be allocated as follows:

(1) to the hospital districts listed in subsection (f) of this section in the dollar amounts listed in that subsection; and

(2) the remainder to the hospital districts listed in subsection (g) of this section in amounts determined by multiplying the percentages listed in that subsection by the remaining amount to be distributed.

(e) Any subsequent distributions of money under subsection (a) of this section shall be allocated to the hospital districts listed in subsection (g) of this section in amounts determined by multiplying the percentages listed in that subsection by the amount to be distributed.

(f) Group One:
Figure: 34 TAC §16.222(f) (No change.)

(g) Group Two:
Figure: 34 TAC §16.222(g) (No change.)

(h) Amounts allocated under subsections (d)(2) and (e) of this section may be rounded down to the nearest whole dollar. Any remaining money caused by rounding shall be retained for future allocation to hospital districts under this section.

(i) Prior to, and as a condition of, receiving a distribution of money under subsection (a) of this section, a hospital district listed in subsection (f) or (g) of this section must, for each distribution:

(1) submit to the director a resolution from the hospital district's governing body that:

(A) designates, by name and title, an authorized official who has the authority to act on behalf of the hospital district in all matters related to the distribution, including the authority to sign all official documents related to the distribution;

(B) affirms that the hospital district will use all money received by the hospital district under this section:

(i) to remediate the opioid crisis, including providing assistance in one or more of the categories described in §16.201(b) of this subchapter; or

(ii) if a court order or settlement agreement requires the money to be used for one or more specific purposes, for a permissible use provided by that court order or settlement agreement; and

(C) affirms that, in the event of loss or misuse of grant funds, the hospital district shall return all funds to the council;

(2) submit to the director in a form acceptable to the director:

(A) the authorized official's title, mailing address, telephone number, and email address;

(B) the hospital district's physical address; and

(C) any other documents or information required by the director, including any documents or information required for the secure transfer of money to the hospital district or required by a court order or settlement agreement that applies to all or a portion of the money being distributed;

(3) if there is a change of authorized official, submit to the director a new resolution from the hospital district's governing body that contains the information required under paragraph (1) of this subsection;

(4) notify the director as soon as practicable of any change in the information provided under paragraph (2) of this subsection;

(5) be in compliance with subsection (j) of this section for any prior distributions; and

(6) be in compliance with the reporting requirements in subsection (l) of this section for any prior distributions.

(j) Money received by a hospital district under this section must be used by the hospital district for the purposes described in subsection (i)(1)(B) of this section.

(k) If a hospital district does not satisfy the requirements to receive a distribution under subsection (i) of this section, does not deposit distributed money before the second anniversary of the date on which the money was distributed, or submits in writing to the council a document indicating that the hospital district affirmatively forfeits or refuses to accept the money, the distribution to that hospital district, and any future distributions to that hospital district, may be cancelled and, if cancelled, the money shall be retained by the council for future allocation to hospital districts under this section.

(l) A hospital district that receives a distribution of money under this section must submit periodic reports to the director to ensure

that the hospital district complies with subsection (j) of this section. The frequency, format, and requirements of the reports shall be determined at the discretion of the director.

(m) The council may monitor a hospital district that receives money under this section to ensure that the hospital district complies with subsection (j) of this section.

(n) If the council finds that a hospital district has failed to comply with the requirements of subsection (j) of this section, the council may do one or more of the following:

(1) instruct the director to provide the hospital district written notice of the alleged failure to comply;

(2) provide the hospital district with an opportunity to respond;

(3) require the hospital district to cure the failure to comply to the satisfaction of the council;

(4) require the hospital district to refund to the council all or a portion of the money received by the hospital district under this section; and

(5) exercise any other legal remedies available at law.

(o) Money refunded to the council under subsection (n) of this section shall be retained by the council for future allocation to hospital districts under this section.

(p) Except as otherwise provided in this section, this section and §16.200 of this subchapter are the only provisions in this subchapter that apply to the allocation of money to hospital districts under Government Code, §403.508(a)(2).

§16.223. Grants to Certain Political Subdivisions.

(a) The council may award non-competitive grants to a political subdivision of this state that participated in the statewide opioid settlement agreement defined in Government Code, §403.501(5).

(b) A grant to a political subdivision under subsection (a) of this section is not subject to §16.203 or §16.208 of this subchapter, unless otherwise determined by the council.

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 January 15, 2026.

TRD-202600132
Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: March 1, 2026
For further information, please call: (512) 475-2220

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34 TAC §§16.207, 16.213, 16.216

The Comptroller of Public Accounts proposes the repeal of §16.207, concerning authorized officials, §16.213, concerning use of council's grant management system, and §16.216, concerning grant reduction or termination. The comptroller repeals these sections because they are no longer necessary or are adequately addressed through the applicable grant agreements or notices of funding availability.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed repeal is in effect, the repeal: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed rules repeal would have no fiscal impact on the state government, units of local government, or individuals. The proposed repeal would benefit the public by improving the clarity and organization of the chapter. There would be no anticipated economic cost to the public. The proposed repeal would have no fiscal impact on small businesses or rural communities.

You may submit comments on the proposal or information related to the cost, benefit, or effect of the proposal, including any applicable data, research or analysis, to Katy Fallon-Brown, Director, Opioid Abatement Fund Council, P.O. Box 13528 Austin, Texas 78711 or to the email address: OAFC.Public@cpa.texas.gov. The comptroller must receive your comments or other information no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The repeals are proposed under Government Code, §403.511, which authorizes the comptroller to adopt rules to implement Government Code, Chapter 403, Subchapter R, concerning the statewide opioid settlement agreement.

The repeals implement Government Code, Chapter 403, Subchapter R, concerning statewide opioid settlement agreements.

§16.207. Authorized Officials.

§16.213. Use of Council's Grant Management System.

§16.216. Grant Reduction or Termination.

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 January 15, 2026.

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SUBCHAPTER G. SHERIFF IMMIGRATION LAW ENFORCEMENT GRANT PROGRAM

34 TAC §§16.550 - 16.556

The Comptroller of Public Accounts proposes new §16.550, concerning definitions; §16.551, concerning applications; §16.552, concerning comptroller review; §16.553, concerning grant agreement; §16.554, concerning authorized uses of grant funds; §16.555, concerning reporting and compliance; and §16.556, concerning fiscal year 2026 application period.

These new sections will be located in 34 TAC Chapter 16, new Subchapter G, Sheriff Immigration Law Enforcement Grant Program.

The legislation enacted in the last four years that provides statutory authority is Senate Bill 8, 89th Legislature, R.S., 2025. Senate Bill 8 establishes a new grant program to assist sheriffs participating in immigration law enforcement agreements.

Section 16.550 provides definitions.

Section 16.551 describes the application process.

Section 16.552 describes comptroller review.

Section 16.553 describes the requirements for grant agreements.

Section 16.554 describes the authorized uses of grant funds and limitations on uses of grant funds.

Section 16.555 describes reporting requirements and available remedies for noncompliance.

Section 16.556 describes the Fiscal Year 2026 application period.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed new rules are in effect, the rules: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed new rules would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed new rules would benefit the public by fulfilling a statutory requirement and establishing a program. There would be no economic cost to the public. The proposed new rules would have no fiscal impact on small businesses or rural communities.

You may submit comments on the proposal or information related to the cost, benefit, or effect of the proposal, including any applicable data, research or analysis, to Russell Gallahan, Manager, Local Government & Transparency, P.O. Box 13528 Austin, Texas 78711 or to the email address: sheriff.grants@cpa.texas.gov. The comptroller must receive your comments or other information no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new sections are proposed under Government Code, §753.104, which requires the comptroller to adopt rules to implement a new grant program to assist sheriffs participating in immigration law enforcement agreements.

The new sections implement Government Code, §753.104.

§16.550. Definitions.

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

(1) Applicant--A sheriff of a county that operates a jail or contracts with a private vendor to operate a jail who applies for a grant.

(2) Biennium--A two-year period that runs from September 1 of an odd-numbered year through August 31 of the next odd-numbered year.

(3) Deputy sheriff--A person appointed as deputy sheriff pursuant to Local Government Code, §85.003.

(4) Equipment--This term includes any tangible or nontangible item necessary to perform duties required under an immigration law enforcement agreement including safety equipment, computers, firearms, vehicles and software. This term does not include office supplies such as pens, paper, and office furniture.

(5) Fiscal year--The twelve consecutive calendar months when an applicant tracks its finances for budget and accounting purposes.

(6) Grant--A grant awarded under Government Code, Chapter 753, Subchapter C, to a sheriff who has entered into an immigration law enforcement agreement.

(7) Grant agreement--An agreement between the comptroller and a grant recipient that governs the terms of a grant.

(8) Grant reporting costs--Costs related to generating and delivering reports required under this subchapter.

(9) Grant recipient--A sheriff who receives a grant under this subchapter.

(10) Immigration law enforcement agreement--An agreement described in Government Code, § 753.001 and §753.051.

(11) Reporting costs--Costs related to generating and delivering reports required under the immigration law enforcement agreement.

(12) Sheriff--A person elected or appointed as the county sheriff who is responsible for carrying out the duties of the office described in Local Government Code, Chapters 85, 291 and 351.

§16.551. Application.

(a) In order to receive a grant award payment under this subchapter, an applicant must timely submit a completed application.

(b) An applicant must submit the application electronically on a website established by the comptroller for that purpose. The application must include all information the comptroller deems necessary to make an award determination, including:

(1) a copy of the immigration law enforcement agreement; and

(2) a copy of a resolution from the county commissioner's court wherein the commissioners court pledges to not reduce the amount of funds provided or appropriated to the sheriff's office in response to the sheriff's receipt of grant funds under this subchapter.

(c) A sheriff is eligible to apply for a grant if the sheriff has entered into an immigration law enforcement agreement and is eligible for the grant amount as described under Government Code, §753.103.

(d) The comptroller accepts only one application per applicant within a biennium.

(e) The sheriff must electronically sign the application and certify that all information in the application is true and correct.

§16.552. Comptroller Review.

(a) The comptroller shall review the application for completeness. The comptroller may require the applicant to submit any additional information deemed necessary to make an award determination. The applicant must submit the required information within 14 calendar days of its request by the comptroller.

(b) The comptroller may reject an application for any of the following reasons:

(1) an applicant has not timely met, to the comptroller's satisfaction, the eligibility and application requirements;

(2) an applicant failed to timely comply with the comptroller's request for information under subsection (a) of this section; or

(3) the application submitted is incomplete or does not otherwise comply with this subchapter as determined by the comptroller.

§16.553. Grant Agreement.

(a) Funding of grant agreements is contingent on the comptroller receiving sufficient legislative appropriations, without which the comptroller may be unable to execute a grant agreement. Determinations regarding grant award payment amounts will depend on the amount of funding available at the time the application is approved and could result in partial or no funding awarded.

(b) The comptroller shall notify the grant recipient of the grant award amount and provide a grant agreement for signature within 30 days of that notification.

(c) Award and funding decisions are made in the comptroller's sole discretion and are not appealable or subject to protest.

(d) A grant agreement must require the comptroller to disburse funds as soon as practicable and must require funds to be expended during the grant period. Funds subject to a binding encumbrance may be considered expended if the grant recipient is legally obligated to expend the funds under a binding contract to purchase allowable goods or services. For example, anticipated contracts, contracts under negotiation, and the earmarking or budgeting of funds for a specified purpose are not binding encumbrances.

(e) Grant award payments are subject to Government Code, §§ 403.055, 403.0551 and 753.103. The most recent federal decennial census will determine the population used for the funding tiers.

(f) The sheriff must electronically sign the grant agreement.

§16.554. Authorized uses of Grant Funds.

(a) Grant funds may only be used for the following:

(1) compensation for persons performing duties under the immigration law enforcement agreement;

(2) reporting costs, which are limited to three percent of the total grant amount;

(3) grant reporting costs, which are limited to three percent of the total grant amount;

(4) equipment and related services for peace officers and other persons related to the immigration law enforcement agreement, including the cost of repairing equipment that was not purchased using grant funds;

(5) attendance by a person at any training or other event required under the immigration law enforcement agreement;

(6) costs to the county for confining inmates under the authority granted under the immigration law enforcement agreement;

(7) overtime pay for persons employed at the sheriff's office who, during periods of training required by the immigration law enforcement agreement, perform the duties of persons obtaining that training;

(8) indirect costs, as described in the Texas Grant Management Standards, which:

(A) are limited to five precent of the total grant amount; and

(B) exclude costs for business functions of the office, including software, trainings, and licenses; and

(9) pre-award costs expended on or after the effective date of the immigration law enforcement agreement and prior to the effective date of the grant agreement.

(b) Grant funds may not be used for:

(1) reporting costs in excess of three percent of the total grant amount;

(2) grant reporting costs in excess of three percent of the total grant amount;

(3) indirect costs, as described in the Texas Grant Management Standards, in excess of five percent of the total grant amount and indirect costs for business functions of the office including software, trainings, and licenses;

(4) costs associated with participating in the immigration law enforcement agreement for which the grantee may be reimbursed by the federal government; and

(5) costs incurred prior to the effective date of the immigration law enforcement agreement.

(c) Grant funds may only be used for the state purpose of assisting sheriffs participating in immigration law enforcement agreements.

(d) For compensation for persons performing duties under the agreement as described by subsection (a)(1) of this section, the costs associated with providing compensation include:

(1) the salary amount as indicated on the county's budget submitted under section 16.555 (Reporting and Compliance) of this subchapter; and

(2) any additional compensation costs legally permissible and allowable by county policy, including overtime pay.

(e) Funds must be expended within the term of the grant agreement.

§16.555. Reporting and Compliance.

(a) A grant recipient must submit a compliance report using the comptroller's electronic form each fiscal year as required by the grant agreement. The report must certify compliance and provide detailed information on the expenditure of grant funds.

(b) The comptroller may request supporting documentation regarding expenditures and any other information required to substantiate that the grant recipient complied with the grant agreement and this subchapter. The grant recipient must submit the documentation within 14 calendar days of the request.

(c) Grant recipients must comply with:

(1) the grant agreement terms and conditions;

(2) Government Code, Chapter 753, Subchapter C requirements, as applicable; and

(3) all state and federal statutes, rules, regulations, and guidance applicable to the grant award, including this subchapter.

(d) If the comptroller finds that a grant recipient has failed to comply with any requirement described in subsection (c) of this section, the comptroller may:

(1) require the grant recipient to cure the failure to comply to the comptroller's satisfaction;

(2) require the grant recipient to return some or all of the grant;

(3) withhold funds from the current grant or future grants awarded to grant recipient until the deficiency is corrected;

(4) disallow all or part of the cost of the activity or purchase that does not comply;

(5) terminate the grant agreement in whole or in part;

(6) bar the grant recipient from future consideration for grants under this subchapter; or

(7) exercise any other legal remedies available at law.

(e) The grant recipient or an official of the county who is authorized to bind the county must electronically sign the compliance report and certify that all information in the compliance report is true and correct.

§16.556. Fiscal Year 2026.

(a) Notwithstanding anything to the contrary in this subchapter, the first application period for all applicants in Fiscal Year 2026 will consist of a thirty-day period beginning on the later of January 1, 2026 or the date the application is first made available.

(b) For grants awarded during Fiscal Year 2026, funds may be used to reimburse costs incurred on or after October 1, 2025, provided the costs were incurred on or after the effective date of the immigration law enforcement agreement. Any pre-award costs, corresponding receipts, invoices or other related information must be submitted with the application.

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 January 15, 2026.

TRD-202600138
Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: March 1, 2026
For further information, please call: (512) 475-2220

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CHAPTER 20. STATEWIDE PROCUREMENT AND SUPPORT SERVICES

SUBCHAPTER E. SPECIAL CATEGORIES OF CONTRACTING

DIVISION 1. STATE SUPPORT SERVICES - MAIL AND PRINTING

34 TAC §20.381

The Comptroller of Public Accounts proposes amendments to §20.381, concerning policy and purpose.

No legislation was enacted within the last four years that provides the statutory authority for the amendments.

The comptroller amends subsection (a) to remove passive voice and unnecessary language and clarify the comptroller's role for providing interagency mail and messenger services between state agencies in Travis County.

The comptroller amends subsection (b) to remove passive voice and streamline language. The revised language provides that mail and messenger service will not deliver personal mail. In addition, the revised subsection states that mail and messenger service will not deliver packages weighing more than 70 pounds.

The comptroller amends subsection (c) to remove passive voice and simplify language, and state when the mail and messenger service will deliver state warrants.

The comptroller amends subsection (d) to remove passive voice and streamline language, and states that mail will be delivered to and from the United States Postal Service upon agreement of the state agency and the comptroller.

The comptroller amends subsection (e) to remove passive voice and unnecessary language and provides the mail and messenger service will process and meter outgoing mail for state agencies upon agreement of the state agency and the comptroller. This section is also amended to state each state agency shall pay for its own postage and obligations if there is a deficit.

The comptroller amends subsection (f) to delete passive voice and simplify language. In paragraph (1), the comptroller raises the threshold at or below which an agency may rely on a written justification of mail equipment purchases and service contracts from $10,000 to $25,000. In paragraph (2), the comptroller raises the corresponding threshold above which an agency must present a detailed analysis of costs and benefits for mail equipment purchases and service contracts from $10,000 to $25,000. The $25,000 threshold aligns with the requirement for posting of a solicitation in Government Code, §2155.083, along with other formal procurement requirements.

The comptroller amends subsection (g) to delete passive voice and unnecessary language, and to specify how state agencies may pay for postage on a meter rented under a term contract. The subsection provides that the comptroller may establish statewide contracts for postage meter machine rentals. And the subsection provides that state agencies that use these statewide contracts may purchase and pay for postage separately, in accordance with the requirements of United States Postal Service Domestic Mail Manual.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amendments are in effect, the amended rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy. This proposal amends an existing rule.

Mr. Reynolds also has determined that the proposed rule amendments would have no fiscal impact on the state government, units of local government, or individuals. The proposed amendments would benefit the public by improving the clarity and implementation of the section. There would be no anticipated economic cost to the public. The proposed amendments would have no fiscal impact on small businesses or rural communities.

You may submit comments on the proposal or information related to the cost, benefit, or effect of the proposal, including any

applicable data, research or analysis, to Gerard MacCrossan P.O. Box 13528 Austin, Texas 78711 or to the email address: Gerard.MacCrossan@cpa.texas.gov. The comptroller must receive your comments or other information no later than 30 days from the date of publication of the proposal in the *Texas Register*.

A public hearing will be held to receive comments on the proposed amendments. There is no physical location for this meeting. The meeting will be held at 10:00 a.m., Central Time, on Tuesday, February 10, 2026. To access the online public meeting by web browser, please enter the following URL into your browser: https://txcpa.webex.com/txcpa/j.php?MTID=mc5da036d94cb39fac7c45cfeacf72d09. To join the meeting by computer or cell phone using the Webex app, use the access code 24868453987 and password SPDRULES. Persons interested in providing comments at the public hearing may contact Mr. Gerard MacCrossan, Comptroller of Public Accounts, at Gerard.MacCrossan@cpa.texas.gov or by calling (512) 463-4468 by February 9, 2026.

These amendments are proposed under Government Code, §2176.110 which provides that the comptroller shall adopt rules for state agencies to implement Government Code, Chapter 2176 regarding mail, and under Government Code, §2113.103(c) which provides that the comptroller by rule shall adopt procedures for the payment of postage by an agency renting a postage meter machine.

These amendments implement Government Code, Chapter 2176 and Government Code, §2113.103.

§20.381. Mail and Messenger Services.

(a) The comptroller [~~provides and~~] operates an interagency mail and messenger service to deliver unstamped or non-metered mail [~~written communications~~] and packages between the [~~legislature,~~] state agencies [~~and legislative agencies located~~] in Travis County.

(b) The Mail and messenger service will not deliver personal mail that is not associated to an individual's job function. The mail and messenger service will not deliver packages weighing more than 70 pounds. [~~No personal mail will be carried by the mail and messenger service. No package that exceeds 70 pounds will be delivered by the mail and messenger service.~~]

(c) The mail and messenger service, upon agreement by the state comptroller and the agency, will deliver state warrants. [~~State warrants may be delivered by the mail and messenger service upon agreement by the state comptroller and the agency concerned.~~]

(d) The mail and messenger service, upon agreement of the state agency and the comptroller, will deliver mail to and from the United States Postal Service. [~~Mail may be delivered to and from the United States Post Office upon the agreement of the state agency and the comptroller.~~]

(e) The mail and messenger service, upon agreement of the state agency and the comptroller, will [~~may~~] process and meter outgoing mail for state agencies [~~upon agreement of the state agency and the comptroller~~]. Each state agency shall pay for its own [~~must furnish funds to cover amounts of~~] postage to be metered.

(1) No mail will [~~shall~~] be metered for a state agency in excess of funds provided by the agency, unless approved by the comptroller [~~so as to avoid undue delays in processing mail~~]. A state agency with a [~~Any~~] deficit in its [~~an agency's~~] postage account shall [~~be~~] promptly reimburse [~~reimbursed to~~] the comptroller.

(2) The mail and messenger service will provide each state agency utilizing the metered mail service with a monthly report showing the amounts of postage used and volume of mail metered.

(3) State agencies that [~~who~~] use the comptroller's outgoing mail service [~~for the purpose of postage meter rental requirements and cost effective mailing requirements~~] will be [~~considered to be~~] in compliance with Government Code, Chapter 2176 and Government Code, §2113.103.

(f) A state agency located in Travis County shall [~~is required to~~] consult [~~with~~] the comptroller before renting, purchasing, upgrading, or selling mail processing equipment; contracting with a private entity for mail processing services; or taking any action that will significantly affect the agency's first class mail practices.

(1) For mail equipment or [~~private entity~~] service contracts $25,000 [~~$10,000~~] and under, a state agency shall submit a written justification to the comptroller stating why the equipment or service is needed and what benefits are expected to be received.

(2) For mail equipment or [~~private~~] service contracts over $25,000 [~~$10,000~~], a state agency shall submit a detailed life-cycle [~~cost benefit~~] analysis to the comptroller that includes all expected costs and benefits over the life of the equipment or service. The analysis shall be in a format prescribed by the comptroller.

(3) For any action that will significantly affect its first class mail practices, a state agency shall provide a written statement of the need for the action and anticipated benefits. Significant actions affecting the first class mail practices [~~of an agency~~] include[~~, but are not limited to, the following~~]:

(A) creation or elimination of internal mail processing functions, organization, or staff; and

(B) addition or elimination of [~~any specific~~] mail processing activities such as metering, presorting, folding, inserting [~~folding/inserting~~], or labeling.

(4) The comptroller shall provide a written response to the state agency indicating whether or not it agrees with the intended action and any suggested alternatives.

(g) The comptroller may establish [~~establishes~~] statewide term contracts for postage meter machine rentals [~~when in the best interest of the state~~]. State agencies that use these [~~Postage for~~] statewide [~~term~~] contracts [~~is purchased separately by state agencies and cooperative purchasing members. State agencies~~] may purchase and pay for postage separately, in accordance with the requirements of United States Postal Service Domestic Mail Manual. State agencies that use the comptroller's statewide contracts for postage meter machine rentals will be in compliance with Government Code, §2113.103.

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 January 15, 2026.

TRD-202600145
Don Neal
General Counsel, Operations and Support Legal Services
Comptroller of Public Accounts
Earliest possible date of adoption: March 1, 2026
For further information, please call: (512) 475-2220

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PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

CHAPTER 75. HAZARDOUS PROFESSION DEATH BENEFITS

34 TAC §§75.1 - 75.3

The Employees Retirement System of Texas (ERS) proposes amendments to 34 Texas Administrative Code Ch. 75, concerning Hazardous Profession Death Benefits, by amending §75.1 (Filing of Claims), §75.2 (Additional Benefit Claims), and §75.3 (Adjustments to Payments).

ERS administers a constitutional trust fund as set forth in Article XVI, §67, Texas Constitution; Title 8, Tex. Gov't Code; and 34 Texas Administrative Code, §§61.1 *et seq.* ERS also administers benefits for the survivors of peace officers, fire fighters, and other similar public servants under Tex. Gov't Code Ch. 615.

Sections 75.1 - 75.3, concerning Hazardous Profession Death Benefits, are proposed to be amended in order to simplify and clarify the process for submitting an application for benefits.

GOVERNMENT GROWTH IMPACT STATEMENT

ERS has determined that during the first five-year period the amended rules will be in effect:

(1) the proposed amendments will not eliminate a government program;

(2) implementation of the proposed amendments will not require the creation of new employee positions or eliminate existing employee positions;

(3) implementation of the proposed amendments will not require an increase or decrease in future legislative appropriations to the agency;

(4) the proposed amendments will not require an increase or decrease in fees paid to the agency;

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

(6) the proposed amendments will not expand an existing rule or regulation and will not repeal an existing rule or regulation;

(7) the proposed amendments will not increase or decrease the number of individuals subject to the rules' applicability; and

(8) the proposed amendments will not positively or adversely affect the state's economy.

Mr. Bernie Hajovsky, Director of Customer Benefits, has determined that for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government or local economies as a result of enforcing or administering the rules; and small businesses, micro-businesses, and rural communities will not be affected.

The proposed amendments to the rule will clarify and simplify the process for submitting an application for benefits. The proposed amendments do not constitute a taking. Mr. Hajovsky has also determined that, to his knowledge, there are no known anticipated economic effects to persons who are required to comply with the rule as proposed, and the proposed amendments do not impose a cost on regulated persons.

Mr. Hajovsky also determined that for each year of the first five years the amended rules are in effect, the public benefit anticipated as a result of adopting and complying with the rules is that the process for submitting an application for benefits will be clarified and simplified.

Comments on the proposed amendments may be submitted to Cynthia C. Hamilton, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or you may email Ms. Hamilton at *general.counsel@ers.texas.gov*. The deadline for receiving comments is Monday, March 2, 2026, at 10:00 a.m.

The amendments are proposed under Tex. Gov't Code §615.002, which provides authorization for the ERS Board of Trustees to adopt rules necessary for the administration of Tex. Gov't Code Ch. 615.

No other statutes are affected by the proposed amendments and rules.

§75.1. Filing of Claims.

(a) An adult survivor or a person with authority to act on behalf of a survivor may initiate an application for benefits under Tex. Gov't Code, Chapter 615, except that for benefits payable to survivors or members of Texas military forces under Tex. Gov't Code § 615.024, the system will make a determination regarding the payment of benefits based on information provided by the Texas Military Department, and the documentation requirements generally applicable to applications for benefits, as described in this chapter, will not apply to members of Texas military forces.

[~~(a) Claims for benefits under Texas Government Code, Chapter 615, may be initiated by the deceased employee's department, any applicant for benefits, if an adult, or by the representative of any minor children for whom benefits are being claimed.~~]

(b) The executive director or the executive director's designee, in his or her sole discretion, may waive any of the documentation requirements set forth in this chapter and may require any additional information, including sworn affidavits, necessary to establish the validity of a claim.

[~~(b) No claim for benefits on behalf of a child born after the death of the law enforcement officer or fire fighter will be paid, unless it is accompanied by a certificate of the attending physician that the child was conceived during the decedent's lifetime.~~]

(c) The following documents [~~or copies of the documents shall be submitted in an application for benefits under Texas Government Code, Chapter 615, unless the executive director or designee waives their submission~~] must accompany an application for benefits:

(1) a sworn statement, on a form prescribed by the system, that provides information related to eligibility for benefits and is executed by each survivor who is applying to receive a lump sum or the survivor's legal representative;

[~~(1) a sworn statement from the person making the claim giving the date of death, the name and address of the surviving spouse, if there is one, and the names, addresses, and birth dates of all surviving children of the decedent. If the decedent left no surviving spouse or children, the names and addresses of surviving parents of the decedent shall be provided. The names and addresses of any persons caring for minors who may be eligible for benefits shall be given;~~]

(2) a certified copy of the death certificate;

(3) a certified copy of the autopsy report, [~~only~~] if an autopsy has been performed [~~requested by the system~~];

(4) [a ~~copy of the marriage certificate showing marriage between the~~] for a surviving spouse: [~~and the deceased;~~]

(A) a copy of a marriage license or an equivalent government record showing a formal marriage between the survivor and the decedent;

(B) a declaration of informal marriage, if one was filed; or

(C) for an informal marriage without a declaration, documentation that proves the survivor and the decedent:

(i) intended to have a present, immediate, and permanent marital relationship and did in fact agree to be married;

(ii) at the time of the decedent's death, had been living together in Texas as spouses; and

(iii) consistently represented to others that they were married (with occasional introductions as spouses being insufficient).

(5) a certified copy of the birth certificate for [~~of~~] each surviving child [~~of the deceased~~];

[~~(6) affidavits from any witnesses detailing the facts of the fatality;~~]

(6) [~~(7)~~] [~~certified~~] copies of official [~~any investigative~~] reports regarding the death;

(7) [~~(8)~~] a sworn statement from the employer or the employer's authorized representative that includes the decedent's official job description as an attachment and describes: [~~of the department detailing the facts and circumstances of the fatality, and any information relied upon in making the sworn statement. The employer's or department representative's sworn statement must also include facts showing that, at the time of the fatal injury, the deceased held a position covered by the terms of Texas Government Code, Chapter 615, and that the death resulted from a personal injury sustained in the line of duty, as provided by Government Code §615.021;~~]

(A) the circumstances surrounding the fatality, including the type of work being performed at the time of death, if the decedent was on duty at the time of death, and other duty-related information that is relevant to the claim;

(B) the specific position held by the decedent at the time of death;

(C) the dates of the decedent's employment;

(D) contact information for the decedent's next of kin and other emergency contact information in the employer's possession; and

(E) a description of the sources of information used to prepare the sworn statement.

(8) [~~(9)~~] for a surviving parent who applies for benefits, a certified copy of the decedent's birth certificate[~~, if benefits are being claimed for parents~~];

(9) [~~(10)~~] documentation [~~a certification~~] from the appropriate authority which demonstrates [~~as follows~~]:

(A) if the decedent was a [~~paid~~] law enforcement officer, as described [~~defined~~] in Tex. Gov't [~~Texas Government~~] Code, §615.003(1), [a ~~certification from the Texas Commission on Law Enforcement Officer Standards and Education~~] that the decedent was a commissioned peace officer certified by the Texas Commission on Law Enforcement [~~that commission~~];

(B) if the decedent was a fire protection professional [~~paid fireman~~], as described [~~defined~~] in Tex. Gov't [~~Texas Government~~] Code, §615.003(10) or §615.003(11), [~~a certification from the Commission on Fire Protection Personnel Standards and Education~~] that the decedent was certified by the Texas Commission on Fire Protection [~~that commission, or a certification from the head of the state agency or political or legal subdivision of the state for whom the decedent worked that aircraft crash and rescue fire fighting were the decedent's principal duties at the time of his or her death~~];

(C) if the decedent was a member of an organized volunteer fire department, as described [~~defined~~] in Tex. Gov't [~~Texas Government~~] Code, §615.003(12), [~~a certification from the head of the organized volunteer fire department~~] that the decedent was a member of an organized volunteer fire department that conducted [~~conducts~~] a minimum of two drills each month, with each drill being at least two hours long, and the decedent rendered fire-fighting [~~fire fighting~~] services without remuneration;

(D) if the decedent was a [~~paid~~] probation officer, as described [~~defined~~] in Tex. Gov't [~~Texas Government~~] Code, §615.003(2), [~~a certification from the district judge or district judges who appointed the decedent or for whom the decedent worked~~] that the decedent had the qualifications and duties described [~~set out~~] in Tex. Gov't Code § 76.002 and § 76.005 [~~the Texas Code of Criminal Procedure, Article 42.12, §10, 1965, as amended~~];

(E) if the decedent was a [~~paid~~] parole officer, as described [~~defined~~] in Tex. Gov't [~~Texas Government~~] Code, §615.003(3), [~~a certification from the executive director of the Board of Pardons and Paroles~~] that the decedent was a parole [~~an~~] officer [~~of the division of parole supervision and had~~] with the qualifications and duties described [~~set out~~] in Tex. Gov't Code § 508.001 and § 508.113 [~~the Texas Code of Criminal Procedure, Article 42.12, §§26-29, 1965, as amended~~];

(F) if the [~~applicant alleges that the~~] decedent was a jailer or guard as described [~~within the protected class defined as supervisory personnel in a county jail~~] in Tex. Gov't [~~Texas Government~~] Code, §615.003(7), [~~a certification by the sheriff~~] that the decedent was appointed by the sheriff [~~as jailer or guard of a county jail~~] and performed a security, custodial [~~custody~~], or supervisory function over the admittance, confinement, or discharge of prisoners, and [~~a certification from the Texas Commission on Law Enforcement Officer Standards and Education~~] that the decedent was certified by the Texas Commission on Law Enforcement [~~that commission~~];

(G) if [~~the applicant alleges that~~] the decedent was an individual who performed [~~within the protected class defined as performing~~] emergency medical services or operated [~~operation of~~] an ambulance as described in Tex. Gov't [~~Texas Government~~] Code, §615.003(13), [~~a certification by the Texas Department of Health~~] that the decedent was certified as at least an "emergency care attendant"; or [~~emergency care attendant;~~]

(H) if [~~the applicant alleges that~~] the decedent was [~~within the protected class defined as~~] a chaplain as described in Tex. Gov't [~~Texas Government~~] Code, §615.003(14), [~~a certification by the firefighting unit, law enforcement agency, Texas Department of Criminal Justice, or a political subdivision of this state~~] that the decedent was employed or formally designated as a chaplain by a specified fire department or law enforcement agency or by the Texas Department of Criminal Justice.

[~~(11) all newspaper or other media accounts, if any, of the fatality;~~]

(10) [~~(12)~~] for decedent's non-biological children, a copy of a transcript of the federal income tax return for [~~filed by~~] the decedent for [~~in~~] the year preceding the year of the decedent's [~~prior to~~] death[~~, if benefits are being claimed for surviving children~~]; and

(11) [~~(13)~~] copies of [~~all~~] documents submitted in connection with a claim for workers' compensation benefits [~~by or on behalf of the decedent or the decedent's beneficiary~~] and [~~all notices of~~] decisions related to the [~~a workers' compensation~~] claim, if requested by the system [~~a workers' compensation claim has been made related to the illness or injury that resulted in the decedent's death~~].

[~~(d) The executive director or designee may require any additional information or affidavits as are necessary to establish the validity of the claim].~~

(d) [~~(e)~~] For [~~Payment on behalf of~~] a survivor who is a minor child: [~~will be made only to a surviving natural parent with custody of the child, to a surviving adoptive parent with custody of the child, or to a court-appointed guardian of the child's estate.~~]

(1) monthly payments will be paid to the duly qualified or appointed guardian of the child or if no guardian exists, another legal representative of the child; and

(2) lump-sum payments will be paid to a duly appointed guardian of the child's estate or a management trust created under Estates Code Chapter 1301.

(e) Proof of the appointment of a guardian of a child's estate or the creation of a management trust will not be required before the system provides notice of the approval of an application for a lump-sum payment to a minor child, but payment may not be remitted until all steps necessary for the appointment of the guardian or the creation of the management trust are completed. Guardianship and trust documents must reflect that the court was aware of the approximate amount of the lump-sum benefit when making the decision to appoint a guardian or create a management trust.

§75.2. Additional Benefit Claims.

(a) In addition to the documents required under §75.1 of this chapter, the following documents must accompany a surviving spouse's [~~shall be submitted in an~~] application for benefits under Tex. Gov't Code Chapter 615, Subchapter F[~~, unless the executive director or the executive director's designee waives their submission~~]:

(1) a sworn statement from the surviving spouse, on a form prescribed by the system, that attests to the surviving spouse's eligibility for spousal benefits; and [~~person making the claim that:~~]

(A) the decedent, on the date of death, was not receiving and was not eligible to receive an annuity under an employee retirement plan;]

(B) the surviving spouse, if any, has not remarried;]

(C) the surviving spouse, if any, is not retired and is not eligible to retire under an employee retirement plan; and]

(D) the surviving spouse, if any, is not receiving and is not eligible to receive social security benefits; and]

(2) an itemized statement of funeral expenses incurred, if the application includes a claim for payment of funeral expenses.

(b) If the decedent died before September 1, 2022, then except as provided by subsection (e) of this section, an annuity payable to a surviving spouse who is eligible for benefits under Tex. Gov't Code Chapter 615, Subchapter F, shall be computed as provided by Tex. Gov't Code §814.105 as if the decedent, on the date of death:

(1) was employed by the Texas Department of Public Safety at the lowest salary provided by the General Appropriations Act for a peace officer position, if the decedent held a peace officer position on the date of death, or by the Texas Department of Criminal Justice at the lowest salary provided by the General Appropriations Act for a custodial personnel position, if the decedent held a custodial personnel position on the date of death;

(2) had accrued 10 years of service credit in the applicable position; and

(3) was eligible to retire without regard to any age requirement.

(c) If the decedent died on or after September 1, 2022, then except as provided by subsection (e) of this section, a surviving spouse who is eligible for benefits under Tex. Gov't Code Chapter 615, Subchapter F, is entitled to receive the greater of an annuity computed as provided by subsection (b) of this section or an annuity computed as provided by Tex. Gov't Code §820.053 as if the decedent, on the date of death:

(1) was employed by the Texas Department of Public Safety at the lowest salary provided by the General Appropriations Act for a peace officer position, if the decedent held a peace officer position on the date of death, or by the Texas Department of Criminal Justice at the lowest salary provided by the General Appropriations Act for a custodial personnel position, if the decedent held a custodial personnel position on the date of death;

(2) had accrued 10 years of service credit in the applicable position;

(3) was eligible to retire without regard to any age requirement; and

(4) was not eligible for the additional benefit provided by Tex. Gov't Code §820.053(a)(2)(B).

(d) For purposes of subsection (c) of this section, the system shall:

(1) include gain sharing interest in the computation of an annuity under Tex. Gov't Code §820.053;

(2) determine which annuity computation would result in the greater annuity at the time the annuity is first paid; and

(3) allow the surviving spouse to reject the system's determination and elect to receive the lesser annuity by providing written notice of the election, which shall be irrevocable, to the system before any payment is made.

(e) In lieu of an amount computed under subsection (b) or (c) of this section, an annuity shall be paid in the amount the decedent would have been eligible to receive under the decedent's employee retirement plan if the decedent had been eligible to retire at the age and with the service attained on the last day of the month of the decedent's death if:

(1) the surviving spouse [~~person making the claim~~] requests payment of the amount computed under this subsection before any payment computed under subsection (b) or (c) of this section is made;

(2) an authorized representative of the employee retirement plan in which the decedent was a participant certifies the amount computed under this subsection; and

(3) the amount computed under this subsection is greater than the amounts computed under subsections (b) and (c) of this section.

(f) The reduction factors applied to a death benefit plan administered by the system shall be applied in the same manner to an annuity computed under subsection (b) or (c) of this section.

(g) As a condition of receipt of an annuity under Tex. Gov't Code Chapter 615, Subchapter F, an eligible surviving spouse shall agree to annually certify the spouse's eligibility under subsection (a)(1)(B) - (D) of this section and to notify the system of any change in circumstances affecting the spouse's continued eligibility. Failure to comply with this requirement or to provide the agreed certification is a basis for suspension of annuity payments until compliance occurs.

(h) The amount reimbursed for funeral expenses under Tex. Gov't Code Chapter 615, Subchapter F, may [~~shall~~] not exceed the lesser of $6,000 or the amount of funeral expenses actually incurred.

~~[(i) The executive director or the executive director's designee may require additional information or affidavits as necessary to establish the validity of any claim under this section.]~~

§75.3. Adjustments to Payments.

Beginning on September 1, 2020, and on each September 1 thereafter, any lump sum payment payable to eligible survivors under Tex. Gov't Code §615.022(d) [~~Section 615.022(d), Texas Government Code,~~] shall be adjusted annually by an amount equal to the percentage change in the Consumer Price Index for All Urban Consumers for the previous calendar year. The annual adjustment will be an amount as reported by the system's consulting actuary and approved by 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 January 12, 2026.

TRD-202600086
Cynthia Canfield Hamilton
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Earliest possible date of adoption: March 1, 2026
For further information, please call: (512) 867-7288

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 704. PREVENTION AND EARLY INTERVENTION SERVICES

The Department of Family and Protective Services (DFPS) proposes the repeal of Title 40, Texas Administrative Code (TAC), Chapter 704, relating to Prevention and Early Interventions Services.

BACKGROUND AND PURPOSE

In 2023, Senate Bill 24 of the 88th Regular Legislative Session transferred the Prevention and Early Intervention (PEI) Services Division from DFPS to the Health and Human Services Commission (HHSC). Chapter 704 contains the rules previously adopted by DFPS to govern the former PEI Division. As DFPS no longer oversees this program, the rules in Chapter 704 are no longer necessary.

FISCAL NOTE

Lea Ann Biggar, *Chief Financial Officer*, has determined that for each year of the first five years the repeals are in effect, there will be no fiscal implications to state or local government.

GOVERNMENT GROWTH IMPACT STATEMENT

DFPS has determined that during the first five years that the section(s) will be in effect:

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

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

(3) implementation of the repeals will not require an increase in future legislative appropriations;

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

(5) the repeals will not create a new rule;

(6) the repeals will not expand, limit, or repeal an existing rule;

(7) the repeals will not increase the number of individuals subject to the rule; and

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

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

Ms. Biggar has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as the rule repeals do not apply to small or micro-businesses, or rural communities.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons required to comply with the repeals as proposed.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 generally requires that state agencies offset the cost to regulated persons of a new rule by repealing or amending another rule. However, DFPS is exempt under §2001.0045(c).

PUBLIC BENEFIT

Ms. Biggar, Chief Financial Officer, has also determined that for each year of the first five years the repeals are in effect, the public benefit anticipated is clarity in the Texas Administrative Code by removing outdated rules.

REGULATORY ANALYSIS

DFPS determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225 and does not require a regulatory analysis.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

DFPS invites comments on the proposed rule to repeal Chapter 704. DFPS requests information related to the cost, benefit, or effect of the proposed new, amended, and repealed rules, including any applicable data, research, or analysis. To be considered, comments, questions, and information must be submitted no later than 30 days after the date of this issue to the *Texas Register*.

Electronic comments and questions may be submitted to Lauren Villa, Policy Attorney at Lauren.Villa@dfps.texas.gov or RULES@dfps.texas.gov. Hard copy comments may be submitted to the DFPS Rules Coordinator, Legal Services Sanjuanita Maltos, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030.

SUBCHAPTER A. PURPOSE AND DEFINITIONS

40 TAC §704.1, §704.3

STATUTORY AUTHORITY

The repeals are proposed under Texas Human Resources Code §40.027 which provides that DFPS shall oversee the development of rules relating to matters within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department. Additionally, SB 24 (88th Regular Legislative Session) transferred the statutory provisions governing PEI from the Family Code and Human Resources Code into a new Human Resources Code Chapter 137 to be administered by HHSC.

CROSS REFERENCE TO STATUTES

The repeal of Chapter 704 implements SB 24 (88th Regular Legislative Session) which transferred provisions governing PEI from Family Code Chapter 265 into new Human Resources Code Chapter 137 for administration by HHSC and amended related provisions in Human Resources Code Chapter 40 and Government Code Chapter 531.

§704.1. What is the purpose of this chapter?

§704.3. How are the key terms in this chapter defined?

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 January 16, 2026.

TRD-202600167
Sanjuanita Maltos
Rules Coordinator
Department of Family and Protective Services
Earliest possible date of adoption: March 1, 2026
For further information, please call: (512) 945-5978

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SUBCHAPTER C. PREVENTION AND INTERVENTION PRIMARY RESPONSIBILITIES

40 TAC §§704.201, 704.203, 704.205, 704.207, 704.209

STATUTORY AUTHORITY

The repeals are proposed under Texas Human Resources Code §40.027 which provides that DFPS shall oversee the development of rules relating to matters within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department. Additionally, SB 24 (88th Regular Legislative Session) transferred the statutory provisions governing PEI from the Family Code and Human Resources Code into a new Human Resources Code Chapter 137 to be administered by HHSC.

CROSS REFERENCE TO STATUTES

The repeal of Chapter 704 implements SB 24 (88th Regular Legislative Session) which transferred provisions governing PEI from Family Code Chapter 265 into new Human Resources Code Chapter 137 for administration by HHSC and amended related provisions in Human Resources Code Chapter 40 and Government Code Chapter 531.

§704.201. What is the Prevention and Early Intervention (PEI) Division and what are its primary responsibilities?

§704.203. How does PEI carry out its primary responsibilities?

§704.205. How does PEI select entities to receive funds for prevention and early intervention programs?

§704.207. How can a member of the public obtain more information on specific PEI initiatives or funding opportunities?

§704.209. How does PEI generally administer grants?

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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Sanjuanita Maltos
Rules Coordinator
Department of Family and Protective Services
Earliest possible date of adoption: March 1, 2026
For further information, please call: (512) 945-5978

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SUBCHAPTER G. INFANT MORTALITY PREVENTION AND EDUCATION PROGRAM

40 TAC §704.601, §704.603

STATUTORY AUTHORITY

The repeals are proposed under Texas Human Resources Code §40.027 which provides that DFPS shall oversee the development of rules relating to matters within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department. Additionally, SB 24 (88th Regular Legislative Session) transferred the statutory provisions governing PEI from the Family Code and Human Resources Code into a new Human Resources Code Chapter 137 to be administered by HHSC.

CROSS REFERENCE TO STATUTES

The repeal of Chapter 704 implements SB 24 (88th Regular Legislative Session) which transferred provisions governing PEI

from Family Code Chapter 265 into new Human Resources Code Chapter 137 for administration by HHSC and amended related provisions in Human Resources Code Chapter 40 and Government Code Chapter 531.

§704.601. What is the Infant Mortality Prevention Education Program?

§704.603. What is PEI's role in implementation of the Infant Mortality Education Program?

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

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Sanjuanita Maltos
Rules Coordinator
Department of Family and Protective Services
Earliest possible date of adoption: March 1, 2026
For further information, please call: (512) 945-5978

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SUBCHAPTER H. COMMUNITY-BASED FAMILY SERVICES GRANT PROGRAM

40 TAC §704.701, §704.703

STATUTORY AUTHORITY

The repeals are proposed under Texas Human Resources Code §40.027 which provides that DFPS shall oversee the development of rules relating to matters within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department. Additionally, SB 24 (88th Regular Legislative Session) transferred the statutory provisions governing PEI from the Family Code and Human Resources Code into a new Human Resources Code Chapter 137 to be administered by HHSC.

CROSS REFERENCE TO STATUTES

The repeal of Chapter 704 implements SB 24 (88th Regular Legislative Session) which transferred provisions governing PEI from Family Code Chapter 265 into new Human Resources Code Chapter 137 for administration by HHSC and amended related provisions in Human Resources Code Chapter 40 and Government Code Chapter 531.

§704.701. What is the Community-Based Family Services Grant Program?

§704.703. What is PEI's role in the implementation and administration of the Community-Based Family Services Grant Program?

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

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Sanjuanita Maltos
Rules Coordinator
Department of Family and Protective Services
Earliest possible date of adoption: March 1, 2026
For further information, please call: (512) 945-5978

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SUBCHAPTER I. CHILDREN'S TRUST FUND

40 TAC §704.801, §704.803

STATUTORY AUTHORITY

The repeals are proposed under Texas Human Resources Code §40.027 which provides that DFPS shall oversee the development of rules relating to matters within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department. Additionally, SB 24 (88th Regular Legislative Session) transferred the statutory provisions governing PEI from the Family Code and Human Resources Code into a new Human Resources Code Chapter 137 to be administered by HHSC.

CROSS REFERENCE TO STATUTES

The repeal of Chapter 704 implements SB 24 (88th Regular Legislative Session) which transferred provisions governing PEI from Family Code Chapter 265 into new Human Resources Code Chapter 137 for administration by HHSC and amended related provisions in Human Resources Code Chapter 40 and Government Code Chapter 531.

§704.801. How is the state plan for expending Children's Trust Fund (CTF) funds developed?

§704.803. How does PEI establish funding priorities for the CTF program?

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

Filed with the Office of the Secretary of State on January 16, 2026.

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Sanjuanita Maltos
Rules Coordinator
Department of Family and Protective Services
Earliest possible date of adoption: March 1, 2026
For further information, please call: (512) 945-5978

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PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 819. CIVIL RIGHTS DIVISION

The Texas Workforce Commission (TWC) proposes amendments to the following sections of Chapter 819, relating to the Civil Rights Division:

Subchapter C. Equal Employment Opportunity Reports, Training, and Reviews, §819.25

Subchapter G. Texas Fair Housing Act Provisions, §819.112

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

TWC's Civil Rights Division (CRD) enforces state and federal employment and fair housing laws, investigates claims of employment and housing discrimination, and provides discrimination training to employers and training on fair-housing best practices.

The purpose of the proposed Chapter 819 rule change is to:

--align the rules relating to employment discrimination training with current federal guidance provided in Executive Order 14281, issued on April 23, 2025; and

--clarify the definition of "Disability" as it relates to Texas Property Code, Chapter 301, and its use in Chapter 819, Subchapters G - L.

Rule Review

Texas Government Code, §2001.039, requires a state agency to review and consider for readoption each of its rules every four years. In accordance with the statute, TWC has reviewed Chapter 819, Civil Rights Division, and proposes readoption of the rules as amended.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER C. EQUAL EMPLOYMENT OPPORTUNITY REPORTS, TRAINING, AND REVIEWS

TWC proposes the following amendments to Subchapter C:

§819.25. Compliance Employment Discrimination Training

Section 819.25 is amended to conform with Executive Order 14281 by removing §819.25(c)(1) through (4) relating to disparate treatment and disparate impact training. Consequently, existing §819.25(c)(5) through (8) is renumbered as §819.25(c)(1) through (4).

SUBCHAPTER G. TEXAS FAIR HOUSING ACT PROVISIONS

TWC proposes the following amendments to Subchapter G:

§819.112. Definitions

Section 819.112 is amended to clarify the definition of "Disability" as it is used in Chapter 819, Subchapters G - L. The change removes unnecessary language from the definition.

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code, §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by Texas Government Code, §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC completed a Takings Impact Assessment for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to modify rule language to conform with federal guidance provided in Executive Order 14281 and to clarify the definition of "disability" as it relates to Texas Property Code, Chapter 301.

The proposed rulemaking action will not create any additional burden on private real property or affect private real property in a manner that would require compensation to private real property owners under the US Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years the rules will be in effect, they:

--will not create or eliminate a government program;

--will not require the creation or elimination of employee positions;

--will not require an increase or decrease in future legislative appropriations to TWC;

--will not require an increase or decrease in fees paid to TWC;

--will not create a new regulation;

--will not expand, limit, or eliminate an existing regulation;

--will not change the number of individuals subject to the rules; and

--will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the rules will not have an adverse economic impact on small businesses or rural communities, as the

proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director, Labor Market Information, has determined that there is not a significant negative impact upon employment conditions in the state as a result of the rules.

Bryan Snoddy, Director, Civil Rights Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to conform with federal guidance and to clarify the rule language.

PART IV. COORDINATION ACTIVITIES

Federal law governs many of CRD's activities. This rulemaking is in direct response to a federal executive order. The public will have an opportunity to comment on the proposed rule changes as set forth below.

PART V. REQUEST FOR IMPACT INFORMATION

TWC requests, from any person required to comply with the proposed rule or any other interested person, information related to the cost, benefit, or effect of the proposed rule, including any applicable data, research, or analysis. Please submit the requested information to no later than March 2, 2026.

PART VI. PUBLIC COMMENTS

Comments on the proposed rules may be submitted to and must be received no later than March 2, 2026.

SUBCHAPTER C. EQUAL EMPLOYMENT OPPORTUNITY REPORTS, TRAINING, AND REVIEWS

40 TAC §819.25

PART VII. STATUTORY AUTHORITY

The rule is proposed under:

--Texas Labor Code, §21.003(a)(7), which provides TWC the specific authority to establish rules relating to employment discrimination;

--Texas Property Code, §301.062, which provides TWC the specific authority to establish rules relating to fair housing practices; and

--Texas Labor Code §301.0015(a)(6), which provides TWC the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rule relates to Title 2, Texas Labor Code, Chapter, 21, and Title 15, Texas Property Code, Chapter 134.

§819.25. Compliance Employment Discrimination Training.

(a) For purposes of this section, the term "complaint with merit" shall mean a complaint that is resolved, either by a cause finding or through withdrawal of the complaint with a remedy favorable to the complainant, such as a negotiated settlement, withdrawal with benefits, or conciliation.

(b) State agencies receiving three or more complaints with merit within a fiscal year shall provide compliance employment discrimination training. The training may be provided by the Agency or by another entity or person approved by the Agency.

(c) CRD's minimum standards for the content of compliance employment discrimination training shall include, but not be limited to, requiring participants to:

[~~(1) distinguish between disparate treatment and disparate impact;~~]

[~~(2) identify the elements of a complaint involving disparate treatment and disparate impact;~~]

[~~(3) explain the defenses available to an employer resulting from both statute and case law involving disparate treatment and disparate impact;~~]

[~~(4) explain the burden of proof requirements for disparate treatment and disparate impact;~~]

(1) [~~(5)~~] identify criteria for accurately measuring compliance with applicable laws;

(2) [~~(6)~~] define the different types of employment discrimination;

(3) [~~(7)~~] identify the appropriate action to be taken in a situation involving a potential case of employment discrimination; and

(4) [~~(8)~~] describe strategies for prevention of employment discrimination.

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 January 13, 2026.

TRD-202600099
Les Trobman
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: March 1, 2026
For further information, please call: (737) 301-9662

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SUBCHAPTER G. TEXAS FAIR HOUSING ACT PROVISIONS

40 TAC §819.112

The rule is proposed under:

--Texas Labor Code, §21.003(a)(7), which provides TWC the specific authority to establish rules relating to employment discrimination;

--Texas Property Code, §301.062, which provides TWC the specific authority to establish rules relating to fair housing practices; and

--Texas Labor Code §301.0015(a)(6), which provides TWC the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rule relates to Title 2, Texas Labor Code, Chapter, 21, and Title 15, Texas Property Code, Chapter 134.

§819.112. Definitions.

The following words and terms, when used in Subchapter G, Texas Fair Housing Act Provisions; Subchapter H, Discriminatory Housing Practices; Subchapter I, Texas Fair Housing Act Complaints and

Investigations [~~Appeals~~] Process; Subchapter J, Fair Housing Deferral to Municipalities; Subchapter K, Fair Housing Administrative Hearings and Judicial Review; and Subchapter L, Fair Housing Fund, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Accessible or readily accessible to and usable by--Means a public or common use area can be approached, entered, and used by individuals with disabilities, as set forth in Texas Property Code, §301.025(c)(3). Compliance with the appropriate requirements of the American National Standards Institute (ANSI) for buildings and facilities providing accessibility and usability for persons having physical disabilities, commonly cited as ANSI A117.1, satisfies this requirement.

(2) Accessible building entrance--A building entrance that is accessible by individuals with disabilities, as set forth in Texas Property Code, §301.025(c). Compliance with the appropriate requirements of ANSI for buildings and facilities providing accessibility and usability for persons having physical disabilities, commonly cited as ANSI A117.1, satisfies this requirement.

(3) Accessible route--A route that is accessible by individuals with disabilities, as set forth in Texas Property Code, §301.025(c). Compliance with the appropriate requirements of ANSI for buildings and facilities providing accessibility and usability for persons having physical disabilities, commonly cited as ANSI A117.1, satisfies this requirement.

(4) Building--A structure, facility, or the portion thereof that contains or serves one or more dwelling units.

(5) Common use areas--Rooms, spaces, or elements inside or outside of a building that are made available for the use of residents or the guests of a building. These areas include, but are not limited to, hallways, lounges, lobbies, laundry rooms, refuse rooms, mailrooms, recreational areas, and passageways among and between buildings.

(6) Complaint--A written statement made under oath stating that an unlawful housing practice has been committed, setting forth the facts on which the complaint is based, and received within one year of the date the alleged unlawful housing practice occurred or terminated, whichever is later, and for which CRD shall initiate an investigation.

(7) Controlled substance--Any drug or other substance or immediate precursor as defined in the Controlled Substances Act, 21 U.S.C. §802 or the Texas Controlled Substances Act, Texas Health and Safety Code, Chapter 481.

(8) Disability--A mental or physical impairment that substantially limits at least one major life activity, a record of such an impairment, or being regarded as having such an impairment. The term does not include current illegal use of or addiction to any drug or illegal or controlled substance[~~; and reference to "an individual with a disability" or perceived as "disabled" does not apply to an individual based on that individual's sexual orientation or because that individual is a transvestite~~].

(A) Physical or mental impairment includes:

(i) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or

(ii) any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, human immunodeficiency virus infection, intellectual disability, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

(B) Major life activity means a function such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(C) A record of having such an impairment means a history of, or misclassification as having, a mental or physical impairment that substantially limits one or more major life activity.

(D) Being regarded as having an impairment means having:

(i) a physical or mental impairment that does not substantially limit one or more major life activity but that is treated by another person as constituting such a limitation;

(ii) a physical or mental impairment that substantially limits one or more major life activity only as a result of the attitudes of others toward such impairment; or

(iii) none of the impairments in subparagraph (A) of this paragraph but is treated by another person as having such an impairment.

(9) Discriminatory housing practice--An action prohibited by Texas Fair Housing Act, Subchapter B, or conduct that is an offense under Texas Fair Housing Act, Subchapter I.

(10) Entrance--Any access point to a building or portion of a building used by residents for the purpose of entering the building.

(11) Exterior--All areas of the premises outside of an individual dwelling unit.

(12) Ground floor--Within a building, any floor with an entrance on an accessible route. A building may have more than one ground floor.

(13) Interior--The spaces, parts, components, or elements of an individual dwelling unit.

(14) Modification--Any change to the public or common use areas of a building or any change to a dwelling unit.

(15) Premises--The interior or exterior spaces, parts, components, or elements of a building, including individual dwelling units and the public and common use areas of a building.

(16) Public use areas--Interior or exterior rooms or spaces of a building that are made available to the general public. Public use may be provided at a building that is privately or publicly owned.

(17) Site--A parcel of land bounded by a property line or a designated portion of a public right of way.

(18) Texas Fair Housing Act--Texas Property Code, Chapter 301.

(19) United States Fair Housing Act--Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988.

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 January 13, 2026.

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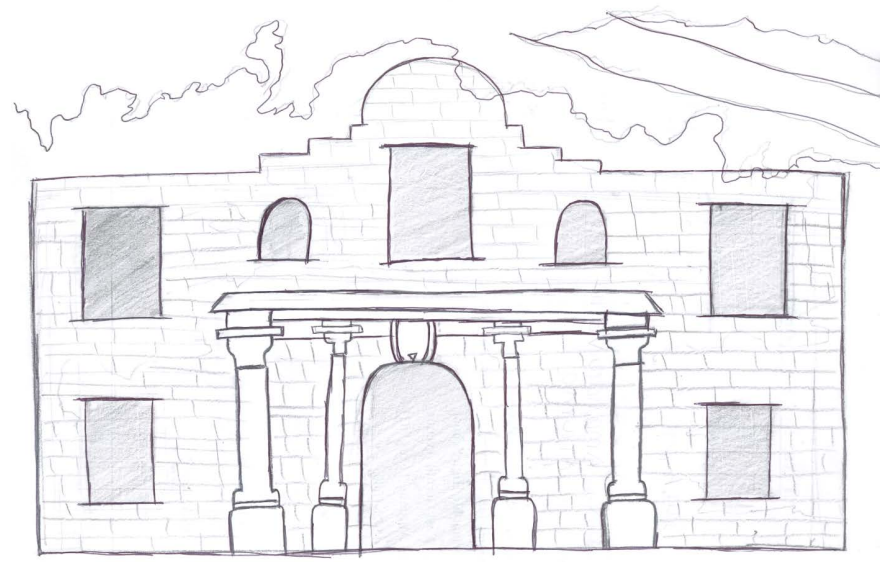
TRD-202600100
Les Trobman
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: March 1, 2026
For further information, please call: (737) 301-9662



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 1. ADMINISTRATION

SUBCHAPTER D. UNIFORM GUIDANCE FOR RECIPIENTS OF FEDERAL AND STATE FUNDS

10 TAC §1.401

The Texas Department of Housing and Community Affairs (the Department) adopts, without changes to the text previously published in the November 21, 2025 issue of the *Texas Register* (50 TexReg 7477), the repeal of 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §1.401 Effective Date and Definitions. The purpose of the repeal is to eliminate the outdated rule and replace it simultaneously with a new more germane rule. The rule will not be republished.

Tex. Gov't Code §2001.0045(b) does not apply to the rule because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this 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 has determined that, for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program but relates to updates to reflect changes made by the Texas Comptroller of Public Accounts to the Texas Grant Management Standards (TxGMS).

2. The repeal 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 repeal does not require additional future legislative appropriations.

4. The repeal will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

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

6. The repeal will not expand, limit, or repeal an existing regulation.

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the changed sections would be a rule in compliance with the newest version of the Texas Grant Management Standards. 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 also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT. The Department requested comments on the proposed repeal and also requested information related to the cost, benefit, or effect of the proposed repeal, including any applicable data, research, or analysis from any person required to comply with the repeal or any other interested person. The public comment period was held November 21, 2025 to December 21, 2025, to receive input on the proposed action. No comment was received.

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 repeal affects no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 15, 2026.

TRD-202600148
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: February 4, 2026
Proposal publication date: November 21, 2025
For further information, please call: (512) 475-3959

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10 TAC §1.401

The Texas Department of Housing and Community Affairs (the Department) adopts, without changes to the text previously published in the November 21, 2025 issue of the *Texas Register* (50 TexReg 7478), new 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §1.401 Effective Date and Definitions. The purpose of the new section is to make updates that relate to the newest version of the Texas Grant Management Standards released in October 2025 by the Texas Comptroller of Public Accounts. The rule will not be republished.

Tex. Gov't Code §2001.0045(b) does not apply to the rule because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this 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 has determined that, for the first five years the new section would be in effect:

1. The new section does not create or eliminate a government program but relates to updates to new changes to the Texas Grant Management Standards.

2. The new section does not require a change in work that would require the creation of new employee positions, C are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The new section does not require additional future legislative appropriations.

4. The new section will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

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

6. The new section will not expand, limit, or repeal an existing regulation.

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

8. The new section will not negatively or positively affect the 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 the new section and determined that it 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 new section does not contemplate or authorize a taking 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 new section as to its possible effects on local economies and has determined that for the first five years the new section would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has 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 would be a clearer rule relating to compliance with Texas Grant Management Standards, version 2.1. There will not be economic costs to individuals required to comply with the new section.

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 section does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT. The Department requested comments on the new section and also requested information related to the cost, benefit, or effect of the proposed new section, including any applicable data, research, or analysis from any person required to comply with the repeal or any other interested person. The public comment period was held November 21, 2025 to December 21, 2025, to receive input on the proposed action. No comment was received.

STATUTORY AUTHORITY. The new section is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the new section affects no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 15, 2026.

TRD-202600149

Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: February 4, 2026
Proposal publication date: November 21, 2025
For further information, please call: (512) 475-3959

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10 TAC §1.403

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §1.403 Single Audit Requirements, without changes to the text previously published in the November 21, 2025 issue of the *Texas Register* (50 TexReg 7480). The purpose of the repeal is to eliminate the outdated rule and replace it simultaneously with a new more germane rule. The rule will not be republished.

Tex. Gov't Code §2001.0045(b) does not apply to the rule because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

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 has determined that, for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program but relates to changes to an existing activity: requirements relating to single audits.

2. The repeal 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 repeal does not require additional future legislative appropriations.

4. The repeal will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

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

6. The repeal will not expand, limit, or repeal an existing regulation.

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the changed sections would be an updated and more germane rule. 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 also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT. The Department requested comments on the proposed repeal and also requested information related to the cost, benefit, or effect of the proposed repeal, including any applicable data, research, or analysis from any person required to comply with the repeal or any other interested person. The public comment period was held November 21, 2025 to December 21, 2025, to receive input on the proposed action. No comment was received.

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 repeal affects no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 15, 2026.

TRD-202600150
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: February 4, 2026
Proposal publication date: November 21, 2025
For further information, please call: (512) 475-3959

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10 TAC §1.403

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §1.403 Single Audit Requirements, without changes to the text previously published in the November 21, 2025 issue of the *Texas Register* (50 TexReg 7481). The rule will not be repub-

lished. The purpose of the new section is to provide greater clarity in relation to the findings that may be identified in a single audit that would warrant the Department to not fund, or to stop funding, a given contract.

Tex. Gov't Code §2001.0045(b) does not apply to the rule because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this 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 has determined that, for the first five years the new section would be in effect:

1. The new section does not create or eliminate a government program but relates to updates to existing requirements for recipients of Department funds.

2. The new section 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 new section does not require additional future legislative appropriations.

4. The new section will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

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

6. The new section will not expand, limit, or repeal an existing regulation.

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

8. The new section will not negatively or positively affect the 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 the new section and determined that it 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 new section does not contemplate or authorize a taking 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 new section as to its possible effects on local economies and has determined that for the first five years the new section would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has 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 would be a clearer rule relating to when single audit findings are significant enough to warrant not funding, or stopping funding, a contract. There will not be economic costs to individuals required to comply with the new section.

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 section does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT. The Department requested comments on the proposed new rule and also requested information related to the cost, benefit, or effect of the proposed new rule, including any applicable data, research, or analysis from any person required to comply with the rule or any other interested person. The public comment period was held November 21, 2025 to December 21, 2025, to receive input on the proposed action. No comment was received.

STATUTORY AUTHORITY. The new section is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the new section affects no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 15, 2026.

TRD-202600151
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: February 4, 2026
Proposal publication date: November 21, 2025
For further information, please call: (512) 475-3959

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10 TAC §1.406

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §1.406 Fidelity Bond Requirements, without changes to the text previously published in the November 21, 2025 issue of the *Texas Register* (50 TexReg 7483). The rule will not be republished. The purpose of the repeal is to eliminate the outdated rule and replace it simultaneously with a new rule that provides greater risk mitigation for the Department as it relates to fidelity bond coverage of the Department's subrecipients.

Tex. Gov't Code §2001.0045(b) does not apply to the rule because there are no costs associated with the repeal.

The Department has analyzed this 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 has determined that, for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program but relates to changes to an existing activity: fidelity bond requirements.

2. The repeal does not require a change in work that creates new employee positions nor does it generate savings that would eliminate any employee positions.

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

4. The repeal will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

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

6. The repeal is not considered to expand an existing regulation.

7. The repeal does not increase the number of individuals subject to the rule's applicability.

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the changed sections would be an updated and more germane rule, and greater risk mitigation or the Department. 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 also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT. The Department requested comments on the rule and also requested information related to the cost, benefit, or effect of the proposed rule, including 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 was held November 21 to December 21, 2025, to receive input on the proposed action. No comment was received.

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 repeal affects no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 15, 2026.

TRD-202600152
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: February 4, 2026
Proposal publication date: November 21, 2025
For further information, please call: (512) 475-3959

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10 TAC §1.406

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §1.406 Fidelity Bond Requirements, without changes to the text previously published in the November 21, 2025 issue of the *Texas Register* (50 TexReg 7484). The rule will not be republished. The purpose of the rule is to eliminate the outdated rule and replace it simultaneously with a new rule that provides greater risk mitigation for the Department as it relates to fidelity bond coverage of the Department's subrecipients.

Tex. Gov't Code §2001.0045(b) does not apply to the rule because there are no costs associated with this action.

The Department has analyzed this 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 has determined that, for the first five years the new section would be in effect:

1. The rule does not create or eliminate a government program but relates to changes to an existing activity: fidelity bond requirements.

2. The rule does not require a change in work that creates new employee positions nor does it generate savings that would eliminate any employee positions.

3. The new section does not require additional future legislative appropriations.

4. The new section will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The new section is not creating a new regulation.

6. The new section does expand on an existing regulation.

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

8. The new section will not negatively or positively affect the 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 the new section and determined that it 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 new section does not contemplate or authorize a taking 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 new section as to its possible effects on local economies and has determined that for the first five years the new section would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has 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 would be a rule that provides clarity around fidelity bond requirements and better mitigates Department risk. There may be minimal costs to some program participant organizations that could be readily absorbed by the administrative funds provided by TDHCA.

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 section will not have costs to the state to implement. No additional funds will be required.

SUMMARY OF PUBLIC COMMENT. The Department requested comments on the rule and also requested information related to the cost, benefit, or effect of the proposed rule, including 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 was held November 21 to December 21, 2025, to receive input on the proposed action. No comment was received.

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

Except as described herein the new section affects no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 15, 2026.

TRD-202600153

Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: February 4, 2026
Proposal publication date: November 21, 2025
For further information, please call: (512) 475-3959

10 TAC §1.410

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §1.410 Determination of Alien Status for Program Beneficiaries, without changes to the text previously published in the November 21, 2025 issue of the *Texas Register* (50 TexReg 7485). The rule will not be republished. The purpose of the repeal is to eliminate the outdated rule and replace it simultaneously with a new rule that more closely aligns with Executive Order 14218 (Ending Taxpayer Subsidization of Open Borders) issued on February 19, 2025 by President Trump; A.G. Order No. 6335-2025 by the U.S. Attorney General (Revised Specification Pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996), the federal direction provided in 2025 grant agreements from the Unites States Department of Housing and Urban Development (HUD), and with Section 401(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) on Department programs, which provides that an alien who is not a qualified alien is not eligible for any federal public benefit.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for repeal because there are no costs associated with the repeal.

The Department has analyzed this 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 has determined that, for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program but relates to changes to an existing activity: the implementation of Executive Order 14218 (Ending Taxpayer Subsidization of Open Borders) issued on February 19, 2025 by President Trump, A.G. Order No. 6335-2025 by the U.S. Attorney General (Revised Specification Pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996), and in the implementation and applicability of Section 401(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).

2. The repeal does not require a change in work that creates new employee positions.

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

4. The repeal will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

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

6. The repeal is not considered to expand an existing regulation.

7. The repeal does not increase the number of individuals subject to the rule's applicability.

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the changed sections would be an updated and more germane rule. 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 also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT. The Department requested comments on the rule and also requested information related to the cost, benefit, or effect of the proposed rule, including 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 was held November 21 to December 21, 2025, to receive input on the proposed action. No comment was received on the repeal.

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 repeal affects no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 15, 2026.

TRD-202600154

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Effective date: February 4, 2026

Proposal publication date: November 21, 2025

For further information, please call: (512) 475-3959

10 TAC §1.410

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §1.410 Determination of Alien Status for Program Beneficiaries, with changes to the text previously published in the November 21, 2025 issue of the *Texas Register* (50 TexReg 7486). The rule will be republished. The purpose of the rule is to eliminate the outdated rule and replace it simultaneously with a new rule that more closely aligns with Executive Order 14218 (Ending Taxpayer Subsidization of Open Borders) issued on February 19, 2025 by President Trump, A.G. Order No. 6335-2025 by the U.S. Attorney General (Revised Specification Pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996), the federal direction provided in 2025 grant agreements from the Unites States Department of Housing and Urban Development (HUD), and in the implementation and applicability of Section 401(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) on Department programs, which provides that an alien who is not a qualified alien is not eligible for any federal public benefit.

Tex. Gov't Code §2001.0045(b) does apply to the rule because there are some costs associated with this action. However, in order to ensure compliance with Executive Order 14218, A.G. Order No. 6335-2025 by the U.S. Attorney General (Revised Specification Pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996), the federal HUD grant agreements, and PRWORA this rule is being revised. Sufficient existing state and/or federal administrative funds associated with the applicable programs are available to offset costs. No additional funds will be needed to implement this rule.

The Department has analyzed this 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 has determined that, for the first five years the new section would be in effect:

1. The rule does not create or eliminate a government program but relates to changes to an existing activity: the verification of program participant eligibility as it relates to the implementation of Executive Order 14218 (Ending Taxpayer Subsidization of Open Borders) issued on February 19, 2025 by President Trump, A.G. Order No. 6335-2025 by the U.S. Attorney General (Revised Specification Pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996), the federal direction provided in the Department's 2025 grant agreements from HUD, and in the implementation and applicability of Section 401(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).

2. The rule may require a change in work that could require the creation of approximately 2 new employee positions to perform the client verifications.

3. The new section does not require additional future legislative appropriations.

4. The new section will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The new section is not creating a new regulation.

6. The new section does expand on an existing regulation.

7. The new section will increase the number of individuals subject to the rule's applicability as well as increase the number of Department subrecipients subject to the rule in an effort to ensure that public benefits are being used only for qualified households.

8. The new section will not negatively or positively affect the 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 the new section and determined that it 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 new section does not contemplate or authorize a taking 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 new section as to its possible effects on local economies and has determined that for the first five years the new section would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has 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 would be a rule that is in alignment with Executive Order 14218 (Ending Taxpayer Subsidization of Open Borders) issued on February 19, 2025 by President Trump, in compliance with direction provided by HUD for the HOME and NHTF programs, and in the implementation and applicability of Section 401(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) and therefore ensures that public benefits are not received by unqualified aliens. There will not be economic costs to individuals required to comply with the new section.

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 sections may have some costs to the state to implement the verification process and to the Department's subrecipients in administering the rule changes. However, sufficient state or federal administrative funds associated with the applicable programs are already available to offset costs. No additional funds will be required.

SUMMARY OF PUBLIC COMMENT. The Department requested comments on the rule and also requested information related to the cost, benefit, or effect of the proposed rule, including 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 was held November 21 to December 21, 2025, to receive input on the proposed action. Public comment was received from six commenters as follows: (1) Bay Area Turning Point, (2) Texas Housers, (3) Proyecto Azteca, (4) Safe Alliance, (5) Tahirih Justice Center, and (6) Texas Council on Family Violence. Comments are summarized and responded to below.

Comment on the Applicability of the Rule to Survivors of Domestic Violence, Sexual Assault, Stalking, and/or Dating Violence:

Commenters (1), (4), (5), and (6) commented that the proposed immigration and/or citizenship status verification requirements should not apply to survivors of domestic violence, sexual assault, stalking, and/or dating violence, as such requirements would conflict with the Violence Against Women Act (VAWA) and the Family Violence Prevention and Services Act (FVPSA). They note that both Federal statutes prohibit denial of assistance based on immigration and/or citizenship status and impose strong confidentiality protections to ensure survivors can safely access critical services. These commenters concluded that the rule needs to provide an explicit exemption for VAWA and FVPSA covered populations within TDHCA-funded programs. Without explicit clarification, subrecipients may interpret the rule as requiring immigration status verification for survivors of violence, which violates Federal laws.

Commenter (5) notes that nondiscrimination provisions in VAWA provide that programs may not discriminate on the basis of race, color, religion, national origin, sex, gender identity, sexual orientation, or disability; and the Office for Victims of Crime VOCA has generally held that this provision means that programs should not deny services solely because of immigration status and covered services are not subject to PRWORA.

Commenter (6) provided statistics and detailed information on the impact of domestic violence and notes that reductions in available housing, which would undoubtedly occur because of this rule change, would exacerbate this instability and danger

Staff Response: TDHCA generally concurs with the comments and is specifying in the rule that the rule will not apply to VAWA or FVPSA covered populations unless federal guidance requires it.

Comments on Requiring Provision of Personal Information for Survivors of Domestic Violence, Sexual Assault, Stalking, and/or Dating Violence

Commenter (6) also indicates that the Family Violence Prevention and Services Act (FVPSA), the Victims of Crime Act (VOCA), and the Violence Against Women Act (VAWA) all require those in receipt of funds (ex. family violence centers) to protect personally identifiable information obtained while seeking services. Each of these federal laws prohibit grantees from disclosing a survivor's personal identifying information, unless an exception applies, which the information laid out in this proposed rule is not. Specifically, VAWA/FVPSA make clear that identifying information about victims cannot be shared without a properly issued release from the survivor or a court order. Commenter (6) notes that conditioning victims' access to services on documentation would also have a chilling effect on service provision, deter survivors from seeking help, and conflict with programmatic obligations of confidentiality and safety planning. Commenter states that federal law pertaining to victim-services statutes contain explicit non-discrimination protections that prohibit conditioning access to services. FVPSA requires that States and subgrantees

"ensure that no person is denied services because of actual or perceived immigration status."

Commenter (4) also notes that requiring survivors to provide names, dates of birth, or other personally identifying information for entry into an external verification system violates the safety and confidentiality requirements of VAWA and FVPSA. The commenter relayed that best practices shared by experts on VAWA and FVPSA recommend limiting the sharing of survivors' personal information to avoid security breaches that would compromise safety of survivors of domestic or sexual violence. The commenter stated the concern that implementing this rule without explicit exemptions for survivors of domestic violence, sexual assault, stalking, and/or dating violence creates additional and potentially lethal barriers for survivors to access shelter, homelessness prevention, and rapid rehousing services, undermining ESG's goal of low-barrier access to housing stability. Commenter (1) echoed this question of whether services would be denied for survivors lacking documentation.

Commenters (5) and (6) also notes that the confidentiality provisions of VAWA and FVPSA prohibit covered programs from releasing personally identifying information without a signed and time limited release, court order, or statute requiring it and are prohibited from conditioning services on the signing of a release. Guidance from the Office on Violence Against Women (OVW) on VAWA instructs programs that these provisions apply to all operations of an entity that receives funding through OVW, even if that funding covers only a small part of their operations. The proposed TDHCA rule would require covered programs to provide personally identifying information to TDHCA or a vendor for purposes of eligibility verification, which could be seen as violating the confidentiality provisions under VAWA for any covered program; and under Texas law, Chapter 93 of the Texas Family Code establishes privilege between an advocate and a crime victim, which similarly prohibits disclosure of personal information with very limited exceptions, and applies to public and private nonprofits that provide family violence services. Commenter relays that the proposed TDHCA rule would require covered programs to provide personally identifying information to TDHCA or a vendor for purposes of eligibility verification, in violation of state law and these programs could be at risk of losing state funding.

Commenter (5) also comments on documentation specifically as it relates to survivors of domestic violence, sexual assault, human trafficking, and other forms of violence. They note that there is a strong connection between domestic violence and homelessness and that TDHCA's Emergency Solutions Grant programs and other homelessness prevention programs play a critical role in survivor safety and healing. Commenter is concerned that cutting off survivors due to lack of documentation from programs that provide support for utilities and homeless intervention will keep survivors reliant on abusers and vulnerable to further violence. Per the commenter, the proposed rule will not only impact immigrant survivors, but also any survivor who is unable to provide proof of status.

Staff Response: TDHCA generally concurs with the comments and is specifying in the rule that the rule will not apply to VAWA or FVPSA covered populations, unless federal guidance requires it.

Comment Requesting for Rule to be Withdrawn:

Multiple commenters requested that the rule be withdrawn.

Commenter (2) points out that HUD has indicated that further guidance will be released from both HUD and DHS and believes it is appropriate for TDHCA to delay the adoption of this rulemaking until such expected federal HUD and DHS guidance is released. They note that to their knowledge, Texas appears to be the only state that is not waiting until further federal guidance is available. They note that the proposed rule changes will have a significant impact on low-income Texans who receive assistance through TDHCA programs and the providers that serve them. Commenter notes that this rule change represents a large expansion of the applicability of PRWORA verification requirements that will result in loss of assistance for vulnerable people in need of help. Commenter (2) noted that activities like emergency rental assistance, where delays could result in evictions and housing instability for low-income tenants, are a particular concern that could lead to eligible beneficiaries losing the benefit of the assistance. Because of this significant impact, Commenter cautions TDHCA to be very cautious to not implement rule changes without adequate federal guidance and regulation to shape the implementation of federal requirements. Texas Housers strongly recommends delaying rulemaking on the updated federal interpretation of PRWORA verification requirements until key federal guidance necessary for implementation is released.

Commenter (5) suggests that the current rule is sufficient and federally compliant as-is, and urges that the Department recommend withdrawing the notice at this time. They note that A.G. Order No. 6335-2025 withdrew the 2001 rule providing detailed guidance on the different kinds of programs that are exempt from PRWORA under 8 U.S.C. § 1611(b)(1)D, which covers services that are provided in-kind by public or nonprofit organizations, are available regardless of income, and are necessary for the protection of life and safety. Notably, per the commenter, this order did not change PRWORA's exemptions, nor did it require any action on the part of recipient states. Barring further guidance from the federal government, many of TDHCA's programs - including the Emergency Solutions Grant Program, the Homeless Housing and Services Program, and the Low Income Home Energy Assistance Program (LIHEAP) - play a critical role in keeping Texan survivors of violence, children, and families safe from the dangers of homelessness and extreme weather, and are therefore are necessary for the protection of life and safety. Additionally, PRWORA also exempts programs for housing or community development assistance or financial assistance administered by the Secretary of Housing and Urban Development (HUD). This provision is not subject to specification by the Attorney General and therefore not impacted by A.G. Order No. 6335-2025.

Commenter (6) also believes that TDHCA should rescind this rule. Should that not occur, TCFV urges substantial revisions to uphold Texas' long-standing commitment to crime victims and ensure compliance with federal law. They note that the proposed rule is vague, inconsistent, and unclear leaving substantial room for misapplication and confusion that will foster implementation challenges for subrecipients and housing providers. These issues include, but are not limited to, unclear verification procedures and conflicting statements regarding legal authority. Specifically, the proposed rule runs counter to federal laws governing nondiscrimination and confidentiality for victim service providers.

Commenter (5) They believe that Community Development Block Grant Program, Emergency Solutions Grant Program, HOME Investment Partnerships Program, National Housing Trust Fund, and the Neighborhood Stabilization Program, all fall under the exceptions in PRWORA. They request that the rule exempt programs that provide emergency housing or other crisis services as well as community development programs

administered by the Department of Housing and Urban Development. Lastly, they note that while Texas is not a party to the ongoing litigation against A.G. Order No. 6335-2025, the rule is currently stayed in plaintiff states, and it is possible that the order will be overturned or the DOJ will issue new regulations or instructions that would require Texas to make changes again.

Commenter (5) comments that the rule will have long-term consequences for Texas children as TDHCA's programs provide critical support for both emergency intervention as well as long-term affordable housing, which are both critical for low-income families with children. Commenter states that restricting immigrant parents from TDHCA programs will cause more Texas children to grow up in poverty. According to the commenter, over one million U.S. Citizen children in Texas have at least one undocumented family member; and for the majority of them, that is a parent. Per the commenter, the proposed rule would cut many families off from assistance and would have a profound impact childhood poverty rates across the state.

Commenter (2) also suggests it is difficult for service providers and advocates to understand the impact of these rule changes and provide thoughtful comment when the full scope of federal reinterpretation of PRWORA requirements is not yet clear.

Staff Response: The Department addresses the concern regarding those protected by VAWA and FVPSA by clarifying their exemption in the rule as noted above. Staff does not recommend withdrawing the rule, as the federal guidance to date has provided sufficient guidance for the Department to proceed with this rule. As it relates to Commenter (5) suggesting that the rule is not applicable to ESG, HOME and NHTF, the Department does not agree that those programs are exempted from guidance to date particularly in light of the 2025 Grant Agreement executed between HUD and the Department, which specifies their applicability.

Comment on Nonprofit Applicability

Commenter (5) and (6) note that the draft rule extends the requirement to verify immigration status to all subrecipients of funding in the affected programs, despite the fact that PRWORA explicitly exempts nonprofit entities that receive funds from the requirement to verify the immigration status of their program beneficiaries. Commenter (2) is concerned that subrecipients may not be fully aware that this proposed rule requires nonprofits that were formerly or otherwise exempt to elect a method of verification for beneficiaries. Commenter (3) also asks that the Department clarify the nonprofit exemption language and ensure it does not create conflicting compliance duties. The proposed rule references that certain nonprofit charitable organizations may not be required to verify status in some contexts, while also describing circumstances in which TDHCA must ensure verification to prevent confusion and uneven practices across the state.

Staff Response: Previously, interpretations regarding the verification process for PRWORA may have indicated that private nonprofit subrecipients- because they do not have direct access to the SAVE system used for verification - did not have to confirm qualified alien status at all even for federal programs covered by PRWORA. However, while PRWORA does not mandate a private nonprofit entity conduct verification, there is nothing in the statute that prohibits such an entity from conducting verification. Therefore, the rule does require that all recipients of the subject programs will be required to comply with PRWORA, and all Administrators must participate in verification within the contours of the statute. Administrators that are nonprofit entities- including those already subject to, but not performing verifications, such as AYBR and Bootstrap - will have three options: 1) To have the Department provide the verification, directly or through a third-party contractor, which would require the Administrator to gather and transmit - but not verify - the appropriate client level information and documentation; 2) To have the Administrator voluntarily agree to participate in using the SAVE system, which is the option that creates the least delay in providing services to the clients (this option is reliant on the Department being able to revise its contract with the Department of Homeland Security); or 3) To allow the Administrator to procure a separate party to perform such verification services on their behalf. No changes are recommended to the rule in response to this comment.

Comment on Clear Guidance for Programs:

Commenter (3) requests that the Department clarify the scope and applicability of the rule by program and "activity type," including where PRWORA does and does not apply. They suggest that in rule text (or incorporated guidance referenced in rule) a clear, program-by-program applicability matrix for TDHCA Single Family, Homeless, and Community Affairs programs, including which activity types require verification and which are explicitly exempt. This will reduce inconsistent implementation across Administrators.

Commenter (3) also notes concern for mixed status households and requests that because the application of this rule is central to homelessness prevention and single family stabilization outcomes, the rule (or companion guidance) should specify a standardized method for benefit calculation/proration and explicitly state that benefits for eligible household members (including U.S. citizen children) may not be categorically denied solely due to another household member's inability to verify status, unless the governing federal program specifically requires otherwise.

Staff Response: Staff notes that more detailed applicability of this rule is provided in a subsequent rulemaking that was released for public comment and will be out for comment until January 26, 2026. That rulemaking includes revisions to five sections of the Department's rules in 10 TAC to be amended to implement changes: 1) §6.204 Use of Funds for the Community Services Block Grant Program, 2) §7.28 Program Participant Eligibility and Program Participant Files for the Homeless Housing and Services Program, 3) §7.44 Program Participant Eligibility and Program Participant Files for the Emergency Solutions Grant Program, 4) §20.4 Eligible Single Family Activities in the Single Family Programs Umbrella Rule, and 5) §20.6 Administrator Applicant Eligibility in the Single Family Programs Umbrella Rule. Those rules add program-specific clarity to mixed status household calculations. Staff encourages the commenter to make comments on those more specific rules. Additionally, staff will, upon adoption of those five other rules, release a matrix reflecting rule applicability. However, as a result of this comment the Department has changed the effective date to April 1, 2026.

Comment on Terminology:

Commenter (3) requests that the rule define "legal status" and align terms consistently throughout the rule (and correct apparent drafting errors). The proposed rule uses "U.S. Citizen, U.S. National, or Qualified Alien status ('legal status')" and defines "Qualified Alien" by reference to 8 U.S.C. §1641(b) or (c). They request that the Department ensure definitions are consistent throughout and correct a noted typographical issues confirm that

the rule's terminology matches the controlling federal definitions and any HUD program-specific language.

Staff Response: Staff has used the terms applicable in PRWORA and is using the term legal status to describe U.S. Citizen, U.S. National, or Qualified Alien status. No changes to the rule are recommend in response to this comment.

Comment on Security and Privacy of Documentation:

Commenter (3) requests that relating to verification mechanics, the Department provide minimum required standards for privacy, security, and record retention before requiring electronic transmission or SAVE use. The proposed rule contemplates verification through "established documents" first and then use of SAVE if unable to verify through those documents. It also contemplates that some Subrecipients may transmit documentation to TDHCA (or a contractor) for verification and requires "a sufficient method of electronic transmittal" and "secure safekeeping." They ask for greater specificity and that baseline security standards (examples given in comment) for any electronic transmittal/recordkeeping methods, especially when personal immigration documentation is collected or transmitted.

Staff Response: Staff concurs on the importance of having standards for privacy, security and record retention. It should be emphasized that all subrecipients subject to this rule will execute contracts with the Department addressing these topics and further will have executed an Information Security and Privacy Agreement as outlined in 10 TAC §1.24 that provides greater detail on securing sensitive information. No changes to the rule are recommended in response to this comment.

Comment on 'Acceptable Documents' Being Made Available:

Commenter (3) requested that reference to the "acceptable documents" will be published in a stable, version-controlled format with effective dates and a change log, because the rule currently references a website list that may be updated "from time to time."

Staff Response: The matrix of "acceptable documents" will be published on the Department's website and as requested will note effective dates when any updated versions are posted. No changes to the rule are recommended in response to this comment.

Comment Requesting Safe Harbor:

Commenter (3) requests that relating to implementation timeline and readiness, that a safe-harbor period be added during which Administrators acting in good faith under TDHCA training/guidance are not penalized for initial implementation errors.

Staff Response: Because of the federal applicability of these requirements in most cases, staff does not recommend the rule provide for a safe harbor. However, the Department and its program staff are committed to training and guidance and monitoring staff will seek to be training oriented in initial monitoring on this issue. No changes to the rule are recommended in response to this comment.

Comment Relating to Forms and Training:

Commenter (3) requested that TDHCA confirm that it will provide standardized forms, checklists, training, and helpdesk support before enforcement, especially for smaller nonprofits and rural Administrators.

Staff Response: TDHCA confirms that it will provide forms, checklists, training, and support for Administrators. No changes are recommended in response to this comment.

Comment relating to Appeal Process for Households:

Commenter (3) requests that due process be considered and that the rule or mandatory guidance should include, a clear notice process (what the applicant receives, in what language(s), and within what timeframe), a reasonable cure period to provide missing documentation, an appeal process, including how SAVE mismatches are handled and corrected, and guardrails to prevent discouraging eligible households from applying due to fear or confusion.

Staff Response: Each program's rules already require specific provisions for the handling of a client's denial of services, which will now include possible denial under this rule as well. Because those provisions may vary by program, based on federal requirements, the provisions for such due process will remain in the program specific rules, and not be added to this section. No changes are recommended in response to this comment.

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

Except as described herein the new section affects no other code, article, or statute.

§1.410. Determination of Alien Status for Program Beneficiaries.

(a) Purpose. The purpose of this section is to provide uniform Department guidance on Section 401(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), which provides that an alien who is not a Qualified Alien is not eligible for any federal or state public benefit.

(b) Definitions. The words and terms in this chapter shall have the meanings described in this subsection unless the context clearly indicates otherwise. Capitalized words used herein have the meaning assigned in the specific Chapters and Rules of this Title that govern the program under which program eligibility is seeking to be determined or assigned by federal or state law.

(1) Administrator--An entity that receives federal or state funds passed through the Department. The term includes, but is not limited, to a Subrecipient, State Recipient, Recipient, or a Developer of single-family housing for homeownership. The term also applies to a For Profit Entity having been procured by the Department to determine eligibility for federal or state funds and as otherwise reflected in the Contract.

(2) For Profit Entity--An Administrator that is neither a Public Organization nor a Nonprofit Charitable Organization.

(3) Nonprofit Charitable Organization--An entity that is organized and operated for purposes other than making gains or profits for the organization, its members or its shareholders, and is precluded from distributing any gains or profits to its members or shareholders; and is organized and operated for charitable purposes.

(4) Public Organization--An entity that is a Unit of Government or an organization established by a Unit of Government.

(5) Qualified Alien--A person that is not a U.S. Citizen or a U.S. National and is described at 8 U.S.C. §1641(b) or (c).

(6) State--The State of Texas or the Department, as indicated by context.

(7) Systematic Alien Verification for Entitlements (SAVE)--Automated intergovernmental database that allows authorized users to verify the immigration status of program applicants.

(c) Applicability for Federal Funds.

(1) The determination of whether a federal program, or activity type under a federal program, is a federal public benefit for purposes of PRWORA is made by the federal agency with administration of a program or activity. Block grants have been determined to be subject to PRWORA. The only circumstance in which the Department will not apply this section is in cases in which the PRWORA statute provides, or the administering federal agency has given clear direction, that an activity is explicitly not a federal public benefit and does not require verification.

(2) At the time of the publication of this rule, this rule applies to Contracts administered in the Single Family and Homeless Division and the Community Affairs Division for applicable federally funded Department programs including Low Income Home Energy Assistance Program, Department of Energy Weatherization Assistance Program, Community Services Block Grant Program, Community Development Block Grant Program, Emergency Solutions Grant Program, and to the extent used for single-family activities National Housing Trust Fund Program, the HOME Program and other programs as provided for in Administrator's Contracts or state guidance with an initial effective date on or after April 1, 2026, or for the Community Development Block Grant Program and HOME 2025 or later year funds added to an existing Contract. For those programs that operate reservation based funding methods this rule applies to Household Commitment Contracts with an initial effective date on or after April 1, 2026.

(3) The requirements of this section are applicable to Subrecipients of federal funds passed through the Department as described in paragraph (1) of this subsection. However, certain exemptions under PRWORA may exist on a case specific, or activity specific basis as further provided by the applicable federal agency.

(d) Applicability for State Funds. The Department has determined that State funds that are provided to a Subrecipient to be distributed directly to individuals, are a state public benefit. At the time of the publication of this rule, applicable state funded Department programs include TCAP-RF (to the extent used for single-family activities), the Homeless Housing and Services Program, the Amy Young Barrier Removal Program, and the Bootstrap Program and other programs as provided for in Administrator's Contracts or state guidance with an initial effective date on or after April 1, 2026. For those programs that operate reservation based funding methods this rule applies to Activity level commitment documents with an initial effective date on or after April 1, 2026.

(e) Exemptions and Benefit Calculations under PRWORA.

(1) If no exemptions under PRWORA are applicable to the activity type, as provided for by the federal agency or by the statute, then the Subrecipient must verify U.S. Citizen, U.S. National, or Qualified Alien status ("legal status") using the methods provided for in subsection (f) of this section and evaluate eligibility using the rules for the applicable program under this Title.

(2) Administrators should review Program Rules and Contracts for additional information, including how benefit calculations are adjusted for households in which not all members can be verified.

(3) Populations that are documented by the Administrator as covered by the Violence Against Women Act (VAWA) or the Family Violence Prevention and Services Act (FVPSA) are excepted from having verification under this rule performed, unless required to do so under federal guidance.

(f) Verification Process Under PRWORA for Programs with Subrecipients.

(1) Administrators must first seek to verify legal status through the use of several established documents as described more fully in guidance provided by the Department and in the Administrator's Contract. Only if unable to verify legal status with those documents will the SAVE system be utilized as described in this subsection.

(2) Public Organizations. Administrators that are Public Organizations are required to perform the verifications through the SAVE system.

(3) An Administrator is required to ensure compliance with the verification requirement as provided for in subparagraphs (A), (B) or (C) of this paragraph. Records must be maintained as required by subparagraph (D) of this paragraph. Notification of election of method must be provided in accordance with subparagraph (E) of this paragraph.

(A) The Subrecipient requesting from the household and transmitting to the Department, or a party contracted by the Department, sufficient information or documentation so that the Department or its vendor can perform such verification and provide a determination to the Subrecipient; OR

(B) As eligible, the Administrator electing to perform the verifications through the SAVE system, as authorized through the Department's access to such system; OR

(C) The Subrecipient electing to procure an eligible qualified organization to perform such verifications on its behalf, subject to Department approval.

(D) In the administration of subparagraph (A) of this paragraph, the Administrator must provide and maintain a sufficient method of electronic transmittal system that allows for such information to be provided to the Department or its vendor, and ensures the secure safekeeping of such paper and/or electronic files, and receipt of subsequent response back from the Department or its contracted party. In the administration of subparagraphs (B) or (C) of this paragraph, the Subrecipient or its procured provider must maintain sufficient evidence and documentation that verification has taken place so that such verification can be confirmed by the Department.

(E) Notification of Election of method under subsection (f)(4)(A) through (C) of this section by Nonprofit Charitable Organizations and For Profit Entities must be provided to the Department as specified in this subparagraph.

(i) For existing Applicants, Administrators with a Contract that is subject to Automatic Renewal, and Awardees or Administrators with a Reservation Contract. No later than 60 days after the effective date of this rule, all entities shall submit their election under subsection (f)(4)(A) through (C) of this section in writing to the applicable program director or his/her designee.

(ii) A new Applicant must make its election under subsection (f)(4)(A) through (C) of this section in its application, or if there is no Application prior to Contract execution.

(iii) For Administrators with no Application or Automatic Renewal once an election is made under this subsection or was made under a prior version of this rule, it does not need to be resubmitted or reelected, but will continue from the election made in the prior year unless the Administrator notifies the Department otherwise in writing at least three months prior to the renewal of the Contract (as applicable).

(iv) If an Administrator does not notify the Department of the election in writing by the deadline or refuses to abide by its election the Administrator will not be eligible to perform as an Administrator in the program, which is considered good cause for nonrenewal or termination of a Contract.

(g) The Department may further describe an Administrator's responsibilities under PRWORA, including but not limited to use of the SAVE system, in its Contract with the Administrator or in further guidance. Nothing in this rule shall be construed to be a waiver, ratification, or acceptance of noncompliant administration of a program prior to the rule becoming effective.

(h) Regardless of method of verification, the results of the verification performed or received by the Administrator must be utilized by the Administrator in determining household eligibility, benefits, income, or other programmatic designations as required by applicable federal program guidance or as determined by other Program Rules under this Title.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 15, 2026.

TRD-202600156
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: February 4, 2026
Proposal publication date: November 21, 2025
For further information, please call: (512) 475-3959

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CHAPTER 2. ENFORCEMENT
SUBCHAPTER C. ADMINISTRATIVE PENALTIES

10 TAC §2.302

The Texas Department of Housing and Community Affairs (the Department) adopts, without changes to the text previously published in the October 24, 2025 issue of the *Texas Register* (50 TexReg 6950), the repeal of 10 TAC Chapter 2, Subchapter C, Administrative Penalties, §2.302 Administrative Penalty Process. The rule will not be republished. The purpose of the repeal is to eliminate the outdated rule and replace it simultaneously with a new rule that addresses elevator noncompliance.

Tex. Gov't Code §2001.0045(b) does not apply because there are no costs associated with the repeal.

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 has determined that, for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program but relates to changes to an existing activity: the enforcement of the Department's program rules.

2. The repeal does not require a change in work that creates new employee positions.

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

4. The repeal will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

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

6. The repeal is not considered to expand an existing regulation.

7. The repeal does not increase the number of individuals subject to the rule's applicability.

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the changed sections would be an updated and more germane rule. 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 also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT. The public comment period was held October 24, 2025 to November 24, 2025, to receive input on the proposed repealed section. No comments were received relating to the repeal.

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 repeal affects no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 15, 2026.

TRD-202600146

Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: February 4, 2026
Proposal publication date: October 24, 2025
For further information, please call: (512) 475-3959

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10 TAC §2.302

The Texas Department of Housing and Community Affairs (the Department) adopts, without changes to the text previously published in the October 24, 2025 issue of the *Texas Register* (50 TexReg 6950), new 10 TAC Chapter 2, Subchapter C, Administrative Penalties, §2.302 Administrative Penalty Process. The rule will not be republished. The purpose is to eliminate the outdated rule and replace it simultaneously with a new rule that addresses the enforcement of elevator noncompliance.

Tex. Gov't Code §2001.0045(b) does not apply because there are no additional costs associated with this action. Sufficient existing state and/or federal administrative funds associated with the applicable programs are available to offset costs. No additional funds will be needed to implement this rule.

The Department has analyzed this 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 has determined that, for the first five years the new sections would be in effect:

1. The rule does not create or eliminate a government program but relates to changes to an existing activity: the enforcement of the Department's program rules.

2. The rule does not require a change in work that creates new employee positions.

3. The new section will not require additional future legislative appropriations.

4. The new section will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The new section is not creating a new regulation.

6. The new section does expand on an existing regulation.

7. The new section does not increase the number of individuals subject to the rule's applicability.

8. The new section will not negatively or positively affect the 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 the new section and determined that it 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 new section does not contemplate or authorize a taking 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 new section as to its possible effects on local economies and has determined that for the first five years the new section would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has 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 would be improvement in the Department's ability to enforce elevator noncompliance. The rule does provide for administrative costs to properties that have no operational elevators. There will not be economic costs to individuals required to comply with the new section.

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 sections may have some costs to the state to implement the verification process and to the Department's subrecipients in administering the rule changes. However, sufficient state or federal administrative funds associated with the applicable programs are already available to offset costs. No additional funds will be required.

SUMMARY OF PUBLIC COMMENT. The public comment period was held October 24, 2025 to November 24, 2025, to receive input on the proposed repealed section. Two comments were received from Disability Rights Texas and Texas Housers; comment is summarized below.

10 TAC §2.302(k). Penalty schedule for Multifamily Rental Findings of Noncompliance - Elevators.

Comment Summary: Commenter 1 supports the increased penalties for inoperable elevators, stating that elevators are a critical component of safe, accessible housing, and providing examples of cases where inoperable elevators were dangerous for tenants. Commenter 2 also strongly supports the addition.

Staff Response: Staff appreciates the support. No revisions are recommended.

10 TAC §2.302(k). Penalty schedule for Multifamily Rental Findings of Noncompliance - Noncompliance with the required accessibility requirements

Comment Summary: Commenters 1 and 2 both requested implementation of a mandatory minimum daily administrative penalty for Section 504 accessibility and Fair Housing Act violations. Commenter 1 referred to a specific case presented to the Department's Board in September 2023, in which a property took more than two years to install a ramp on an accessible route. They expressed an opinion that the administrative penalty assessed was too low ($10,000.00, of which $7,500.00 was forgivable with full corrections), and that harsher administrative penalties would hold properties accountable. Commenter 1 also referenced a tax credit property currently for sale that it alleges has major accessibility problems.

Both commenters specifically request that under the Finding related to Noncompliance with required accessibility requirements, that the maximum first time administrative penalty be revised from "Up to $1,000 per violation, plus an optional $100

per day for each accessibility deficiency that remains uncorrected 6 months from the corrective action deadline" to "Up to $1,000 per violation, plus: a mandatory minimum $100 per day per violation for each accessibility deficiency that remains uncorrected between 6 and 9 months from the corrective action deadline; a mandatory minimum $125 per day per violation for each accessibility deficiency that remains uncorrected between 9 and 12 months from the corrective action deadline; and a mandatory minimum $150 per day per violation for each accessibility deficiency that remains uncorrected more than 12 months from the corrective action deadline."

Staff Response: Staff has referred the concerns regarding the property for sale to the Asset Management and Compliance Divisions. Staff understands the concerns relating to administrative penalty amounts, however, Tex. Gov't. Code §2306.042 requires TDHCA to consider the following factors for all administrative penalty assessments: seriousness of the violation, the history of previous violations, the amount necessary to deter future violations, efforts made to correct the violation, and any other matter that justice may require. The Department has a standardized penalty schedule for the maximum potential penalty amount, but individual factors must also be considered as they are not conducive to standardization. A mandatory minimum administrative penalty amount would result in a penalty being assessed without regard to the statutorily required consideration of the enumerated factors. No changes are recommended to the rule.

General Comment

Comment Summary: Commenter 2 commented generally on the availability of information relating to enforcement. Though records of enforcement actions are included in board materials, those documents are hundreds of pages long and are not easily accessible for everyday Texans. The commenter recommends that TDHCA make records on informal conferences, penalties, and debarment more publicly available, such as including this information on TDHCA's website.

Staff Response: Enforcement actions are considered by the Board during open meetings, supporting background information is posted online in the board books maintained at https://tdhca.legistar.com/Calendar.aspx, including a board action request summarizing the matter and all factors considered, and copies of Board decisions are posted online at https://www.tdhca.texas.gov/tdhca-orders. Staff perceives no need to create further summaries of that activity, and recommends no further revision to the rule.

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

Except as described herein, the new section affects no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 15, 2026.

TRD-202600147

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

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Proposal publication date: October 24, 2025

For further information, please call: (512) 475-3959

SUBCHAPTER D. DEBARMENT FROM PARTICIPATION IN PROGRAMS ADMINISTERED BY THE DEPARTMENT

10 TAC §2.401

The Texas Department of Housing and Community Affairs (the Department) adopts, without changes to the text previously published in the October 24, 2025 issue of the *Texas Register* (50 TexReg 6954), the repeal of 10 TAC Chapter 2, Subchapter D, Debarment from Participation in Programs Administered by the Department, §2.401 General. The purpose of the repeal is to eliminate the outdated rule and replace it simultaneously with a new rule that incorporates voluntary nonparticipation agreements, incorporates elevator noncompliance, and clarifies areas of confusion.

Tex. Gov't Code §2001.0045(b) does not apply because there are no costs associated with the repeal.

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 has determined that, for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program but relates to changes to an existing activity: the enforcement of the Department's program rules.

2. The repeal does not require a change in work that creates new employee positions.

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

4. The repeal will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

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

6. The repeal is not considered to expand an existing regulation.

7. The repeal does not increase the number of individuals subject to the rule's applicability.

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the changed sections would be an updated and more germane rule. 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 also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT. The public comment period was held October 24, 2025 to November 24, 2025, to receive input on the proposed repealed section. No comments were received relating to the repeal.

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 repeal affects no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 15, 2026.

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: February 4, 2026
Proposal publication date: October 24, 2025
For further information, please call: (512) 475-3959

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10 TAC §2.401

The Texas Department of Housing and Community Affairs (the Department) adopts, with no changes to the text previously published in the October 24, 2025 issue of the *Texas Register* (50 TexReg 6954), new 10 TAC Chapter 2, Subchapter D, Debarment from Participation in Programs Administered by the Department, §2.401 General. The rule will not be republished. The purpose is to eliminate the outdated rule and replace it simultaneously with a new rule that incorporates voluntary nonparticipation agreements, incorporates elevator noncompliance, and clarifies areas of confusion.

Tex. Gov't Code §2001.0045(b) does not apply because there are no additional costs associated with this action. Sufficient existing state and/or federal administrative funds associated with the applicable programs are available to offset costs. No additional funds will be needed to implement this rule.

The Department has analyzed this 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 has determined that, for the first five years the new sections would be in effect:

1. The rule does not create or eliminate a government program but relates to changes to an existing activity: the enforcement of the Department's program rules.

2. The rule does not require a change in work that creates new employee positions.

3. The new section will not require additional future legislative appropriations.

4. The new section will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The new section is not creating a new regulation.

6. The new section does expand on an existing regulation.

7. The new section does not increase the number of individuals subject to the rule's applicability.

8. The new section will not negatively or positively affect the 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 the new section and determined that it 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 new section does not contemplate or authorize a taking 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 new section as to its possible effects on local economies and has determined that for the first five years the new section would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has 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 would be improvement in the Department's enforcement abilities. There

will not be economic costs to individuals required to comply with the new section.

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 sections may have some costs to the state to implement the verification process and to the Department's subrecipients in administering the rule changes. However, sufficient state or federal administrative funds associated with the applicable programs are already available to offset costs. No additional funds will be required.

SUMMARY OF PUBLIC COMMENT. The public comment period was held October 24, 2025 to November 24, 2025, to receive input on the proposed new section. Two comments were received from Texas Housers and Disability Rights Texas, and are summarized below.

10 TAC §2.401(a) and (c). Pertaining to corrective action deadlines.

Comment Summary: Commenters 1 and 2 oppose parties in violation receiving time to correct noncompliance before administrative penalties or debarment are considered. Commenter 1 referred to a specific case presented to the Department's Board in September 2023, in which a property took more than two years to install a ramp on an accessible route. Commenter 1 stated their opinion that the administrative penalty assessed in that case was too low ($10,000.00, of which $7,500.00 was forgivable with full corrections), and that the Department should consider debarment before a corrective action period is complete. Commenter 2 stated an opinion that parties already have ample opportunities to correct before penalties or debarment are considered.

Staff Response: Staff addressed the administrative penalty concern under Department response to a separate rule, 10 §TAC 2.302. Staff understands the concerns regarding corrective action periods, however, the Department's goal is to achieve compliance, and the party's action or inaction during the corrective action period is a relevant factor that must be considered in the potential debarment term. Furthermore, this change to the rule was merely clarification; 10 TAC §2.103(c) already states that parties must receive written notice and a corrective action period prior to referral to the Enforcement Committee. No revisions are recommended.

10 TAC §2.401(a)(7). Debarment due to Bankruptcy.

Comment Summary: Commenters 1 and 2 support seeking debarment if bankruptcy results in loss of affordable units.

Staff Response: Staff appreciates the support. No revisions are recommended.

10 TAC §2.401(a)(8). Debarment for Inoperable Elevators.

Comment Summary: Commenter 1 applauds seeking debarment for developments with inoperable elevators, stating that elevators are a critical component of safe, accessible housing, and providing examples of cases where inoperable elevators were dangerous for tenants. Commenter 2 also strongly supports the addition.

Staff Response: Staff appreciates the support. No revisions are recommended.

10 TAC §2.401(a). Recommendation for Discretionary Debarment for Parties with Current Properties that are out of Compliance with Accessibility Requirements.

Commenters 1 and 2 both propose adding a new item eligible for discretionary debarment in cases where current properties do not comply with accessibility requirements. Commenter 1 alleges that multiple tax credit properties listed for sale in 2024 and 2025 had potential accessibility noncompliance, the majority of which are properties built before 2008, when TDHCA began to be involved in final construction inspections. It provided examples of potential risks associated with possible accessibility noncompliance, such as environmental controls that might be installed out of reach, or water pipes that could cause burns if they are not insulated. Commenters 1 and 2 provide a specific example of a property that is currently for sale through a ROFR, which they allege does not have any accessible units. Commenter 1 also states that two properties without any accessible units received tax credits in 2024 and 2025.

Staff Response: Staff has referred Commenter's concerns regarding older developments, including the property currently listed for sale, to the Asset Management and Compliance Divisions. The Department also responds to accessibility complaints for existing Developments in its portfolio through its complaint process in 10 TAC §1.2. The referenced 2024 and 2025 HTC awards will have standard accessibility requirements that are verified via a final construction inspection. No revisions are recommended because these concerns are outside of the scope of this rule amendment.

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

Except as described herein, the new section affects no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 15, 2026.

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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Proposal publication date: October 24, 2025
For further information, please call: (512) 475-3959

CHAPTER 12. MULTIFAMILY HOUSING REVENUE BOND RULES

10 TAC §§12.1 - 12.10

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules (the Bond Rules), without changes to the text previously published in the October 24, 2025 issue of the *Texas Register* (50 TexReg 6964). The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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

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

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, the issuance of Private Activity Bonds (PAB).

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

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

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

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

6. The action will repeal an existing regulation but is associated with a simultaneous readoption making changes to an existing activity, the issuance of PABs.

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

8. The 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 repeal and determined that the 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 repeal does not contemplate nor authorize a taking 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 repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

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

Mr. Wilkinson has determined that, for each year of the first five years the 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 issuance of PAB. 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 also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between October 24, 2025, and November 21, 2025, with no comments on the repeal itself received.

The Board adopted the final order adopting the repeal on January 15, 2026.

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 January 15, 2026.

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: February 4, 2026
Proposal publication date: October 24, 2025
For further information, please call: (512) 475-3959

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10 TAC §§12.1 - 12.11

The Texas Department of Housing and Community Affairs (the Department) adopts, with clarifying changes from the published draft, new 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules (Bond Rules), §§12.1 - 12.11. Sections 12.1 - 12.5 and 12.7 - 12.10 are adopted without changes and §12.6 and §12.11 are adopted with changes to the text previously published in the October 24, 2025 issue of the *Texas Register* (50 TexReg 6965). Sections 12.1 - 12.5 and 12.7 - 12.10 will not be republished. Sections 12.6 and 12.11 will be republished. The purpose of the new section is to provide compliance with Tex. Gov't Code §2306.359, to make minor administrative revisions, to ensure that it is reflective of changes made in the Department's Qualified Allocation Plan where applicable and in response to public comment received.

Tex. Gov't Code §2001.0045(b) does not apply to the action on this rule pursuant to item (9), which excepts rule changes necessary to implement legislation. The rule provides compliance with Tex. Gov't Code §2306.359, which requires the Department to provide for specific scoring criteria and underwriting considerations for multifamily private activity bond activities.

The Department has analyzed this 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 new rule will be in effect:

1. The rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to an existing activity, the issuance of Private Activity Bonds ("PAB").

2. The 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 workload to a degree that eliminates any existing employee positions.

3. The rule does not require additional future legislative appropriations.

4. The rule changes will not result in an increase in fees paid to the Department, but may, under certain circumstances, result in a decrease in fees paid to the Department regarding Tax-Exempt Bond Developments.

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

6. The rule will not limit, expand or repeal an existing regulation but merely revises a rule.

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

8. The rule will not negatively or positively affect the 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, in drafting this 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, §2306.359. Although these rules mostly pertain to the filing of a bond pre-application, some stakeholders have reported that their average cost of filing a full Application is between $50,000 and $60,000; which may vary depending on the specific type of Application, location of the Development Site, and other non-state of Texas funding sources utilized. The proposed rules do not, on average result in an increased cost of filing an application as compared to the existing program rules.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. This rule relates to the procedures in place for entities applying for multifamily PAB. Only those small or micro-businesses that participate in this program are subject to this rule. There are approximately 100 to 150 businesses, which could possibly be considered small or micro-businesses, subject to the rule for which the economic impact of the rule would be a flat fee of $11,000 which includes the filing fees associated with submitting a bond pre-application.

The Department bases this estimate on the potential number of Applicants and their related parties who may submit applications to TDHCA for PAB (and accompanying housing tax credits). There could be additional costs associated with pre-applications depending on whether the small or micro-businesses outsource how the application materials are compiled. The fee for submitting an Application for PAB layered with LIHTC is based on $30 per unit, and all Applicants are required to propose constructing, at a minimum, 16 Units.

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 approximately 1,300 rural communities potentially subject to the new rule for which the economic impact of the rule is projected to be $0. 10 TAC Chapter 12 places no financial burdens on rural communities, as the costs associated with submitting an Application are born entirely by private parties. In an average year the volume of applications for PAB that are located in rural areas is not more than 20% of all PAB applications received. In those cases, a rural community securing a PAB 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 PAB 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 PAB 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 rule does not contemplate or authorize a taking 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 rule may provide a possible positive economic effect on local employment in association with this rule since PAB Developments, layered with housing tax credits, 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 and local employment. However, because the exact location of where program funds or developments are directed is not determined in rule, and is driven by real estate demand, 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 PABs and LIHTCs are actually awarded to a proposed Development, given the unique characteristics of each proposed multifamily Development.

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 PAB Development layered with LIHTC and each apartment community significantly increases the property value of the land being developed, there are no probable negative effects of

the rule on particular geographic regions. If anything, positive effects will ensue in those communities where developers receive PAB 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 issuance of PABs and corresponding allocation of housing tax credits. 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 a pre-application and application remain unchanged based on these rule changes. The 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.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comments between October 24, 2025, and November 21, 2025. Comments from two commenters were received.

The Board adopted the final order adopting the new rule on January 15, 2026.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS

Public comments were accepted between October 24, 2025, and November 21, 2025, with comments received from: (1) Texas Housers and (2) Disability Rights Texas.

§12.6(6) and §12.6(7) - Pre-Application Scoring Criteria - Common Amenities and Resident Supportive Services (Commenter 1)

COMMENT SUMMARY:

Commenter (1) recommends removing language from §12.6(6) relating to Common Amenities, and §12.6(7), relating to Resident Supportive Services, which allows Development Owners to change the amenities and services offered at a property as long as the total number of points remains unchanged. The commenter believes that allowing changes to these items increases the difficulty for tenants to make an informed decision as to which property offers the amenities and services desired. Commenter (1) notes that 10 TAC §11.101(b)(5) of the QAP does not include language that allows Common Amenities to be changed and that §12.6(6) of the Multifamily Bond Rules does not mirror the QAP. Commenter (1) expressed strong opposition to the language in 10 TAC §11.101(b)(7) of the QAP and §12.6(7) of the Multifamily Bond Rules, as both allow changes to be made to Resident Supportive Services.

STAFF RESPONSE:

In response to commenter (1) and in light of the fact that the Bond Regulatory Agreement includes the complete list of common amenities that an owner can select from to meet the minimum point requirement, staff recommends removing the following sentence under §12.6(6). Moreover, in making the change the requirement will be consistent with the Qualified Allocation Plan.

"The common amenities include those listed in §11.101(b)(5) of this title and must meet the requirements as stated therein.

As it relates to similar requested changes to the resident supportive services by commenter (1), staff notes that tenant profiles change over time and the type of services offered initially may or may not be useful to tenants in the future. The Department's Bond Regulatory Agreement (and Housing Tax Credit Land Use Restriction Agreement) includes a list of all the possible Resident Supportive Services for this reason. Staff recommends the commenter bring up this topic during the comment period for 10 TAC Chapter 10, the Compliance Monitoring Rule, and roundtable discussions regarding the development of the 2027 Qualified Allocation Plan.

§12.6(8) - Pre-Application Scoring Criteria - Underserved Area (Commenter 1)

COMMENT SUMMARY:

Commenter (1) recommends that the language pertaining to the Underserved Area scoring item be changed to reflect the current QAP.

STAFF RESPONSE:

In response to the commenter, the Multifamily Bond Rules do not recite the exact options for this point item, but instead refer to 10 TAC §11.9(c)(6) of the QAP for the scoring criteria. There are two options included in the QAP that are excluded in the Multifamily Bond Rules because the options reference the At-Risk Set-Aside and/or subregions, which are specific to the Competitive HTC program. Moreover, the Multifamily Bond Rules clarify that regardless of the varying point options listed in the QAP, the number of points attributed to this point item shall be four points.

Staff believes there is an additional option under 10 TAC §11.9(c)(6) that could be applicable, and therefore added to the Underserved Area scoring criteria. Specifically, option (H) under 11.9(c)(6) of the QAP allows the election of points for Underserved Area if 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.

Staff recommends adding the following to §12.6(8) of the Multifamily Bond Rules, "An Application may qualify to receive up to four (4) points if the Development Site meets the criteria described in §11.9(c)(6)(A)-(E), or (H) of this title."

§12.11(g) - Qualified 501(c)(3) Bonds - Accessibility Requirements (Commenters 1 and 2)

COMMENT SUMMARY:

Commenters (1) and (2) strongly oppose the exemption from visitability requirements and 10 TAC §11.101(b)(8)(D) of the QAP, relating to Development Accessibility Requirements, for rehabilitation applications requesting Qualified 501(c)(3) Bonds. Specifically, the commenters oppose the exemption from visitability and Section 504 of the Rehabilitation Act of 1973, which requires that developments provide 5% of the units to be mobility accessible and 2% of the units to be audio/visual accessible. Commenter (1) understands that federal requirements differ for de-

velopments funded with bonds exclusively, however, the commenter believes that the Department should promote accessibility and visitability requirements, regardless of the funding source. Commenter (2) is alarmed that the proposed language will exclude too many persons that are part of the aging and/or the low-income populations in Texas.

STAFF RESPONSE:

In response to the commenters, staff has accepted the suggestion that the accessibility requirements in the QAP apply to New Construction, Reconstruction, and Adaptive Reuse. Furthermore, the Department has clarified that Rehabilitation Development only is exempt from the construction requirements in 24 CFR §8.23, if the Development does not already have to follow Section 504 of the Rehabilitation Act of 1973.

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

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

§12.6. Pre-Application Scoring Criteria.

This section identifies the scoring criteria used in evaluating and ranking pre-applications, including pre-applications requesting Qualified 501(c)(3) Bonds to the extent applicable. Any scoring items that require supplemental information to substantiate points must be submitted in the pre-application, as further outlined in the Multifamily Bond Pre-Application Procedures Manual. Applicants proposing multiple sites will be required to submit a separate pre-application for each Development Site, unless staff determines that one pre-application is more appropriate based on the specifics of the transaction. Each individual pre-application will be scored on its own merits and the final score will be determined based on an average of all of the individual scores. Ongoing requirements, as selected in the pre-application, will be reflected in the Bond Regulatory and Land Use Restriction Agreement and must be maintained throughout the State Restrictive Period, unless otherwise stated or required in such Agreement.

(1) Income and Rent Levels of the Tenants. Pre-applications may qualify for up to ten (10 points) for this item.

(A) Priority 1 designation includes one of clauses (i) - (iii) of this subparagraph. (10 points)

(i) set aside 50% of Units rent capped at 50% AMGI and the remaining 50% of Units rent capped at 60% AMGI; or

(ii) set aside 15% of Units rent capped at 30% AMGI and the remaining 85% of Units rent capped at 60% AMGI; or

(iii) set aside 100% of Units rent capped at 60% AMGI for Developments located in a census tract with a median income that is higher than the median income of the county, MSA, or PMSA in which the census tract is located.

(B) Priority 2 designation requires the set aside of at least 80% of the Units rent capped at 60% AMGI (7 points).

(C) Priority 3 designation. Includes any qualified residential rental development. Market rate Units can be included under this priority (5 points).

(2) Cost of Development per Square Foot. (1 point) For this item, costs shall be defined as the Building Cost as represented in the Development Cost Schedule, as originally provided in the pre-application. This calculation does not include indirect construction costs or site work. Pre-applications that do not exceed $160 per square foot of Net Rentable Area will receive one (1) point. Rehabilitation Developments will automatically receive this point.

(3) 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).

(A) Five-hundred (500) square feet for an Efficiency Unit;

(B) Six-hundred (600) square feet for a one Bedroom Unit;

(C) Eight-hundred-fifty (850) square feet for a two Bedroom Unit;

(D) One-thousand-fifty (1,050) square feet for a three Bedroom Unit; and

(E) One-thousand, two-hundred-fifty (1,250) square feet for a four Bedroom Unit.

(4) Extended Affordability. A pre-application may qualify for up to three (3) points under this item.

(A) Development Owners that agree to extend the State Restrictive Period for a Development to a total of 40 years (3 points).

(B) Development Owners that agree to extend the State Restrictive Period for a Development to a total of 35 years (2 points).

(5) Unit and Development Construction Features. A pre-application may qualify for nine (9) points, as certified in the pre-application, for providing specific amenity and quality features in every Unit at no extra charge to the tenant. The amenities and corresponding point structure is provided in §11.101(b)(6)(B) of this title (relating to Unit, Development Construction, and Energy and Water Efficiency Features), which includes a minimum number of points that must come from Energy and Water Efficiency Features. Applications involving scattered site Developments must have a specific amenity located within each Unit to count for points. Rehabilitation Developments will start with a base score of (5 points).

(6) Common Amenities. All Developments must provide at least the minimum threshold of points for common amenities based on the total number of Units in the Development as provided in subparagraphs (A) - (F) of this paragraph. An Applicant may choose to exceed the minimum number of points necessary based on Development size; however, the maximum number of points under this item which a Development may be awarded shall not exceed 22 points. The common amenities include those listed in §11.101(b)(5) of this title and must meet the requirements as stated therein.

(A) Developments with 16 to 40 Units must qualify for (2 points);

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

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

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

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

(F) Developments with 200 or more Units must qualify for (18 points).

(7) Resident Supportive Services. A pre-application may qualify for up to ten (10) points for this item. By electing points, the Applicant certifies that the Development will provide supportive services, which are listed in §11.101(b)(7) of this title, appropriate for the residents and that there will be adequate space for the intended services. The Owner may change, from time to time, the services offered; however, the overall points as selected at pre-application must remain the same. Should the QAP in subsequent years provide different services than those listed in §11.101(b)(7)(A) - (E) of this title, the Development Owner may be allowed to select services as listed therein upon written consent from the Department and any services selected must be of similar value to the service it is intending to replace. The Development Owner will be required to substantiate such service(s) at the time of compliance monitoring, if requested by staff. The services provided should be those that will directly benefit the Target Population of the Development and be accessible to all. No fees may be charged to the residents for any of the services. 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) The Development Owner shall provide resident services sufficient to substantiate ten (10) points; or

(B) The Development Owner shall provide resident services sufficient to substantiate eight (8) points.

(8) Underserved Area. An Application may qualify to receive up to four (4) points if the Development Site meets the criteria described in §11.9(c)(6)(A) - (E), or (H) of this title. The pre-application must include evidence that the Development Site meets this requirement. Regardless of the varying point options listed under §11.9(c)(6) of this title, the number of points attributed to this scoring item shall be four (4) points.

(9) Development Support/Opposition. (Maximum +24 to -24 points) Each letter will receive a maximum of +3 to -3 points and shall be received 10 business days prior to the Board's consideration of the pre-application. Letters must clearly state support or opposition to the specific Development. State Representatives or Senators as well as local elected officials must be in office when the pre-application is submitted and represent the district containing the proposed Development Site. Letters of support from State or local elected officials that do not represent the district containing the proposed Development Site will not qualify for points. Neutral letters that do not specifically refer to the Development or do not explicitly state support will receive (zero points). A letter that does not directly express support but expresses it indirectly by inference (i.e., "the local jurisdiction supports the Development and I support the local jurisdiction") counts as a neutral letter except in the case of State elected officials. A letter from a State elected official that does not directly indicate support by the official, but expresses support on behalf of the official's constituents or community (i.e., "My constituents support the Development and I am relaying their support") counts as a support letter. A resolution specifically expressing support that is adopted by the applicable Governing Body will count as support under this scoring item for a maximum of 3 points.

(A) State Senator and State Representative of the districts whose boundaries include the proposed Development Site;

(B) Mayor of the municipality (if the Development is within a municipality or its extraterritorial jurisdiction);

(C) Elected member of the Governing Body of the municipality (if the Development is within a municipality or its extraterritorial jurisdiction) who represents the district in which the Development Site is located;

(D) Presiding officer of the Governing Body of the county in which the Development Site is located;

(E) Elected member of the Governing Body of the county who represents the district in which the Development Site is located;

(F) Superintendent of the school district in which the Development Site is located; and

(G) Presiding officer of the board of trustees of the school district in which the Development Site is located.

(10) Preservation Initiative. (2 points) Preservation Developments, including Rehabilitation proposals on Properties which are nearing expiration of an existing affordability requirement within the next two years or for which there has been a rent restriction requirement in the past 10 years may qualify for points under this item. Evidence must be submitted in the pre-application.

(11) Declared Disaster Areas. (7 points) A pre-application may receive points if the Development Site is located in an area declared a disaster area under Tex. Gov't Code §418.014 at the time of submission, or at any time within the two-year period preceding the date of submission.

(12) Waiting List. (5 points) A pre-application that is on the Department's waiting list with the TBRB and does not have an active Certificate of Reservation at the time of the Private Activity Bond Lottery may receive points under this item if participating in the Lottery for the upcoming program year. These points will be added by staff once all of the scores for Lottery applications have been finalized. A pre-application for Qualified 501(c)(3) Bonds is not eligible for these points.

(A) For pre-applications that participated in the prior year Private Activity Bond Lottery (5 points); or

(B) For pre-applications that had an Inducement Resolution adoption date of November of the prior calendar year through March of the current calendar year (3 points); or

(C) For pre-applications that had an Inducement Resolution adoption date of April through July of the current calendar year (1 point).

(13) Assisting Households with Children. (42(m)(1)(C)(vii)) A pre-application may receive one point under this item if at least 15% of the Units in the Development contain three or more bedrooms. The specific number of three or more bedrooms may change from pre-application to full Application, but the minimum percentage must still be met. Applications proposing Rehabilitation (excluding Reconstruction) and Elderly Developments will automatically receive this point.

(14) Sponsor Contribution. This scoring item is only applicable to pre-applications requesting an issuance of Qualified 501(c)(3) Bonds. A pre-application may qualify for up to ten (10) points for this item based on the amount of sponsor contribution as reflected in the pre-application. The contribution shall be in the form of cash or

land contribution or other contribution acceptable to the Department. A contribution in the form of deferred developer fee will not qualify for points.

(A) A contribution of at least 10% will qualify for 10 points; or

(B) A contribution of at least 5% will qualify for 7 points.

§12.11. Qualified 501(c)(3) Bonds.

(a) General. The Department may issue Qualified 501(c)(3) Bonds under §145 of the Code to provide residential rental property. Such Bonds are not eligible for an allocation of Housing Tax Credits.

(b) Rule Applicability. Qualified 501(c)(3) Bond Developments shall meet the applicable requirements of Chapter 1 of this title (relating to Administration), Chapter 2 (relating to Enforcement), Chapter 10 (relating to Uniform Multifamily Rules), Chapter 11 Subchapter B of this title (except for §11.101(b)(3) (relating to Rehabilitation Costs), Chapter 11 Subchapter C of this title, and this Chapter (except for §12.9(b) (relating to Federal Set-Asides) and §12.10 (relating to Fees)).

(c) Maximum Amount to be Issued. The annual amount of Qualified 501(c)(3) Bonds to be issued shall be in accordance with Tex. Gov't Code §2306.358(b) pursuant to a Memorandum of Understanding with the Bond Review Board and further subject to §2306.358(a) whereby not more than 25% of the total annual issuance amount specified in the Memorandum of Understanding will be used for projects in any one metropolitan area and at least 15% of the total annual issuance amount specified in the Memorandum of Understanding is reserved for projects in rural areas, as both metropolitan and rural area is defined in the Memorandum of Understanding.

(d) Borrower Eligibility. A borrower must be an organization exempt from federal income tax by virtue of being described in §501(c)(3) of the Code. In addition to having a "determination letter" issued by the Internal Revenue Service confirming the borrower's Section 501(c)(3) status, an "unqualified" legal opinion from a practitioner experienced in tax-exempt organizations must be delivered in connection with a financing. The ownership of the multifamily Development financed with proceeds from Qualified 501(c)(3) Bonds must further the organization's exempt purposes, which shall include providing affordable housing pursuant to standards promulgated by the Internal Revenue Service and the Safe Harbor for Relieving the Poor and Distressed under Revenue Procedure 96-32. The borrower or its nonprofit parent organization shall have at least five years in operation with demonstrated experience in affordable housing development and management and/or ownership of other similar projects. The Borrower must maintain its Section 501(c)(3) status while the bonds are outstanding. Borrower must be registered with the Texas Secretary of State throughout the term of the Regulatory Agreement.

(e) Minimum Set-Asides and Rent and Income Requirements (§2306.358). The federal Safe Harbor for Relieving the Poor and Distressed requires that at least 75% of the units must be at or below 80% of Area Median Gross Income. The state law requirements, as identified in subparagraphs (1) and (2) below, may alternatively be elected for a Development, regardless of whether New Construction or Rehabilitation. Units intended to satisfy set-aside requirements must be distributed proportionally throughout the Development.

(1) At least 60% of the units serve individuals and families at 80% of the Area Median Gross Income and below (§2306.358(c)(2)); AND

(A) At least 20% of the Units are both rent restricted and occupied by individuals whose income is 50% or less of the Area Median Gross Income, adjusted for family size; OR

(B) At least 40% of the Units are both rent restricted and occupied by individuals whose income is 60% or less of the Area Median Gross Income, adjusted for family size; AND

(2) 100% of the Units must be occupied by individuals whose income does not exceed 140% of the Area Median Gross Income such that all tenants are eligible tenants.

(f) Mandatory Development Amenities (§2306.187). The Development must include those amenities identified under §11.101(b)(4) of this title (relating to Mandatory Development Amenities).

(g) Accessibility Requirements. New Construction, Reconstruction, and Adaptive Reuse Developments shall be subject to 10 TAC §11.101(b)(8) (relating to Development Accessibility Requirements).Rehabilitation (excluding Reconstruction) Developments shall be exempt from the construction standards of Section 504 of the Rehabilitation Act of 1973, as further detailed in §8.23 unless the Development is required to follow §11.101(b)(8)(D) by another source in the transaction, or there is or will be another use agreement requiring the Development to follow the construction standards of Section 504 of the Rehabilitation Act of 1973.

(h) Minimum Rehabilitation Costs. In the case of Rehabilitation Developments, a Scope and Cost Report or Capital Needs Assessment must be submitted. Any health and safety findings identified must be corrected as part of the acquisition and rehabilitation following closing, and a timeline of the repairs must be included in the Application. For deferred maintenance indicated in such report as needing to be remedied within the first three years, the Department will require an adequate reserve account to be funded at closing. Alternatively, the Department may rely on reserve amounts required by the senior lender.

(i) Underwriting Standards (§2306.358(c)). In addition to meeting the requirements of §§141 through 150 of the Code, the borrower must demonstrate to the Department that the Development is carefully and conservatively underwritten to ensure that the project is well run, well maintained, financially viable, and will minimize the risk of the Borrower's default. Developments financed by Qualified 501(c)(3) Bonds shall generally be underwritten pursuant to §11.302 of the QAP, except that for Developments that do not have any other Department funding or an ongoing Department use agreement, in recognition of differences in financing structures, the Executive Director or authorized designee may approve minor deviations where consistent with prudent industry standards or senior lender requirements, provided they do not jeopardize the financial viability of the Development, are determined by Real Estate Analysis to be necessary to maintain financial feasibility, and if such deviation is requested as part of the application process.

(j) Fees. The fees noted in paragraphs (1) - (5) of this subsection will be required as part of a Qualified 501(c)(3) Bond issuance by the Department.

(1) Pre-Application/Inducement Fee. A pre-application fee of $1,000 shall be submitted, payable to the Department and an Inducement Fee as noted on the Schedule of Fees posted on the Department's website specific to the Department's bond counsel. These fees cover the costs of pre-application review by the Department and its bond counsel. For Developments proposed to be structured as a portfolio, either or both fees may be reduced on a case-by-case basis at the discretion of the Executive Director.

(2) Application Fee. An application fee of $20 per Unit based on the total number of Units must be submitted, with an allow-

able 10% discount off the calculated Application fee. For Developments proposed to be structured as a portfolio, the bond Application fee may be reduced by the Executive Director to reflect the Department's projected costs.

(3) Closing Fees. The origination fee shall be equal to 25 basis points of the issued principal amount of the Bonds, unless otherwise modified by the Executive Director. The Applicant will also be required to pay at closing of the Bonds the first two years of the administration fee equal to 20 basis points of the issued principal amount of the Bonds, with the first year prorated based on the actual closing date, and a Bond compliance fee equal to $25 per Unit (excluding market rate Units as defined in the Regulatory Agreement). Such compliance fee shall be applied to the third year following closing.

(4) Ongoing Administration Fee. The annual administration fee is equal to 10 basis points of the outstanding bond amount at the inception of each payment period and is paid as long as the bonds are outstanding.

(5) Ongoing Bond Compliance Fee. The compliance monitoring fee is equal to $25 per Unit (excluding market rate Units as defined in the Regulatory Agreement) and is paid for the duration of the State Restrictive Period under the Regulatory Agreement, regardless of whether the Bonds have been paid off and are no longer outstanding. For Developments for which (1) the Department's Bonds are no longer outstanding and (2) new bonds or notes have been issued and delivered by the Department, the bond compliance monitoring fee may be reduced on a case-by-case basis at the discretion of Department staff.

(6) Professional Fees. The Department engages outside firms to provide professional services with respect to its multifamily bond program. These firms include bond counsel, financial advisor and disclosure counsel. Applicants are encouraged to review the Department's Schedule of Fees on its website for more details regarding these fees.

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 January 15, 2026.

TRD-202600139
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: February 4, 2026
Proposal publication date: October 24, 2025
For further information, please call: (512) 475-3959

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 3. ADVISORY COMMITTEES, COUNCILS, AND BOARDS

25 TAC §3.8

The executive commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts new §3.8, concerning Youth Camp Advisory Committee (YCAC).

Section 3.8 is adopted without changes to the proposed text as published in the November 28, 2025, issue of the *Texas Register* (50 TexReg 7676). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

New §3.8 is necessary to improve public access to DSHS advisory committee, council, and board rules by moving all advisory committee, council, and board rules into a single chapter. Section 265.29, concerning Youth Camp Committee, is repealed from 25 Texas Administrative Code (TAC) Chapter 265, concerning General Sanitation. The repeal is adopted elsewhere in this issue of the *Texas Register*.

The YCAC provides an important function advising DSHS and the executive commissioner regarding youth camp standards and rules. New Section 3.8 amends the membership composition of the YCAC to provide the agency with valuable insights to improve health and safety standards for campers.

COMMENTS

The 21-day comment period ended December 19, 2025.

During this period, DSHS received comments regarding the proposed rule from 27 commenters. DSHS received comments from Beloved and Beyond, Camp Aranzazu, Camp Liberty, Camp Summit, Camp Zephyr, Camping Association for Mutual Progress (C.A.M.P.), Forest Glen Camps and Retreats, His Hill Ranch Camp, Lake Brownwood Christian Retreat, Latham Springs Camp and Retreat Center, Morgan's Camp, Mt. Lebanon Camp, Riverbend Retreat Center, Sandy Creek Bible Camp, Scouting America - Circle Ten Council, Tejas Camp and Retreat, University of Houston, and three individual commenters. A summary of comments relating to the rule and DSHS's responses follows.

Comment: One commenter inquired if the Youth Camp Safety Multidisciplinary Team (YCSMT) and YCAC work together.

Response: No revision is made to the rule in response to this comment. The rule does not specify that the YCSMT and the YCAC work together. They perform different functions. The purpose of the YCAC as stated in §3.8(b) is to advise the executive commissioner and DSHS on the development of youth camp standards and procedures. The function of the YCSMT as stated in §265.29(c) is to develop proposed minimum standards for youth camps to present to the executive commissioner as recommendations for adoption.

Comment: One commenter inquired about representation from a Texas public university on the YCAC.

Response: No revision is made to the rule in response to this comment. The definition of youth camp in §265.11(30)(H) specifically excludes "a facility or program operated by or on the campus of an institution of higher education or a private or independent institution of higher education as those terms are defined by the Texas Education Code §61.003, that is regularly inspected by one or more local governmental entities for compliance with health and safety standards." Texas Education Code §51.976(a)(2) defines campus program for minors as a program that: "(A) is operated by or on the campus of an institution of higher education or a private or independent institution of higher education; (B) offers recreational, athletic, religious, or educational activities for at least 20 campers who: (i) are not enrolled at the institution; and (ii) attend or temporarily reside at the camp

for all or part of at least four days; and (C) is not a day camp or youth camp as defined by Texas Health and Safety Code (HSC) §141.002, or a facility or program required to be licensed by the Department of Family and Protective Services."

HSC §141.010(b) requires the advisory committee to have no more than nine total members. HSC §141.010(b) requires at least two members from the general public. Section 3.8(f) outlines the membership of the YCAC and is consistent with the statutory requirement.

Comment: One commenter suggested that the YCSMT and YCAC review and determine appropriate local emergency management versus state oversight.

Response: DSHS declines to revise the rule in response to this comment. Section 265.29(c) outlines that the YCSMT will meet regularly to develop proposed minimum standards for youth camps. The YCSMT presents the proposed minimum standards to the executive commissioner as recommendations for adoption. Additionally, §3.8(b) outlines that the YCAC advises the executive commissioner and DSHS on the development of youth camp standards and procedures.

Comment: One commenter questioned if the renewal licensing fee increases were to support the YCAC. The commenter stated they disagree with the formation of the YCAC if the licensing fee increases are to support the committee.

Response: No revision is made to the rule in response to this comment. The licensing fee increases in §265.28 are not related to the YCAC established in 25 TAC Chapter 265. The purpose of relocating the YCAC into 25 TAC Chapter 3 is to improve public access to DSHS advisory committee, council, and board rules by moving all advisory committee, council, and board rules into a single chapter. Section 265.29, concerning Youth Camp Committee, is repealed as a result of this move. The YCAC provides an important function advising DSHS and the executive commissioner regarding youth camp standards and rules. Section 3.8 does not affect fees paid to DSHS. Senate Bill 5, 89th Legislature, Second Special Session, 2025, Section 4(a) requires DSHS to adjust licensing fees established under HSC §141.0035 as necessary to recover the costs of the appropriations made. DSHS will reevaluate licensing fees periodically to ensure that fees do not exceed the amount required to administer the program.

Comment: Ten commenters suggested revising §3.8(f) to include a rental or group camp operator. Nine commenters suggested revising §3.8(f) to add a camper parent, a safety expert, and a youth mental health expert. One commenter suggested revising §3.8(f) to have a greater representation of camp professionals. One commenter suggested revising §3.8(f) to have representation from day and residential camps. One commenter suggested revising §3.8(f) to add a residential camp and special needs professional. One commenter suggested that the YCAC include youth camp representation.

Response: DSHS declines to revise the rule in response to this comment. HSC §141.010(b) requires the advisory committee to have no more than nine total members. HSC §141.010(b) requires at least two members from the general public. Section 3.8(f) outlines the membership of the YCAC and is consistent with the statutory requirement.

Comment: One commenter suggested revising §3.8(f)(1)(H) to specify that the waterfront safety expert on the YCAC must not be employed by or have any affiliation with a camp.

Response: DSHS declines to revise the rule in response to this comment. HSC §141.010(b) sets the membership composition of the YCAC and stipulates at least two of the members must be from the general public. The new proposed YCAC in §3.8(f) meets the membership composition set by statute. By stipulating more exclusive membership requirements for the YCAC as suggested by the commenter, the YCAC may have a less qualified applicant pool. Section 3.8(f)(1)(H) does not prevent a waterfront safety expert that is not employed or affiliated with a youth camp from serving on the YCAC.

Comment: One commenter inquired about the abolishment date of the YCAC in §3.8(j).

Response: Texas Government Code §2110.008(a) mandates that an advisory committee may continue in existence after being designated to be abolished only if the agency amends the rule to provide for a different abolishment date. The repealed §263.29(b)(8) set a date for the abolishment of the advisory committee, and as such, a new date in §3.8(j) was set to comply with the statute.

STATUTORY AUTHORITY

The new rule is authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, HSC §1001.035 and §141.010, which authorize the executive commissioner to establish an advisory committee and appoint committee members necessary to assist and advise DSHS and the executive commissioner in performing duties related to youth camps, and HSC §1001.075, which authorizes the executive commissioner of HHSC to adopt rules and policies for the operation and provision of health and human services by DSHS and for the administration of HSC Chapter 1001.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 13, 2026.

TRD-202600091
Cynthia Hernandez
General Counsel
Department of State Health Services
Effective date: February 2, 2026
Proposal publication date: November 28, 2025
For further information, please call: (512) 231-5727

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CHAPTER 265. GENERAL SANITATION

The executive commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts amendments to §§265.11, 265.18, 265.23, 265.24, 265.28, and 265.30; the repeal of §265.29, and Subchapter C, consisting of §§265.31 - 265.35; and new §265.29 and §§265.31 - 265.34, concerning Texas Youth Camps Safety and Health.

Sections 265.18, 265.23, and 265.24 are adopted with changes to the proposed text as published in the November 28, 2025, issue of the *Texas Register* (50 TexReg 7678). These rules will be republished. Sections 265.11 and 265.28 - 265.35 are adopted

without changes to the proposed text as published in the November 28, 2025, issue of the *Texas Register* (50 TexReg 7678). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The adoption is necessary to implement Senate Bill (SB) 1 and House Bill (HB) 1, 89th Legislature, Second Special Session, 2025, that amend Texas Health and Safety Code (HSC) Chapter 141. SB 1 and HB 1 require DSHS to update definitions, add requirements for implementation and submission of emergency plans for emergency preparedness and response, and establish minimum camper and counselor overnight ratios. The bills also add a requirement for youth camps to notify DSHS of structure modifications, submit renewal applications for certain camp updates, implement DSHS and youth camp operator website information requirements, and create a new Youth Camp Safety Multidisciplinary Team (YCSMT). The adoption also implements SB 5, 89th Legislature, Second Special Session, 2025, which requires DSHS to increase license fees for day and residential youth camps to meet the cost of administering the program.

The proposed repeal of §265.29 is necessary as all DSHS advisory committee, council, and board rules are moving into a single chapter. The proposed new Youth Camp Advisory Committee (YCAC) section is published elsewhere in this issue of the *Texas Register*.

The proposed repeal of §§265.31 - 265.35 is necessary because responsibility for Migrant Labor Housing Facilities was transferred to Texas Department of Housing and Community Affairs (TDHCA) in 2005 in accordance with House Bill 1099, 79th Legislature, Regular Session, 2005. The TDHCA rules are located in Title 10 Texas Administrative Code (TAC), Chapter 90.

COMMENTS

The 21-day comment period ended December 19, 2025.

During this period, DSHS received comments regarding the proposed rule from 188 commenters. DSHS received comments from Allaso Ranch, American Camp Association (ACA), Bandina Christian Youth Camp, Beloved and Beyond, Broadband Fabric Partners, Buffalo Trail Scout Ranch, Camp Aranzazu, Camp Copass, Camp Doublecreek, Camp El Ranchito, Camp Liberty, Camp Longhorn, Camp Peniel, Camp Summit, Camp Wilderness Ridge, Camp Zephyr, Camping Association for Mutual Progress (C.A.M.P.), Cho-Yeh Camp and Conference Center, Cross Trails Ministry, Forest Glen Camps and Retreats, Frontier Camp, Girl Scouts of Central Texas, Girl Scouts of Northeast Texas, Girl Scouts of San Jacinto, Heart of Texas Baptist Camp, His Hill Ranch Camp, John Knox Ranch, Lake Brownwood Christian Retreat, Lake Lavon Baptist Encampment, Lakeview Camp, Latham Springs Camp and Retreat Center, Lower Colorado River Authority (LCRA), Morgan's Camp, Mt. Lebanon Camp, Outdoor Texas Camps, Pine Springs Baptist Camp, Plains Baptist Camp and Retreat Center, Riverbend Retreat Center, Sandy Creek Bible Camp, Scouting America - Alamo Area Council, Scouting America - Bay Area Council, Scouting America - Capitol Area Council, Scouting America - Circle Ten Council, Scouting America - East Texas Area Council, Scouting America - Golden Spread Council, Scouting America - Longhorn Council, Scouting America - Sam Houston Area Council, Slumber Falls Camp, Southwestern Texas Synod, Sun Communities, Inc., T Bar M Camps & Retreats, Tejas Camp and Retreat, the Texas Association of Campground Owners (TACO), Texas Brigades, Texas Travel Alliance, Timberline Baptist Camp, University of Houston, Victory Camp, Villa Sport, and 82 individual commenters. A summary of comments relating to the rules and DSHS's responses follows.

Comment: One commenter suggested an opportunity for an in-person hearing to allow stakeholders to provide input and to seek clarification on specific elements of the proposed rules.

Response: DSHS did not revise the rules in response to this comment. An in-person Executive Council meeting was held at 10 a.m. on December 11, 2025. The Executive Council meeting allowed the public to pre-register to provide comments on the agenda items, which included the youth camp rule projects. Additionally, DSHS held another public hearing on October 10, 2025, where the public had the opportunity to publicly comment on the implementation of SB 1 and HB 1 prior to the publication of the proposed youth camp rules in the *Texas Register*.

Comment: One commenter suggested inclusion of stakeholders in the proposed youth camp rules.

Response: DSHS declines to revise the rules in response to this comment. DSHS has included stakeholders in the rulemaking process. DSHS held a public hearing on October 10, 2025, and gathered public comments and statements. Additionally, DSHS sent a survey to youth camp operators from October 23, 2025, to November 6, 2025. The survey gathered data on youth camps as well as requested feedback on potential issues. An Executive Council meeting was held on December 11, 2025, which allowed the public to pre-register to provide comments on the agenda items, including the youth camp rule projects. Lastly, stakeholders were able to submit formal comments on the proposed rules from November 28, 2025, through December 19, 2025.

Comment: One commenter suggested adding alternative compliance pathways for rural and nonprofit camps. One commenter suggested adding provisions to the rules to allow for exemptions for faith-based and rural camps.

Response: DSHS declines to revise the rule in response to this comment. The statute does not create separate standards for rural, faith-based, or nonprofit camps. Therefore, all youth camp operators are subject to the same requirements. DSHS rules are required to be consistent with statutory requirements.

Comment: Six commenters suggested allowing youth camps to demonstrate compliance with the new rule requirements through performance-based alternatives.

Response: DSHS declines to revise the rule in response to this comment. The statute does not allow this. DSHS rules must be consistent with statutory requirements.

Comment: One commenter suggested revising the rules to prevent the implementation of the new requirements for summer camps.

Response: DSHS declines to revise the rule in response to this comment. Under HSC §§141.002(6) and 141.0035, and 25 TAC Chapter 265, Subchapter B, all licensed youth camps must comply with the same statutory and regulatory requirements regardless of the type of camp. Neither the statute nor the rules create a separate category for compliance for different camp types. As such, all youth camp operators must comply with all requirements outlined in the statute.

Comment: Seven commenters suggested revising the rules to establish a reasonable phased implementation schedule that prioritizes immediate life safety requirements while allowing additional time for other improvements and upgrades required by the

rules. Three commenters suggested adding a phased timeline to the rules so that upgrades can be funded reasonably at youth camps. One commenter suggested that DSHS set realistic timelines for youth camps during rule implementation. One commenter disagreed with the implementation timeline of the new requirements within the rules.

Response: DSHS declines to revise the rule in response to this comment. DSHS must adopt the rules to comply with the requirements added to HSC Chapters 141 and 762 from HB 1 and SB 1, 89th Legislature, which were effective September 5, 2025.

Comment: Eight commenters suggested adding provisions to the rules for grant programs or funding assistance for safety-related infrastructure. Two commenters suggested adding provisions to the rules for grant funding for nonprofit camps, small camps, and camps with a limited budget.

Response: DSHS declines to revise the rule in response to this comment. Section 4(a) of SB 5 requires DSHS to adjust licensing fees established under HSC §141.0035 as necessary to recover the costs of the appropriations made. The increased licensing fees in §265.28 are to recover these costs and to administer the program.

Comment: One commenter suggested revising the rules to mandate that DSHS conduct scheduled reviews of youth camp rules every five years and introduce regulatory updates in stages to support clarity, consistency, and sustainable implementation.

Response: DSHS declines to revise the rule in response to this comment. DSHS is already required to review and evaluate the agency's rules for readoption every four years as outlined in Texas Government Code §2001.039. Furthermore, the YCAC outlined in §3.8 advises DSHS and the executive commissioner regarding youth camp standards and rules. Additionally, §265.29 establishes the YCSMT, which is required to meet regularly to develop proposed minimum standards for youth camps. DSHS must adopt the rules to comply with the requirements added to HSC Chapters 141 and 762 from HB 1 and SB 1, 89th Legislature, which were effective September 5, 2025.

Comment: One commenter inquired about the applicability of the new rules and amendments to university academic enrichment programs, day-only youth programs, and other university-based offerings. Specific new requirements and amendments mentioned by the commenter include emergency warning systems, counselor to camper ratios, modification notifications, fee increases, and the advisory committee.

Response: DSHS declines to revise the rule in response to this comment. The definition of youth camp in §265.11(30)(H) specifically excludes "a facility or program operated by or on the campus of an institution of higher education or a private or independent institution of higher education as those terms are defined by the Texas Education Code §61.003, that is regularly inspected by one or more local governmental entities for compliance with health and safety standards."

Texas Education Code §51.976(a)(2) defines campus program for minors as a program that: "(A) is operated by or on the campus of an institution of higher education or a private or independent institution of higher education; (B) offers recreational, athletic, religious, or educational activities for at least 20 campers who: (i) are not enrolled at the institution; and (ii) attend or temporarily reside at the camp for all or part of at least four days; and (C) is not a day camp or youth camp as defined by Section 141.002, Health and Safety Code, or a facility or program required to be licensed by the Department of Family and Protective Services."

25 TAC Chapter 265 establishes minimum requirements for youth camps. If a program does not meet the definition of a youth camp as outlined above, then requirements for youth camps outlined in the rules do not apply.

Comment: One commenter inquired about how the cost to comply with the emergency preparedness and response requirements will vary based on whether the camp is a day camp or a residential camp as outlined in Chapter 265 Public Benefit and Costs statement.

Response: No revision is made to the rule in response to this comment. The Chapter 265 Public Benefit and Costs statement evaluates that costs will vary based on the different operational capabilities of certain day and residential camps. For example, to comply with the emergency preparedness and response requirements, a day camp that does not operate at night will not be required to illuminate evacuation routes as outlined in §265.31(k)(2) whereas a residential camp will need to. Furthermore, residential camps have higher licensing fees on average than day camps.

Comment: Five commenters suggested that DSHS establish a DSHS youth camp assistance program to answer questions, review draft emergency plans, provide guidance on infrastructure, and conduct pre-application consultations. The commenters suggested this program also publish detailed guidance documents, FAQs, and templates and conduct regional workshops and webinars.

Response: DSHS declines to revise the rule in response to this comment. The rule establishes baseline regulatory requirements and does not specify the establishment of a DSHS youth camp assistance program. The existing DSHS Youth Camp Program may provide guidance, provide educational materials, answer questions, or offer other means of technical assistance as a resource outside of rulemaking to help youth camps comply with the requirements.

Comment: One commenter suggested that DSHS reduce the adverse economic effects of the new rule requirements as required by Texas Government Code.

Response: DSHS declines to revise the rule in response to this comment. DSHS determined that alternative methods to achieve the purpose of the proposed rules for small businesses, micro-businesses, or rural communities would not be consistent with ensuring the health and safety of children attending youth camps. Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas, are adopted in response to a natural disaster, and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

Comment: Three commenters suggested DSHS provide an initial implementation period where youth camps are not fined at least for one summer to make the required improvements to playgrounds required by the "Public Playground Safety Handbook," July 2025 outlined in §265.11(19).

Response: DSHS declines to revise the rule in response to this comment. DSHS does not have authority to establish a grace period where an operator would not be subject to enforcement or fines. DSHS cannot delay the implementation of enforcement of "Public Playground Safety Handbook," July 2025 as compliance

with this version of the handbook best protects the health and safety of campers at a youth camp playground.

Comment: One commenter inquired if a Letter of Map Revision (LOMR) is considered "a substantially similar process" to a Letter of Map Amendment (LOMA) or a Letter of Map Revision based on fill (LOMR-F) as presented in the definition of a floodplain in §265.11(12).

Response: No revision is made to the rule in response to this comment. For purposes of the definition of floodplain in §265.11(12), a LOMR is considered a substantially similar administrative process to a LOMA or LOMR-F.

Comment: One commenter suggested adding a definition of "qualified supervision" to §265.11 and implementing this term into §265.32 for purposes of determining camper to counselor ratios.

Response: DSHS declines to revise the rule in response to this comment. A supervisor or counselor is already defined in §265.11(24) as "a person, at least 18 years of age or older, who is responsible for the immediate supervision of campers." Furthermore, "supervision" is defined in §265.11(23). As such, a person who meets this definition as well as other requirements outlined in 25 TAC Chapter 265 qualifies as a counselor for purposes of the counselor to camper ratios outlined in §265.32. No revision to the rule is necessary.

Comment: One commenter suggested adding a definition of "modification" in §265.11.

Response: DSHS declines to revise the rule in response to this comment. The term "modification" is only used twice in §265.31 in relation to a youth camp operator notifying DSHS of any modification to a structure intended to facilitate youth camp activities or the location of a camp activity on the camp's premises.

Comment: Fifteen commenters suggested adding a definition for "transportation emergency" in §265.11.

Response: DSHS declines to revise the rule in response to this comment. The term "transportation emergency" is only used once in §265.31 in relation to a youth camp operator developing an emergency plan that establishes procedures for responding to an emergency event. The term "transportation emergency" is used in its plain, ordinary meaning, and the rule does not intend to establish a technical definition. Existing emergency planning requirements in §265.31(a)(2) provide sufficient context for camp operators to develop appropriate procedures for responding to a transportation emergency. Section 265.31(f) allows a youth camp operator to consult with an emergency management director or coordinator when developing their emergency plan.

Comment: One commenter suggested adding a definition for "epidemic" in §265.11.

Response: DSHS declines to revise the rule in response to this comment. The term "epidemic" is only used once in §265.31 in relation to a youth camp operator developing an emergency plan that establishes procedures for responding to an emergency event. The term is used in its plain, ordinary meaning. Existing emergency planning requirements in §265.31(a)(2) provide sufficient context for camp operators to develop appropriate procedures for responding to an epidemic. Section 265.31(f) also allows a youth camp operator to consult with an emergency management director or coordinator when developing their emergency plan.

Comment: One commenter suggested adding a definition for "renovation" in §265.11.

Response: DSHS declines to revise the rule in response to this comment. The term "renovation" is used only once in §265.24(a)(2)(C). Furthermore, §265.24(a)(2)(C)(i) and (ii) already outline the requirements where renovation to one or more cabins on the premises of a camp would require a youth camp operator to submit a renewal application.

Comment: One commenter suggested adding a definition of "emergency event" in §265.11. The commenter stated that the emergency events listed in §265.31(a)(2) are not a comprehensive list of all emergency events.

Response: DSHS declines to revise the rule in response to this comment. Section 265.31(a)(2)(A)-(H) provides a minimum list of eight possible emergency events that a youth camp operator must establish procedures for when developing an emergency plan.

Comment: Six commenters suggested revising the definition of broadband service in §265.11(3) to include "or best available broadband service" in areas where the minimum requirements cannot be met.

Response: DSHS declines to revise the rule in response to this comment. HSC §141.0092(a) states that broadband service has the meaning assigned by Texas Government Code §490I.0101(a), which defines broadband service as "Internet service with the capability of providing a: (1) speed of not less than 100 megabits per second for a download; (2) speed of not less than 20 megabits per second for an upload; and (3) network round-trip latency of less than or equal to 100 milliseconds based on the 95th percentile of speed measurements." DSHS rules are required to be consistent with statutory requirements.

Comment: One commenter suggested revising the definition of broadband service in §265.11(3) to specify that a distinct broadband service is a secondary connection using different physical transport technology and is provided by a different service provider.

Response: DSHS declines to revise the rule in response to this comment. HSC §141.0092(a) states that broadband service has the meaning assigned by Texas Government Code §490I.0101(a), which defines broadband service as "Internet service with the capability of providing a: (1) speed of not less than 100 megabits per second for a download; (2) speed of not less than 20 megabits per second for an upload; and (3) network round-trip latency of less than or equal to 100 milliseconds based on the 95th percentile of speed measurements." The definition of "broadband service" in §265.11(3) is consistent with the statute. Additionally, §265.37(2) already specifies that the secondary internet connection required must be from a broadband service distinct from the service described in §265.37(1). The rule language does not require this service to be from a different service provider.

Comment: One commenter suggested revising the definition for cabin in §265.11(4) to limit the meaning to "permanent structures" to prevent tents from being defined as cabins. Three commenters also inquired about the meaning of "structure" in the definition for cabins in §265.11(4) and if tents would be considered a cabin.

Response: DSHS declines to revise the rule in response to this comment. The definition of cabin in §265.11(4) is consistent with the definition of cabin in HSC §762.001(1) and HSC §141.002(1).

DSHS rules are required to be consistent with statutory requirements. A tent is generally not considered a structure and therefore would not qualify as a cabin under the existing definition.

Comment: One commenter suggested revising the definition for cabin in §265.11(4) to include that recreational vehicle parks are defined in Water Code, §13.087 and are not considered youth and day camps.

Response: DSHS declines to revise the rule in response to this comment. 25 TAC 265 rules regulate youth camp health and safety and do not regulate recreational vehicle parks. The definition of cabin in §265.11(4) is consistent with the definition of cabin in HSC §762.001(1) and HSC §141.002(1). Recreational vehicle parks and related campgrounds are regulated separately under Texas Water Code §13.087.

Comment: One commenter suggested revising the definition of a day camp in §265.11(8) by including different categories of day camps to reflect the diversity of camps that meet these criteria.

Response: DSHS declines to revise the rule in response to this comment. The definition of a "day camp" in §265.11(8) is consistent with the definition of "day camp" in HSC §141.002(2). DSHS rules are required to be consistent with statutory requirements.

Comment: One commenter suggested deleting §265.11(25)(B) from the definition of swim test. The commenter stated that two levels are sufficient for the definition (non-swimmer and swimmer). One commenter suggested revising the definition of swim test to differentiate between pools and open waters. The commenter stated the differentiation is necessary to reflect the physical and safety differences between pools and open waters and not to limit participation and inclusivity in aquatic facilities.

Response: DSHS declines to revise the rule in response to this comment. The definition of a swim test in §265.11(25) is consistent with other organizations such as Scouting America (formerly Boy Scouts of America) and the Young Men's Christian Association (YMCA). These organizations classify a child's swimming ability based on a swim test as a non-swimmer, intermediate/beginner swimmer, and a swimmer. These classifications do not differentiate between pools and open water. DSHS believes these classifications and standards are necessary to ensure the safety of campers participating in aquatic activities.

Comment: One commenter suggested revising the definition for resident camp in §265.11(22) to include that recreational vehicle parks are not affected and related campgrounds do not provide residential services.

Response: DSHS declines to revise the rule in response to this comment. 25 TAC 265 rules regulate youth camp health and safety and do not regulate recreational vehicle parks. The definition of resident camp in §265.11(22) is consistent with the definition of resident youth camp in HSC §141.002(4). Recreational vehicle parks and related campgrounds are regulated separately under Texas Water Code §13.087.

Comment: Eighty-two commenters suggested revising the definition of a supervisor or counselor in §265.11(24) by decreasing the minimum age to 16 or 17 years old to align with the American Camping Association (ACA) standards. Commenters argued this would allow junior counselors to count toward the counselor to camper ratio.

Response: DSHS declines to revise the rule in response to this comment. The definition of a supervisor or counselor in §265.11(24) was not revised in this rule. The current definition of a supervisor or counselor was adopted to be effective April 16, 2006, 31 TexReg 3049. In addition, HSC §141.009(2) allows the executive commissioner to set qualifications for supervisors.

Comment: One commenter suggested revising the definition for travel camp in §265.11(27) to include that recreational vehicle parks are not affected and related campgrounds do not provide residential services.

Response: DSHS declines to revise the rule in response to this comment. 25 TAC 265 rules regulate youth camp health and safety and do not regulate recreational vehicle parks. Recreational vehicle parks and related campgrounds are regulated separately under Texas Water Code §13.087.

Comment: One commenter suggested revising the definition of a youth camp in in §265.11(30)(D) to include minors "under supervision of camp staff."

Response: DSHS declines to revise the rule in response to this comment. The definition of a "youth camp" in §265.11(30)(D) is consistent with the definition of camp in HSC §141.002(5)(C). DSHS rules are required to be consistent with statutory requirements.

Comment: Two commenters suggested removing the requirement for youth camps facilities to comply with National Fire Protection Association 1194, Standard for Recreational Vehicle Parks and Campgrounds, 2021 Edition (NFPA 1194) outlined in §265.18(a). One commenter suggested revising §265.18(a) to allow NFPA 1194 not to apply to non-camp properties. The commenters stated the requirement is incorrect and should be revised to only require youth camps to meet local fire and safety codes. The commenters argued the NFPA 1194 was only intended to apply to recreational vehicle parks and related campgrounds and not apply to youth camps.

Response: DSHS declines to revise the rule to remove the requirement to comply with the NFPA 1194 as outlined in §265.18(a). HSC §762.003(b) requires a campground, except those owned or controlled by a governmental entity, to comply with the NFPA 1194, Standard for Recreational Vehicle Parks and Campgrounds, 2021 Edition, other than Sections 1.1.1 and 5.1.1.1.

However, DSHS agrees with revising the rule to clarify that facilities at all youth camps that meet the definition of a campground in HSC §762.001(2), except those owned or controlled by a governmental entity, must comply with the National Fire Protection Association 1194, Standard for Recreational Vehicle Parks and Campgrounds, 2021 Edition, other than Sections 1.1.1 and 5.1.1.1. HSC §762.001(2)(A) defines a campground as "a commercial property designed to provide cabins for transient overnight guest use...". The rule is also revised to clarify that all youth camps must meet local fire and safety codes.

Comment: Two commenters suggested removing the requirement for youth camp facilities to comply with National Fire Protection Association 1194, Standard for Recreational Vehicle Parks and Campgrounds, 2021 Edition (NFPA 1194) outlined in §265.18(a) because §265.31(a)(2)(B) establishes procedures for responding to an emergency event that includes fire.

Response: DSHS declines to revise the rule to remove the requirement for youth camps to comply with the NFPA 1194 as outlined in §265.18(a). The procedures for responding to an emergency event that include fire outlined in §265.31(a)(2)(B) do not preclude a campground from complying with NFPA 1194

as required in HSC §762.003(b). DSHS rules are required to be consistent with statutory requirements.

Comment: One commenter suggested revising §265.18 to clarify that DSHS will serve as the primary inspection authority for NFPA 1194 standards as they apply to youth camps. The commenter also suggested adding inspection procedures, compliance thresholds, and a process for requesting clarification.

Response: DSHS declines to revise the rule in response to this comment. HSC §141.006 outlines that DSHS is the principal authority on matters relating to health and safety conditions at youth camps. Additionally, §265.25 already conveys the authority of DSHS to inspect a youth camp. The adoption of NFPA 1194 does not alter DSHS's statutory inspection authority or create a new inspection framework.

Comment: One commenter suggested revising §265.18(a) to include "A governmental entity may adopt a policy, rule, ordinance or order to regulate environmental health and sanitation, electrical distribution system safety, liquefied petroleum gas storage and dispensing safety, or fire protection only if the policy, rule, ordinance or order does not impose standards more stringent than the standards describe under Subsection b." The commenter argued that this language is necessary to include the full text from SB 1.

Response: DSHS declines to revise the rule in response to this comment. §265.18(d) already includes the suggested language from the commenter.

Comment: Six commenters suggested revising §265.18(a) to detail which sections of NFPA 1194 apply to youth camps.

Response: DSHS declines to revise the rule in response to this comment. HSC §762.003(b) requires a campground, except those owned or controlled by a governmental entity, to comply with the NFPA 1194, other than Sections 1.1.1 and 5.1.1.1. DSHS rules are required to be consistent with statutory requirements, and §265.18(a) appropriately reflects which sections of NFPA 1194 apply to youth camps. DSHS does not have discretion to selectively enforce portions of NFPA 1194.

Comment: Thirteen commenters suggested that DSHS provide guidance on the appropriate implementation of various NFPA 1194 standards.

Response: DSHS declines to revise the rule in response to this comment. HSC §762.003(b) requires a campground, except those owned or controlled by a governmental entity, to comply with the NFPA 1194, other than Sections 1.1.1 and 5.1.1.1. 25 TAC Chapter 265 establishes minimum requirements for the health and safety of youth camps. DSHS may provide guidance to youth camps on compliance with the rules outside of the rulemaking process. Questions about the scope and technical meaning of certain sections of NFPA 1194 can be directed to the NFPA.

Comment: Six commenters suggested extending the license application submission window to May 31 for the first year of rule implementation so that DSHS can have adequate time to review and approve emergency plans before camp season.

Response: DSHS declines to revise the rule in response to this comment. Extending the submission deadline to May 31 would not provide DSHS with adequate time to complete the required regulatory and license application review functions before youth camps begin operations.

Comment: Thirty commenters inquired about when a youth camp license is required.

Response: No revision is made to the rule in response to this comment. Section 265.23(a) states that a person must possess a valid youth camp license prior to operating a youth camp. A youth camp is defined in §265.11(30), and a camp must meet all eight requirements in §265.11(30)(A)-(H) to be licensed as youth camp.

Comment: Fourteen commenters inquired about whether multiple youth camp licenses are needed for a single property with multiple specialized activities.

Response: No revision is made to the rule in response to this comment. A camp that meets the definition of a youth camp in §265.11(30) only needs one license per camp location. Multiple licenses are not issued based on the number of specialized activities that occur at one youth camp location.

Comment: One commenter inquired about who is responsible for licensing if a third party uses their property for their youth camp program and if a license could be shared.

Response: No revision is made to the rule in response to this comment. Section 265.11(32) defines a youth camp operator as any person who owns, operates, controls, or supervises a youth camp, whether or not for profit. Section 265.23(a) requires a person to possess a valid youth camp license prior to operating a youth camp. Furthermore, §265.23(a)(1)(A) requires a youth camp license application to include an activity schedule showing dates and detailed information about the activities that are conducted both at the camp and at other locations. As such, a person that supervises a youth camp must submit and possess a valid youth camp license before undertaking such activities. Location information regarding camp activities would be specified in the license application.

Comment: A commenter inquired when pre-licensing inspections will be required.

Response: No revision is made to the rule in response to this comment. Section 265.23(a)(3)(B)(ii) states that a facility qualifies for a new youth camp license if the facility demonstrates compliance or a plan for compliance with the rules before operation by passing a pre-licensing inspection conducted by DSHS. Section 265.24(j) states that a youth camp applying for a license renewal may be subject to a pre-licensing inspection. DSHS may issue a deficiency notice that includes the need for a pre-licensing inspection if an incomplete renewal application is submitted.

Comment: Eighteen commenters suggested revising §265.23(j)(4) and §265.24(h) to allow a license holder whose license has been denied to reapply for a new license within two years from the date of final denial.

Response: DSHS agrees with revising the rule in response to this comment. DSHS revises §265.23(j)(4) and §265.24(h) to limit the two-year reapplication waiting period only to a license holder whose license has been revoked.

Comment: One commenter suggested reincorporating the specific timeframes for DSHS to issue licenses, deficiency notices, or inspection deficiency letters in §265.23 and §265.24.

Response: DSHS agrees with revising the rule in response to this comment. DSHS revises §265.23(b)(2)(A) and (B) to incorporate a 45-day timeframe to issue a new license or letter of application deficiency, respectively. Additionally, DSHS revises §265.24(d)(2)(A) and (B) to incorporate a 30-day timeframe to is-

sue a renewal license or letter of renewal application deficiency, respectively.

Comment: One commenter inquired about whether license renewal is required for renovation to an old cabin as outlined in §265.24(a)(2)(C).

Response: Section 265.24(a)(2)(C) should read as: "completes any renovation to one or more existing cabins located on the premises of the camp." DSHS revises the rule to correctly specify "existing" cabins rather than "new" cabins.

Comment: Five commenters suggested removing the requirement for a license holder to submit a renewal application after remodeling a cabin as outlined in §265.24(a)(2)(C). One commenter suggested removing the requirement for a license holder to submit a renewal application after constructing, modifying, or decommissioning a cabin.

Response: DSHS declines to revise the rule in response to this comment. HSC §141.005(a)(2) requires a license holder to submit a renewal application after altering the boundaries of a youth camp, completing construction of one or more cabins on the premises, or renovating any existing cabins that increases or decreases the number of beds in a cabin or alters the method of ingress or egress to a cabin. DSHS rules are required to be consistent with statutory requirements.

Comment: One commenter inquired what type of renovation would require the submission of a renewal application and when the application should be submitted.

Response: No revision is made to the rule in response to this comment. Section 265.24(a)(2)(c) requires a youth camp operator to submit a renewal application when the operator completes any renovation to one or more existing cabins located on the premises of the camp that increases or decreases the number of beds in an affected cabin or alters the method of ingress or egress to an affected cabin. Section 265.24(a)(2) specifies this submission should occur no later than the 30th day after the operator completes any renovations described in §265.24(a)(2)(c).

Comment: Five commenters inquired if minor updates to an emergency plan are required to be submitted as part of a renewal application.

Response: No revision is made to the rule in response to this comment. Section 265.24(c)(1)(C) requires the submission of an emergency plan, including any updated emergency plan, as part of a complete renewal application.

Comment: Three commenters inquired if §265.25(a)(3), which allows a camp to correct violations while the investigation and inspection is occurring, is removed.

Response: No revision is made to the rule in response to this comment. Section 265.25(a)(3) has not been revised or repealed by this rule.

Comment: Fifty-two commenters suggested modifying the licensing fees in §265.28 based on a youth camp's nonprofit status. Five commenters suggested assessing licensing fees in §265.28 based on the number of days campers are present. Four commenters suggested assessing licensing fees in §265.28 based on a camp's size and operating type. One commenter suggested tiering the licensing fees based on a youth camp's budget, like the Christian Camp and Conference Association (CCCA). One commenter suggested assessing licensing fees in §265.28 according to a graduated tiered structure based on annual operating revenue, average weekly camper capacity, and operational scale. One commenter suggested assessing licensing fees by the maximum number of campers present at one time rather than total number of campers per year.

Response: DSHS declines to revise the rule in response to this comment. HSC §141.0035(a) authorizes DSHS to adjust licensing fees as necessary to administer and enforce the statute. DSHS determined that a youth camp with a higher number of campers per year would take more time and resources for compliance inspections. DSHS sent a survey to youth camp operators that began on October 23, 2025, and ended November 6, 2025. The survey helped DSHS gain more information about youth camps across Texas. Using data gained from the survey and comments from the public hearing on October 10, 2025, DSHS adjusted the licensing fee structure to raise fees for youth camps with a higher number of campers per year and lower fees for youth camps with a lower number of campers per year. As such, to recover costs required to administer the program, youth camps are required to pay a licensing fee based on the number of campers attending the camp per year. DSHS determined other factors do not have the same impact on compliance inspections as the number of campers attending a youth camp per year. DSHS will reevaluate licensing fees periodically to ensure that fees do not exceed the amount required to administer the program.

Comment: Sixteen commenters disagreed with the licensing fee increases in §265.28. Twelve commenters suggested that the licensing fees in §265.28 be increased incrementally over time. Six commenters suggested that DSHS should internally cover more of the costs to administer the program to reduce licensing fees.

Response: DSHS declines to revise the rule in response to this comment. HSC §141.0035(a) authorizes DSHS to adjust licensing fees as necessary to administer and enforce the statute. Additionally, §4(a) of SB 5 requires DSHS to adjust licensing fees established under HSC §141.0035 as necessary to recover the costs of the appropriations made. DSHS will reevaluate licensing fees periodically to ensure that fees do not exceed the amount required to administer the program. Licensing fee changes for youth camps were last made in 2006.

Comment: Nine commenters suggested offering a reduction in licensing fees for youth camps that are accredited by the American Camp Association (ACA).

Response: DSHS declines to revise the rule in response to this comment. DSHS does not regulate ACA accreditation requirements. As such, DSHS cannot ensure that ACA accreditation requirements will remain unchanged in the future. In addition, DSHS is required to adjust licensing fees to meet the cost of administering the program. Thus, DSHS cannot consider ACA accreditation to discount licensing fees for youth camps.

Comment: A commenter inquired where residential camps licensing fee information is located.

Response: Initial and renewal fees for residential youth camps are found in §265.28(3) and §265.28(4), respectively. No revision is made to the rule in response to this comment.

Comment: A commenter suggested revising §265.28 to specify that the fees are based on the estimated number of campers at the time of application.

Response: DSHS declines to revise the rule in response to this comment. Sections 265.23(a)(1)(c) and 265.24(c)(1)(D) specify that a complete license application includes an estimated num-

ber of campers attending the camp during the upcoming calendar year.

Comment: Five commenters suggested waiving late fees in §265.28 if the delay is due to DSHS emergency plan review and revision processes or if the camp can document good faith efforts to comply with new safety requirements.

Response: DSHS declines to revise the rule in response to this comment. The late fees in §265.28(e)(1) and (2) are only assessed for applications received after March 31. DSHS will not assess a late fee if a complete application is submitted before this time.

Comment: Twenty-four commenters suggested adding youth camp representation to the Youth Camp Safety Multidisciplinary Team (YCSMT) in §265.29.

Response: DSHS declines to revise the rule in response to this comment. The composition and membership categories of the YCSMT are established in HSC §141.0081. DSHS rules are required to be consistent with statutory requirements.

Comment: A commenter suggested revising §265.31 to specify clear review timelines for emergency plan submissions, including the expected turnaround time for approvals and corrections. The commenter also suggested that camps should be granted provisional approval when submissions are made on time, but department review is still in progress.

Response: DSHS declines to revise the rule in response to this comment. Emergency plans, as described in §265.31, are now required to be submitted as part of a new or renewal license application as outlined in §265.23 and §265.24, respectively. A new or renewal license cannot be issued unless the facility is in compliance with all the provisions of the rules. DSHS will review and process emergency plans as part of the application review process.

Comment: One commenter suggested revising the rule to allow emergency plans to be approved by local emergency management instead of DSHS.

Response: DSHS declines to revise the rule in response to this comment. HSC §141.0091(d) requires a youth camp operator to annually submit the initial or updated plan to the department for approval. DSHS rules are required to be consistent with statutory requirements.

Comment: One commenter suggested revising §265.31(a) to specifically outline what is required in an emergency plan. Seven commenters suggested that DSHS provide detailed templates, examples, and guidance documents for emergency plans. These commenters also suggested DSHS designate staff for technical assistance with emergency plans.

Response: DSHS declines to revise the rule in response to this comment. 25 TAC Chapter 265 establishes baseline regulatory requirements and does not specify the format or structure for emergency plans. Section 265.31(a)(2) already provides that a youth camp operator must establish procedures in their emergency plan. The existing DSHS Youth Camp Program may provide general guidance or educational materials as a resource outside of rulemaking to help comply with the requirements. Lastly, §265.31(f) allows a youth camp operator to consult with an emergency management director or coordinator when developing their emergency plan.

Comment: One commenter suggested adding the phrase "or contains" after "borders" in §265.31(a)(2)(D). The commenter stated adding "or contains" is necessary because a youth camp may have a body of water that runs through its property without being a "border" to the property.

Response: DSHS declines to revise the rule in response to this comment. HSC §141.0091(b)(2)(D) requires a youth camp operator to establish procedures for responding to an emergency event such as an aquatic emergency if the camp borders a watercourse, lake, pond, or any other body of water. Section 265.31(a)(2)(D) reflects this requirement. DSHS rules are required to be consistent with statutory requirements. Furthermore, §265.29 outlines the YCSMT. Additional minimum standards not presented in the rules may be developed and proposed by the YCSMT for adoption by the executive commissioner if necessary.

Comment: One commenter inquired about evacuation standards and procedures in §265.31. One commenter inquired if youth camps need a specified offsite evacuation gathering site.

Response: 25 TAC Chapter 265 establishes minimum requirements for the health and safety of youth camps. HSC §141.0091(b)(1) requires a youth camp operator to develop an emergency plan that specifies zones for campers and camp staff to gather in an emergency event that requires evacuation from any location within the premises of the camp. Additionally, §265.31(a)(2) outlines specific procedures a youth camp operator must develop an emergency plan for. The rules do not specify evacuation standards and procedures beyond what is outlined as these may vary by camp. Section 265.31(f) states that a youth camp operator may consult with an emergency management director or coordinator to develop the youth camp's emergency plan. No revision is made to the rule in response to this comment.

Comment: One commenter suggested adding minimum procedural requirements for a youth camp to have in their emergency plan when responding to an aquatic emergency in §265.31(a)(2)(D).

Response: DSHS declines to revise the rule in response to this comment. HSC §141.0091(b)(2)(D) requires a youth camp operator to establish procedures for responding to an emergency event such as an aquatic emergency if the camp borders a watercourse, lake, pond, or any other body of water. Section 265.31(a)(2)(D) reflects this requirement. Additionally, §265.31(f) states that a youth camp operator may consult with an emergency management director or coordinator to develop the youth camp's emergency plan.

Comment: Fourteen commenters suggested revising §265.31(b)(1) to clarify that evacuation plans should identify on-premises or off-premises evacuation procedures as determined by the topographical features and location of the floodplain.

Response: DSHS declines to revise the rule in response to this comment. HSC §762.002(a)(2)(A) requires a campground operator to develop an emergency evacuation plan for evacuating on issuance of a flash flood or flood warning campground occupants who are at a campground area within the floodplain. HSC §762.002(a)(2)(A) does not distinguish between on or off premises evacuation. Section 265.31(b)(1) is consistent with the statutory requirement and appropriately allows the evacuation plan to be based on site-specific conditions including topographical features and the location of the floodplain. As such, no change to §265.31(b)(1) is necessary.

Comment: One commenter inquired if an evacuation plan is required for camps with portions of its property within a floodplain but without infrastructure within the floodplain areas.

Response: HSC §762.002(a)(2)(A) requires a campground operator to develop an emergency evacuation plan for evacuating on issuance of a flash flood or flood warning campground occupants who are at a campground area within the floodplain. As such, if campers are ever expected to be at a campground area within a floodplain, this statutory requirement would apply. Additionally, HSC §141.0091(b)(1) requires a youth camp operator to develop an emergency plan that specifies zones for campers and camp staff to gather in an emergency event that requires evacuation from any location within the premises of the camp. No revision is made to the rule in response to this comment.

Comment: One commenter inquired if the flash flood evacuation requirements in §265.31(b)(1) also apply to flash flood or flood warnings issued by the county.

Response: Section 265.31(b)(1) requires a youth camp operator to develop an emergency evacuation plan to evacuate campers who are at a camp within a floodplain on issuance of a flash flood or flood warning. Section 265.31(b)(1) does not limit the development of the plan to specific weather or emergency organizations. Furthermore, §265.31(h)(3) requires a youth camp operator to monitor safety alerts issued by the National Weather Service (NWS) or a similar professional weather service and by local river authorities, if applicable to the camp, or through other local emergency notification systems. No revision is made to the rule in response to this comment.

Comment: One commenter suggested revising §265.31(b)(1) to allow the emergency evacuation plan to shelter campers in place upon issuance of a flash flood or flash flood warning if floodwater remains more than five feet below the base flood elevation. The commenter suggested requiring evacuation only once water levels reach the flood pool elevation. The commenter argued that evacuating large groups of minors during a flash flood can place them at higher risks and that local emergency management officials should determine if the appropriate response is to evacuate or shelter in place.

Response: DSHS declines to revise the rule in response to this comment. HSC §762.002(a)(2)(A) and §762.002(b)(1) respectively require a campground operator to develop and implement an emergency evacuation plan for evacuating campground occupants who are at a campground area within the floodplain on issuance of a flash flood or flood warning. DSHS rules are required to be consistent with statutory requirements. Section 265.31(f) allows a youth camp operator to consult with an emergency management director or coordinator for the municipality or county when developing an emergency plan.

Comment: Ten commenters suggested revising §265.31(b)(1) to clarify that evacuation plans for camps on a dam-controlled lake must be in accordance with the local emergency management coordinator and dam operator.

Response: DSHS declines to revise the rule in response to this comment. Section 265.31(b)(2) already requires the youth camp operator to develop an emergency evacuation plan for evacuating campers on issuance of an evacuation order by the emergency management coordinator for the county or municipality. Additionally, §265.31(f) allows a youth camp operator to consult with an emergency management director or coordinator when developing their emergency plan.

Comment: One commenter suggested inserting "floodway" after "floodplain" in §265.31(b)(1) because the statute regulates activities in floodplains and floodways.

Response: DSHS declines to revise the rule in response to this comment. HSC §762.002(a)(2)(A) requires a campground operator to develop an emergency evacuation plan for evacuating campground occupants on issuance of a flash flood or flood warning who are at a campground area within the floodplain. Section 265.31(b)(1) reflects this requirement. DSHS rules are required to be consistent with statutory requirements.

Comment: One commenter suggested inserting "flash flood or flood" after "wildfire" in §265.31(b)(2) because flash floods and floods are two of the emergency events addressed by the statute.

Response: DSHS declines to revise the rule in response to this comment. Section 265.31(b)(1) already encompasses evacuating campers who are at a camp within a floodplain on issuance of a flash flood or flood warning.

Comment: Five commenters suggested revising §265.31(c)(2) to allow campers and camp occupants to shelter in place after the issuance of a tornado warning for an area of a camp. Two commenters suggested that evacuation plans should allow sheltering in place in certain circumstances.

Response: DSHS declines to revise the rule in response to this comment. Section 265.31(c)(2) does not mandate an evacuation of the camp after issuance of a tornado warning for an area of the camp by the NWS. Instead, §265.31(c)(2) requires the youth camp operator to implement the emergency evacuation plan developed under §265.31(b)(3). Section 265.31(b)(3) already requires a youth camp operator to develop an emergency evacuation plan for sheltering campers in place on issuance of a tornado warning or an order to shelter in place issued by the emergency management director or coordinator for the county or, if applicable, the municipality in which the camp is located.

Comment: One commenter inquired about who the emergency management director is and who to submit their emergency plan to if their property is in two counties.

Response: Texas Government Code §418.1015 states an emergency management director is the presiding officer of the governing body of an incorporated city or a county or the chief administrative officer of a joint board is designated as the emergency management director for the officer's political subdivision. If a youth camp's property is located in two counties, the emergency plan submission requirements outlined in §265.31 would apply to both emergency management directors or coordinators. No revision is made to the rule in response to this comment.

Comment: Seven commenters suggested revising §265.31(d)-(f) to provide an established protocol to follow when an emergency management director or coordinator is unresponsive after receiving the required emergency plans.

Response: DSHS declines to revise the rule in response to this comment. Section 265.31 does not outline specific requirements for an emergency management director or coordinator to respond to a youth camp operator when submitting an emergency plan. Instead, §265.31(d) requires a youth camp operator to send a copy of an emergency evacuation plan to the emergency management director or coordinator for the municipality or county. Section 265.31(e) requires a youth camp operator to send a copy of the approved or revised and approved emergency evacuation plan to the emergency management director

or coordinator for the municipality or county. Lastly, §265.31(f) allows a youth camp operator to consult with an emergency management director or coordinator.

Comment: Sixteen commenters suggested revising §265.31(g) to allow youth camp operators to redact portions of an emergency plan that could endanger camper safety.

Response: DSHS declines to revise the rule in response to this comment. HSC §141.0091(j)(1)(A) and (B) require a youth camp operator to provide the most recent version of a youth camp's emergency plan to the parent or legal guardian of a camper participating in a camp session or a prospective camper who is registered to participate in a future camp session. Redacting information from the emergency plan would not satisfy the requirements of §141.0091(j)(1)(A) and (B). DSHS rules are required to be consistent with statutory requirements. Any emergency plan submitted to, received by, or accessed by DSHS, the Texas Division of Emergency Management, an emergency management director or coordinator, or any other governmental entity is confidential and not subject to disclosure as outlined in HSC §141.0091(o).

Comment: One commenter suggested revising §265.31(g) to allow the youth camp operator to provide an emergency plan only upon request from a registered camper.

Response: DSHS declines to revise the rule in response to this comment. HSC §141.0091(j)(1)(A) and (B) require a youth camp operator to provide the most recent version of a youth camp's emergency plan to the parent or legal guardian of a camper participating in a camp session or a prospective camper who is registered to participate in a future camp session. DSHS rules are required to be consistent with statutory requirements.

Comment: One commenter suggested inserting "or floodway" after "floodplain" in §265.31(g)(2) because the statute regulates activities in floodplains and floodways.

Response: DSHS declines to revise the rule in response to this comment. HSC §141.0091(j)(2) requires a youth camp operator to notify the parent or legal guardian of a camper or prospective camper if any area of the camp is located within a floodplain. Section 265.31(g)(2) reflects this requirement. DSHS rules are required to be consistent with statutory requirements.

Comment: Seven commenters suggested DSHS provide a standardized notification and acknowledgement form to notify parents that an area of a youth camp is located within a floodplain.

Response: DSHS declines to revise the rule in response to this comment. Section 265.31(g)(2) requires a youth camp operator to notify the parent or legal guardian of a camper if any area of the camp is located within a floodplain. Section 265.31(g)(3) requires a youth camp operator to ensure the parent or legal guardian signs and submits to the operator a statement acknowledging receipt of the notice. 25 TAC Chapter 265 establishes baseline regulatory requirements and does not specify a required format of the notification form. The existing DSHS Youth Camp Program may provide general guidance as a resource outside of rulemaking to help comply with the rule requirements.

Comment: One commenter inquired how parents who are notified that an area of a camp is in a floodplain would acknowledge receipt of the notice and questioned what would happen if the parent does not acknowledge receipt of the notice.

Response: A parent or legal guardian would acknowledge receipt of a notice that an area of a camp is in a floodplain by signing the notice and submitting it back to the youth camp operator as outlined in §265.31(g)(3). If a parent or legal guardian does not sign and submit the notice to the youth camp operator and the youth camp operator allows a camper to participate in camp activities, then the youth camp operator is in violation of §265.31(g)(3). No revision is made to the rule in response to this comment.

Comment: One commenter suggested revising §265.31(g)(2)-(3) to only require disclosure and acknowledgement if a youth camp has cabins in the floodplain.

Response: DSHS declines to revise the rule in response to this comment. Section 265.31(g)(2) already only requires a youth camp operator to notify the parent or legal guardian of a camper if any area of the camp is located within a floodplain. The same applies to the acknowledgement of receipt of the notice in §265.31(g)(3).

Comment: One commenter inquired about what qualifies as a weather radio in §265.31(h)(1).

Response: Section 265.31(h)(1) outlines that a youth camp operator must maintain an operable radio that provides real-time weather alerts issued by the NWS or a similar professional weather service at their camp. No revision is made to the rule in response to this comment.

Comment: One commenter suggested revising §265.31(h)(1) to require three operable radios to ensure adequate redundancy in the warning system.

Response: DSHS declines to revise the rule in response to this comment. HSC §141.0091(c)(1) requires a youth camp operator to maintain an operable radio capable of providing real-time weather alerts issued by the NWS or a similar professional weather service at the camp. Section 265.31(h)(1) is consistent with the statutory requirement. 25 TAC Chapter 265 outlines minimum requirements for Texas youth camp health and safety and does not prevent a youth camp operator from maintaining additional operable radios. Furthermore, §265.29 outlines the YCSMT. Additional minimum standards not presented in the rules may be developed and proposed by the YCSMT for adoption by the executive commissioner if necessary.

Comment: Three commenters inquired about the minimum standards for an emergency warning system outlined in §265.31(h)(2).

Response: Section 265.31(h)(2) requires a youth camp operator to install and maintain at the camp an emergency warning system that is capable of alerting all campers and camp occupants of an emergency and includes a public address system operable without reliance on an internet connection. Section 265.31(h)(2) does not establish other standards for the emergency warning system. DSHS will evaluate compliance with this requirement by the standards outlined in the rule. No revision is made to the rule in response to this comment.

Comment: Three commenters suggested revising §265.31(h)(2) to allow for the use of alternative tools for youth camps held at non-camp properties, such as parks.

Response: DSHS declines to revise the rule in response to this comment. Under HSC §141.002(6) and §141.0035, and 25 TAC Chapter 265, Subchapter B, all licensed youth camps must comply with the same statutory and regulatory requirements regard-

less of whether they use owned or non-owned locations. Neither the statute nor the rules create a separate category for camps held at non-camp facilities. As such, all youth camp operators must comply with all requirements outlined in the statute. HSC §141.0091(c)(2)(A) requires a youth camp operator to install and maintain an emergency warning system that is capable of alerting all campers and camp occupants of an emergency. HSC §141.0091(c)(2)(B) requires that the youth camp operator install and maintain an emergency warning system that includes a public address system operable without reliance on an internet connection. DSHS rules are required to be consistent with statutory requirements. HSC §141.0091(n) prohibits DSHS from granting a waiver from the requirements specified in §141.0091.

Comment: Seven commenters suggested revising §265.31(h)(2) to allow for alternative compliance options based on camp operational models.

Response: DSHS declines to revise the rule in response to this comment. HSC §141.0091(c)(2)(A) requires a youth camp operator to install and maintain an emergency warning system that is capable of alerting all campers and camp occupants of an emergency. HSC §141.0091(c)(2)(B) requires that the youth camp operator install and maintain an emergency warning system that includes a public address system operable without reliance on an internet connection. DSHS rules are required to be consistent with statutory requirements. HSC §141.0091(n) prohibits DSHS from granting a waiver from the requirements specified in § 141.0091.

Comment: One commenter suggested inserting the phrase "that is powered by an on-site electrical source such as a generator" after "warning system" in §265.31(h)(2) to ensure the warning system may operate even if third party electrical service to the campground is interrupted.

Response: DSHS declines to revise the rule in response to this comment. HSC §141.0091(c)(2) requires a youth camp operator to install and maintain at the camp an emergency warning system. Section 265.31(h)(2) is consistent with this requirement. 25 TAC Chapter 265 outlines minimum requirements for Texas youth camp health and safety and does not prevent a youth camp operator from using an on-site electrical source such as a generator to power their emergency warning system. Furthermore, §265.29 outlines the YCSMT. Additional minimum standards not presented in the rules may be developed and proposed by the YCSMT for adoption by the executive commissioner if necessary.

Comment: One commenter suggested adding a requirement for youth camp operators to have wireless radio devices that can receive NWS weather alerts in every cabin to §265.31(h)(2). The commenter stated that this addition is necessary to specify what should be included as part of an emergency communication system.

Response: DSHS declines to revise the rule in response to this comment. HSC §141.0091(c)(2)(A) and (B) require a youth camp operator to install and maintain at the camp an emergency warning system that is capable of alerting all campers and camp occupants of an emergency and includes a public address system operable without reliance on an internet connection. Section 265.31(h)(2)(A) and (B) are consistent with the statutory requirements, and §265.31(h)(3)(A) already requires a youth camp operator to monitor safety alerts issued by the NWS. 25 TAC Chapter 265 outlines minimum requirements for Texas youth camp health and safety and does not prevent a youth camp operator from using wireless radio devices that can receive NWS alerts in every cabin. Furthermore, §265.29 outlines the YCSMT. Additional minimum standards not presented in the rules may be developed and proposed by the YCSMT for adoption by the executive commissioner if necessary.

Comment: One commenter suggested adding a requirement in §265.31(h)(2) for youth camp operators to install a continuous water level measuring gauge approved by DSHS that will activate an on-site alarm when the water in a river, stream, or other water body running through or bordering a youth camp crests its banks. The commenter stated that this addition is necessary to specify what should be included as part of an emergency communication system.

Response: DSHS declines to revise the rule in response to this comment. HSC §141.0091(c)(2)(A) and (B) require a youth camp operator to install and maintain at the camp an emergency warning system that is capable of alerting all campers and camp occupants of an emergency and includes a public address system operable without reliance on an internet connection. Section 265.31(h)(2)(A) and (B) are consistent with the statutory requirements, and §265.31(h)(3)(B) already requires a youth camp operator to monitor safety alerts issued by local river authorities or through other local emergency notification systems. 25 TAC Chapter 265 outlines minimum requirements for Texas youth camp health and safety and does not prevent a youth camp operator from installing a continuous water level measuring gauge that will activate an on-site alarm when the water in a river, stream, or other water body of water crests its banks. Furthermore, §265.29 outlines the YCSMT. Additional minimum standards not presented in the rules may be developed and proposed by the YCSMT for adoption by the executive commissioner if necessary.

Comment: One commenter suggested adding a requirement in §265.31(h)(2) for youth camp operators to install a public address system with speakers in every cabin. The commenter stated that this addition is necessary to specify what should be included as part of an emergency communication system.

Response: DSHS declines to revise the rule in response to this comment. HSC §141.0091(c)(2)(A) and (B) require a youth camp operator to install and maintain at the camp an emergency warning system that is capable of alerting all campers and camp occupants of an emergency and includes a public address system operable without reliance on an internet connection. Section 265.31(h)(2)(A) and (B) are consistent with the statutory requirements. 25 TAC Chapter 265 outlines minimum requirements for Texas youth camp health and safety and does not prevent a youth camp operator from installing speakers in every cabin as part of their public address system. Furthermore, §265.29 outlines the YCSMT. Additional minimum standards not presented in the rules may be developed and proposed by the YCSMT for adoption by the executive commissioner if necessary.

Comment: One commenter suggested adding a requirement in §265.31(h)(2) for youth camp operators to install a backup satellite internet connection. The commenter stated that this addition is necessary to specify what should be included as part of an emergency communication system.

Response: DSHS declines to revise the rule in response to this comment. Section 265.37(2) already requires a youth camp operator to have a secondary internet connection through a broad-

band service distinct from a broadband service that connects to the internet using end-to-end fiber optic facilities.

Comment: One commenter inquired if the emergency warning system must be one complete system.

Response: No revision is made to the rule in response to this comment. HSC §141.0091(c)(2) requires a youth camp operator to install and maintain an emergency warning system that is capable of alerting all campers and camp occupants of an emergency and includes a public address system operable without reliance on an internet connection. The emergency warning system must be capable of meeting both requirements outlined in the statute.

Comment: Three commenters disagreed with the emergency warning system requirements in §265.31(h)(2). One commenter questioned why §265.31(h)(2)(A) and (B) are both needed as they believe that one or the other would be sufficient.

Response: DSHS declines to revise the rule in response to this comment. HSC §141.0091(c)(2)(A) requires a youth camp operator to install and maintain an emergency warning system that is capable of alerting all campers and camp occupants of an emergency. HSC §141.0091(c)(2)(B) requires that the youth camp operator install and maintain an emergency warning system that includes a public address system operable without reliance on an internet connection. DSHS rules are required to be consistent with statutory requirements.

Comment: One commenter suggested revising §265.31(h)(2) to allow for the emergency system to be partially reliant on internet.

Response: DSHS declines to revise the rule in response to this comment. HSC §141.0091(c)(2) requires a youth camp operator to install and maintain an emergency warning system that is capable of alerting all campers and camp occupants of an emergency and includes a public address system operable without reliance on an internet connection. The emergency warning system must be capable of meeting both requirements outlined in the statute.

Comment: One commenter suggested revising §265.31(h)(2)(B) to also include an integrated mass notification system such as Internet Protocol (IP)-based systems that possess local network survivability or offline triggering capabilities.

Response: DSHS declines to revise the rule in response to this comment. HSC §141.0091(c)(2) requires a youth camp operator to install and maintain an emergency warning system that is capable of alerting all campers and camp occupants of an emergency and includes a public address system operable without reliance on an internet connection. Section 265.31(h)(2)(B) is consistent with the statutory requirement.

Comment: One commenter suggested revising §265.31(h)(3) to state "continuously monitor safety alerts, anytime a camper is located at the camp, issued by:" The commenter stated the revision is necessary to clarify that a youth camp operator must monitor alerts on a 24-hour basis if campers are staying overnight.

Response: DSHS declines to revise the rule in response to this comment. HSC §141.0091(c)(3) requires a youth camp operator to "monitor safety alerts issued." The language used in §265.31(h)(3) is consistent with the statutory requirement. Additionally, this requirement presupposes that a youth camp operator would be monitoring safety alerts as outlined in the rule anytime a camper is located at the camp.

Comment: A commenter suggested revising §265.31(h)(3)(A) to also allow a youth camp operator to monitor on-site atmospheric and water-level sensing technology that provides real-time data to camp administrators.

Response: DSHS declines to revise the rule in response to this comment. HSC §141.0091(c)(3)(A) requires a youth camp operator to monitor safety alerts issued by the NWS or a similar professional weather service. The statute does not allow a youth camp operator to monitor on-site atmospheric and water-level sensing technology in place of professional weather service safety alerts. DSHS rules are required to be consistent with statutory requirements.

Comment: One commenter suggested adding a new requirement for the youth camp operator to monitor United States Geological Survey (USGS) and River Authority stream flow gauge readings for the duration of a flash flood or flood warning under §265.31(h). The commenter stated this addition is consistent with the statutory requirement to monitor stream flow reports and warnings.

Response: DSHS declines to revise the rule in response to this comment. Section 265.31(h)(3)(B) already requires a youth camp operator to monitor safety alerts issued by local river authorities, if applicable to the camp, or through other local emergency notification systems. This is consistent with the requirement in HSC §141.0091(c)(3)(B). 25 TAC Chapter 265 outlines minimum requirements for Texas youth camp health and safety and does not prevent a youth camp from also monitoring USGS or River Authority stream flow gauge readings during a flash flood or flood warning. Furthermore, §265.29 outlines the YCSMT. Additional minimum standards not presented in the rules may be developed and proposed by the YCSMT for adoption by the executive commissioner if necessary.

Comment: One commenter suggested revising §265.31(h)(4) to state "certify actions taken by the operator to ensure compliance with this subsection." The commenter argued that the current rule does not require an operator to identify the actions it took to comply with the rule.

Response: DSHS declines to revise the rule in response to this comment. HSC §141.0091(c)(4) requires a youth camp operator to "certify the operator's compliance with this subsection," which coincides with the language in §265.31(h)(4). DSHS rules are required to be consistent with statutory requirements.

Comment: Five commenters suggested revising §265.31(i) to allow the youth camp operator to conduct the mandatory safety orientation within 48 hours of each camper's arrival or the first scheduled activity for each camper.

Response: DSHS declines to revise the rule in response to this comment. HSC §141.0091(k) requires a youth camp operator or youth camp staff member to conduct a mandatory safety orientation not more than 48 hours after each youth camp session begins. DSHS rules are required to be consistent with statutory requirements.

Comment: One commenter suggested adding a new §265.31(i)(4) that states "shall include a walk-through drill where campers are instructed on the evacuation route to be taken in the case of an emergency event." The commenter stated this addition is necessary to expand on the requirement to take appropriate actions and procedures during an emergency event.

Response: DSHS declines to revise the rule in response to this comment. HSC §141.0091(k)(1)-(3) details the requirements for

a youth camp's mandatory safety orientation. The requirements outlined in the statute are consistent with the requirements in §265.31(i)(1)-(3). 25 TAC Chapter 265 outlines minimum requirements for Texas youth camp health and safety and does not prevent a youth camp from also conducting a walk-through drill during their safety orientation. Furthermore, §265.29 outlines the YCSMT. Additional minimum standards not presented in the rules may be developed and proposed by the YCSMT for adoption by the executive commissioner if necessary.

Comment: One commenter disagreed with the staff training requirements in §265.31(j)(2). One commenter suggested revising the staff training requirements in §265.31(j)(2) to exempt adult sponsors or volunteers for church camps.

Response: DSHS declines to revise the rule in response to this comment. HSC §141.0091(l)(2) requires a youth camp operator to train each staff member and volunteer on the camp's emergency plan at least once per year. DSHS rules are required to be consistent with statutory requirements.

Comment: Six commenters suggested revising §265.31(j) to allow online training modules for portions of the emergency preparedness training and to recognize certain training from nationally recognized youth-serving organizations.

Response: DSHS declines to revise the rule in response to this comment. Section 265.31(j)(2) requires youth camp operators to ensure each staff member and volunteer successfully completes training on the camp's emergency plan at least once per year. Section 265.31(j)(3) requires youth camp operators to instruct each staff member and volunteer on the proper procedures to follow in an emergency under the plan at least once per year. 25 TAC 265 outlines minimum requirements for youth camp health and safety. Section 265.31(j)(2)-(3) does not specify approved instruction or training formats or supplemental training from organizations but does outline that a youth camp operator is required to train staff and volunteers on their camp's emergency plan and proper emergency procedures annually.

Comment: One commenter suggested adding minimum requirements for the instruction of staff members and volunteers on procedures to follow in an emergency under the plan under §265.31(j)(3).

Response: DSHS declines to revise the rule in response to this comment. HSC §141.0091(l)(3) details the requirement for a youth camp operator to instruct staff members and volunteers on proper procedures to follow during an emergency event under their emergency plan. The requirement outlined in the statute is consistent with the requirement in §265.31(j)(3). Furthermore, §265.29 outlines the YCSMT. Additional minimum standards not presented in the rules may be developed and proposed by the YCSMT for adoption by the executive commissioner if necessary.

Comment: One commenter disagreed with the requirement for a youth camp operator to post the evacuation routes as described in §265.31(k)(1). The commenter stated the requirement is unreasonable and unrealistic for their camp.

Response: DSHS declines to revise the rule in response to this comment. HSC §141.0091(m)(1) requires a youth camp operator to visibly post in each cabin on the youth camp premises the proper evacuation route described in the youth camp's emergency plan. DSHS rules are required to be consistent with statutory requirements.

Comment: Fourteen commenters disagreed with the requirement to illuminate an evacuation route in §265.31(k)(2). Nine commenters cited safety concerns and conflicts with active shooter protocols. Two commenters stated the requirement would create a negative impact on the environment related to conservation. Two commenters stated the requirement was unreasonable and ineffective.

Response: DSHS declines to revise the rule in response to this comment. HSC §141.0091(m)(2) requires a youth camp operator to ensure each evacuation route on the camp premises is illuminated at night. DSHS rules are required to be consistent with statutory requirements.

Comment: Twelve commenters inquired about the minimum standards for the illumination requirement in §265.31(k)(2). Fourteen commenters inquired if reflectors on an evacuation route were adequate to satisfy the requirement in §265.31(k)(2). One commenter inquired if spotlights could satisfy the illumination requirement in §265.31(k)(2).

Response: No revision is made to the rule in response to this comment. Section 265.31(k)(2) requires a youth camp operator to ensure each evacuation route on the camp premises is illuminated at night. For an evacuation route to be illuminated at night, a lighting system is needed. Section 265.31(k)(2) does not require a specific type of lighting system but does require adequately illuminated evacuation routes to support safe evacuation at night. Generally, a reflector is reliant on an external light source to reflect visible light. As such, reflectors alone would not satisfy the requirement of illumination in §265.31(k)(2).

Comment: Seventeen commenters suggested revising §265.31(k)(2) to specify that illumination of evacuation routes can be satisfied with reflectors, arrows with reflective paint/decals, solar lighting, or other suitable markings that can be seen in the dark. One commenter suggested revising §265.31(k)(2) to specify that evacuation routes can be illuminated with reflective signs, directional markers, or other objects that are visible in low light conditions.

Response: DSHS declines to revise the rule in response to this comment. HSC §141.0091(m)(2) requires a youth camp operator to ensure each evacuation route on the camp premises is illuminated at night. For an evacuation route to be illuminated at night, a lighting system is needed. Section 265.31(k)(2) does not require a specific type of lighting system but does require adequately illuminated evacuation routes to support safe evacuation at night. Generally, a reflector is reliant on an external light source to reflect visible light. As such, reflectors alone would not satisfy the requirement of illumination in §265.31(k)(2).

Comment: One commenter suggested revising §265.31(k)(2) to limit the requirement to residential camps.

Response: DSHS declines to revise the rule in response to this comment. Under HSC §141.002(6) and 25 TAC Chapter 265, Subchapter B, all licensed youth camps must comply with the same statutory and regulatory requirements. HSC §141.0091(m)(2) requires a youth camp operator to ensure each evacuation route on the camp premises is illuminated at night. DSHS rules are required to be consistent with statutory requirements. The statute and the rules do not create a separate category for limiting the illumination of evacuation routes at night to residential camps. Therefore, all youth camp operators that operate at night are subject to the illumination requirement in §265.31(k)(2).

Comment: One commenter inquired if evacuation routes need to be illuminated for day camps.

Response: No revision is made to the rule in response to this comment. A day camp, as defined in §265.11(8), is a camp that operates between 7:00 a.m. and 10:00 p.m. and offers no more than two overnight stays during each camp session. Section 265.31(k)(2) requires a youth camp operator to ensure each evacuation route on the camp premises is illuminated at night. As such, any youth camp that operates at night would be required to comply with §265.31(k)(2).

Comment: One commenter suggested inserting "that is powered by an on-site electrical source such as a generator" after "at night" in §265.31(k)(2) to ensure the evacuation routes are illuminated even if third party electrical services are interrupted at the campground.

Response: DSHS declines to revise the rule in response to this comment. HSC §141.0091(m)(2) requires a youth camp operator to ensure each evacuation route on the camp premises is illuminated at night. Section 265.31(k)(2) is consistent with this requirement. 25 TAC Chapter 265 outlines minimum requirements for Texas youth camp health and safety and does not prevent a youth camp operator from using an on-site electrical source such as a generator to power their evacuation route lighting. Furthermore, §265.29 outlines the YCSMT. Additional minimum standards not presented in the rules may be developed and proposed by the YCSMT for adoption by the executive commissioner if necessary.

Comment: Seven commenters inquired about what constitutes a reportable structural modification in §265.31(l).

Response: No revision is made to the rule in response to this comment. A modification consists of any modification to a structure intended to facilitate youth camp activities or the location of a camp activity on the camp's premises as outlined in §265.31(l)(1) and (2), respectively. The notification requirement in §265.31(l) allows DSHS to evaluate if the modification impacts any aspect of the emergency plan developed by the youth camp operator (e.g., emergency evacuation route). If so, DSHS would require the youth camp operator to update the emergency plan as required in §265.31(m).

Comment: Two commenters suggested revising §265.31(l)(1) to specify that notification is only required for major renovations such as modifications to the ingress and egress of a permanent structure intended to facilitate youth camp activities to align with §265.24(a)(2)(C)(ii). One commenter suggested revising §265.31(l)(1) to limit the notification to major modifications rather than routine maintenance.

Response: DSHS declines to revise the rule in response to this comment. The requirement of a youth camp operator to notify DSHS of any modification to a structure intended to facilitate youth camp activities is outlined in HSC §141.0093(a)(1). This requirement is separate from the requirement in HSC §141.005(a)(2)(C)(ii) that requires a license holder to submit a renewal application after renovating any existing cabins that alters the method of ingress or egress to a cabin. DSHS rules are required to be consistent with statutory requirements.

Comment: One commenter inquired if DSHS needs to be notified of modifications to any activities within the camp or only activities within a floodplain.

Response: No revision is made to the rule in response to this comment. Section 265.31(l)(1)-(2) requires a youth camp operator to notify the department of any modification to a structure intended to facilitate youth camp activities or the location of a camp activity on the camp's premises. The rule does not limit this notification requirement to structures or camp activities within a floodplain.

Comment: Four commenters disagreed with the requirement to notify DSHS of any modification to the location of a camp activity on the camp's premises in §265.31(l)(2). One commenter suggested revising §265.31(l)(2) to specify that notification is only required for modification to the location of a specialized camp activity.

Response: DSHS declines to revise the rule in response to this comment. The requirement of a youth camp operator to notify DSHS of any modification to the location of a camp activity on the camp's premises is outlined in HSC §141.0093(a)(2). The statute does not authorize DSHS to limit notification of modifications to specialized activities. DSHS rules are required to be consistent with statutory requirements.

Comment: One commenter suggested adding a subsection in §265.31 that permits the department to initiate proceedings to suspend or revoke a youth camp license if the operator is in violation of any rules in the chapter and to reinstate a youth camp license after DSHS determines the operator is in compliance with the rules. The commenter stated this addition is necessary to comply with HSC §141.012 and §141.0094.

Response: DSHS declines to revise §265.31 in response to this comment. HSC §141.012 (License Revocation) and §141.0094 (Denial or Suspension of License for Noncompliance) already authorize the department to deny, suspend, revoke, or reinstate a youth camp license when a license holder violates applicable health and safety statutes or rules or fails to correct violations within a specified timeframe. These enforcement authorities are implemented through existing department rules and enforcement processes and are not required to be restated within each operational rule section. Chapter 265, specifically rules §§265.24, 265.25, 265.26, and 265.27, already provides a comprehensive enforcement framework governing inspections, corrective action, license denial, suspension, revocation, and reinstatement, including the use of compliance timeframes and administrative due process. Adding a duplicative enforcement subsection within §265.31 would be unnecessary and could create confusion by implying that enforcement authority is limited to, or contingent upon, that specific rule section. Accordingly, no rule revision to §265.31 is necessary to comply with HSC §141.012 or §141.0094.

Comment: One commenter suggested adding a subsection in §265.31 that permits the department to seek a civil penalty or injunctive relief against an operator that violates a rule. The commenter stated this addition is necessary to comply with HSC §141.015.

Response: DSHS declines to revise the rule in response to this comment. The ability of DSHS to bring a civil action in a district court for injunctive relief, a civil penalty, or both to a person that violates the rules is already outlined in §265.26(b).

Comment: Ten commenters inquired if an adult volunteer would qualify as a "counselor" for purposes of the counselor to camper ratio outlined in §265.32.

Response: A supervisor or counselor is defined in §265.11(24) as "a person, at least 18 years of age or older, who is responsible for the immediate supervision of campers." As such, a volunteer

who meets this definition as well as other requirements outlined in 25 TAC Chapter 265 could qualify as a counselor for purposes of the counselor to camper ratios outlined in §265.32. No revision is made to the rule in response to this comment.

Comment: Thirteen commenters suggested revising §265.32(1)-(3) to require a ratio of one counselor for every 10 campers. Four commenters disagreed with the minimum overnight ratios in §265.32(1)-(3). One commenter suggested removing one age group from §265.32 and grouping campers from 4-6, 7-14, and 15-17 years old. One commenter suggested revising §265.32(2)-(3) to require a ratio of one counselor for every eight campers for ages seven to 12.

Response: DSHS declines to revise the rule in response to this comment. HSC §141.008(c) authorizes DSHS to review and establish minimum camper to counselor ratios for overnight stays at youth camps. DSHS has completed a review of the ACA guidelines and determined the ratios outlined in §265.32 are best suited to protect the health and safety of campers.

Comment: Thirteen commenters suggested revising §265.34 to limit complaints from a verified individual. One commenter suggested revising §265.34 to limit complaint eligibility to individuals with a direct relationship with the camp.

Response: DSHS declines to revise the rule in response to this comment. HSC §141.0071(b) requires that DSHS investigate each complaint filed with the department for a youth camp to ensure the youth camp operator is properly implementing the camp's approved emergency plan. Additionally, HSC §141.0071(c) requires this complaint-based inspection to include an inspection to ensure the youth camp's compliance with this chapter in the same manner as HSC §141.007. DSHS rules are required to be consistent with statutory requirements, and DSHS complaint processes allow for the submission of anonymous complaints.

Comment: Five commenters suggested revising §265.34(a) to provide specific guidance on acceptable placement and minimum requirements of the link on a youth camp's website that directs a user to the DSHS complaint website.

Response: DSHS declines to revise the rule in response to this comment. Section 265.34(a) requires a youth camp operator's public-facing website to include a prominent, clearly marked link to the DSHS complaint website where campers, parents, camp staff, and volunteers can report noncompliance. Section 265.34(a) does not specify acceptable placement or minimum requirements for the link to the DSHS complaint website. DSHS will assess compliance with this requirement by reviewing if the link is reasonably visible and prominently placed on the youth camp operator's website.

Comment: Four commenters disagreed with the requirement for a youth camp operator's website to have a link to the DSHS complaint website in §265.34(a). The commenters argued that the required additional inspection from a complaint takes a lot of time and diverts attention away from oversight of the camp and campers, especially if the inspection is not limited to emergency plans.

Response: DSHS declines to revise the rule in response to this comment. HSC §141.0071(a) requires a youth camp operator's website to have a link to the DSHS complaint website. Furthermore, HSC §141.0071(b) requires that DSHS investigate each complaint filed with the department for a youth camp to ensure the youth camp operator is properly implementing the camp's approved emergency plan. HSC §141.0071(c) requires this complaint-based inspection include an inspection to ensure the youth camp's compliance with this chapter in the same manner as HSC §141.007. DSHS rules are required to be consistent with statutory requirements.

Comment: One commenter inquired if §265.34 applies to emergency preparedness or all forms of complaints.

Response: Section 265.34(a) requires a youth camp operator's public-facing website to include a prominent, clearly marked link to the DSHS complaint website where campers, parents, camp staff, and volunteers can report noncompliance with any portion of 25 TAC Chapter 265. No revision is made to the rule in response to this comment.

SUBCHAPTER B. TEXAS YOUTH CAMPS SAFETY AND HEALTH

25 TAC §§265.11, 265.18, 265.23, 265.24, 265.28 - 265.34

STATUTORY AUTHORITY

The amendments and new sections are authorized by HSC §141.008, which authorizes the executive commissioner of HHSC to adopt rules to implement the Youth Camp Safety and Health Act; and by Texas Government Code §524.0151 and HSC §1001.075, which authorize the executive commissioner of HHSC to adopt rules necessary for the operation and provision of health and human services by DSHS and for the administration of HSC Chapter 1001.

§265.18. Fire Prevention.

(a) Fire and safety codes. Facilities at all youth camps that meet the definition of a campground as defined in Texas Health and Safety Code Section 762.001(2), except those described in subsection (d) of this section, must comply with the National Fire Protection Association 1194, Standard for Recreational Vehicle Parks and Campgrounds, 2021 Edition, other than Sections 1.1.1 and 5.1.1.1. Facilities at all youth camps must meet local fire and safety codes.

(b) Fire exits in buildings. All buildings where groups of people live, eat, sleep, or assemble must have ready exits for use in case of fire and these exits must be conspicuously marked.

(c) Storage of flammable or explosive materials. Containers of gasoline, flammables, or explosives must be plainly marked and stored in a locked area separate and apart from any permanent and semi-permanent structures used by campers. The presence of flammable or explosive materials must be kept to a minimum.

(d) Subsection (a) of this section does not apply to a youth camp owned or controlled by a governmental entity. A governmental entity may adopt a policy, rule, ordinance, or order to regulate environmental health and sanitation, electrical distribution system safety, liquefied petroleum gas storage and dispensing safety, or fire protection only if the policy, rule, ordinance, or order does not impose standards more stringent than the standards described under subsection (a) of this section.

§265.23. Application and Denial of a New License; Non-transferable.

(a) License required. A person must possess a valid youth camp license prior to operating a youth camp.

(1) Submitting an application. A complete application to operate a youth camp must be submitted to and received by the department's Environmental and Sanitation Licensing Branch between January 1 and March 31 of each calendar year, and include:

(A) an activity schedule showing dates and detailed information about the activities that are conducted both at the camp and at other locations;

(B) an emergency plan, as described in §265.31 of this subchapter (related to Emergency Preparedness and Response);

(C) the estimated number of campers attending the camp during the upcoming calendar year;

(D) any other requested documents and information; and

(E) the license fee, as described in §265.28 of this subchapter (relating to Fees).

(2) Applications and fees. Applications and fees may be submitted online to https://vo.ras.dshs.state.tx.us.

(3) Qualifying for a youth camp license. Subject to subsection (j) of this section, a facility qualifies for a youth camp license if the facility:

(A) meets the definition of a "youth camp," as described in §265.11 of this subchapter (relating to Definitions); and

(B) is in compliance, or has demonstrated a plan for compliance, with all provisions of the Act and the rules before operation as determined by:

(i) submitting a complete application as described in paragraph (1) of this subsection; and

(ii) passing a pre-licensing inspection conducted by the department, using the standard youth camp inspection form that may be found at https://www.dshs.texas.gov/youth-camp-program/applications-forms-youth-camp-program.

(b) Processing applications.

(1) A complete application must be submitted to the Environmental and Sanitation Licensing Branch at least 90 calendar days before camp operations begin. An application is considered incomplete until all required documentation, information, and fees are received. If the application is incomplete, the department issues a deficiency notice, including identification of deficiencies, a deadline for deficiency corrections, and the need for a pre-licensing inspection.

(2) Upon receipt of an application, the department issues the following documents in accordance with policy, as applicable:

(A) a license after the date of successfully passing the pre-licensing inspection--within 45 days;

(B) a letter of application deficiency--within 45 days; or

(C) a letter of pre-licensing inspection deficiency at the conclusion of the pre-licensing inspection.

(i) The camp must provide proof of all deficiency corrections, except for corrections to the emergency plan, within 10 days after the inspection or before camp operation, whichever comes first.

(ii) The camp must provide proof of all deficiency corrections for the emergency plan. The proof must be provided within 45 days after the camp received the department letter of pre-licensing inspection deficiency.

(3) In the event that an application for a new license is not processed within 120 days, and no good cause exists for the delay, the applicant may request reimbursement of all fees paid in that particular application process so long as a complete application was submitted at least 120 calendar days prior to camp operation. Requests for reimbursement must be made in writing to the Environmental and Sanitation Licensing Branch. Good cause for exceeding the time period is considered to exist if the number of applications for licensure exceeds by 15% or more the number of applications processed the same calendar quarter of the preceding year or any other condition exists giving the department good cause for exceeding the time period.

(4) If the request for reimbursement as authorized by paragraph (3) of this subsection is denied, the applicant may then appeal to the commissioner for a resolution of the dispute. The applicant must give written notice to the commissioner requesting reimbursement of the fee paid because the application was not processed within the established time period. The department submits a written report of the facts related to the processing of the application and good cause for exceeding the established time periods. The commissioner makes the final decision and provides written notification of the decision to the applicant and to the department.

(c) Record availability. All records, except criminal background and sex offender registration database checks (including any written evaluation for any staff member or volunteer with a criminal conviction or deferred adjudication), required by this subchapter must be made available to the department immediately upon request. Criminal background and sex offender registration database checks (including any written evaluation for any staff member or volunteer with a criminal conviction or deferred adjudication) must be made available to the department within two business days upon request.

(d) Term of license. The term of a youth camp license is one year, beginning on the date of issuance.

(e) License non-transferable. A youth camp license is not transferable and may not be sold, assigned, or otherwise transferred. Any new business entity that acquires the operation of a youth camp through sale, assignment, or other transfer must obtain a new license.

(f) Ownership change. A new application, fee, pre-licensing inspection, and license is required if there is a change in ownership.

(g) Name change. If a camp changes its name during operation, but does not change location or ownership, then a new license certificate may be issued if requested by email to youthcamps.reg@dshs.texas.gov. A nonrefundable fee of $20 will be assessed.

(h) Location change. A new application, fee, pre-licensing inspection, and license is required if there is a change in physical camp location.

(i) Duplicate license. A duplicate license may be issued if requested by email to youthcamps.reg@dshs.texas.gov. A nonrefundable fee of $20 will be assessed.

(j) Denials.

(1) The department may deny an application for licensing to applicants who fail to meet the standards established by the Act and this subchapter. In making this determination, the department considers any violation by the applicant of the Act or this subchapter, including employment of an individual who was convicted of an act of sexual abuse, as defined by Texas Penal Code §21.02, that occurred at the camp. When the department proposes to deny an application, the department gives notice of the proposed action in writing and provides information on how to request an administrative hearing. The applicant must submit a written request for a hearing within 30 days from the date of the department's notice letter. The hearing is conducted in accordance with the Act; Texas Government Code Chapter 2001, the Administrative Procedure Act; and the formal hearing procedures in Chapter 1 of this title (relating to Miscellaneous Provisions).

(2) A letter of denial of licensure may be issued within 60 days after the receipt of application if the applicant does not meet the requirements of subsection (a)(3)(A) of this section.

(3) A letter of denial of licensure may be issued if the applicant does not meet the requirements of subsection (a)(3)(B) of this section:

(A) within 60 days following the first scheduled date of camp operations if a pre-licensing inspection has not been completed; or

(B) within 60 days following the first scheduled date of camp operations if the camp does not pass the pre-licensing inspection.

(4) A license holder whose license has been revoked may not reapply for a new license for two years from the date of final revocation.

(k) Refunds.

(1) If the applicant does not meet the requirements of subsection (a)(3)(A) of this section, the application may be denied and the license fee, less a handling fee of $50, may be refunded. If an application is denied because the facility does not meet the requirements of subsection (a)(3)(A) of this section, the applicant should determine if a license from another agency is required.

(2) If the applicant does not meet the requirements of subsection (a)(3)(B) of this section, the application may be denied and the license fee may not be refunded.

§265.24. Application and Denial of a Renewal License.

(a) Renewal of a youth camp license. A youth camp operator holding a license issued under this chapter must submit a complete renewal application to operate a youth camp. A renewal application must be submitted:

(1) annually to the department's Environmental and Sanitation Licensing Branch between January 1 and March 31 of each calendar year; and

(2) no later than the 30th day after the date the youth camp operator:

(A) alters the boundaries of a youth camp;

(B) completes construction of one or more new cabins located on the premises; or

(C) completes any renovation to one or more existing cabins located on the premises of the camp that:

(i) increases or decreases the number of beds in an affected cabin; or

(ii) alters the method of ingress or egress to an affected cabin.

(b) Renewal notice. At least 60 days before a license expires, the department, as a service to the licensee, may send a renewal notice to the licensee or registrant to the last address provided by the licensee. The licensee is responsible for renewing the license whether the licensee receives the department's notice or not. The renewal notice states:

(1) license type requiring renewal;

(2) time period allowed for renewal; and

(3) the amount of the renewal fee.

(c) Renewal requirements. Renewal applications and fees must be received by the department before the license's annual expiration date.

(1) Submitting an application. A complete renewal application must be submitted to the department and include:

(A) a completed youth camp renewal application;

(B) an activity schedule showing dates and detailed information about the activities that are conducted both at the camp and at other locations;

(C) an emergency plan, including any updated emergency plan, as described in §265.31 of this subchapter (relating to Emergency Preparedness and Response);

(D) the estimated number of campers attending the camp during the upcoming calendar year;

(E) any other requested documents and information; and

(F) the renewal license fee as described in §265.28 of this subchapter (relating to Fees).

(2) Applications and fees. Applications and fees may be submitted online to https://vo.ras.dshs.state.tx.us.

(3) Qualifying for renewal of a youth camp license. Subject to subsection (k) of this section, the department issues a renewal license if the facility:

(A) meets the definition of a "youth camp," as described in §265.11 of this subchapter (relating to Definitions); and

(B) is in compliance with all provisions of the Act and the rules before operation as determined by:

(i) submitting a complete renewal application as described in this subsection;

(ii) passing a pre-licensing inspection conducted by the department, if required; and

(iii) complying with all final orders resulting from any violations of this subchapter before the application for renewal is submitted.

(d) Processing renewal applications.

(1) A complete application for a license renewal issued under this subchapter must be received by the department's Environmental and Sanitation Licensing Branch before the expiration date of the license or 45 days before camp operation, whichever is earlier.

(A) An application is considered incomplete until all required documentation, information, and fees are received.

(B) If the application is incomplete, the department issues a deficiency notice, including identification of deficiencies, a deadline for deficiency correction, and the need for a pre-licensing inspection.

(C) If a camp is subject to pre-licensing inspection, a renewal license is issued after the inspection is completed and compliance with the Act and this subchapter is confirmed.

(2) Upon receipt of an application, the department issues the following documents in accordance with policy, as applicable:

(A) a license--within 30 days;

(B) a letter of renewal application deficiency--within 30 days; or

(C) a letter of pre-licensing inspection deficiency at the conclusion of the pre-licensing inspection.

(i) The camp must provide proof of all deficiency corrections, except for corrections to the emergency plan, within 10 days after the inspection or before camp operation, whichever comes first.

(ii) The camp must provide proof of all deficiency corrections for the emergency plan. The proof must be provided within 45 days after the camp received the department letter of pre-licensing deficiency.

(3) In the event that a timely and complete application for license renewal is not processed within timeframe established in department policy, and no good cause exists for the delay, the applicant has the right to request reimbursement of all fees paid in that particular application process. Requests for reimbursement must be made by email to youthcamps.reg@dshs.texas.gov. Good cause for exceeding the time period is considered to exist if the number of applications for licensure exceeds by 15% or more the number of applications processed the same calendar quarter of the preceding year or any other condition exists giving the department good cause for exceeding the time period.

(4) If the request for reimbursement as authorized by paragraph (3) of this subsection is denied, the applicant may then appeal to the commissioner for a resolution of the dispute. The applicant must give written notice to the commissioner requesting reimbursement of the fee paid because the application was not processed within the established time period. The department submits a written report of the facts related to the processing of the application and good cause for exceeding the established time periods. The commissioner makes the final decision and provides written notification of the decision to the applicant and to the department.

(e) Late renewal. If a license is not renewed within one year after the expiration date, the license cannot be renewed. A new license may be obtained by submitting a new application in compliance with §265.23 of this subchapter (relating to Application and Denial of a New License; Non-transferable). If the license is renewed after its expiration date, the renewed license expires on the date the license would have expired if the license had been renewed timely.

(f) Non-renewal. The department may refuse to renew a license if the applicant has not complied with all final orders resulting from any violations of these sections. Eligibility for license renewal may be reestablished by meeting all conditions of the orders and complying with the requirements of this section. The department may not renew the license of a youth camp that has not corrected deficiencies identified in a final order before the application for renewal is submitted. Corrections must be submitted to and approved by the department's Environmental and Sanitation Licensing Branch before submitting the renewal application.

(g) Application determination affecting license expiration. If a license holder submits a timely and complete license renewal application, the existing license does not expire until the application has been finally determined by the department. If a license holder submits a late or incomplete application and the application is denied, the existing license does not expire until the last day to request a review of the agency order or a later date granted by order of the reviewing court.

(h) Reapplication for license upon revocation. A license holder whose license has been revoked may not reapply for a new license for two years from the date of final revocation.

(i) Opportunity for a hearing. When the department proposes to deny an initial or renewal application, the department gives notice of the proposed action in writing and provides information on how to request an administrative hearing. The applicant must submit a written request for a hearing within 30 days from the date of the notice letter.

(j) Pre-licensing inspections. A youth camp applying for a license renewal may be subject to a pre-licensing inspection. Youth camps must be in compliance with all provisions of the Act and the rules before operation.

(k) Denials.

(1) The department may deny a renewal application for licensing to applicants who fail to meet the standards established by the Act and this subchapter. The department considers any violations by the applicant of the Act or this subchapter, including employment of an individual who was convicted of an act of sexual abuse, as defined by Texas Penal Code §21.02, that occurred at the camp. When the department proposes to deny a renewal application, the department gives notice of the proposed action in writing and provides information on how to request an administrative hearing. The hearing is conducted in accordance with the Act; Texas Government Code Chapter 2001, the Administrative Procedure Act; and the formal hearing procedures in Chapter 1 of this title (relating to Miscellaneous Provisions).

(2) A letter of denial of license renewal may be issued within 60 days of the receipt of application if the applicant does not meet the requirements of subsection (c)(3)(A) of this section.

(3) A letter of denial of license renewal may be issued within 60 days following the first scheduled date of camp operations if the applicant does not meet the requirements of subsection (c)(3)(B) of this section.

(l) Refunds.

(1) If the applicant does not meet the requirements of subsection (c)(3)(A) of this section, the renewal application may be denied and the renewal license fee, less a handling fee of $50, may be refunded. If an applicant is denied because the facility does not meet the requirements of subsection (c)(3)(A) of this section, the applicant should determine if a license from another agency is required.

(2) If the applicant does not meet the requirements of subsection (c)(3)(B) of this section, the renewal application may be denied and the renewal license fee may not be refunded.

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 January 13, 2026.

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Cynthia Hernandez
General Counsel
Department of State Health Services
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Proposal publication date: November 28, 2025
For further information, please call: (512) 231-5727

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25 TAC §265.29

STATUTORY AUTHORITY

The repeal is authorized by HSC §141.008, which authorizes the executive commissioner of HHSC to adopt rules to implement the Youth Camp Safety and Health Act; and by Texas Government Code §524.0151 and HSC §1001.075, which authorize

the executive commissioner of HHSC to adopt rules necessary for the operation and provision of health and human services by DSHS and for the administration of HSC Chapter 1001.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. MIGRANT LABOR HOUSING FACILITIES

25 TAC §§265.31 - 265.35

STATUTORY AUTHORITY

The repeals are authorized by HSC §141.008, which authorizes the executive commissioner of HHSC to adopt rules to implement the Youth Camp Safety and Health Act; and by Texas Government Code §524.0151 and HSC §1001.075, which authorize the executive commissioner of HHSC to adopt rules necessary for the operation and provision of health and human services by DSHS and for the administration of HSC Chapter 1001.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. TEXAS YOUTH CAMPS SAFETY AND HEALTH

25 TAC §265.36

The executive commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts new §265.36, concerning Prohibited Operation of Cabins within Floodplains.

Section 265.36 is adopted with changes to the proposed text as published in the November 28, 2025, issue of the *Texas Register* (50 TexReg 7689). This rule will be republished.

BACKGROUND AND JUSTIFICATION

The new rule is necessary to comply with Senate Bill (SB) 1, 89th Legislature, Second Special Session, 2025, that amends Texas Health and Safety Code Chapter 141, which requires DSHS to prohibit licensure of youth camps within floodplains unless they meet certain requirements.

COMMENTS

The 21-day comment period ended December 19, 2025.

During this period, DSHS received comments regarding the proposed rule from 34 commenters. DSHS received comments from Beloved and Beyond, Camp Aranzazu, Camp Eagle, Camp Longhorn, Camp Peniel, Camping Association for Mutual Progress (C.A.M.P.), Cho-Yeh Camp and Conference Center, Forest Glen Camps and Retreats, Girl Scouts of Central Texas, Heart of Texas Baptist Camp, Laity Lodge Youth Camp, Lake Brownwood Christian Retreat, Latham Springs Camp and Retreat Center, Morgan's Camp, Mt. Lebanon Camp, Northgate Resorts, Plains Baptist Camp and Retreat Center, Scouting America - Longhorn Council, Still Water Camps, Sun Communities, Inc., University of Houston, Victory Camp and two individual commenters. A summary of comments relating to the rule and DSHS's responses follows.

Comment: Two commenters disagreed with the cabin floodplain restrictions in §265.36.

Response: DSHS declines to revise the rule in response to this comment. Texas Health and Safety Code (HSC) §762.001(4) defines a floodplain as "any area within a 100-year floodplain identified by the Federal Emergency Management Agency under the National Flood Insurance Act of 1968 (42 U.S.C. Section 4001 et seq.). This term includes any area removed from the 100-year floodplain by a letter of map amendment (LOMA), a letter of map revision (LOMR) based on fill, or a substantially similar administrative process conducted by the Federal Emergency Management Agency." HSC §141.0052 prevents DSHS from issuing or renewing a license for a youth camp that operates one or more cabins located within a floodplain unless the youth camp meets the requirements outlined in proposed §265.36(1) - (3). DSHS rules are required to be consistent with statutory requirements.

Comment: Two commenters suggested revising §265.36 to allow alternative data besides FEMA maps for floodplain determination, including a LOMR. One commenter suggested revising §265.36 to allow FEMA Base Level Engineering maps (BLE) to work alongside FIRM for Zone A areas. One commenter suggested revising §265.36 to allow FEMA documentation such as a LOMA to exempt cabins from the floodplain requirements in the section.

Response: DSHS declines to revise the rule in response to this comment. Texas Health and Safety Code (HSC) §762.001(4) defines a floodplain as "any area within a 100-year floodplain identified by the Federal Emergency Management Agency under the National Flood Insurance Act of 1968 (42 U.S.C. Section 4001 et seq.). This term includes any area removed from the 100-year floodplain by a letter of map amendment, a letter of map revision based on fill, or a substantially similar administrative process conducted by the Federal Emergency Management Agency." For purposes of the definition of floodplain in §265.11(12), a Letter of Map Revision (LOMR) is considered a substantially similar administrative process to a Letter of Map

Amendment (LOMA) or Letter of Map Revision Based on Fill (LOMR-F).

Comment: One commenter inquired about the applicability of the prohibited operation of cabins within floodplains in §265.36 to university academic enrichment programs, day-only youth programs, and other university-based offerings.

Response: DSHS explains that the definition of youth camp in §265.11(30)(H) specifically excludes "a facility or program operated by or on the campus of an institution of higher education or a private or independent institution of higher education as those terms are defined by the Texas Education Code §61.003, that is regularly inspected by one or more local governmental entities for compliance with health and safety standards." Texas Education Code §51.976(a)(2) defines campus program for minors as a program that: "(A) is operated by or on the campus of an institution of higher education or a private or independent institution of higher education; (B) offers recreational, athletic, religious, or educational activities for at least 20 campers who: (i) are not enrolled at the institution; and (ii) attend or temporarily reside at the camp for all or part of at least four days; and (C) is not a day camp or youth camp as defined by Section 141.002, Health and Safety Code, or a facility or program required to be licensed by the Department of Family and Protective Services."

25 TAC Chapter 265 establishes minimum requirements for youth camps. If a program does not meet the definition of a youth camp as outlined above, then requirements for youth camps outlined in these rules do not apply.

Comment: One commenter suggested revising Texas Health and Safety Code §762.002(a)(1) to only apply the emergency ladder requirement to cabins located at youth camps and not Park Model RVs (PMRVs) or cabins located in campgrounds and recreational vehicle parks.

Response: DSHS declines to revise the rule in response to this comment. DSHS is unable to amend any Texas Health and Safety Code statutory requirement as part of its rulemaking process. A Texas statute is created or amended by the Texas Legislature. The requirement to install and maintain an emergency ladder capable of providing access to a cabin's roof outlined in proposed §265.36(3) only applies to youth camp operators.

Comment: One commenter suggested inserting "or allow a camper to stay overnight in a cabin" after "operate a cabin" in §265.36 to specify that a cabin in a floodplain may not be used as overnight sleeping quarters for campers.

Response: DSHS disagrees and declines to revise the rule in response to this comment. A youth camp that is not permitted to operate a cabin located in a floodplain as specified in §265.36 is also prevented from allowing overnight campers to use the cabin as sleeping quarters.

Comment: Five commenters inquired about acceptable methods for measuring distance from a floodway and whether this measurement should be taken from the closest tent/structure or from the property boundary.

Response: Section 265.36(a)(2) requires each cabin to be at least 1,000 feet from a floodway. As such, any measurement to determine distance for compliance with this section would be of any cabin in a floodplain to the floodway. Section 265.36(a)(2) does not specify approved methods of measurement. DSHS expects that a youth camp operator will use reliable, industry standard measuring methods produced by experts such as maps, surveys, or other such resources. DSHS will evaluate data to determine if the provided measurement is acceptable to promote emergency planning.

Comment: Eleven commenters suggested revising the ladder requirement in proposed §265.36(3) to take into consideration building height, roof pitch, and current OSHA standards. Nine commenters suggested revising the ladder requirement as the commenters believe that a ladder will present safety hazards. One commenter suggested removing the ladder requirement from the rule.

Response: DSHS disagrees and declines to revise the rule in response to this comment. Texas Health and Safety Code §762.002(a)(1) requires a youth camp operator to install and maintain in each campground cabin located within the floodplain an emergency ladder capable of providing access to the cabin's roof. DSHS rules are required to be consistent with statutory requirements. Proposed §265.36(3) also does not prevent a youth camp operator from adhering to any other applicable health and safety regulations.

Comment: One commenter inquired if a ladder in proposed §265.36(3) needs to be affixed to the cabin and if the ladder needs a minimum rating.

Response: DSHS explains that proposed §265.36(3) requires the youth camp operator to install and maintain an emergency ladder capable of providing access to the cabin's roof. An emergency ladder capable of providing access to a cabin's roof would comply with this requirement whether it is affixed to the cabin or not. However, proposed §265.36(3) does not preclude a youth camp operator from adhering to any other applicable health and safety regulations.

DSHS made a minor editorial change to proposed §265.36(3) to provide clarity, renumbered as §265.36(b).

STATUTORY AUTHORITY

The new section is authorized by Texas Health and Safety Code §141.008, which authorizes the executive commissioner of HHSC to adopt rules to implement the Youth Camp Safety and Health Act; and by Texas Government Code §524.0151 and Texas Health and Safety Code §1001.075, which authorize the executive commissioner of HHSC to adopt rules necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

§265.36. Prohibited Operation of Cabins within Floodplains.

(a) A youth camp must not operate a cabin located within a Federal Emergency Management Agency (FEMA) identified 100-year floodplain, unless:

(1) each cabin located within a floodplain is a result of the cabin's proximity to a lake, pond, or other still body of water that:

(A) is not connected to a stream, river, or other watercourse; or

(B) is dammed; or

(2) each cabin is at least 1,000 feet from a floodway.

(b) A youth camp that operates a cabin within the floodplain as described in subsection (a) of this section must install and maintain an emergency ladder capable of providing access to the cabin's roof.

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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25 TAC §265.37

The executive commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts new §265.37, concerning Redundant Internet Connections Required.

Section 265.37 is adopted without changes to the proposed text as published in the November 28, 2025, issue of the *Texas Register* (50 TexReg 7690). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The new rule is necessary to comply with Senate Bill (SB) 1 and House Bill (HB) 1, 89th Legislature, Second Special Session, 2025, that amended Texas Health and Safety Code (HSC) Chapter 141, which requires the department to set the requirements for youth camp safety and health in relation to redundant internet connections.

COMMENTS

The 21-day comment period ended December 19, 2025.

During this period, DSHS received comments regarding the proposed rule from 108 commenters. DSHS received comments from Allaso Ranch, Bandina Christian Youth Camp, Beloved and Beyond, the Broadband Development Office, Broadband Fabric Partners, Buffalo Trail Scout Ranch, Camp Aranzazu, Camp Copass, Camp Doublecreek, Camp El Ranchito, Camp Hidden Acres, Camp Liberty, Camp Longhorn, Camp Peniel, Camp Summit, Camp Wilderness Ridge, Camp Zephyr, Camping Association for Mutual Progress (C.A.M.P.), Cho-Yeh Camp and Conference Center, Cross Trails Ministry, Forest Glen Camps and Retreats, Girl Scouts of Central Texas, Girl Scouts of Greater South Texas, Girl Scouts of Northeast Texas, Girl Scouts of San Jacinto, Heart of Texas Baptist Camp, His Hill Ranch Camp, John Knox Ranch, Lake Brownwood Christian Retreat, Lake Lavon Baptist Encampment, Lakeview Camp, Latham Springs Camp and Retreat Center, Lower Colorado River Authority (LCRA), Mt. Lebanon Camp, Panfork Baptist Encampment, Plains Baptist Camp and Retreat Center, Riverbend Retreat Center, Sandy Creek Bible Camp, Scouting America - Alamo Area Council, Scouting America - Bay Area Council, Scouting America - Capitol Area Council, Scouting America - Circle Ten Council, Scouting America - East Texas Area Council, Scouting America - Golden Spread Council, Scouting America - Longhorn Council, Scouting America - Sam Houston Area Council, Slumber Falls Camp, Southwestern Texas Synod, Still Water Camps, T Bar M Camps & Retreats, Tejas Camp and Retreat, Texas Brigades, Texas Telephone Association, Texas Travel Alliance, Timberline Baptist Camp, University of Houston, Victory Camp, The Master's Workshop Camp, and eight individual commenters. DSHS declines to make any suggested changes at this time.

A summary of comments relating to the rule and DSHS's responses follows.

Comment: A commenter suggested removing the requirement for high-speed broadband services in §265.37.

Response: DSHS declines to revise the rule in response to this comment. HSC §141.0092(a) states that broadband service has the meaning assigned by Texas Government Code §490I.0101(a), which defines broadband service as "Internet service with the capability of providing a: (1) speed of not less than 100 megabits per second for a download; (2) speed of not less than 20 megabits per second for an upload; and (3) network round-trip latency of less than or equal to 100 milliseconds based on the 95th percentile of speed measurements." DSHS rules are required to be consistent with statutory requirements.

Comment: Three commenters inquired whether broadband service in §265.37 is required for all youth camp buildings housing campers, for one designated building such as an administration building, or something else.

Response: DSHS explains that §265.37(1) requires a youth camp operator to provide and maintain for a youth camp, internet service through a broadband service that connects to the internet using end-to-end fiber optic facilities. Additionally, §265.37(2) requires a youth camp operator to provide and maintain for a youth camp, a secondary internet connection through a broadband service distinct from a broadband service that connects to the internet using end-to-end fiber optic facilities. If a youth camp operator can demonstrate they are providing and maintaining internet services described in §265.37(1) and (2) at the youth camp, then the youth camp operator would be determined to be compliant with this section. Neither the rule nor the statute specifies that youth camp operators must maintain the broadband internet service requirements for all camp buildings or cabins.

Comment: A commenter suggested revising §265.37 to limit application of the requirements in the section to campgrounds. For youth camps held at non-camp locations, the commenter proposed adding other minimum requirements.

Response: DSHS declines to revise the rule in response to this comment. Under HSC §141.002(6) and §141.0094, and 25 Texas Administrative Code (TAC) Chapter 265, Subchapter B, all licensed youth camps must comply with the same statutory and regulatory requirements regardless of whether they use owned or non-owned locations. The statute does not create a separate category for camps held at non-camp facilities. As such, all youth camp operators must comply with all requirements outlined in the statute. HSC §141.0092(b)(1) requires a youth camp operator to maintain internet services through a broadband service that connects to the internet using end-to-end fiber optic facilities. Additionally, the requirement of a youth camp operator to maintain a secondary internet connection through a broadband service distinct from a broadband service that connects to the internet using end-to-end fiber optic facilities is stated in HSC §141.0092(b)(2). DSHS rules are required to be consistent with statutory requirements.

Comment: A commenter questioned why redundant internet access is necessary in §265.37 if §265.31(h)(2) already requires a

public address system operable without reliance on an internet connection.

Response: DSHS explains that the requirement of a youth camp operator to maintain a secondary internet connection through a broadband service distinct from a broadband service that connects to the internet using end-to-end fiber optic facilities is required in HSC §141.0092(b)(2). This is a separate requirement from a public address system operable without reliance on an internet connection as described in HSC §141.0091(c)(2)(B). DSHS rules are required to be consistent with statutory requirements.

Comment: A commenter inquired about the applicability of redundant internet connections in §265.37 to university academic enrichment programs, day-only youth programs, and other university-based offerings.

Response: DSHS explains that the definition of youth camp in §265.11(30)(H) specifically excludes "a facility or program operated by or on the campus of an institution of higher education or a private or independent institution of higher education as those terms are defined by the Texas Education Code (TEC) §61.003, that is regularly inspected by one or more local governmental entities for compliance with health and safety standards." TEC §51.976(a)(2) defines campus program for minors as a program that: "(A) is operated by or on the campus of an institution of higher education or a private or independent institution of higher education; (B) offers recreational, athletic, religious, or educational activities for at least 20 campers who: (i) are not enrolled at the institution; and (ii) attend or temporarily reside at the camp for all or part of at least four days; and (C) is not a day camp or youth camp as defined by HSC §141.002, or a facility or program required to be licensed by the Department of Family and Protective Services."

25 TAC Chapter 265 establishes minimum requirements for youth camps. If a program does not meet the definition of a youth camp as outlined above, then requirements for youth camps outlined in the rules do not apply.

Comment: Fourteen commenters questioned whether the requirements in §265.37 are necessary and whether there are alternatives to these requirements.

Response: DSHS explains that HSC §141.0092(b)(1) requires a youth camp operator to maintain internet services through a broadband service that connects to the internet using end-to-end fiber optic facilities. Additionally, the requirement of a youth camp operator to maintain a secondary internet connection through a broadband service distinct from a broadband service that connects to the internet using end-to-end fiber optic facilities is required in HSC §141.0092(b)(2). DSHS rules are required to be consistent with statutory requirements.

Comment: Fifty-eight commenters suggested revising the requirement for a fiber optic broadband service detailed in §265.37(1) to include alternative types of broadband services. Two commenters disagreed with the requirement for a fiber optic broadband service. Three commenters suggested removing the fiber optic broadband service requirement. Eight commenters suggested allowing an exemption, variance, or waiver for the fiber optic broadband service requirement.

Response: DSHS declines to revise the rule in response to these comments. HSC §141.0092(b)(1) requires a youth camp operator to maintain internet services through a broadband service that connects to the internet using end-to-end fiber optic facilities. DSHS rules are required to be consistent with statutory requirements.

Comment: Ten commenters suggested extending the compliance timeline for youth camps to have a broadband internet service using end-to-end fiber optic facilities in §265.37(1). Nine commenters suggested revising §265.37(1) to allow phased compliance for youth camps without access to fiber broadband. One commenter inquired about the implementation timeline of the requirements outlined in §265.37(1).

Response: DSHS declines to revise the rule in response to this comment. DSHS must adopt the rules to comply with the requirements added to HSC §141.0092 from HB 1 and SB 1, 89th Legislature, which were effective September 5, 2025. HSC §141.0092(b)(1) requires a youth camp operator to maintain internet services through a broadband service that connects to the internet using end-to-end fiber optic facilities. DSHS rules are required to be consistent with statutory requirements.

Comment: Sixteen commenters suggested removing §265.37(2) to allow a youth camp to maintain only a single internet service. Three commenters suggested revising §265.37(2) to allow a youth camp to maintain alternative communication methods that do not rely on a broadband connection.

Response: DSHS declines to revise the rule in response to this comment. The requirement of a youth camp operator to maintain a secondary internet connection through a broadband service distinct from a broadband service that connects to the internet using end-to-end fiber optic facilities is required in HSC §141.0092(b)(2). DSHS rules are required to be consistent with statutory requirements.

Comment: A commenter inquired if the requirement in §265.37(2) can be satisfied by using a separate and distinct fiber optic cable.

Response: DSHS explains that §265.37(2) requires a youth camp operator to provide and maintain for a youth camp, a secondary internet connection through a broadband service. This secondary internet connection must be distinct from an internet service through a broadband service that connects to the internet using end-to-end fiber optic facilities, which is required under §265.37(1).

Comment: A commenter inquired if a cell phone hot spot can satisfy the secondary internet requirement in §265.37(2).

Response: DSHS explains that §265.37(2) does not specify approved types of secondary internet connections. However, as outlined in §265.37(2), a secondary internet connection through a broadband service must be distinct from the service in §265.37(1). A secondary internet connection must also meet the definitional requirements of a broadband service outlined in §265.11(3).

Comment: A commenter inquired if the secondary internet connection in §265.37(2) needs to be from a different provider.

Response: DSHS explains that §265.37(2) requires a youth camp operator to provide and maintain for a youth camp, a secondary internet connection through a broadband service. This secondary internet connection must be distinct from the internet service described in §265.37(1). Section 265.37(2) does not specify that the secondary internet must be from a different internet service provider.

Comment: A commenter agreed with DSHS using the Broadband Development Office's broadband service definition. The

commenter stated the definition provides for a technology-neutral approach in the type of broadband service each camp can utilize to meet connectivity requirements, specifically the secondary internet connection in §265.37(2).

Response: DSHS appreciates the comment.

STATUTORY AUTHORITY

The new section is authorized by HSC §141.008, which authorizes the executive commissioner of HHSC to adopt rules to implement the Youth Camp Safety and Health Act; and by Texas Government Code §524.0151 and HSC §1001.075, which authorize the executive commissioner of HHSC to adopt rules necessary for the operation and provision of health and human services by DSHS and for the administration of HSC Chapter 1001.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 13, 2026.

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Cynthia Hernandez
General Counsel
Department of State Health Services
Effective date: February 2, 2026
Proposal publication date: November 28, 2025
For further information, please call: (512) 231-5727

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER H. CANCELLATION, DENIAL, AND NONRENEWAL OF CERTAIN PROPERTY AND CASUALTY INSURANCE COVERAGE

DIVISION 1. GENERAL PROVISIONS

28 TAC §5.7015

The commissioner of insurance adopts amendments to 28 TAC §5.7015, concerning unearned premium refunds. The amendments are adopted with changes to the proposed text published in the August 15, 2025 issue of the *Texas Register* (50 TexReg 5305). The section was revised in response to public comment. The section will be republished.

REASONED JUSTIFICATION. The amendments to §5.7015 are necessary to ensure compliance with Insurance Code §558.002 and §558.003. Section 558.002 requires insurers to refund the appropriate portion of any unearned premium to a policyholder whenever a personal automobile or residential property insurance policy is cancelled before the end of its term. Section 558.003 directs the commissioner to adopt rules necessary to implement Insurance Code Chapter 558 and establish guidelines for determining required refunds of portions of unearned premiums.

The amendments to §5.7015 establish that when a personal automobile or residential property policy is cancelled, the appropriate portion to be refunded is the full amount of any unearned premium, which must be calculated pro rata. In effect, the amendments prohibit insurers from using a "short rate" provision or otherwise retaining any unearned premium. A short rate provision allows an insurer to retain a portion of unearned premium, which means that an insured's refund is less than a pro rata amount of the policy premium. The amendments remove uncertainty about the amount of unearned premium that insurers must return and align with policyholder expectations because most personal automobile and residential property policies already calculate unearned premium proportionately.

The amendments also clarify that insurers are not prohibited from having a minimum retained premium or other earned amount that is retained for otherwise unrecoverable expenses incurred in issuing a policy. For example, assume that a company issues a one-year personal automobile policy effective January 1 with an annual premium of $365, and the policy has a minimum retained premium of $25. If the insured cancels the policy effective February 19 (i.e., the 50th day of the policy), the pro rata refund amount would be $315. If the insured cancels effective January 10 (i.e., the 10th day of the policy), the refund amount would be $340 (i.e., $365 annual premium minus the $25 minimum retained premium). Any minimum retained premium or other earned amount that is retained for otherwise unrecoverable expenses incurred in issuing a policy, as well as justification for the amount, must be included in a rate or rule filing required under 28 TAC Chapter 5, Subchapter M, Division 6.

To provide adequate time for insurers to comply with these changes, the changes made to §5.7015 will become effective September 1, 2026. This delayed effective date will give insurers time to update policy forms, determine whether to update rate filings, and implement any necessary programming or procedural changes. This is longer than the 180-day period referenced in the proposal preamble, so it should give insurers enough time to incorporate the requirements under §5.7015.

Descriptions of the section's amendments follow.

Section 5.7015. Subsection (a) is amended to remove the phrase "the appropriate portion of" to more clearly require personal automobile and residential property insurers to refund any unearned premium when a policy is cancelled or terminated before the end of its term. The amendments also specify that unearned premium must be calculated pro rata, and add the title of Insurance Code §558.002 for consistency with agency drafting style.

New subsection (e) has been added in response to a comment. It clarifies that the requirements in subsection (a) do not prohibit a policy from including an earned amount that is retained for otherwise unrecoverable expenses incurred in issuing a policy, such as a minimum retained premium.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. TDI provided an opportunity for public comment on the rule proposal for a period that ended on September 15, 2025.

Commenters: TDI received comments from four commenters, all of which were generally in support of the proposal and requested some clarification: American Property Casualty Insurance Association; Old American County Mutual; Insurance Council of Texas; and Insurance Services Office, Inc.

Comments on §5.7015.

Comment. A commenter states that the requirement to calculate premiums pro rata rather than short rate is straightforward and clear, as is the allowance for the application of a minimum earned premium that is properly included in the rate and rule filings for the product.

Agency Response. TDI appreciates the commenter's observations.

Comment. A commenter commends TDI for including a statement in the proposal preamble that the amendments would "not prohibit insurers from having a minimum retained premium."

Agency Response. TDI appreciates the comment.

Comment. A commenter raises concerns about how to handle cases where the premium credit balances are inconsequential and costly for insurers to issue refund checks relative to the amounts. The commenter states that such checks often go uncashed, and the industry often includes "waiver of premium" rules in their filings, generally providing that inconsequential amounts will not be refunded unless requested. The commenter suggests that $5.00 is a typical threshold. The commenter asserts that TDI has handled companies' waiver-of-premium rules inconsistently in recent years, sometimes objecting to them and sometimes not. The commenter believes the commissioner of insurance has the authority to make reasonable allowances for the handling of inconsequential premium credit balances and that requiring automatic refund is inefficient, ineffective, and unnecessary.

Agency Response. TDI acknowledges the commenter's concern. However, TDI declines to revise the rule to address "inconsequential" premium credit balances, as it is outside the scope of this rulemaking. TDI will ensure that staff are trained on the matter. The rule proposal did not address the retention of minor amounts of credit balances but instead addressed the scope and types of expenses that are considered earned. With the understanding that the expense of returning the credit can be greater than the amount returned, TDI notes that companies have historically filed thresholds for waivers of minor amounts of credit balances unless the insured specifically requests a refund. These thresholds should be nominal and justified in the company's rate filing.

Comment. One commenter requests clarification regarding companies retaining a minimum earned premium. The commenter asks that TDI maintain consistency with the proposed rule's preamble explanation that there may be nonrefundable expenses incurred in writing a policy and for which a pro rata refund may not be appropriate.

The commenter, along with another commenter, similarly requests clarification about whether the rule amendment would apply only to premiums, or if it also would apply to other charges. The two commenters give examples such as the Motor Vehicle Crime Prevention Authority surcharge, installment payment fees, late payment fees, return payment fees, SR-22 fees, surcharges to collect volunteer fire assessments, surcharges to recoup FAIR Plan assessments, and catastrophe surcharges collected to repay a Texas Windstorm Insurance Association financing arrangement under Insurance Code Chapter 2210, Subchapter M-2.

One of the commenters suggests a way to clarify the rule is by adding new subsection (e) to read: "This requirement does not prohibit a policy from including a minimum retained premium or other earned amount that is retained for nonrefundable expenses incurred in writing a policy."

Agency Response. TDI agrees with this request. To clarify the rule, TDI added a new subsection (e) containing language similar to the commenter's suggested language, with changes made for added clarity.

The addition of new subsection (e), which references "an earned amount that is retained for otherwise unrecoverable expenses incurred in issuing a policy, such as a minimum retained premium," reinforces the principle that there are certain amounts like statutory fees and surcharges that may be retained as unrecoverable expenses. Companies should state in their manual and forms which fees are fully earned or unrecoverable.

Comment. A commenter requests that TDI consider a longer implementation period beyond the 180-day effective date TDI stated in the proposal. The commenter suggests that extending the effective date beyond 180 days could ensure a smoother transition, reduce compliance burdens, and minimize potential disruptions for companies that might have to make systems changes. The commenter does not suggest how much additional time is needed.

Agency Response. TDI agrees to extend the implementation period. TDI expects that few insurers will need to make systems changes because TDI is aware of only a few insurers that have short rate provisions. But extending the effective date to September 1, 2026, as discussed in the preamble, should give those insurers that need it ample time to implement the new requirements under §5.7015.

Comment: A commenter references the preamble of the rule proposal in which TDI stated that the amendments in effect prohibit insurers from using a short rate provision or otherwise retaining any unearned premium. The commenter requests that TDI clarify how insurers can recover expenses incurred for insured-requested cancellations of policy terms for less than one year, as well as for cancellations occurring within the first year of one-year policies. The commenter states that insurers often incur expenses to obtain new business, and the retention of a small amount of premium for nonrefundable expenses during the first year of an automobile policy is a common practice.

The commenter requests that the preamble of the rule as proposed be revised by adding the following statement: "Given the nonrefundable expenses incurred, insurers are not prohibited from retaining a relatively small amount (i.e., 10%) of premium during the first year that the policy is in force." The commenter also requests that TDI issue a bulletin with more specific guidance on its interpretation of these regulatory requirements for carriers writing automobile insurance policies in Texas.

Agency Response. TDI declines to add the requested language to the preamble of the rule as proposed or to issue a bulletin. The commenter's concerns are addressed in new subsection (e), which clarifies that insurers can retain amounts for otherwise unrecoverable expenses incurred in issuing a policy. TDI believes that the rule, with the addition of subsection (e), addresses the commenter's request for more specific guidance.

STATUTORY AUTHORITY. TDI adopts amendments to §5.7015 under Insurance Code §§558.002, 558.003 and 36.001.

Insurance Code §558.002 provides that Insurance Code Chapter 558 applies to an insurer that issues an insurance policy that requires the insurer to maintain an unearned premium reserve for the portion of the written policy premium applicable to the un-

expired or unused part of the policy period for which the premium has been paid.

Insurance Code §558.003 directs the commissioner to adopt rules necessary to implement Insurance Code Chapter 558 and establish appropriate guidelines to determine the portion of unearned premium that must be refunded to a policyholder.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

§5.7015. Refund of Unearned Premium.

(a) Insurers must refund any unearned premium to the policyholder not later than the 15th business day after the effective date of cancellation or termination of a personal automobile or residential property insurance policy, as required by Insurance Code §558.002(d), concerning Applicability of Chapter; Refund of Unearned Premium. Unearned premium must be calculated pro rata.

(b) For purposes of this section and Insurance Code §558.002(d), the "effective date of cancellation or termination" means the date the insurer receives notice of the cancellation or termination, or the date of the cancellation or termination, whichever is later. This does not change the actual date of cancellation or termination for calculating the amount of unearned premium or any other purpose.

(c) Insurers may refund unearned premium by applying it as a credit to other premium due on the same policy, unless the policyholder requests otherwise.

(d) This section applies to any unearned premium, including any that results from cancellation or termination of an entire policy or an endorsement.

(e) The requirements in subsection (a) of this section do not prohibit an insurer from including in a policy an earned amount that is retained for otherwise unrecoverable expenses incurred in issuing a policy, such as a minimum retained premium.

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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Jessica Barta
General Counsel
Texas Department of Insurance
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For further information, please call: (512) 676-6555

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SUBCHAPTER O. STATISTICAL PLANS

28 TAC §5.9503, §5.9504

The commissioner of insurance adopts new 28 TAC §5.9503 and §5.9504, concerning the *Texas Statistical Plan for Residential Risks* (Residential Plan) and the *Texas Private Passenger Auto Statistical Plan* (Auto Plan), respectively. The new sections are adopted with changes to the proposed text published in the October 24, 2025 issue of the *Texas Register* (50 TexReg 6977). Sections 5.9503 and 5.9504 were revised in response to public comments. In addition, both the Residential Plan referenced in §5.9503 and the Auto Plan referenced in §5.9504 have been revised in response to public comments. TDI also revised both statistical plans to provide clarification; ensure consistency between the plans; allow for future expansion of data fields, if necessary; and correct errors and typos. The sections will be republished.

REASONED JUSTIFICATION.

The new sections are necessary to implement House Bill 2067, 89th Legislature, 2025, which amended Insurance Code Chapter 551 to require insurers to (1) disclose to consumers their reasons for cancellation or nonrenewal of an existing insurance policy or for declination of an application, even without a consumer's request; and (2) provide to TDI--at least once a quarter and in the form and manner TDI prescribes--a written report organized by ZIP code that summarizes the insurer's reasons that were provided to consumers. The bill also requires TDI to post an aggregated summary of the reports on its website.

New §5.9503 and §5.9504 adopt by reference revised versions of TDI's current statistical plans for residential and private passenger automobile lines of business. The revisions to the Residential Plan and Auto Plan require insurers to include data by ZIP code relating to the reasons for cancellations, nonrenewals, and declinations in the statistical reports submitted to TDI's statistical agent. Insurers will report the data under the Residential Plan on a monthly basis and under the Auto Plan on a quarterly basis, aligning with current reporting frequency. The adopted plan updates will facilitate insurers' reporting of the data to TDI and TDI's collection and posting of an aggregated summary of the data, in compliance with HB 2067. Each statistical plan will provide codes to be used as shorthand for various common reasons an insurer would decline an application or cancel or not renew a policy.

Descriptions of the adopted updates to the Residential Plan and the Auto Plan and new §5.9503 and §5.9504 follow.

The Residential Plan

In the Residential Plan, the adopted updates add new General Rules No. 34 to Section A (General Rules) to describe the requirements for reason-code reporting. New Section E provides the record layout for reasons-related data, including instructions, description of the required columns, and the corresponding reason codes. New Section F provides additional instructions and descriptions of the reason codes.

For clarity, the reason codes are provided only for use in a statistical plan report submitted to TDI's statistical agent. TDI expects that in notices or disclosures of reasons to consumers, as required by HB 2067, insurers will provide a comprehensive description or explanation of the reasons for a specific declination, cancellation, or nonrenewal; the insurer should *not* rely on TDI's reason codes in its consumer notices or disclosures. TDI anticipates that reason code updates will be needed to align future data reports with the evolving insurance market, to address stakeholder feedback, or to improve the usefulness of collected data.

Consistent with Insurance Code §551.002(c) and §551.109(1), the new reporting requirements include an indicator for reasons that include the use of third-party information. The new indicator requires specifying whether the reasons were based on the use of aerial imagery versus other types of third-party information. An indicator for cancellations that occur during the first 60 days of the initial policy term is also included in the adopted updates.

As instructed in the plan, the reasons-related reporting requirements apply to all declinations, cancellations, and nonrenewals starting on April 1, 2026, except for:

(1) declination of an application that was made before April 1, 2026; and

(2) cancellation of a policy that was delivered, issued for delivery, or renewed before April 1, 2026.

The adopted updates also add new reporting requirements to require an additional report of the numbers of declined applications and canceled and nonrenewed policies by ZIP code. New General Rules No. 35 and Section G are added to the Residential Plan to describe the requirements for reporting the actual numbers of declined applications and canceled and nonrenewed policies and to provide the record layout for reporting the data, respectively.

In addition to the previously described revisions to implement HB 2067 and Insurance Code Chapter 38, Subchapter E, updates to the Residential Plan (non-implementation updates) include aligning reporting requirements with current industry practices, adding clarification, correcting errors, and removing an obsolete technology reference.

An instruction for reporting accident dates on loss records in General Rules No. 8 is deleted to reflect current industry practice. Similarly, a new code for policies with vacant occupancy is added to the premium and losses codes and the record layout for premiums to accommodate current reporting practices. Also, in the record layout for premiums, revisions clarify in the descriptions for Codes 01 and 91 in Column 5-6 (Record Type) that the report includes reinstatements of flat cancellations. Revisions correct errors in the record layout for premium instructions by adding a code for "Not Applicable" in Column 53 (Construction) and by deleting the "DW Only" reference in Column 151 (Replacement Cost Building (HO and DW)). In the instructions within the record layout for losses for column 151 (Replacement Cost Building (HO and DW), the text "(Ten and Con Only)" is deleted. Another error in the instructions within the record layout for losses is corrected by deleting a reference to a nonexistent field in Column 169-172 (Amount of Insurance - Personal Property Coverage (HO)). A reference to an obsolete technology, ShareFile, is deleted from the transmittal form instructions in the General Rules.

TDI has made the following changes to the Residential Plan as proposed in response to comments:

- References to the January 1, 2026 effective date of the updated Residential Plan have been replaced with the new plan effective date of April 1, 2026, throughout the plan.

- General Rules No. 4 has been revised to remove the requirement for a separate formal affidavit.

- General Rules Nos. 21 and 29 have been updated to remove the references to farm mutual insurers.

- General Rules No. 29, relating to the transmittal form content, has been revised to clarify that the Notified Policy Count (referred to as the Recipient Count when the rule proposal was published) should be provided by action type. The term "recipient count" has been changed to "notified policy count" to clarify that the term refers to the count of policies and not the count of insureds. This terminology change has also been made in General Rules No. 34, in the record layout in Section E, and throughout the Residential Plan.

- General Rules No. 34 has been revised to clarify the instructions for reporting the Notified Policy Count.

- Both General Rules Nos. 34 and 35 have been revised to: (a) add specific instructions for reporting the reasons for and counts of cancellations, including flat cancellations; (b) clarify that only declinations of "completed and submitted applications" must be reported; and (c) clarify that rescissions and certain voided policies should not be reported.

- Section E (Record Layout for Cancellation, Nonrenewal, and Declination Notices) has been revised to: (a) update the Reason Code List description to clarify that the reason codes should be concatenated in alphabetical order; (b) clarify in Column 18 (60D) of the record layout that the 60-day indicator should apply if the cancellation notice was sent during the first 60 days of the initial policy term; and (c) remove the "Cancellations" and "Nonrenewals and Declinations" headings from the Reason Code List for Columns 36-45 (RCL) to prevent confusion about which reason codes apply to each action type.

- In the "Reason codes" instructions in Section F, the description for "Exposure to loss - liability" has been expanded to provide additional guidance for use of that reason code.

TDI has also made the following updates to the record layouts as proposed to accommodate future reporting needs and to clarify coding:

- In Sections E and G, additional "Skip" fields have been added to the record layout for both new reports to allow for future expansion for new data fields.

- In Section E, the code for Column 1 (SP) in the record layout has been updated from 4 to 5 to distinguish from transaction reporting under other sections of the Residential Plan.

- Similarly, in Section G, the code for Column 1 (SP) has been updated from 4 to 6.

- In Section E, the description of "Notification Date" in Columns 2-4 (NDT) has been reworded for clarity.

TDI has also replaced the term "count" in General Rules No. 29 with "actualized policy count" to clarify that the count should be composed of actual cancellations, nonrenewals, and declinations. This terminology change has also been made in the record layout in Section G.

TDI also adopts nonsubstantive changes to the Residential Plan, including typo corrections, plain language edits, table of contents additions, and style and formatting changes to reflect current TDI style preferences.

The Auto Plan

In the Auto Plan, the adopted updates require a new quarterly report on the reasons for cancellations, nonrenewals, and declinations. In new Section F, specific instructions are added for the report, including the record layout, field instructions, and listing and descriptions of the reason codes.

Consistent with Insurance Code §551.002(c) and §551.109(1), the new reporting requirements include an indicator for reasons that include the use of third-party information. An indicator for cancellations that occur during the first 60 days of an initial policy term is also included in the adopted updates.

As instructed in the plan, the reasons-related reporting requirements apply to all declinations, cancellations, and nonrenewals starting on April 1, 2026, except for:

(1) declination of an application that was made before April 1, 2026; and

(2) cancellation of a policy that was delivered, issued for delivery, or renewed before April 1, 2026.

The adopted updates also add new reporting requirements to the Auto Plan to require an additional report of the numbers of declined applications and canceled and nonrenewed policies by ZIP code. New Section G is added to provide the instructions, field definitions, and record layout for reporting the data.

In addition to the previously described revisions to implement HB 2067 and Insurance Code Chapter 38, Subchapter E, updates to the Auto Plan (non-implementation updates) include aligning reporting requirements with current industry practices and adding clarification.

The adopted updates add classification codes to clarify how insurers should report data in certain circumstances and expand the number of reserved deductible positions. Insurers have increasingly reported that the classification codes in the current Auto Plan do not account for changes in insurers' driver class rating variables and risk classifications. The following two new classification codes are added to the Quarterly Market Report:

(1) 99150 - Used when an insured household includes both Youthful Males under the age of 25 and Unmarried Females under the age of 21.

(2) 99900 - Used when an insurer does not have sufficient information about Operators and Business Use. Use of this code requires certification from the insurer regarding inapplicability of any other classification code and requires prior approval from TDI's statistical agent.

The number of positions available for the "deductible amount" is increased from four to five in the Quarterly Detailed Experience Report. At least one insurer has begun offering a deductible option that spans five digits. Because the current Auto Plan has an allocation of four positions for reporting the deductible amount, insurers currently report "9999" in the deductible field when the deductible is five digits.

The adopted revisions to the classification codes and deductible positions address limitations in the current plan that make reporting of accurate statistical data difficult and reflect current practices by insurers. Revisions also update General Reporting Instructions No. 12 relating to new versions of the Auto Plan.

TDI has made the following changes to the Auto Plan as proposed in response to comments:

- References to the January 1, 2026 effective date of the updated Auto Plan have been replaced with the new plan effective date of April 1, 2026, throughout the plan.

- General Reporting Instructions No. 10 has been revised to remove the requirement for a separate formal affidavit.

- Specific Instructions No. 1 in Section F has been revised to clarify the instructions for reporting the Notified Policy Count (referred to as the Recipient Count when the rule proposal was published). The term "recipient count" has been changed to "notified policy count" to clarify that the term refers to the count of policies and not the count of insureds. This terminology change has also been made in General Reporting Instructions No. 8, in the record layout in Section F, and throughout the Auto Plan.

- Specific Instructions No. 3 in Sections F and G has been revised to clarify that insurers offering policies covering Group 1 and Group 2 vehicles are subject to the new reporting requirements.

- Specific Instructions No. 4 and field definitions for the "Five-Digit ZIP Code" field in Sections F and G have been revised to clarify reporting of multiple covered vehicles in different ZIP codes.

- New Specific Instructions No. 6 in Section F and new Specific Instructions No. 5 in Section G have been added to clarify that only declinations of "completed and submitted applications" must be reported.

- New Specific Instructions No. 7 in Section F and new Specific Instructions No. 6 in Section G have been added to provide specific instructions for reporting the reasons for and counts of cancellations, including flat cancellations, and to clarify that rescissions and certain voided policies should not be reported.

- Specific Instructions Nos. 6 and 7 in Section F have been combined into renumbered No. 8 and the reason code lists for cancellations versus nonrenewal and declinations have been combined into a single list, to prevent confusion about which reason codes apply to each action type. Similarly, the separate reason code lists in the field definition for the "Reason Code List (Alphanumeric Field: Positions 36-45)" field in Section F have been combined into a single list and the separate headings have been removed.

- Specific Instructions No. 8 in Section F has been revised to expand the description for "Exposure to loss - liability" to provide additional guidance for use of that reason code.

- The field definition for the "60-day Indicator (Alphanumeric Field: Position 18)" field has been revised to clarify that the 60-day indicator should apply if the cancellation notice was sent during the first 60 days of the initial policy term.

- In the record layout for Section G, the field length for the "Action Effective Date" field has been corrected from 6 to 4.

- General Reporting Instructions No. 8, relating to the transmittal form content, has also been revised to clarify that the recipient count and the actualized policy count (referred to as "count" when the rule proposal was published) should be provided separately by each action type.

TDI has also made the following updates to the record layouts and field definitions in Sections F and G as proposed to correct errors, make the coding consistent with the Residential Plan, and accommodate future reporting needs:

- The field definition for the "Plan Code (Numeric Field: Positions 1-2)" field in Section F has been revised to reflect the correct report name.

- The field definition for the "Action Type (Numeric Field: Positions 15-16)" field in Sections F and G has been revised to reflect numeric codes consistent with the Residential Plan. References to "letter" codes and "alphanumeric" fields have been corrected. Conforming changes have been made to the positions in the field definitions and in the record layout.

- The field definition for the "Notification Date" field in Section F has been reworded for clarity.

- The "Count" field in the Section G field definitions has been renamed "Actualized Policy Count" to clarify that the count should be composed of actual cancellations, nonrenewals, and declinations. This terminology change has also been made in the record layout in Section G and in General Reporting Instructions No. 8.

- Additional "Reserved" fields have been added to the field definitions and record layout in Sections F and G to allow for future expansion for new data fields.

TDI also adopts nonsubstantive changes in the Auto Plan, including typo corrections, plain language edits, TDI contact information updates, outdated footer removal, new cover page and table of contents additions, and style and formatting changes to reflect current TDI style preferences.

Section 5.9503. Texas Statistical Plan for Residential Risks.

New §5.9503 adopts by reference the Residential Plan, which is revised to add requirements and instructions for reporting data on the reasons for declinations, cancellations, and nonrenewals of residential property insurance policies under HB 2067. Subsection (a)(1) provides that the section's purpose is to establish requirements for this data reporting. Subsection (a)(2) provides that these requirements apply to insurers writing direct residential property lines of business in Texas and that applicable insurers must provide the reports described in the Residential Plan. Subsection (a)(3) provides that insurers' reports must comply with the requirements and instructions specified in the Residential Plan. Subsection (a)(4) specifies that insurers must use the revised version of the Residential Plan beginning on its effective date. Subsection (b) adopts by reference the revised Residential Plan.

In response to comments, TDI has extended the effective date of the Residential Plan to April 1, 2026. Subsections (a)(4) and (b) as proposed have been changed to replace the January 1, 2026 plan effective date with the new date of April 1, 2026.

Section 5.9504. Texas Private Passenger Auto Statistical Plan.

New §5.9504 adopts by reference the Auto Plan, which is revised to add requirements and instructions for reporting data on the reasons for declinations, cancellations, and nonrenewals of automobile insurance policies under HB 2067. Subsection (a)(1) provides that the section's purpose is to establish requirements for this data reporting. Subsection (a)(2) provides that insurers writing direct private passenger automobile business in Texas must provide the reports described in the Auto Plan. Subsection (a)(3) provides that insurers' reports must comply with the requirements and instructions specified in the Auto Plan. Subsection (a)(4) specifies that insurers must use the revised version of the Auto Plan beginning on its effective date. Subsection (b) adopts by reference the revised Auto Plan.

In response to comments, TDI has extended the effective date of the Auto Plan to April 1, 2026. Subsections (a)(4) and (b) as proposed have been changed to replace the January 1, 2026 plan effective date with the new date of April 1, 2026.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. TDI provided an opportunity for public comment on the rule proposal for a period that ended on November 24, 2025.

Commenters: TDI received written comments from 21 commenters. Six of the 21 commenters also spoke at a public hearing on the proposal held on November 13, 2025. Commenters in support of the proposal with changes were American Modern; American Property Casualty Insurance Association; Amica Mutual Insurance Company; CGI, Inc.; Cimarron Insurance Company, Inc.; Clearcover Insurance Company; Cornerstone Operations Group; Insurance Council of Texas; National Association of Mutual Insurance Companies; Old American County Mutual Fire Insurance Company & Old American Indemnity Company; Sentry Insurance; Sutton National Insurance Group; Texas Appleseed; and Texas Farm Bureau Insurance Companies.

Commenters against the proposed application of the new reporting requirements in the statistical plans to farm mutual insurance companies were Farmers Mutual Fire Insurance Association of Comal County; Garfield Farm Mutual Insurance Association; Germania Farm Mutual Insurance Association; Gillespie Farm Mutual Insurance Company; Hochheim Prairie Farm Mutual Insurance Association; Ranchers and Farmers Mutual Insurance Company; and Texas Association of Mutual Insurance Companies.

Four commenters submitted comments after the posted deadline of 5:00 p.m., Central time, on November 24, 2025. Because these comments were submitted after the end of the public comment period, TDI is unable to consider the comments and does not respond to them in this adoption order.

General Comments

Comment. A commenter states appreciation for TDI's important work in proposing amendments to the Residential and Auto Plans that align with the requirements of HB 2067. The commenter notes that "HB 2067 offers clear authority to TDI and a mandate to collect reasons for cancellation, declination, and nonrenewal."

Agency Response. TDI appreciates the commenter's support.

Comment. A commenter expresses interest in collaborating with TDI and industry peers through a TDI-led working group or technical subcommittee to shape uniform standards and share implementation insights to further industry-wide adoption of the requirements.

Agency Response. TDI declines to create a working group or technical subcommittee at this time but appreciates the commenter's interest in collaborating in the implementation of HB 2067.

Comment: Multiple commenters express concern about the deadline to begin complying with the reporting requirements as proposed. Two commenters state that the timeframe to implement the proposed requirements will not be sufficient to make all the necessary changes needed to report the required data. Another commenter notes the difficulty of implementing the reporting requirements while simultaneously devoting resources to comply with the consumer notice requirements. Another commenter notes the challenge of implementing the proposed requirement in Section B of the Residential Plan to report on vacancy status, as some companies may not currently capture this data. To minimize implementation challenges, four commenters suggest delaying the implementation of the proposed requirements by providing extra time for the first report submission or creating a phased reporting schedule.

Three commenters note the difficulty of quickly implementing the requirements while reporting accurate data, with one noting that inaccurate or incomplete data undermines the goal of promoting transparency. One of the commenters notes that previous changes to the residential statistical plan allowed for a six-month lead time and that quickly implementing the proposed statistical plan requirements may result in inaccurate or less useful information. Another commenter recommends extending the implementation deadline by 90 to 120 days to ensure complete understanding and compliance with the new requirements.

Agency Response. TDI recognizes the challenge of implementing the new reporting requirements by the proposed deadline and agrees to extend the implementation time. To reflect this, TDI has changed the effective dates of the statistical plans in the rule text and in the plans from January 1, 2026, to April 1, 2026. TDI believes that delaying the plans' effective dates will provide insurers with sufficient time to implement the reporting and notice requirements, which will ensure that the reported data is accurate and collected in a timely manner. The extra time will allow insurers to make necessary updates to their systems and processes before they must begin reporting.

In §5.9503(a)(4) and §5.9504(a)(4), TDI has updated the date that applies to all reports required under the section from January 1, 2026, to April 1, 2026. TDI has also changed the effective dates in the Residential Plan and the Auto Plan from January 1, 2026, to April 1, 2026. To reflect the change to the effective dates of the statistical plans, TDI has changed the plans' effective dates as referenced in §5.9503(b) and §5.9504(b) from January 1, 2026, to April 1, 2026.

Comment. Multiple commenters express concern about the short implementation timeline. One commenter notes the uncertainty in navigating this new system and another commenter states that it may take time for testing and working with the statistical agent to ensure programming and coding systems are aligned. Two commenters recommend that, in addition to delaying the effective date, TDI establish a safe harbor provision for good faith errors that insurers may report during the initial compliance period. One of the commenters requests that TDI be flexible with its enforcement of the requirements, especially at the beginning of implementation.

Another commenter recommends that TDI permit an initial "pilot" reporting period, where insurers submit the new data to TDI in a trial run (using the first quarter of required data as an example) and then TDI provides feedback on data quality or formatting issues without the risk of regulatory penalties. The commenter notes that a period like this would benefit both TDI and insurers by identifying and addressing inconsistencies or technical problems before strict enforcement.

Agency Response. TDI recognizes the challenge of implementing the new reporting requirements by the proposed deadline but declines to establish a safe harbor period or a "pilot" reporting period. However, as previously described, TDI has changed the effective dates of the statistical plans in the rule text and in the plans from January 1, 2026, to April 1, 2026, to give insurers more time to update coding and programming systems to comply with the requirements.

In §5.9503(a)(4) and §5.9504(a)(4), TDI has updated the date that each section begins to apply to all reports required under the section from January 1, 2026, to April 1, 2026. TDI has also changed the effective dates in the Residential Plan and the Auto Plan from January 1, 2026, to April 1, 2026. To reflect the change to the effective dates of the statistical plans, TDI has changed the plans' effective dates as referenced in §5.9503(b) and §5.9504(b) from January 1, 2026, to April 1, 2026.

Comment. Four commenters express concern about the effective date of the proposed rule and request clarification about how to apply HB 2067 and the proposed statistical plans to policies. One commenter requests clarification on the reporting requirements regarding application denials and policy cancellations where the application or policy begins December 31, 2025, and is subsequently denied or canceled in January 2026. Two commenters state that reporting nonrenewal notifications made before January 1, 2026, is inconsistent with HB 2067 and that coverage decisions made before January 1, 2026, should not be reported. The commenters state that HB 2067 does not require notices providing reasons to be issued prior to January 1, 2026, and request that any language in the statistical plans that suggests otherwise be removed or replaced with language that aligns with HB 2067. Another commenter urges TDI to implement data collection timelines that align with the effective date in HB 2067 and notes the importance of receiving meaningful data about the insurance market by geographic location to inform Texas legislators in time for the 90th Regular Legislative Session.

Agency Response. TDI understands the concerns raised by the commenters and agrees that meaningful, timely data is important to effectively implement HB 2067. However, in response to comments, TDI has changed the effective date of the statistical plans in the rule text and in the plans from January 1, 2026, to April 1, 2026. TDI believes that delaying the plans' effective dates will provide insurers with time to implement the reporting and notice requirements to ensure accurate data is reported and collected in a timely manner.

In §5.9503(a)(4) and §5.9504(a)(4), TDI has updated the date that each section begins to apply to all reports required under the section from January 1, 2026, to April 1, 2026. TDI has also changed the effective dates in the Residential Plan and the Auto Plan from January 1, 2026, to April 1, 2026. To reflect the change to the effective dates of the statistical plans, TDI has changed the plans' effective dates as referenced in §5.9503(b) and §5.9504(b) from January 1, 2026, to April 1, 2026.

Comment. One commenter requests clarification on whether the lack of carve-out for nonrenewals was intentional and references the explanation in the proposal. The proposal states that "the reasons-related reporting requirements will apply to all declinations, cancellations, and nonrenewals starting on January 1, 2026, except for: (1) declination of an application that was made before January 1, 2026; and (2) cancellation of a policy that was delivered, issued for delivery, or renewed before January 1, 2026." The commenter notes that insurers are already issuing nonrenewal notices and that this reporting requirement will likely require manual review to capture the data being requested.

Agency Response. In Specific Instructions No. 2 in Section F in the Auto Plan and General Rules No. 34 in Section A in the Residential Plan, TDI requires insurers to provide information on the number of notices sent for policies that nonrenew on or after the effective date of the plan, which has been adopted as April 1, 2026. TDI recognizes that companies will be sending nonrenewal notices out in early 2026 and may have to capture this information by other means before programming is in place for the new reporting requirements. However, this requirement enables TDI's posting of an aggregated summary of the insurers' reports as required under Insurance Code §551.006(b).

Comment. Two commenters jointly posit that HB 2067 does not require the use of the statistical plans for the new reporting requirements. The commenters strongly encourage TDI to allow for reporting through other means. A third commenter states their appreciation for TDI leveraging existing statistical reporting to collect the newly required data and notes that this helps to streamline the process for insurers.

Agency Response. HB 2067 added new §551.006 to the Insurance Code, and §551.006 expressly requires reporting to be "in the form and manner prescribed by the commissioner." TDI is therefore authorized to prescribe reporting via the existing statistical plans. Incorporating the new reporting requirements as new sections in the existing statistical plans provides efficiency for both insurers and TDI and will facilitate TDI's posting of aggregated summaries of the reported data on TDI's internet website.

Comment. A commenter recommends that companies be required to report declinations by consumers, as a separate data category. The commenter expresses concern that otherwise insurers could conceal declinations by offering an untenable price to consumers as a way to avoid reporting a declination.

Agency Response. TDI declines to require reporting of consumers' reasons for declining coverage. As stated in Insurance Code §551.006, the new reporting requirements apply to "the insurer's reasons" that the insurer provided to consumers. HB 2067 does not mention reporting of a consumer's reasons, and insurers are unlikely to have access to such data. Policyholders may decide not to renew their policy for any number of reasons that are not captured by the insurer.

Comment. One commenter notes that existing reports already include ZIP codes and suggests that TDI consider adding the relevant data fields to existing reports instead of requiring two new reports for the notices and quarterly numbers. Another commenter questions whether separate reports for home and auto are necessary and suggests consolidating Sections E, F, and G into two sections in the Auto Plan.

Agency Response. TDI declines to add the new reporting requirements to the existing reports in the statistical plans. The current Residential Plan data is at the transactional level, and TDI believes that incorporating the new fields will require more programming effort and validation. While drafting the proposal, TDI considered including the new fields in the Quarterly Market Report in the Auto Plan, but determined a new report was necessary as the new information is by policy, rather than by vehicle. In addition, TDI declines to consolidate Sections E, F, and G of the Auto Plan. Section E is the Quarterly Detailed Experience Report and applies only to the Top Reporting Groups as defined in the General Reporting Instructions of the Auto Plan. All insurers are required to submit data for Sections F and G.

Comment. A commenter asks about two sections in the Residential Plan: Section E, on the record layout for cancellation, nonrenewal, and declination notices, and Section G, on the record layout for the number of actual cancellations, nonrenewals, and declinations. The commenter asks if the data in Section G can be derived from the data in Section E, and if so, suggests requiring insurers to submit only the data required by Section E to avoid redundancy. Two additional commenters jointly state that reporting reasons codes and "raw numbers" of declinations, cancellations, and nonrenewals for both the Auto and Residential Plans is duplicative and unnecessary, and request deleting the second report in new Section G in both plans.

Agency Response. The data in both Section E and Section G of the Residential Plan is necessary because the data in the latter cannot be derived from the former. Section E collects data on the number of notices of cancellation, nonrenewal, and declination sent during the reporting period and the reasons and timing thereof. Section G collects data on the number of actual cancellations, nonrenewals, and declinations during the reporting period. These numbers will not necessarily be the same. For example, a consumer who gets a nonrenewal notice may be able to remedy the underlying reason for the notice, and the insurer does not actually nonrenew the policy. Due to these reasons, which also apply to the Auto Plan, TDI declines to remove the reporting requirement in Section G of either plan.

Comment. One commenter expresses concern about the level of detail for reporting required in the revised statistical plans. The commenter notes that HB 2067 does not require the level of detail.

Agency Response. TDI disagrees with the commenter regarding the scope of the requirements of HB 2067. Insurance Code §551.006 requires insurers to provide to TDI a written report summarizing the insurer's reasons for declination, cancellation, or nonrenewal provided to applicants for insurance or policyholders as required under Insurance Code Chapter 551. Under Insurance Code §551.006(a)(1), the report must be in the form and manner prescribed by the commissioner. The proposed revisions to the statistical plans prescribe the form and manner in which insurers must report the information under Insurance Code §551.006.

Comment. A commenter recommends allowing companies to file reports directly with the Texas Insurance Checking Office (TICO).

Agency Response. The proposed amendments to both statistical plans already expressly instruct companies to file the new reports directly with TDI's designated statistical agent, TICO. General Rules No. 28 in the Residential Plan and General Reporting Instructions No. 2 in the Auto Plan both identify TICO as TDI's designated statistical agent for receiving data reports under the plan.

Comment. A commenter asks whether the required filing is a transmittal or an affidavit.

Agency Response. The amendments to both plans require both a transmittal form and an attestation for the new reports. In the Residential Plan, General Rules No. 4 has been revised to require an attestation to the accuracy and completeness of the submitted reports without the need for a separate affidavit, and General Rules No. 29 requires a transmittal form. Similarly, in the Auto Plan, General Reporting Instructions No. 8 provides that a transmittal form "shall accompany every data submission," and General Reporting Instructions No. 10 has been revised to require an attestation to the accuracy and completeness of the reported data without the need for a separate affidavit.

Comment. Two commenters express concern about the confidentiality of the information reported. One commenter suggests adding clear confidentiality provisions for insurers to assert confidentiality or trade secret protections on the reported data. The other commenter notes that Insurance Code §551.006(b) requires TDI to post an aggregated summary that does not identify, directly or indirectly, any insurer. The commenter states that insurer reports will include confidential and proprietary information, which could expose underwriting guidelines and other information if released, and urges TDI to take all necessary steps in rulemaking to protect the confidentiality of the reported information.

Agency Response. TDI declines to add confidentiality provisions in the revised statistical plans because it is adequately protected under HB 2067. TDI will post an aggregated summary of insurers' reports, which will not identify, directly or indirectly, any

insurer as required by HB 2067. TDI notes that insurers currently report detailed statistical data every quarter for private passenger auto lines and every month for residential property lines without explicit confidentiality provisions laid out in the statistical plans.

Comment. A commenter asks for clarification on whether there will be additional fees for submitting the new reports to comply with HB 2067.

Agency Response. The cost analysis included in the rule proposal states that the designated statistical agent may charge additional or increased fees for additional data reports required under the proposed revised statistical plans. TDI does not know at this time what, if any, additional fees the statistical agent may charge for the new reporting requirements.

Comment. A commenter asks for confirmation that ocean marine and umbrella policies are not in the scope of the reporting requirements.

Agency Response. The adopted rules only apply to lines of business reported under the Residential and Auto Plans. Ocean marine and umbrella policies are not reported under those plans.

Comment. A commenter asks for clarification on whether to count days from the policy effective date to the cancellation effective date or the date an insurer decides to cancel the policy.

Agency Response. The new reporting requirements do not require the number of days between the policy's effective date and the cancellation effective date or the date the insurer decides to cancel. Rather, insurers must report the "Notification Date," which is the date on which the notice providing the reasons for cancellation, nonrenewal, or declination was sent to the policyholder or applicant, and the "Action Effective date," which is the date coverage ends for cancellations, unless it is a flat cancellation. The record layout and field definitions or descriptions in the new reporting requirements in the statistical plans provide information on these fields.

Comment. A commenter requests that TDI define "notice date" for an insured cancellation and asks for clarification on how this information is captured and the difference between "notice date" and "effective date."

Agency Response. TDI declines to add a definition of "notice date" as it relates to insured cancellation because a similar term, "Notification Date," is already defined in the statistical plans. The Notification Date is the date on which the notice providing the reasons for cancellation, nonrenewal, or declination was sent to the policyholder or applicant. This definition is found in the Auto Plan in the "Field Definitions" in Section F and in the "Record Layout" in Section E of the Residential Plan. TDI notes that the report for the actual number of declinations, cancellations, and nonrenewals has a field for "Action Effective Date," which is defined as the date the declination, cancellation, or nonrenewal is effective. The "Action Effective Date" is included in the "Field Definitions" in Section G for the Auto Plan and in the "Record Layout" in Section G of the Residential Plan.

Comment. A few commenters ask whether the requirement to submit the Quarterly Cancellation, Nonrenewal, and Declination Notices and Quarterly Number of Actual Cancellations, Nonrenewals, and Declinations reports applies to policies covering motorcycles and other vehicles reported as Group 2.

Agency Response. Yes. The new quarterly reports in the Auto Plan apply to policies covering Group 1 and Group 2 vehicles, which are currently subject to statistical plan reporting. Specific Instructions No. 3 in both the Quarterly Report of Cancellation, Nonrenewal, and Declination Notices and the Quarterly Report of Number of Actual Cancellations, Nonrenewals, and Declinations states that the experience reported on lines 19.1, 19.2, and 21.1 of the Annual Statement, statutory Page 14 must be reported. This experience includes motorcycles and antique autos.

However, in response to these comments, the adopted Auto Plan includes a new sentence to Specific Instructions No. 3 in Sections F and G to clarify that the reporting requirements apply to policies covering Group 1 and Group 2 vehicles.

Comment. The report description for the Quarterly Report of Number of Actual Cancellations, Nonrenewals, and Declinations in the Auto Plan states that the number of actual cancellations and nonrenewals by ZIP Code should reconcile with those provided to the NAIC's Market Conduct Annual Statement (MCAS) reporting. A few commenters state that they only report motorcycle business, and not collector/antique auto business for MCAS and so the numbers will not reconcile. The commenters ask whether that is a problem.

Agency Response. This is not a problem as long as the relevant subsets of data can be reconciled. TDI recognizes that there are some differences between the new statistical plan reporting requirements and those for the NAIC MCAS reporting. For example, insurers report private passenger automobiles and motorcycles for MCAS, but antique vehicles and primarily off-road vehicles are excluded from MCAS reporting. As such, an insurer's reports to TDI over a given calendar year for the actual number of cancellations and nonrenewals should reconcile based on the subset of data reported under MCAS for the same year.

TDI recognizes that the numbers may not match given the reporting differences, but if insurers use the same programming logic, then if TDI staff were to ask an insurer to reconcile its statistical reporting and MCAS submissions, the insurer should be able to show TDI that its numbers reconcile between the two.

Comment. A few insurers ask how they should report the ZIP codes of vehicles garaged in multiple ZIP codes or for which the garage ZIP code is unknown.

Agency Response. In response to this comment, TDI has changed Specific Instructions No. 4 and the "Five-Digit ZIP Code" field in the Field Definitions in both Section F and Section G in the Auto Plan to provide that if there are multiple vehicles on the policy in different ZIP codes, insurers should report the ZIP code for the first covered auto listed.

Comment. A commenter recommends that TDI specify a uniform set of reason codes with clear definitions. The commenter notes that this would reduce ambiguity, help insurers to map their internal codes to TDI's expectation, and enhance comparability of data across different companies.

Agency Response. TDI agrees with the commenter's reasoning. The proposed amendments to both statistical plans provide for standardized reporting of the reasons for cancellations, nonrenewals, and declinations. Both amended plans include specific instructions, the record layout and field descriptions, and descriptions of reason codes. The reasons are listed and assigned a code. For reasons that may not be as intuitive, there is additional information describing when to use the specific reason.

Comment. Three commenters request that TDI allow companies to use their own reasons in the reports instead of requiring the use of the uniform set of reason codes provided in the amended statistical plans. The commenters argue that doing so would allow simpler, faster, and less costly implementation of the new reporting requirements. One of the commenters also requests detailed guidance and a minimum of 180 days notice, public comment period, and longer transition windows for any future changes to the reason codes.

Agency Response. TDI declines to allow insurers to submit their own reason codes. Under HB 2067, TDI must prescribe the form and manner of the insurers' reports. Having a uniform reporting mechanism and standard reason codes allows TDI to efficiently aggregate the data. Both amended statistical plans provide descriptions and guidance for the listed reason codes. For reasons that may not be as intuitive, there is additional information describing when to use the specific reason.

Comment. One commenter requests clarification on whether they must map their reasons for nonrenewals, declinations, and cancellations to the uniform reason codes provided in the statistical plans.

Agency Response. Insurers will need to map the specific reasons they provide to applicants and policyholders on why they declined an application or nonrenewed or canceled a policyholder to the reason codes that are in the adopted statistical plans.

Comment. Two commenters request that TDI change the scope of the "Other" reason code covering reasons that are not captured in the specific reason codes. One of the commenters note that including additional reason codes that would otherwise fall under the "Other" reason code would be helpful and suggested adding specific reason codes for eligibility issues (such as title, deceased insured, out-of-state garaging, no application) and drivers license issues (such as a suspended, revoked, or invalid license). The other commenter argues that the "Other" category is vague and that insurers should be permitted to add their own reasons if they are not covered by the specific codes to help TDI identify new market trends.

Agency Response. TDI declines to make the requested changes. The rule proposal noted that TDI anticipates future updates to the reason codes to align data reporting with the evolving insurance market, to address stakeholder feedback, or to improve the usefulness of the collected data. Furthermore, allowing insurers to write in their own reasons for the "Other" category would likely limit efficient aggregation of the data.

Comment. A commenter suggests including specific weather-related codes for exposure to loss, such as wildfire, hail, flood, and hurricane in the Auto Plan. The commenter states that this would help determine if natural disasters impact access to auto insurance as well as residential property insurance.

Agency Response. TDI declines to make the suggested change. While weather related and other natural causes of loss affect automobiles, the exposure to loss from weather is not as prevalent as it is for property because vehicles can be shielded from inclement weather.

Comment. A commenter suggests separating the wind/hail/hurricane reason code in the Residential Plan's new monthly reports into three separate categories. The commenter suggests three separate categories for the new reports in both statistical plans: 1) severe convective storm other than hail, 2) hail, and 3) hurricane. In the Auto Plan the commenter suggests adding flooding as well.

Agency Response. TDI declines to make the suggested changes. While the perils suggested are separate perils, they are sufficiently similar, and occur together frequently enough that it is reasonable to include them together. As to adding separate, weather-related perils to the new quarterly reports in the Auto Plan, the exposure to loss from weather is not as prevalent for vehicles as it is for property, as vehicles can be shielded from inclement weather.

Comment. Three commenters request that TDI require reporting of only the primary reason for a declination, cancellation, or nonrenewal. One of the commenters argues that HB 2067 does not require reporting of all reasons underlying a coverage decision and that reporting of all reasons would be a major burden on insurers without offering substantially better information to consumers. The other two commenters jointly raised similar arguments that in many cases, the primary reason will be the only relevant reason and that the absence of other reasons in a report will have no significance; as a result, limiting the reports to only the primary reason would be simpler, ensure greater consistency, and be more reasonable. A fourth commenter supports requiring companies to provide all relevant reason codes.

Agency Response. TDI declines to require insurers to report only the primary reason for a coverage decision. As stated in Insurance Code §551.006, insurers must report to TDI the "reasons" for a coverage decision. The use of the plural form of the word "reasons" suggests that the reporting requirement applies to all relevant reasons. Moreover, in some cases, the insurer may have multiple reasons for its coverage decisions and it would be useful to TDI, the Texas Legislature, and Texas consumers to have full knowledge of those reasons. If there is only one reason for a coverage decision, the insurer can report only that single reason.

Comment. One commenter recommends that companies be required to report, for each reason code, the proportionate impact of that reason on the coverage decision.

Agency Response. TDI declines to require insurers to report the proportionate impact of a specific reason for a coverage decision. For coverage decisions which are based on multiple reasons, TDI is not aware that insurers currently calculate the impact of each reason, and even if feasible, the burdens to insurers of adding that data element to their reports may outweigh the data's utility.

Comment. A commenter notes the instructions in the Auto Plan to concatenate the reason codes in alphabetical order and suggests that the Residential Plan should include the same instructions.

Agency Response. General Rules No. 34 in the Residential Plan instructs the insurer to concatenate the list of reason codes in alphabetical order. In the proposal, the Reason Code List in the record layout in Section E also instructs the insurer to concatenate the reason codes but does not specify that they should be in alphabetical order. TDI agrees with the commenter's suggestion and has added that detail in the record layout for the Reason Code List.

Comment. A commenter asks for additional clarification on how to report data, such as detailed reasons for declination, that insurers do not currently capture. The commenter suggests hav-

ing "other" as one of the possible reason codes or instructions to insurers to begin capturing certain information.

Agency Response. As stated in Insurance Code §551.006, insurers must report to TDI the "reasons" for a coverage decision. The use of the plural form of the word "reasons" suggests that the reporting requirement applies to all relevant reasons. Moreover, in some cases, the insurer may have multiple reasons for its coverage decisions and it would be useful to TDI, the Texas Legislature, and Texas consumers to have full knowledge of those reasons.

Both statistical plans include a reason code of "other" and instructions on when to use it for declinations. In the Residential Plan, see Reason Code No. 11 in Section F; in the Auto Plan, see Specific Instructions No. 8 in Section F.

Comment. A commenter suggests removing the "Cancellation Reason Codes" and "Nonrenewal or Declination Reason Codes" headings from the Reason Code List in the Record Layout and Field Definitions subsection of Section F in the Auto Plan. The commenter explains that the headings are not accurate because, for example, Reason Code C (Claims history/driving record) is not listed under the "Cancellation Reason Codes" heading, but a new business policy could be canceled during the 60-day underwriting period if the reports are ordered after the policy was sold. As another example, Reason Code A (Failure to pay premiums when due) is listed under the "Nonrenewal or Declination Reason Codes" heading but a policy is never renewed for nonpayment because if the policyholder fails to pay the renewal premium, the policy will expire, and expiration is not nonrenewal.

Agency Response. TDI appreciates the commenter's suggestion and has removed the two headings from the Reason Code List in Section F of the Auto Plan. TDI agrees that some reasons listed under the "Nonrenewal or Declination Reason Codes" heading may apply to cancellations occurring during the 60-day underwriting period for the initial policy term, and that the headings could cause confusion. For similar reasons, TDI has also removed the "Cancellations" and "Nonrenewals and Declinations" headings from the Reason Code List for Columns 36-45 (RCL) in Section E and in Section F of the Residential Plan.

Comment. A commenter asks for confirmation that "the reference for liability is Section II for home and strictly liability type coverages for auto."

Agency Response. Yes, assuming this comment refers to the reason code "exposure to loss - liability." This reason is described in Reason Code No. 3 in Section F in the Residential Plan and Specific Instructions No. 8 in Section F in the Auto Plan.

In response to this comment, additional clarifying text has been added in both places. This reason code should be used if the reason for the action is due to the insured's or applicant's personal liability risk under the policy or the characteristics or activities of the insureds or applicants. It should not be used to reflect first-party claims history.

Comment. A commenter identifies a typo in the field length column for the "Action Effective Date" in the record layout for Section G in the Auto Plan. The field length is shown as six digits; however, the "Action Effective Date" field in the "Field Definitions" shows a four-digit entry (YYMM).

Agency Response. TDI appreciates the commenter identifying this typo. The field length in the record layout has been corrected to reflect four digits instead of six digits for the Action Effective Date.

Comment. A commenter asks whether an insurer must provide notification dates for declinations under the new plans, stating that this is not information they currently collect.

Agency Response. Yes, the record layouts for the cancellation, nonrenewal, and declination notices in both the Auto Plan and the Residential Plan include a field, "Notification Date," which is the date the notice providing the reasons for cancellation, nonrenewal, or declination was sent to the policyholder or applicant. See Section F in the Auto Plan and Section E in the Residential Plan.

Comment. Two commenters jointly ask about the meaning of new language on "recipient count." They ask TDI to clarify whether a "recipient" equates with a policy, so that, for example, a policy for a married couple would count once.

Agency Response. The commenters' understanding is correct; the term "recipient count" used in the proposal is associated with the number of policies, not the number of insureds on the policy.

In response to the comment, TDI has changed both the Residential and the Auto Plans. Throughout both plans, TDI changed the term "recipient count" to "notified policy count" to clarify that the term refers to the count of policies and not the count of insureds.

Also in response to the comment, General Rules No. 34 as proposed in the Residential Plan has been revised to clarify the instructions for reporting the notified policy count.

In the Auto Plan, General Reporting Instructions No. 8, relating to the transmittal form content, has also been revised to clarify that the notified policy count and the actual count should be provided separately by each action type.

Relatedly, but not in response to a comment, "count" is changed to "actualized policy count." This clarifies that the term reflects actual cancellations, nonrenewals, and declinations. This term differs from "notified policy count" in that an insurer may have sent a notice, but the cancellation, nonrenewal or declination may not have actually occurred.

Comment. Three commenters oppose the requirement in both statistical plans that insurers report whether a coverage decision was based on aerial imagery or third-party data. All three commenters note that some insurers do not currently capture such information and that it would be extremely difficult for them to start doing so; the commenters also argue that such requirement is not part of HB 2067, and one commenter states that there is no statute on how insurers may use aerial imagery. Two of the commenters state that use of third-party data or aerial imagery is a tool for assessing risk but is not a reason for an underwriting action; as an example, if aerial imagery revealed that a house's roof is in disrepair, the reason for the insurer's action would be the condition of the property, not the fact that aerial imagery, rather than an inspection, was used to make the coverage decision. The two commenters also state that reporting on aerial imagery is a policy decision for the Texas Legislature. A fourth commenter supports the requirement to report use of aerial imagery and specific types of third-party data.

Agency Response. Insurance Code §551.002(c)(2) requires insurers to state the source of information on which the insurer relied on when giving the reasons for the declination, cancellation, or nonrenewal of an insurance policy to the applicant or policyholder. TDI believes that it is important to collect data on

insurers' reliance on sources of information they use to make decisions that adversely affect applicants and policyholders. With the increasing use of third-party information and aerial imagery in underwriting and rating, TDI requires that insurers report whether they relied on this information in declining, canceling, or nonrenewing coverage.

Under the new reporting requirements, insurers report their reliance on third-party information, including aerial imagery, as an indicator, not as a reason code. If an insurer declines to write a residential property policy based on the condition of the roof and they used aerial imagery to determine the condition, the insurer will report the reason as "condition of property - roof" and then use the reason source indicator code of either 1 (if only aerial imagery and no other third-party information was used) or 3 (if both aerial imagery and other third-party information was used), as applicable.

TDI acknowledges that insurers may not have captured this information in the past and may need to make programming updates to do so for the new reporting requirements.

Comment. One commenter suggests that insurers should be required to report the use of additional types of third-party data in coverage decisions, such as real-time driving data from a third party or risk factors identified by companies like CoreLogic.

Agency Response. TDI declines to make this change. TDI believes that the reporting of the third-party indicator or the reason source indicator in combination with the reason codes provides an informative level of detail without requiring insurers to provide the name of the third-party source in their statistical reports. Insurers must provide the name of the data vendor, model vendor, or source of third-party information or third-party models they use in their rate/rule filings and underwriting guideline filings for private passenger auto and residential property lines of insurance. Under Insurance Code §551.002(c), insurers must provide a statement to applicants and policyholders with the source of information on which the insurer relied regarding the applicable incident, circumstance, or risk factors that violated the insurer's applicable guidelines.

Comment. Three commenters request clarification on what constitutes third-party data for purposes of the new requirement to report the use of third-party data in coverage decisions. One commenter asks whether "third-party data" refers to any outside vendor or service provider that supplies information leading to or supporting an underwriting action and whether it includes internal research that uses sources like Google. The other two commenters ask whether the term includes driving records for auto policies.

Agency Response. TDI views information from an external provider or source as constituting third-party information. This would include information retrieved from a Google search used to research characteristics of potential policyholders.

Comment. One commenter asks whether the requirement to report the use of third-party data in coverage decisions requires the insurer to report the specific name of the third-party vendor, or just the information provided. The commenter also asks whether insurers must also report the name of the vendor or company that provided the aerial imagery.

Agency Response. Under the new reporting requirements, insurers do not need to include the name of the source of the third-party information or the aerial imagery. The insurer should use the codes provided in the statistical plans for the third-party indicator or reason source indicator to indicate only whether the insurer relied in whole or in part on this information.

Comment. Two commenters request clarification on multiple cancellations. One commenter asks whether an insurer should report every time a cancellation for nonpayment notice is issued. This could occur multiple times on a policy if payment is made and the cancellation is rescinded. The other commenter states that a policy may be canceled multiple times and for multiple reasons during its term, resulting in cancellations of the same policy appearing on multiple reports. The commenter suggests that the reporting requirements make it clear that reports reflect cancellations as of the reporting date.

Agency Response. TDI agrees that every time a notice of cancellation for nonpayment of premium is issued, the insurer must report each notice of cancellation. If the policy is canceled, and later reinstated, each cancellation must also be reported, under the appropriate reporting period. The number of cancellations should reconcile with the cancellations reported to the NAIC MCAS reporting, which also treats policies that were canceled and subsequently reinstated the same way.

In the Residential Plan, General Rules No. 34 requires that each monthly report under Section E include all actions with a notification date within the experience month. General Rules No. 35 requires that each monthly report under Section G include all actions with an action effective date within the experience month.

In the Auto Plan, Specific Instructions No. 2 in Sections F and G requires insurers to include all actions with a notification date or an action effective date within the experience quarter, respectively.

In response to the comments, TDI has amended General Rules Nos. 34 and 35 in the Residential Plan and Specific Instructions No. 7 in Section F and Specific Instructions No. 6 in Section G in the Auto Plan. These amendments clarify that if a policy that was canceled is subsequently reinstated, the cancellation should be reported. The amendments also provide an example for additional context.

Comment. A few commenters ask for clarification on how flat cancellations must be reported in the new reports required under both statistical plans. Two commenters suggest alternatively that no reporting be required for flat cancellations.

Agency Response. In both statistical plans, flat cancellations must be reported. Insurers are instructed to use the policy's effective date for the action effective date for a flat cancellation. This applies for both the notice reports and the actual numbers reports. See the "Action Effective Date" instructions in Sections E and G of the Residential Plan and Sections F and G of the Auto Plan. However, in response to the comment, TDI has added a sentence that repeats this information and says for flat cancellation to report the effective date of the policy for the action effective date. This has been done in Specific Instructions No. 7 of Section F and in Specific Instructions No. 6 of Section G in the Auto Plan and in General Rules Nos. 34 and 35 in the Residential Plan.

Comment. A commenter asks whether the new reporting requirements apply to rescissions.

Agency Response. Rescissions and policies voided under Insurance Code Chapter 705 should not be included in the new reports. This approach is consistent with the NAIC MCAS reports, which do not include data relating to rescissions for the residential and auto lines of business. TDI has added clarifying

language in General Rules Nos. 34 and 35 in the Residential Plan and in Specific Instructions No. 7 in Section F and Specific Instructions No. 6 in Section G in the Auto Plan to confirm that the new reporting requirements do not apply to rescissions.

Comment. A commenter asks whether the definition of the 60-day indicator (for cancellations that occur during the first 60 days of a policy term) refers to the notice date instead of the termination date.

Agency Response. TDI agrees that the description of the 60-day indicator should refer to when the notice of cancellation was sent. This makes the instructions consistent with similar reporting for the NAIC MCAS reports. In Section F of the Auto Plan, TDI has revised the field definition for the 60-day indicator to refer to whether the cancellation notice was "sent." TDI has further revised the field definition to refer to the "initial" policy term only to clarify that insurers do not need to report whether a cancellation notice was sent during the first 60 days of subsequent or renewal terms. TDI has made similar changes in the 60-Day Indicator description for Column 18 (60D) in Section E of the Residential Plan.

Comment. Two commenters jointly request that TDI remove the 60-day indicator because the timing of a cancellation is a separate inquiry that is not relevant to the reason for cancellation. The commenters also argue that the requirement would necessitate additional programming by insurers to collect data not specified in HB 2067.

Agency Response. TDI declines to remove the reporting for cancellations within the first 60 days of the policy term. As noted in its response to the previous comment, TDI has clarified in both statistical plans that the 60-day indicator applies only to the initial term of a policy, and not subsequent renewal terms. Because the reasons for cancellations permitted under the Insurance Code vary depending on the timing of the cancellation, TDI views such data as relevant under HB 2067 and potentially helpful for policymaking purposes. TDI acknowledges that programming may be needed to capture this information. However, insurers already report similar data for the NAIC MCAS reports and should be able to use the same or similar programming logic.

Comment. A few commenters ask for clarification on what qualifies as a declination that an insurer must provide written reasons for and report on to TDI. When an insurer gives an applicant different quotes for different coverages or answers to application questions, what must the insurer report? A commenter asks that the phrase "completed and submitted," from Insurance Code Chapter 551, be incorporated into the definition of declination in the statistical plans.

Agency Response. Insurance Code §§551.002, 551.0521, and 551.109 refer to the declination of a "completed and submitted application." Therefore, if the insurer declines a completed and submitted application, the insurer must provide the applicant with a written statement giving the reasons for the declination and report the declination to TDI.

In response to the comments, TDI has amended both statistical plans. In the Residential Plan, General Rules Nos. 34 and 35 now include a heading for "Declinations." In the Auto Plan, the "Declinations" heading is in Specific Instructions No. 6 in Section F and Specific Instructions No. 5 in Section G. Both plans require reports for declinations of "completed and submitted applications."

Comment. TDI received eleven timely comments asking whether farm mutuals are subject to the new reporting requirements in the Residential and Auto Plans. Seven commenters argue no; four commenters argue yes.

The commenters arguing against imposing the new reporting requirements on farm mutuals say that Insurance Code §551.006, which contains HB 2067's reporting requirements, does not apply to them. The arguments against are legal and practical.

Legal arguments against applying Insurance Code §551.006 to farm mutuals:

Legal arguments against applying Insurance Code §551.006 to farm mutuals assert that Insurance Code §551.109 is the only section amended by HB 2067 that applies to farm mutuals. Some of the commenters conclude that TDI could obtain the same information from farm mutuals under Insurance Code §38.001.

Under Insurance Code §911.001, farm mutuals are subject only to the statutes listed in that section and to statutes elsewhere in the code that are expressly made applicable to farm mutuals. Insurance Code §911.001 does not list any part of Insurance Code Chapter 551, nor does Insurance Code §551.006 mention farm mutuals. Insurance Code Chapter 551, Subchapter C, does expressly apply to farm mutuals per Insurance Code §551.101. Therefore, the commenters' argument goes, Insurance Code §551.109 is the only section amended by HB 2067 that applies to farm mutuals. HB 2067 amended Insurance Code §551.109 to require that an insurer provide a statement of the reason for a declination, cancellation, or nonrenewal without the insured needing to request it.

One of the commenters cites the case *Fireman's Fund Cnty. Mut. Ins. Co. v. Hidi*, 13 S.W.3d 767, 769 (Tex. 2000), which held that a provision referring to "any insurer" did not apply to county mutuals, because the provision did not reference county mutuals and the provision was not enumerated in the Insurance Code chapter addressing county mutuals. As with farm mutuals, the Insurance Code Chapter addressing county mutuals exempts county mutuals from Texas insurance laws except for statutes listed in the chapter or made applicable by their specific terms.

Another commenter argues that HB 2067 does not require farm mutuals to report under the statistical plans because it does not amend Insurance Code Article 5.96, which governs the procedures for adopting statistical plans, nor does it amend Insurance Code Chapter 38, Subchapter E, on statistical data collection. Neither Article Insurance Code 5.96, nor Insurance Code Chapter 38, Subchapter E, apply to farm mutuals.

Three of the commenters state that farm mutuals are subject to Insurance Code §38.001, concerning Inquiries, because that section is listed in Insurance Code §911.001.

Practical arguments against applying Insurance Code §551.006 to farm mutuals:

Four of the commenters discuss the expense of complying with the proposed reporting requirements and potential conflict with statutory expense ratio limits. Insurance Code §911.301 prohibits a farm mutual from using more than 33 percent of its gross income for expenses, unless approved by the commissioner. One farm mutual reports writing approximately $2.2 million in direct written premium annually and having a full-time staff of five. Another comment states that almost all farm mutuals write less than $10 million in direct written premium and that most have less than six employees. The commenters argue that farm mu-

tuals cannot comply with the proposed reporting requirements without raising their expense ratio above what is permitted.

Some of the commenters question whether gathering data from farm mutuals would enable a balanced, representative picture of the Texas market, given that farm mutuals represent a small share of the market and by statute only write in rural areas.

Four commenters argue that Insurance Code §551.006 does apply to farm mutuals.

Legal arguments for applying Insurance Code §551.006 to farm mutuals:

The commenters' legal argument is that Insurance Code Chapter 551, Subchapter C, expressly applies to farm mutuals. Under Insurance Code §551.101, "insurer" in Subchapter C refers to any authorized property and casualty insurer, including a farm mutual. Thus Insurance Code §551.109 applies to farm mutuals, as does Insurance Code §551.112, which gives the commissioner authority to adopt rules relating to cancellation and nonrenewal .

The commenters argue that Insurance Code §551.112 gives the commissioner authority to apply the reporting requirements of Insurance Code §551.006 to farm mutuals. One comment argues that Insurance Code §551.001 provides this authority.

Additional arguments for applying Insurance Code §551.006 to farm mutuals:

The commenters' additional arguments emphasize the result of exempting farm mutuals from the reporting requirements. The public, the legislature, and TDI would have incomplete data on cancellations, declinations, and nonrenewals in rural areas. TDI would not have the same ability to identify trends and protect all consumers to the same extent. The commenters also argue that HB 2067 imposes a significant regulatory burden, which should fall equally on all members of the industry. One of the commenters argues that exempting farm mutuals could "inadvertently make it easier to identify individual insurers operating in rural markets, raising privacy and competitive concerns."

Agency Response. TDI appreciates all of the comments. TDI does not agree with the legal arguments for exempting farm mutual insurers from the reporting requirements of Insurance Code §551.006.

The comments arguing for an exemption fail to acknowledge that Insurance Code §551.006 requires a written report summarizing the reasons that insurers "provided to applicants for insurance or policyholders as required by this chapter" (emphasis added). As the commenters concede, Insurance Code §551.109 in Chapter 551, Subchapter C requires farm mutuals to automatically provide an insured with a statement of the reasons for a declination, cancellation, or nonrenewal.

However, TDI is sensitive to the cost and expense ratio concerns raised in the comments and agrees to exempt farm mutual insurers from the Residential Plan at this time. TDI plans to have discussions with stakeholders to explore how to best obtain the data required under HB 2067 to protect consumers while addressing these concerns.

Comment. A commenter argues that TDI lacks the statutory authority to impose the reporting requirements of Insurance Code §551.006 on county mutuals, Lloyd's plans, and reciprocal and interinsurance exchanges. The commenter argues that like farm mutuals, these entities are subject only to the Insurance Code provisions in which they are expressly referenced.

Agency Response. As explained in its previous response to the comments on farm mutuals, TDI does not agree with the similar legal arguments raised for exempting county mutuals, Lloyd's plans, and reciprocal and interinsurance exchanges from the reporting requirements of Insurance Code §551.006. TDI declines to exempt these entities from the new reporting requirements.

STATUTORY AUTHORITY.

The commissioner adopts new §5.9503 and §5.9504 under Insurance Code §§38.001, 38.202, 38.204(a), 38.205 - 38.207, 551.006, 551.112, and 36.001.

Insurance Code §38.001 authorizes TDI to address a reasonable inquiry to any insurance company or other holder of an authorization relating to the business condition or any matter connected with the person's transactions that TDI considers necessary for the public good or for the proper discharge of TDI's duties.

Insurance Code §38.202 allows the commissioner to, for a line or subline of insurance, designate or contract with a qualified organization to serve as the statistical agent for the commissioner to gather data for relevant regulatory purposes or as otherwise provided by the Insurance Code.

Insurance Code §38.204(a) provides that a designated statistical agent must collect data from reporting insurers under a statistical plan adopted by the commissioner.

Insurance Code §38.205 provides that insurers must provide all premium and loss cost data to the commissioner or designated statistical agent as the commissioner or agent requires.

Insurance Code §38.206 authorizes the statistical agent to collect from reporting insurers any fees necessary for the agent to recover the necessary and reasonable costs of collecting data from that reporting insurer.

Insurance Code §38.207 authorizes the commissioner to adopt rules necessary to accomplish the purposes of Insurance Code Chapter 38, Subchapter E.

Insurance Code §551.006 authorizes the commissioner to prescribe the form and manner of an insurer's written report summarizing the insurer's reasons for declination, cancellation, or nonrenewal provided to applicants or policyholders as required by Insurance Code Chapter 551.

Insurance Code §551.112 authorizes the commissioner to adopt rules relating to the cancellation and nonrenewal of insurance policies.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

§5.9503. Texas Statistical Plan for Residential Risks.

(a) Purpose and Applicability.

(1) The purpose of this section is to establish requirements for the reporting of data by residential property insurers under Insurance Code Chapter 38, Subchapter E, concerning Statistical Data Collection; Insurance Code §38.001, concerning Inquiries; and Insurance Code §551.006, concerning Report Required.

(2) Insurers writing direct residential property business in Texas must provide the required reports described in the *Texas Statistical Plan for Residential Risks* adopted by reference in subsection (b) of this section to the commissioner or the statistical agent designated under Insurance Code §38.202, concerning Statistical Agent.

(3) The reports must comply with the reporting requirements and instructions specified in the *Texas Statistical Plan for Residential Risks* adopted by reference in subsection (b) of this section.

(4) This section applies to all reports required to be filed with the department under this section for reporting periods beginning on or after April 1, 2026.

(b) Adoption by Reference. The commissioner adopts by reference the *Texas Statistical Plan for Residential Risks*, effective April 1, 2026. This document is published on the department's website at www.tdi.texas.gov.

§5.9504. Texas Private Passenger Auto Statistical Plan.

(a) Purpose and Applicability.

(1) The purpose of this section is to establish requirements for the reporting of data by private passenger automobile insurers under Insurance Code Chapter 38, Subchapter E, concerning Statistical Data Collection; Insurance Code §38.001, concerning Inquiries; and Insurance Code §551.006, concerning Report Required.

(2) Insurers writing direct private passenger automobile business in Texas must provide the required reports described in the *Texas Private Passenger Auto Statistical Plan* adopted by reference in subsection (b) of this section to the commissioner or the statistical agent designated under Insurance Code §38.202, concerning Statistical Agent.

(3) The reports must comply with the reporting requirements and instructions specified in the *Texas Private Passenger Auto Statistical Plan* adopted by reference in subsection (b) of this section.

(4) This section applies to all reports required to be filed with the department under this section for reporting periods beginning on or after April 1, 2026.

(b) Adoption by Reference. The commissioner adopts by reference the *Texas Private Passenger Auto Statistical Plan,* effective April 1, 2026. This document is published on the department's website at www.tdi.texas.gov.

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 January 15, 2026.

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Jessica Barta
General Counsel
Texas Department of Insurance
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For further information, please call: (512) 676-6555

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 60. COMPLIANCE HISTORY

30 TAC §60.1, §60.2

The Texas Commission on Environmental Quality (commission or TCEQ) adopts amendments to 30 Texas Administrative Code (TAC) §60.1 and §60.2.

Amended §60.1 and §60.2 are adopted *with changes* to the proposed text as published in the July 25, 2025, issue of the *Texas Register* (50 TexReg 4241) and, therefore, will be republished.

Background and Summary of the Factual Basis for the Proposed Rules

The commission adopts revisions to Chapter 60 to implement certain requirements of Senate Bill (SB) 1397, regarding compliance history. SB 1397, 88th Legislature, 2023, Section 13, amended Texas Water Code (TWC), §5.754 requiring the commission to consider major, moderate, and minor violations when determining repeat violators. This rulemaking adoption also addresses management recommendations adopted by the Sunset Advisory Commission that were not included in SB 1397 for the commission to review and update the agency's compliance history rating formula to ensure it accurately reflects a regulated entity's record of violations, including considerations of site complexity and cumulative violations or repeating violations; and to regularly update compliance history ratings. Non-substantive changes were made to the rule language for consistency and plain language.

Section by Section Discussion

§60.1, Compliance History

The commission adopts revisions to §60.1(a)(6) and (7) to establish the effective date of the adopted rule. However, the commission made a change to the language presented at proposal in §60.1(a)(6) and (7) to note the rule will become effective on September 1, 2026. This change will allow the executive director to ensure program upgrades are complete prior to full implementation of the rule changes. The commission will continue to use the version of the rule in effect at the time the compliance history classification was calculated in accordance with §60.1(b). For example, when an application for a permit is received by the executive director, the version of Chapter 60 in effect at the time the application is received will be the version used for compliance history purposes. The commission may consider new compliance history information as it deems necessary. Additionally, adopted §60.1(a)(8) adds a motion for reconsideration under §50.39 as requiring a compliance history be prepared and filed with the Office of the Chief Clerk before it is considered at commission agenda.

The adoption amends §60.1(b) to change the compliance period for enforcement actions to be calculated from the initial enforcement screening date. The compliance history period for an enforcement action is currently based on the date of the initial mailing of the enforcement settlement offer or petition, whichever occurs first. Since complicated cases may take substantial time to develop, the compliance history period could change while the settlement offer or petition is being drafted. Changing the start of the compliance period to the initial screening of an enforcement action means the compliance history will more closely reflect the performance of the site at the time the violations were documented as opposed to several months later. This provides greater certainty to the regulated community as to how an entity is performing at the time an enforcement action begins. This also means a site's compliance history will remain the same throughout the drafting and review process of the initial proposed agreed order or the petition instead of requiring additional reviews to verify whether the compliance history has changed dur-

ing the process. In addition, clarification is made on how Notices of Violation (NOVs) are considered consistent with changes to §60.2(f).

Adopted §60.1(c)(8) changes the language referencing the Texas Environmental, Health, and Safety Audit Privilege Act. The Act was amended by the 85th Legislature in 2017 and the adopted language recognizes this change.

§60.2, Classification

The commission proposed a change to the effective date of 60.2(a); however, upon review of the rule, the commission determined this change was not necessary. The adoption amends §60.2(a) to change the frequency that the executive director shall evaluate the compliance history of each site from annually to semi-annually. This implements a management recommendation adopted by the Sunset Advisory Commission to regularly update an entity's compliance history rating. The commission adopts that compliance histories be evaluated on March 1st and September 1st each year. Since 2002, when the rule originally established an annual review, technological advances have made it possible for the agency to increase the number of reviews per year without overburdening agency resources. Semi-annual reviews will allow for appropriate planning for announced and unannounced investigations, as well as increased oversight of unsatisfactory performers. More frequent evaluations better allow the commission to consider whether proceedings should be initiated to revoke a permit, or to amend a permit where statutes allow, of an unsatisfactory performer. The commission considered other evaluation periods and determined that evaluations more frequent than semi-annually may require shortening the appeal window to ensure appeal reviews could be completed before the next evaluation period begins.

The adoption changes the language proposed in §60.2(c) by changing the word "paragraph" to "subsection" and adding the phrase "relating to Classification" for consistency with rule language. The adoption amends §60.2(c) to change the methodology of grouping regulated entities from reliance on the North American Industry Classifications System (NAICS) to use of complexity points described in §60.2(e) as the commission has determined complexity to be a more accurate measurement criterion. In 2002, the commission determined Standard Industrial Classification (SIC) codes did not adequately capture the environmental complexity of the regulated community. In 2012, the commission listed NAICS codes as an option for grouping. However, over time, the commission found that the self-reported NAICS codes were frequently incorrect, inaccurate, or failed to fully describe the operations of the regulated site from an environmental impact standpoint. Therefore, the commission has not been able to effectively use NAICS codes for complexity determinations. The commission adopts the complexity formula to establish groupings to improve accuracy and provide certainty to the regulated public as they are already familiar with the formula and its impact on a site.

The adoption amends §60.2(f) to reflect changes to the way in which the commission evaluates repeat violators as required by SB 1397. Previously, in determining whether an entity was a repeat violator, the commission evaluated only major violations of the same nature and the same environmental media that occurred during the five-year compliance period. Under the adopted rule, in accordance with SB 1397, the commission will evaluate major, moderate, and minor violations of the same nature and environmental media that occurred during the five-year compliance period.

The new formula considers "repeat violation points" for each violation of the same nature and the same environmental media documented in any final enforcement orders, court judgments, and criminal convictions during the five-year compliance period. The number of "repeat violation points" varies by classification of the violation with each minor violation receiving 2 repeat violation points, each moderate violation receiving 10 points, and each major violation receiving 50 points. The total of all repeat violation points assessed to a regulated entity is used to determine whether the regulated entity has exceeded the repeat violation point thresholds to be classified as a repeat violator. The commission changes the proposed rule by establishing repeat violation point thresholds based on five complexity point categories in contrast to the two groups in the proposed rule.

The commission adopts amended §60.2(f)(1) and (2) and new §60.2(f)(3). Adopted §60.2(f)(1) adds moderate and minor violations to repeat violator consideration and removes the requirement that violations be documented on separate occasions. Currently, multiple violations of the same type may be consolidated into a single enforcement action. Historically, the commission has considered "separate occasion" to mean individual orders or enforcement actions. For example, if a regulated entity had two unauthorized discharges within one compliance year and the entity signed a single agreed order that contained both major violations, the commission treated it as a single major violation for purposes of the repeat violator criteria. The legislative directive of SB 1397 to include all minor, moderate, and major violations requires the removal of the "separate occasion" language to ensure all violations are considered. The change allows the commission to consider all repeat occurrences of similar violations documented during the five-year evaluation period rather than the number of orders or enforcement actions that contained similar violations.

Adopted §60.2(f)(2)(A) - (C) establishes "repeat violation point" values based on the classification of the violation. Each violation of the same nature and the same environmental media documented in any final enforcement orders, court judgments, and criminal convictions that occurred at least three times during the five-year compliance period is assessed repeat violation points based on the classification of the violation. Each minor violation receives 2 repeat violation points, each moderate violation receives 10 points, and each major violation receives 50 points. This methodology allows the commission to clearly differentiate between repeat violators with significant actual or potential environmental harm from those entities that have repeat violations with minimal actual or potential environmental harm. For example, repeating a minor violation five times during a five-year period would be equally weighted with a single moderate violation, and repeating the same moderate violation five times during a five-year period would be weighted equally to one major violation.

Adopted §60.2(f)(3) changes the proposed repeat violation point thresholds, based on complexity points, to determine repeat violator classifications. The proposed rule established repeat violator thresholds based on two complexity categories: (1) Entities with 14 or less complexity points and 100 or more "repeat violation points" and (2) Entities with 15 or more complexity points with 150 or more "repeat violation points". A rule language update was made at adoption to increase the number of complexity categories from two to five with different repeat violator point thresholds for each group. The five different thresholds for the repeat violator determination based on complexity points are:

1. Entities with less than 15 complexity points and 150 or more "repeat violation points" will be classified as a repeat violator.

2. Entities with at least 15 complexity points but less than 30 complexity points and 250 or more "repeat violation points" will be classified as a repeat violator.

3. Entities with at least 30 complexity points but less than 45 complexity points and 350 or more "repeat violation points" will be classified as a repeat violator.

4. Entities with at least 45 complexity points but less than 60 complexity points and 450 or more "repeat violation points" will be classified as a repeat violator.

5. Entities with at least 60 complexity points and 550 or more "repeat violation points" will be classified as a repeat violator.

This modification recognizes the increased self-reporting requirements for more complex facilities due to their proportionally larger number of authorizations, such as through the Texas Pollution Discharge Elimination System for wastewater and reporting of deviations to comply with Title V air permit requirements. These programs require entities to self-report violations whereas other sites are only subject to violations documented and discovered through investigations. Less complex facilities do not have as many self-reporting requirements and therefore have less opportunity for the commission to identify violations.

This approach continues to use complexity points as the threshold and expands the criteria for repeat violators using a combination of minor, moderate, and major violations (total 150 points) for less complex entities and increasing complexity levels by 15 points and 100 repeat violator points respectively through each threshold. These thresholds ensure that the commission continues to hold repeat violators accountable without reducing environmental protections or standards. For example, regulated entities may reach the threshold by repeating the same moderate violation within a five-year period, repeating the same minor violation within a five-year period, or some combination of violation points to reach the appropriate point threshold.

The adoption moves "Repeat Violator Exemption" from existing §60.2(f)(2) to adopted §60.2(f)(4).

Adopted §60.2(g)(1)(L) changes the language referencing the Texas Environmental, Health, and Safety Audit Privilege Act. The Act was amended by the 85th Legislature in 2017 and the adopted language recognizes this change.

Adopted §60.2(g)(2) changes the site rating ranges for regulated entities. Currently, there is a common set of ranges for entities of all complexities. The commission adopts separate classification groups based on complexity points to address the Sunset Advisory Commission's management recommendation to compare entities of similar complexity to one another. The adopted rule establishes separate ranges for higher complex entities and less complex entities.

Adopted §60.2(g)(2)(A) establishes the classification rating ranges for regulated entities with a complexity point total less than 15. For a regulated entity classified as less complex, a high performer is defined as having less than 0.10 points. A satisfactory performer is defined as having 0.10 points to 60 points. An unsatisfactory performer is defined as having more than 60 points.

Adopted §60.2(g)(2)(B) establishes the classification rating ranges for regulated entities with a complexity point total of 15 or more. A high performer is defined as having less than 0.10 points. A satisfactory performer is defined as having 0.10 points to 55 points. An unsatisfactory performer is defined as having more than 55 points.

As noted by the Sunset Advisory Commission, the compliance history rule calculation methodology disproportionately impacts less complex entities. The commission recognizes that, in general, less complex entities have fewer resources and face different challenges than their higher complexity counterparts. While the higher complexity entities are generally much larger in size, they tend to have more resources, represent a much smaller group of the regulated community, and typically have a potentially larger environmental footprint. The adopted rule allows for different classification thresholds for each complexity grouping, thereby accounting for their differences.

Adopted §60.2(g)(3)(A), (B)(i) and (ii) removes the specific point value that a regulated entity will receive following the application of a mitigating factor. Should a mitigating factor be granted to a regulated entity, the entity's rating will be adjusted to the maximum rating within the satisfactory classification for the entity's complexity point group. For regulated entities with less than 15 complexity points, the rating will be adjusted to 60. For regulated entities with 15 or more complexity points, the rating will be adjusted to 55. Additionally, a rule language update was made at adoption to §60.2(g)(3)(B)(i) by adding "semi-" to "annual" to make the timeframe for when the next compliance history is performed consistent with adopted §60.2(a).

Adopted §60.2(i) revises how a regulated entity can review their pending compliance history rating to match current practice by removing the submission of a Compliance History Review Form and replacing it with the registration for the Advanced Review of Compliance History (ARCH). The ARCH review period allows entities to review their pending compliance history components prior to publication of the compliance history scores and classifications on the commission's website. During the ARCH review period, entities may request revisions to their compliance history components, including re-classification of violations, review of repeat violator designations, and request for exemptions or mitigating factors.

Final Regulatory Impact Determination

The commission has reviewed the rulemaking adoption in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because the adopted rule changes do not meet the definition of a "Major environmental rule" as defined in that statute. Although the intent of the adopted rule modifications are to protect the environment and reduce the risk to human health from environmental exposure, they do not adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Instead, the adopted rule changes merely modify the standards for the classification of a person's compliance history by setting the number of major, moderate, and minor violations needed to be classified as a repeat violator, to review and update the agency's compliance history rating formula to ensure it accurately reflects a regulated entity's record of violations, and to update compliance history ratings more often than once per fiscal year. The requirements for establishing standards for the classification of a person's compliance history are contained in TWC §5.754.

The adopted rule modifications are designed to protect the environment, the public health, and the public safety of the state

and all sectors of the state. Furthermore, the adopted rule modifications do not meet any of the four applicability requirements listed in §2001.0225(a). They do not exceed a standard set by federal law, because there is no comparable federal law. They do not exceed an express requirement of state law, because they are consistent with the requirements of TWC, §5.754. The adopted rule modifications do not exceed the requirements of a delegation agreement because there is no applicable delegation agreement. They are not proposed to be adopted solely under the general powers of the agency but will be adopted under the express requirements of TWC §5.754 and management recommendations adopted by the Sunset Advisory Commission.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the adopted rules and performed an assessment of whether the adopted rules constitute a taking under TGC, Chapter 2007. The specific purpose of the adopted rules is to implement certain requirements of Senate Bill (SB) 1397 and other legislative directives regarding compliance history. The adopted rules will substantially advance this stated purpose by modifying the standards for the classification of a person's compliance history by setting the number of major, moderate, and minor violations needed to be classified as a repeat violator, to review and update the agency's compliance history rating formula to ensure it accurately reflects a regulated entity's record of violations, and to update compliance history ratings more often than once per fiscal year.

Promulgation and enforcement of these adopted rules will be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulations do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally); nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. In other words, the adopted rules will not burden private real property because they modify the standards for the classification of a person's compliance history by setting the number of major, moderate, and minor violations needed to be classified as a repeat violator, to review and update the agency's compliance history rating formula to ensure it accurately reflects a regulated entity's record of violations, and to update compliance history ratings more often than once per fiscal year. The subject adopted rules do not affect a landowner's rights in private real property.

Consistency with the Coastal Management Program

The commission reviewed the rulemaking adoption and found that the adoption is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 et seq., and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §29.22, and found the rulemaking adoption consistent with the applicable CMP goals and policies.

CMP goals applicable to the adopted rule include: 31 TAC §26.12(1), to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); 31 TAC §26.12(2), to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone; 31 TAC §26.12(3), to minimize loss of human life and property due to the impairment and loss of protective features of CNRAs; 31 TAC §26.12(5), to balance the benefits from economic development and multiple human uses of the coastal zone, the benefits from protecting, preserving, restoring, and enhancing CNRAs, the benefits from minimizing loss of human life and property, and the benefits from public access to and enjoyment of the coastal zone; 31 TAC §26.12(6), to coordinate agency and subdivision decision-making affecting CNRAs by establishing clear, objective policies for the management of CNRAs; 31 TAC §26.12(7), to make agency and subdivision decision-making affecting CNRAs efficient by identifying and addressing duplication and conflicts among local, state, and federal regulatory and other programs for the management of CNRAs; and 31 TAC §26.12(8), to make agency and subdivision decision-making affecting CNRAs more effective by employing the most comprehensive, accurate, and reliable information and scientific data available and by developing, distributing for public comment, and maintaining a coordinated, publicly accessible geographic information system of maps of the coastal zone and CNRAs at the earliest possible date. The commission has reviewed the adopted rule for consistency with applicable goals of the CMP and determined that the adopted rule is consistent with the intent of the applicable goals and will not result in any significant adverse effect to CNRAs.

CMP policies applicable to the adopted rule include: 31 TAC §26.19, Construction and Operation of Solid Waste Treatment, Storage, and Disposal Facilities; 31 TAC §26.20, Prevention, Response, and Remediation of Oil Spills; 31 TAC §26.21, Discharge of Municipal and Industrial Wastewater to Coastal Waters; 31 TAC §26.22, Nonpoint Source (NPS) Water Pollution; 31 TAC §26.23, Development in Critical Areas; 31 TAC §26.25, Dredging and Dredged Material Disposal and Placement; 31 TAC §26.28, Development Within Coastal Barrier Resource System Units and Otherwise Protected Areas on Coastal Barriers; and 31 TAC §26.32, Emission of Air Pollutants. This rulemaking does not relax existing standards for issuing permits related to the construction and operation of solid waste treatment, storage, and disposal facilities in the coastal zone or for governing the prevention of, response to, and remediation of coastal oil spills. This rulemaking does not relax existing commission rules and regulations governing the discharge of municipal and industrial wastewater to coastal waters, nor does it affect the requirement that the agency consult with the Department of State Health Services regarding wastewater discharges that could significantly adversely affect oyster reefs. This rulemaking does not relax the existing requirements that state agencies and subdivisions with the authority to manage NPS pollution cooperate in the development and implementation of a coordinated program to reduce NPS pollution in order to restore and protect coastal waters. Further, it does not relax existing requirements applicable to: areas with the potential to develop agricultural or silvicultural NPS water quality problems; on-site disposal systems; underground storage tanks; or Texas Pollutant Discharge Elimination System permits for stormwater discharges. This rulemaking does not relax the standards related to dredging; the discharge, disposal, and placement of dredge material; compensatory mitigation; and authorization of development in critical areas. This rulemaking does not relax existing standards for issuing permits related to development of infrastructure within Coastal Barrier Resource System Units and Otherwise Protected Areas. Rather, the intent

of the rulemaking is to increase compliance with existing standards and rule requirements.

Promulgation and enforcement of this rule will not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rule is consistent with these CMP goals and policies and because this rule does not create or have a direct or significant adverse effect on any coastal natural resource areas.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Public Comment

A public hearing on the proposed rules was held in Austin on August 18, 2025, at 9:30 AM. in Building D, Room 191 at the Texas Commission on Environmental Quality complex, located at 12100 Park 35 Circle. The hearing was structured for the receipt of oral or written comments by interested persons. The comment period closed on August 25, 2025. A total of seven commenters provided both general and specific comments on the proposed rules. The following commented on the proposal: The Associated General Contractors of Texas (AGC); Better Brazoria€"Clean Air & Clean Water (Better Brazoria); Harris County Attorney's Office (HCAO); Harris County Pollution Control Services (PCS); Texas Association of Manufacturers (TAM), Texas Chemistry Council (TCC), and Texas Oil and Gas Association (TXOGA); Texas Industry Project (TIP); and Public Citizen.

§60.1 - Compliance History

Comment:

Public Citizen commented that the commission's approach to compliance history ratings do not adequately incorporate written Notices of Violation (NOVs). Per Public Citizen, NOVs are a formal and frequent indicator of non-compliance, noting that the commission issued over 15,000 NOVs but only about 1,100 enforcement orders and civil judgments during FY 2024 therefore excluding NOVs means that the "vast majority" of documented non-compliance is not factored into the compliance history. They assert that the exclusion of NOVs leads to an inaccurate and incomplete picture of an entity's compliance history. They requested that NOVs be included in compliance history for the full five-year period, without the one-year limitation.

Response:

The commission notes that limiting the use of NOVs to one year is governed by statute. TWC §5.753(d) states, "notices of violation must be included as a component of compliance history for a period not to exceed one year from the date of issuance of each notice of violation." The commission will continue to consider NOVs in the compliance history formula as required by statute.

No changes were made in response to this comment.

Comment:

HCAO noted the proposed preamble stated that the commission "may consider new compliance history information as necessary." HCAO interprets this to mean that the commission may consider new information when reviewing a permit application that would not otherwise be considered under the effective version of the rule. They requested that the commission provide a list of factors to consider when deciding whether to use new compliance history information to ensure a thorough review and predictability in decision-making.

Response:

The commission responds that, while not a part of this rulemaking, §60.4 outlines the conditions under which the executive director may take into consideration additional compliance history information. The commission has not altered the executive director's discretionary authority as provided by that rule.

No changes were made in response to this comment.

Comment:

TAM, TCC, TXOGA, and TIP requested limiting consideration of moderate and minor violations for repeat violator status to those violations that occurred after September 1, 2023, the date when Senate Bill 1397 became effective. The organizations contended that including violations that occurred before this date would be inconsistent with Texas Government Code § 311.022, which supports the prospective operation of statutes, and would violate general principles of due process and fair notice.

Response:

The commission notes that its compliance history report provides a current assessment of an entity's performance over the past five years. Although this report may include data from before the September 1, 2023 effective date of SB 1397, it is considered current at the time it is generated. Instructions to limit this period for the new repeat violator rule were not conveyed in statute.

Additionally, the Texas Attorney General previously addressed this matter specifically for compliance history in Attorney General Opinion JC-0515 (2001), affirming that a valid exercise of legislative authority to safeguard public safety and welfare can, in certain cases, overcome concerns of unconstitutional retroactivity.

No changes were made in response to this comment.

Comment:

AGC and Better Brazoria each provided comments related to when the 5-year compliance history period should begin for enforcement actions. AGC noted that, under the proposed rule, a regulated entity could lose the benefit of a "positive component" the entity implements within the timeframe between the enforcement screening date and the settlement offer. Better Brazoria noted the proposed rule could result in violations not being incorporated into a facility's compliance history rating and requested that an entity's compliance history be recalculated to ensure additional violations are appropriately incorporated to reflect the entity's compliance.

Response

The commission recognizes that the components of an entity's compliance history may change during settlement negotiations and litigation. Considering changes in components throughout the litigation process would create uncertainty and could result in additional staff resources and delays throughout the hearing process. Having a fixed compliance history during negotiations creates more certainty for all parties, streamlines the negotiation process, and shortens the review time for agreed orders and petitions.

No changes were made in response to these comments.

Comment:

TAM, TCC, TXOGA, and TIP submitted comments regarding the way the commission currently calculates compliance history. They contend that using the date of a final enforcement action

(e.g., an Agreed Order) to determine when a violation affects a site's compliance score is flawed and can misrepresent a site's current performance.

TAM, TCC, TXOGA, and TIP noted that the commission's current method of using the date of the final enforcement action, rather than the date the violation actually took place, can penalize a company for years after the violation has been corrected. The commenters noted TWC §§5.754(c)(2)(B) and 7.302(b)(2) indicate that the legislature intended violations to be evaluated based on the date they happened.

TAM, TCC, TXOGA, and TIP noted that an entity with emissions events from 2018 through 2020 which are resolved in an Agreed Order in 2025, will remain a component until 2030, even though the company may have been compliant since 2020. The commenters believed the time gap between the violation and the resolution in a final order contradicts the purpose of compliance history, which is to accurately reflect a site's performance over a five-year period. They proposed revising the rules to ensure that compliance history points are only assessed for violations that happened within the preceding five-year period.

TAM, TCC, TXOGA, and TIP suggested adding language to 30 TAC §60.1(b) and 30 TAC §60.2(g) so that the date assigned to violations in the compliance history report matches the incident date instead of the date of the final order or action.

Response:

The commission did not propose any changes to the length of time for the compliance period and believes these comments are outside the scope of this rulemaking. However, the commission recognizes that there may be instances where the time gap between the activity and the resolution in a final order may be less representative of an entity's recent compliance posture. In these instances, the commission believes that it is appropriate for the executive director to consider, and if appropriate, apply discretion provided under §60.2(g)(3)(A) that allows the executive director to grant a mitigating factor that will reclassify a site to a satisfactory rating level.

No changes were made in response to these comments.

Comment:

PCS, HCAO, Better Brazoria, and Public Citizen each requested that the commission incorporate local investigations and violations into the compliance history formula, although each commenter provided different reasons to support the request.

PCS contended that TWC §5.1773, requires inclusion of violations issued by local governments in an entity's compliance history rating. PCS notes the public is encouraged to report non-compliance to the commission's regional offices. However, the commission refers some of these complaints to PCS for investigation. Violations noted as a result of these referred complaint investigations are not included in the compliance history formula. PCS adds that nothing in SB 1397 prohibits the addition of local violations in the compliance history formula, that TWC §26.173(a) grants local governments the same authority to conduct investigations and find violations as the commission, and the inclusion of these will allow permit-writers to render more-informed decisions. PCS requests that the TCEQ amend the rule to require that investigations conducted by and violation notices issued by local governments be included in a facility's compliance history rating.

HCAO contended that an entity's compliance history would be more accurate if it included local government violations. They noted that the exclusion of local government compliance information creates a disparity in that the commission can impact compliance history by issuing a written notice of violation, while a local government can only impact compliance history with a court judgment. This delay allows entities to renew their permits without consideration of full compliance performance. HCAO and Better Brazoria each cited an example where a concrete batch plant with nearly twenty locally issued notices of violation maintained a satisfactory classification, allowing the TCEQ to approve a ten-year permit renewal even while a lawsuit was pending in Harris County. HCAO contends that inclusion of local violations would have presented a more accurate and complete compliance history of the concrete batch plant.

Better Brazoria contended that the current exclusion of local compliance history components, particularly notices of violation, eliminates valuable information and leads to an incomplete picture of an entity's compliance performance. Better Brazoria posited that disregarding verified violations from local authorities overlooks systemic noncompliance that should be evaluated when designating repeat violator status or considering permit renewals, and incorporating these violations would lead to a more accurate compliance rating, which could necessitate permit denial or renewal in certain situations.

Public Citizen asserted that the inclusion of enforcement actions by local governments as a compliance history component should be considered as proposed in SB 277 and HB 3972 of the 89th legislative session.

Response:

The commission notes that local governments and municipalities are not obligated to report complaints, investigations, violations, and enforcement actions to this commission. In order to ensure that this information is provided to the commission so that it may be considered in the compliance history calculation would require contractual arrangements with each local government or municipality that has environmental ordinances. Additionally, because local governments and municipalities vary in their resources, there is inconsistency in their ability to conduct investigations and pursue enforcement actions which would lead to inconsistent determinations of compliance histories for regulated entities across the state. The commission is charged with developing standards for evaluating and using compliance history in a way that ensures regulatory consistency, including standards that establish a system of classifications per TWC §§5.753(a) and 5.754(a).

No changes were made in response to these comments.

60.2 Classification

Comment:

Better Brazoria and AGC supported the revision to §60.2(a) to require semi-annual evaluation of compliance history. Since compliance ratings will be assessed on March 1st and September 1st of each year instead of annually, then this more frequent evaluation will lead to more accurate ratings, particularly for facilities with recent violations.

Response:

The commission appreciates the positive comments in support of the rules.

No changes were made in response to this comment.

Comment:

Both Better Brazoria and Public Citizen requested the agency update compliance history more frequently, or even immediately, when new information becomes available. Public Citizen noted significant delays in the enforcement process which allows entities to apply for permits with a positive compliance rating while pending enforcement actions are not yet finalized. Public Citizen also emphasized that communities have a right to timely information about local facilities' compliance, which is essential for communities to advocate for stronger enforcement and hold both polluters and the commission accountable.

Better Brazoria and Public Citizen recommended updating compliance history ratings throughout the year, specifically suggesting that updates occur when new information is received, such as when orders are signed or notices of violations are issued.

Response:

The time necessary to complete the compliance history classification and rating development, review, and approval process does not allow for mass classifications more frequently than twice a year. Before the compliance history rating can be publicly posted, TWC §5.756 requires a quality control and assurance review, and a 30-day window for entities to review and comment on their score. These factors, among others, make it infeasible to update the compliance history classification rating in real time. The commission also notes that, although mass classification and publication will occur twice a year, a compliance history report containing the most recent components, including investigations, violations, and orders is used for internal enforcement and permitting considerations, in accordance with §60.1(b). In addition, TCEQ posts data about complaints, investigations, and violations on its website upon completion, so information is available to the public in a timely manner.

No changes were made in response to these comments.

Comment:

PCS, Better Brazoria, and Public Citizen expressed concern that under the compliance history program approximately 90% of regulated facilities are rated as "unclassified" in the compliance history database. This designation is given to sites that have no compliance history components in the database at the time that the mass classification is run. Better Brazoria and Public Citizen posited that this issue occurs because the formula does not include all relevant data. For example, PCS noted that data from local government investigations resulting in violations is excluded from the compliance history database, potentially making the unclassified number inaccurate. As a solution, Public Citizen recommended inclusion of citizen complaints, local government violations, and Tier II Deficiency Correction Reports to the compliance history formula and inclusion of minor and moderate violations to reduce the number of unclassified facilities.

In addition to the above comments, Better Brazoria requested two changes to address the "unclassified" classification 1) that an "unclassified" designation include a notation that the facility has no compliance history, and 2) that a contemporaneous compliance history review be completed when an unclassified facility seeks a permit renewal. If any violations are discovered as a result of that review, then investigations should be excluded as positive components in the site's compliance rating.

Response:

The commission acknowledges that the "unclassified" compliance history classification is a source of public confusion. A "regulated entity" is a person, organization, place, or thing that is of environmental interest to TCEQ where regulatory activities of interest to the commission occur or have occurred in the past. Regulated entities are indexed in the commission's "Central Registry". Most of these entities do not have any of the components listed in §60.1(c). Entities that are commonly "unclassified" include construction sites with stormwater registrations, recycling centers, office buildings, and one-time shipment permittees. In order to ensure that a complete history of each site is maintained, the commission does not remove these types of entities from Central Registry. This leads to a continual increase in the number of entities with "unclassified" compliance history classifications. All entities are included in the compliance history mass classification and an entity's "unclassified" status may change if compliance history components are added during the previous five years.

No changes were made in response to these comments; however, the commission agrees that adding a notation or further information to better explain the reason for an "unclassified" designation could help mitigate this confusion for the public.

Comment:

Better Brazoria stated that violations occurring in designated nonattainment areas, or impaired waterways, should be given a higher penalty. Failure to adequately weigh these violations results in inadequate consequences for polluting facilities, leading to inaccurate compliance history classifications and a lack of appropriate regulatory oversight. This deficiency may unfairly allow certain industrial facilities to avoid the stricter scrutiny warranted by their environmental impact. Better Brazoria recommended that penalties for air program violations in nonattainment areas be weighted more heavily than violations in areas that meet EPA air standards.

Response:

The commission responds that, while it appreciates the concerns raised by the commenter, the penalty policy is outside the scope of this rulemaking.

No changes were made in response to this comment.

Comment:

Better Brazoria stated that the current complexity scoring system, though an improvement over NAICS codes, is flawed because it can artificially inflate an entity's compliance rating while failing to accurately reflect true environmental and public health risks. They assert that the rigid, permit-type and size-based point system underestimates the risk of certain operations. Better Brazoria provided an example of an entity with a single, high-risk permit like hazardous waste disposal who could score lower than a less risky facility with multiple low-point permits. This system is problematic because complexity points increase the denominator in the compliance rating formula, effectively diluting the impact of violations, meaning complexity forgives violations rather than adding weight to them. This low threshold allows complex, dangerous facilities to incur many minor infractions before being flagged as a repeat violator, which poses a significant and avoidable risk to local communities. Better Brazoria cited the TPC Port Neches disaster, which had over eighty emissions events in the five years preceding the explosion on site. To correct this, Better Brazoria proposes either increasing repeat violation points to offset the artificial inflation from complexity points or assigning

more weight to violations incurred by complex facilities, ensuring that a facility's complexity score truly reflects the potential risk it poses and that patterns of non-compliance always have consequences.

Response:

The commission responds that its compliance history regulations are applicable to a wide range of regulated entities, and the commission reviewed the compliance history formula for factors that could be adjusted in a meaningful way to address the Sunset Commission's concerns. The inclusion of moderate and minor violations to the repeat violator calculation should more accurately reflect the compliance status of facilities of all sizes, and ensure that facilities with more violations will be considered for repeat violator status. The implementation of five complexity categories with corresponding repeat violation point thresholds should provide more granularity to ensure that facilities are held to appropriately stringent requirements for their complexity.

No changes were made in response to this comment.

Comment:

The AGC supported the proposed overall approach for calculating "repeat violation points." AGC believed it is appropriate to include only final enforcement orders, court judgements, and criminal convictions; and it is appropriate to give proper weight to minor, moderate, and major violations.

Response:

The commission appreciates the positive comment in support of the rules.

No changes were made in response to this comment.

Comment:

AGC supported the proposed exclusion of NOVs from the classification of "repeat violator." AGC noted that TWC §5.753 already recognizes that NOVs are not final actions. Further, NOVs are an important tool for achieving compliance quickly, and conserving agency resources through early resolution at the Regional Office level.

Response:

The commission appreciates the positive comment in support of the rules.

No changes were made in response to this comment.

Comment:

Public Citizen and Better Brazoria each advocated for the inclusion of all NOVs in the repeat violator calculation for a period of five years. Each NOV should be assigned points related to the severity, frequency, and complexity of the violation. The commenters asserted that this change would ensure a more accurate and comprehensive compliance history calculation.

Response:

The commission recognizes that the repeat violator designation has a rightfully severe impact on compliance history scores.

Previously, the repeat violator formula only included major violations. Major violations typically result in formal enforcement. With the removal of the consideration of NOVs from the repeat violator formula, the commission is adding moderate and minor violations and will only include violations from final commission actions after due process has been provided. It should be noted that NOVs are evaluated for severity and impact in accordance with §60.2(d). The commission did not propose any changes to §60.2(d) and therefore comments related to that section are outside the scope of this rulemaking. Moreover, the commission also believes the §60.2(d) classification for major, moderate, and minor violations is appropriate.

No changes were made in response to these comments.

Comment:

Public Citizen asserted that the current compliance history system overlooks a significant portion of environmental violations by excluding "minor" and "moderate" violations. Public Citizen pointed to the commission's 2024 Annual Enforcement Report which showed the minor and moderate categories accounted for 86% of all violations during the fiscal year. Moderate violations were the most common type, representing 70% of the total. Public Citizen emphasized that regardless of the perceived severity of individual violations, their cumulative effect remains harmful to communities already overburdened by pollution. Including minor and moderate violations in the repeat violator criteria closes this loophole to further prevent chronic polluters from avoiding the repeat violator designation and meaningful consequences.

Response:

The commission appreciates the positive comment in support of the rules.

No changes were made in response to this comment.

Comment:

Better Brazoria alleged that proposed §60.2(f)(4) violates the Legislature's intent by granting the Executive Director discretion to downgrade a facility's compliance history or grant an exemption from repeat violator status if the violations "do not warrant the designation." Better Brazoria stated this broad discretion, without any qualifiers, prevents the public and regulated community from knowing what conditions justify an exemption. They believe that this discretionary allowance was intended only for "exigent circumstances" and urge the commission to develop clear, static criteria for exemptions or to incorporate a policy by reference. Furthermore, they recommend that the rules adopt a definition of "exigent circumstances" that is narrow and consistent with the Sunset Advisory Commission's definition, thereby eliminating the current, much broader discretionary authority.

Response:

The executive director continues to have discretion to exempt an entity from the repeat violator designation based on the nature of the violations and conditions leading to the violations. This discretion is necessary to allow for case-by-case evaluation of circumstances. The commission adopted this provision in 2012 because it was concerned that a repeat violator designation could be applied to an entity based on circumstances beyond their reasonable control. As stated in 2012, the commission expects the executive director to be stringent in application of the provision.

In addition to the repeat violator exemption, the executive director also has discretionary authority to adjust an entity's classification between compliance rating years through §60.4.

No changes were made in response to this comment.

Comment:

The AGC requested the commission retain the "separate occasion" language in §60.2(f). AGC noted that Senate Bill 1397 did

not change the commissions mandate to "establish criteria" for the "repeat violator" classification, i.e., that language was not changed by the Legislature. Under this authority, AGC noted that the commission maintains the authority to retain the "separate occasion" language and respectfully requested keeping the current language.

Response:

Historically, the commission has considered each order or enforcement action as a "separate occasion" regardless of the number of major violations included in the order. Given the requirement in Senate Bill 1397 to also consider minor and moderate violations, the commission must now document each violation separately to ensure proper calculation of the repeat violator score. Since the methodology for considering violations in the repeat violator calculation has changed, the commission is removing the "separate occasion" language.

No changes were made in response to this comment.

Comment:

TAM, TCC, TXOGA, and TIP, requested revision to §60.2(f) to align with the commenters interpretation of TWC §5.754(c)(2)(B). They asserted that the statute's language "occurred in the preceding five years," mandates that repeat violator status must be based solely on violations with a violation date within five years of the date compliance history is run. TAM, TCC, TXOGA, and TIP noted that the current commission practice uses the date of the final enforcement action (such as an Agreed Order) to determine when components are added to compliance history, which can include violations that occurred more than five years ago. To correct this, they propose amending the rule to explicitly state that a person may be classified as a repeat violator only when multiple major, moderate, or minor violations of the same nature and environmental media that occurred within the five-year compliance period preceding the date compliance history is run should be considered. This revision, they contend, is necessary to comply with the plain language of the Texas Water Code, reduce ambiguity, and streamline the evaluation process.

Response:

The commission did not propose any changes to the length of time for the repeat violator calculation and believes these comments are outside the scope of this rulemaking. However, the commission recognizes that there may be instances where the time gap between the activity and the resolution in a final order may be less representative of an entity's recent compliance posture.

In these instances, the commission believes that it is appropriate for the executive director to consider, and if appropriate, apply discretion provided under §60.2(f) that allows the executive director to grant an exemption if "the nature of the violations and the conditions leading to the violations do not warrant the designation." The executive director may review the date the underlying violations associated with each proposed repeat violator designation were committed during the quality control and quality assurance review period. If the executive director conducts a review and determines that the underlying violations do not warrant the designation, the executive director will grant an exemption. This review may also occur in response to requests during the ARCH review period or appeals window.

No changes were made in response to this comment.

Comment:

TAM, TCC, TXOGA, and TIP, requested changing the definition of "same nature" in 30 TAC §60.2(f) for determining repeat violator status, noting that the definition uses a broad "root citation" approach, classifying any violations under the same rule subsection as being of the same nature. TAM, TCC, TXOGA, and TIP specifically invoked 30 TAC §116.115, which encompasses permit violations without differentiating between the nature of the violations cited. They contended that the proposed inclusion of minor and moderate violations, when combined with this existing definition, will unfairly result in an unrepresentative number of repeat violators. To ensure a more accurate assessment of a facility's compliance pattern, they proposed amending the rule to define "same nature" more narrowly, requiring that violations must involve the same equipment and same root cause, in addition to the root citation. TAM, TCC, TXOGA, and TIP contended that this change is supported by existing practice for Title V violations, aligns with the Texas Water Code's emphasis on root cause analysis, and addresses the Sunset Report's call to identify common patterns of noncompliance.

Response:

The commission agrees that some regulations, including Title V of the Clean Air Act, consider the same equipment and root cause that, where such information is provided by the entity, may be considered in the "same nature" determination. However, there is not a consistent requirement for entities to identify the equipment and root cause for all violations. To expand this definition of "same nature" to all violations of all programs within the commission's authority would require significant changes to statutes, rules, authorizations, and policies. Frequently, determining the root cause is not always possible. Additionally, it is not the responsibility of the commission to determine what caused a failure at a site. The commission's focus is on evaluating compliance with applicable requirements, while finding and correcting the cause of a violation is the responsibility of the site owner and operator.

Regulations and rules are generally separated by environmental media. For example, air rules are located in 30 TAC chs. 101, 106, 111, 112, 113, 114, 115, 116, 117. Violations that cite these rules will involve the same environmental media with a similar nature. The violation description may explain the point of failure that contributed to the violation, if the information is available. With a similar point of failure, the nature of the violations will generally be similar. In addition, the commission reviews violations during the quality control and quality assurance process to ensure they involve the same nature and environmental media. This essential review process will be maintained under the proposed rule per §60.2(f), which provides that the executive director is able to evaluate if the repeat violator designation is warranted considering the nature of the violations and the conditions leading to the violations.

The commission may record the root cause of a violation if that information is available. If an entity believes the citation level fails to give adequate consideration of the "same nature" principle, there are several levels of review that are available for reviewing and correcting any errors. The commission rules require an internal quality control and quality assurance procedure to proactively identify errors, as well as allowing correction requests to be submitted at any time. The executive director may also adjust the repeat violator designation when information provided by the entity demonstrates the violation is not repeating. If during any level of review, the executive director determines that the "same

nature" determination is not appropriate, the executive director will remove the violations from consideration. Finally, entities may also avail themselves of the appeals process in §60.3(e).

No changes were made in response to these comments.

Comment:

TAM, TCC, TXOGA, and TIP proposed reducing the points assigned to "moderate violations" in §60.2(f) from 10 to 5 points. They expressed concern that the proposed 10-point value, coupled with the broad definition of moderate violations, could unfairly trigger "repeat violator" status for sites with minimal, infrequent emissions events. Specifically, they note that under the proposal, a site with just three one-hour emissions events annually could be classified as a repeat violator. They believed this would be contrary to the Sunset Report's focus on "habitual noncompliance" which included examples of facilities having over 40 emissions events. TAM, TCC, TXOGA, and TIP contended that the proposed threshold would inaccurately represent a site's true compliance, potentially penalizing sites with successful compliance programs for minor, corrected events. They therefore proposed revising §60.2(f)(2) to assign 5 points for each moderate violation to create a more balanced threshold.

Response:

The commission notes that the proposed point values of 2, 10, and 50 are intentionally structured so that if an entity commits the same violation annually over a five-year period, the cumulative impact elevates the classification to the next level. This design ensures that frequent, lower-level violations are appropriately addressed over time. For instance, a gas station that repeatedly fails to maintain consistent leak detection records would eventually accumulate enough points from these minor violations to be equivalent to a single moderate violation. Reducing the point value for a moderate violation from 10 to 5 would drastically increase the number of violations a facility would need to accrue to meet the repeat violator threshold, effectively doubling the requirement over a five-year period. The changes in 30 TAC § 60.2(f)(3), related to repeat violator point thresholds for different complexity categories, takes into account the potentially adverse impact of moderate and minor violations in determining if a facility should be a repeat violator and achieves a similar result to lowering the points assigned to moderate violations.

No changes were made in response to these comments.

Comment:

TAM, TCC, and TXOGA requested that the repeat violator threshold be increased to 250 points for sites with 30 or more complexity points.

Similarly, TIP requested the creation of a new complexity category with a separate repeat violator point threshold. Specifically, TIP recommended a threshold of 250 repeat violator points for sites with over 30 complexity points. TIP contends that using the current 15-complexity-point threshold to separate all sites into just two compliance levels disproportionately disadvantages highly complex sites, such as large refineries and chemical plants. These larger facilities have many more emissions points and permit obligations, naturally increasing their risk of accumulating minor noncompliance points. Consequently, a site with 15 complexity points is less likely to reach the 150-point repeat violator threshold, even with a single major violation, than a site with 50+ complexity points. TIP concludes that grouping a 50+ complexity point site with a 15-point site, which they assert are far from "similar complexity," violates the spirit of the Sunset Report and could unfairly label large sites as repeat violators simply due to their size rather than their actual compliance performance.

Response:

In preparing the proposed rule, the commission conducted simulations using several years of historical data to evaluate the potential impact of different point values on various entities. These simulations analyzed how repeat violation points and repeat violator thresholds could affect different types of entities.

The commission recognizes that the inclusion of both moderate and minor violations will make it more likely for entities to accumulate points and reach the repeat violator thresholds. This is particularly true for entities who are required to self-report violations. To reduce the impact of minor and moderate violations in facilities that would not otherwise be considered repeat violators, while ensuring that minor and moderate violations are integral to the repeat violator calculation, the commission has adjusted the proposed rule to include five complexity categories with point thresholds ranging from 150 to 550 based on complexity category. These changes are documented in §60.2(f)(3).

Comment:

AGC noted that the "Repeat Violator" status currently results in a 25 percent penalty enhancement. The proposed preamble acknowledges that adding minor and moderate violations will result in more repeat violators. While beyond the scope of the rulemaking, AGC requests the commission modify the penalty policy, such as adding a tiered approach for penalty enhancements, with lower penalty enhancements for entities that are repeat violators on the basis of minor or moderate violations alone.

Response:

The commission responds that, while it appreciates the concerns raised by the commenter, it agrees that the penalty policy is outside the scope of this rulemaking. The commission considered how including minor and moderate violations will impact all entities. By assigning weighted points to these violations and requiring a minimum point threshold, the commission will ensure only deserving entities are designated as repeat violators.

No changes were made in response to this comment.

Comment:

Better Brazoria contended that the proposed criteria for classifying a repeat violator fails to provide an accurate picture of a facility's overall compliance history because violations must be of the same environmental media. Better Brazoria stated that complex facilities with permits across various media, such as air, water, and waste, may escape repeat violator status because the violations are not in the same media, despite demonstrating a clear pattern of non-compliance. Better Brazoria emphasized that multiple violations across different environmental media often signal a broader, systemic compliance problem at a facility, regardless of its complexity. For example, an operation failing on both a stormwater permit and a separate permit or registration indicates deeper issues, which, even if seemingly minor, impact public health, such as contaminated runoff and particulate matter releases from operations near communities. Commenters therefore requested the repeat violator classification be updated to incorporate and assess habitual violations across media types when they point to a systemic issue.

TAM, TCC, TXOGA and TIP noted a lack of clarity regarding whether the required point total is calculated across all media

(a total of 150 points) or only within a single medium (e.g., 150 points for air and 150 points for water). TAM, TCC, TXOGA, and TIP requested revising the proposed rule, to apply a separate repeat violator point total for each environmental media (e.g., air, water, waste), in accordance with TWC §5.754(c)(2)(B), which mandates that repeat violator consideration be limited to violations of "the same nature and the same environmental media."

Response:

The commission acknowledges that the proposed preamble did not directly clarify how the rule would handle repeat violations across environmental media types. TWC §5.754(c)(2)(B) requires that, for the purpose of designating repeat violators, the commission must consider all violations of the same nature and environmental media. As outlined in the proposed preamble, when an entity has multiple violations of the same nature and environmental media within the preceding five-year period, the points from these violations are combined. The points from all repeating violations on a site are then totaled across all environmental media to determine whether the entity exceeds its designated repeat violator threshold.

For example, a refinery with both multiple air emission violations and multiple wastewater discharge violations would have the points from each set of repeating violations, air and water, added together to determine if it is a repeat violator. This holistic approach helps ensure that systemic issues across environmental media are more quickly identified through the repeat violation formula.

No changes were made in response to these comments.

Comment:

TAM, TCC, TXOGA, and TIP asserted that the current rule's compliance history formula disproportionately impacts smaller entities, such as upstream production facilities, which means a single emissions event with an associated reporting or record-keeping violation can cause these sites to trigger an unsatisfactory compliance history designation. However, the commenters asserted a single event does not accurately reflect overall poor performance, making a reclassification process necessary to accurately represent a facility's compliance record. TAM, TCC, TXOGA, and TIP requested the addition of a mitigating factor to allow reclassification of unsatisfactory less complex sites (those with 15 or fewer complexity points) to a satisfactory classification.

Response:

The commission acknowledges that the smallest entities could be unfairly designated as unsatisfactory performers for committing two minor or two moderate violations. To address this concern, the commission is raising the threshold for unsatisfactory performance from 55 to 60 points. Therefore, a separate mitigating factor for a single minor or moderate violation is not necessary.

No changes were made in response to these comments.

§60.3 Use of Compliance History

Comment:

Better Brazoria appreciated the proposal to evaluate compliance history more frequently. However, they expressed concern that evaluating and rating compliance history twice a year may give industrial operators more opportunities to challenge unfavorable, but accurate, designations. To ensure compliance ratings remain accurate and to minimize these appeals, Better Brazoria requested a shortened appeal window to prevent industrial operators from having extended opportunities to challenge unfavorable compliance history classifications.

Response:

The commission responds that the compliance history rules apply to a wide range of regulated entities with varying sizes and complexities. The commission recognizes that a rule of such broad application may create situations where unique factual circumstances may warrant the exercise of additional review through the appeals process. To prevent an unmanageable number of appeals to the executive director, the right of an appeal is already limited to unsatisfactory performers, repeat violators, and satisfactory performers with 45 points or higher. Unsatisfactory performers and repeat violators receive additional oversight and regulatory restrictions by the commission and providing an avenue for these entities to supply additional information to the executive director to appeal the classification is warranted. With these limitations, the commission is not reducing the 45-day appeal window for regulated entities at this time.

No changes were made in response to this comment.

Comment:

Public Citizen asserted that while the rulemaking considered the duration of the appeal window for regulated entities, it failed to include any measures for transparency in the appeals process. Currently, the Compliance History website states that appeals rely solely on submitted written documentation, as "here is no hearing associated with this process." Given the lack of a public hearing, the commenter requested access be granted, upon request, to all documentation and reasoning submitted to or considered by the commission when determining whether to grant an appeal.

Response:

The commission operates in adherence to the Public Information Act. Consequently, documents and materials related to the appeals process may be requested and released in accordance with the Act's provisions through the commission's public information request process.

No changes were made in response to this comment.

Comment:

Better Brazoria asserted that a flaw with compliance history is that entities are able to self-report which removes the commission's ability to protect public health. The commenter requests that any entities which self-report compliance history data be subject to auditing and independent data verification.

Response:

This comment is outside the scope of this rulemaking. However, the commission agrees that self-reported data should be subject to auditing and independent data verification. To ensure this, the commission reviews self-reported data and evaluates it against applicable requirements, often requesting additional information to determine if the entity's evaluation was appropriate. The commission cites violations for noncompliance whether they are self-reported or identified through an investigation.

No changes were made in response to this comment.

Statutory Authority

The amended rules are adopted under the authority of Texas Water Code (TWC), §5.753, concerning Standards for Evaluating and Using Compliance History, and TWC, §5.754, as amended by Senate Bill 1397, 88th Legislature, 2023, Section 13, concerning Classification and Use of Compliance History, which authorize rulemaking to establish compliance history standards, call upon the compliance history program to ensure consistency, and establish criteria for classifying a repeat violator. These provisions do not restrict the application of such classifications to be at specific intervals. Additional authority exists under TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted amended rules implement TWC, §§5.102, 5.103, 5.753, and 5.754.

§60.1. Compliance History.

(a) Applicability. The provisions of this chapter are applicable to all persons subject to the requirements of Texas Water Code (TWC), Chapters 26, 27, and 32 and Texas Health and Safety Code (THSC), Chapters 361, 375, 382, and 401.

(1) Specifically, the agency will utilize compliance history when making decisions regarding:

(A) the issuance, renewal, amendment, modification, denial, suspension, or revocation of a permit;

(B) enforcement;

(C) the use of announced investigations; and

(D) participation in innovative programs.

(2) For purposes of this chapter, the term "permit" means licenses, certificates, registrations, approvals, permits by rule, standard permits, or other forms of authorization.

(3) With respect to authorizations, this chapter only applies to forms of authorization, including temporary authorizations, that require some level of notification to the agency, and which, after receipt by the agency, requires the agency to make a substantive review of and approval or disapproval of the authorization required in the notification or submittal. For the purposes of this rule, "substantive review of and approval or disapproval" means action by the agency to determine, prior to issuance of the requested authorization, and based on the notification or other submittal, whether the person making the notification has satisfied statutory or regulatory criteria that are prerequisites to issuance of such authorization. The term "substantive review or response" does not include confirmation of receipt of a submittal.

(4) Notwithstanding paragraphs (2) and (3) of this subsection, this chapter does not apply to certain permit actions such as:

(A) voluntary permit revocations;

(B) minor amendments and nonsubstantive corrections to permits;

(C) Texas pollutant discharge elimination system and underground injection control minor permit modifications;

(D) Class 1 solid waste modifications, except for changes in ownership;

(E) municipal solid waste Class I modifications, except for temporary authorizations and municipal solid waste Class I modifications requiring public notice;

(F) permit alterations;

(G) administrative revisions; and

(H) air quality new source review permit amendments which meet the criteria of §39.402(a)(3)(A) - (C) and (5)(A) - (C) of this title (relating to Applicability to Air Quality Permits and Permit Amendments) and minor permit revisions under Chapter 122 of this title (relating to Federal Operating Permits Program).

(5) Further, this chapter does not apply to occupational licensing programs under the jurisdiction of the commission.

(6) This rule will become effective on September 1, 2026. The executive director shall continue in effect the standards and use of compliance history for any action (permitting, enforcement, or otherwise) that were in effect before the effective date of the rule.

(7) , this chapter shall apply to the use of compliance history in agency decisions relating to:

(A) applications submitted on or after this date for the issuance, amendment, modification, or renewal of permits;

(B) inspections and flexible permitting;

(C) a proceeding that is initiated or an action that is brought on or after this date for the suspension or revocation of a permit or the imposition of a penalty in a matter under the jurisdiction of the commission; and

(D) applications submitted on or after this date for other forms of authorization, or participation in an innovative program, except for flexible permitting.

(8) If a motion for reconsideration or a motion to overturn is filed under §50.39 or §50.139 of this title (relating to Motion for Reconsideration; and Motion to Overturn Executive Director's Decision) with respect to any of the actions listed in paragraph (4) of this subsection, and is set for commission agenda, a compliance history shall be prepared by the executive director and filed with the Office of the Chief Clerk no later than six days before the Motion is considered on the commission agenda.

(b) Compliance period. The compliance history period includes the five years prior to the date the permit application is received by the executive director; the five-year period preceding the date of the initial enforcement screening; for purposes of determining whether an announced investigation is appropriate, the five-year period preceding an investigation; or the five years prior to the date the application for participation in an innovative program is received by the executive director. The compliance history period may be extended beyond the date the application for the permit or participation in an innovative program is received by the executive director, up through completion of review of the application. Notices of violation may only be used as a component of compliance history for a period not to exceed one year from the date of issuance.

(c) Components. The compliance history shall include multimedia compliance-related information about a person, specific to the site which is under review, as well as other sites which are owned or operated by the same person. The components are:

(1) any final enforcement orders, court judgments, and criminal convictions of this state relating to compliance with applicable legal requirements under the jurisdiction of the commission. "Applicable legal requirement" means an environmental law, regulation, permit, order, consent decree, or other requirement;

(2) notwithstanding any other provision of the TWC, orders developed under TWC, §7.070 and approved by the commission on or after February 1, 2002;

(3) to the extent readily available to the executive director, final enforcement orders, court judgments, consent decrees, and criminal convictions relating to violations of environmental rules of the United States Environmental Protection Agency;

(4) chronic excessive emissions events. For purposes of this chapter, the term "emissions event" is the same as defined in THSC, §382.0215(a);

(5) any information required by law or any compliance-related requirement necessary to maintain federal program authorization;

(6) the dates of investigations;

(7) all written notices of violation for a period not to exceed one year from the date of issuance of each notice of violation, including written notification of a violation from a regulated person, issued on or after September 1, 1999, except for those administratively determined to be without merit;

(8) the date of letters notifying the executive director of an intended audit conducted and any violations disclosed and having received immunity under the Texas Environmental, Health, and Safety Audit Privilege Act (Audit Act), 85th Legislature, 2017, TEX. HEALTH AND SAFETY CODE ch. 1101;

(9) an environmental management system approved under Chapter 90 of this title (relating to Innovative Programs), if any, used for environmental compliance;

(10) any voluntary on-site compliance assessments conducted by the executive director under a special assistance program;

(11) participation in a voluntary pollution reduction program; and

(12) a description of early compliance with or offer of a product that meets future state or federal government environmental requirements.

(d) Change in ownership. In addition to the requirements in subsections (b) and (c) of this section, if ownership of the site changed during the five-year compliance period, a distinction of compliance history of the site under each owner during that five-year period shall be made. Specifically, for any part of the compliance period that involves a previous owner, the compliance history will include only the site under review. For the purposes of this rule, a change in operator shall be considered a change in ownership if the operator is a co-permittee.

§60.2. Classification.

(a) Classifications. Beginning September 1, 2002, the executive director shall evaluate the compliance history of each site and classify each site and person as needed for the actions listed in §60.1(a)(1) of this title (relating to Compliance History). On September 1, 2026, and semi-annually thereafter, the executive director shall evaluate the compliance history of each site, and classify each site and person. For the purposes of classification in this chapter, and except with regard to portable units, "site" means all regulated units, facilities, equipment, structures, or sources at one street address or location that are owned or operated by the same person. Site includes any property identified in the permit or used in connection with the regulated activity at the same street address or location. A "site" for a portable regulated unit or facility is any location where the unit or facility is or has operated. Each site and person shall be classified as:

(1) a high performer, which has an above-satisfactory compliance record;

(2) a satisfactory performer, which generally complies with environmental regulations; or

(3) an unsatisfactory performer, which performs below minimal acceptable performance standards established by the commission.

(b) Inadequate information. For purposes of this rule, "inadequate information" shall be defined as no compliance information. If there is no compliance information about the site at the time the executive director develops the compliance history classification, then the classification shall be designated as "unclassified." The executive director may conduct an investigation to develop a compliance history.

(c) Groupings. Sites will be divided into groupings based on complexity or other information available to the executive director. The complexity calculation is described in subsection (e) of this section (relating to Classification).

(d) Major, moderate, and minor violations. In classifying a site's compliance history, the executive director shall determine whether a documented violation of an applicable legal requirement is of major, moderate, or minor significance.

(1) Major violations are:

(A) a violation of a commission enforcement order, court order, or consent decree;

(B) operating without required authorization or using a facility that does not possess required authorization;

(C) an unauthorized release, emission, or discharge of pollutants that caused, or occurred at levels or volumes sufficient to cause, adverse effects on human health, safety, or the environment;

(D) falsification of data, documents, or reports; and

(E) any violation included in a criminal conviction, which required the prosecutor to prove a culpable mental state or a level of intent to secure the conviction.

(2) Moderate violations are:

(A) complete or substantial failure to monitor, analyze, or test a release, emission, or discharge, as required by a commission rule or permit;

(B) complete or substantial failure to submit or maintain records, as required by a commission rule or permit;

(C) not having an operator whose level of license, certification, or other authorization is adequate to meet applicable rule requirements;

(D) any unauthorized release, emission, or discharge of pollutants that is not classified as a major violation;

(E) complete or substantial failure to conduct a unit or facility inspection, as required by a commission rule or permit;

(F) any violation included in a criminal conviction, for a strict liability offense, in which the statute plainly dispenses with any intent element needed to be proven to secure the conviction; and

(G) maintaining or operating regulated units, facilities, equipment, structures, or sources in a manner that could cause an unauthorized or noncompliant release, emission, or discharge of pollutants.

(3) Minor violations are:

(A) performing most, but not all, of a monitoring or testing requirement, including required unit or facility inspections;

(B) performing most, but not all, of an analysis or waste characterization requirement;

(C) performing most, but not all, of a requirement addressing the submittal or maintenance of required data, documents, notifications, plans, or reports; and

(D) maintaining or operating regulated units, facilities, equipment, structures, or sources in a manner not otherwise classified as moderate.

(e) Complexity Points. All sites classified shall have complexity points as follows:

(1) Program Participation Points. A site shall be assigned Program Participation Points based upon its types of authorizations, as follows:

(A) four points for each permit type listed in clauses (i) - (viii) of this subparagraph issued to a person at a site:

(i) Radioactive Waste Disposal;

(ii) Hazardous or Industrial Non-Hazardous Storage Processing or Disposal;

(iii) Municipal Solid Waste Type I;

(iv) Prevention of Significant Deterioration;

(v) Phase I--Municipal Separate Storm Sewer System;

(vi) Texas Pollutant Discharge Elimination System (TPDES) or National Pollutant Discharge Elimination System (NPDES) Industrial or Municipal Major;

(vii) Nonattainment New Source Review; and

(viii) Underground Injection Control Class I/III;

(B) three points for each type of authorization listed in clauses (i) - (iv) of this subparagraph issued to a person at a site:

(i) Municipal Solid Waste Type I AE;

(ii) Municipal Solid Waste Type IV, V, or VI;

(iii) Municipal Solid Waste Type IV AE; and

(iv) TPDES or NPDES Industrial or Municipal Minor;

(C) two points for each permit type listed in clauses (i) - (iii) of this subparagraph issued to a person at a site or utilized by a person at a site:

(i) Title V Federal Operating Permit;

(ii) New Source Review individual permit; and

(iii) any other individual site-specific water quality permit not referenced in subparagraph (A) or (B) of this paragraph or any water quality general permit;

(D) one point for each type of authorization listed in clauses (i) - (xiii) of this subparagraph issued to a person at a site or utilized by a person at a site:

(i) Edwards Aquifer authorization;

(ii) Enclosed Structure permit or registration relating to the use of land over a closed Municipal Solid Waste landfill;

(iii) Industrial Hazardous Waste registration;

(iv) Municipal Solid Waste Tire Registrations;

(v) Other types of Municipal Solid Waste permits or registrations not listed in subparagraphs (A) - (C) of this paragraph;

(vi) Petroleum Storage Tank registration;

(vii) Radioactive Waste Storage or Processing license;

(viii) Sludge registration or permit;

(ix) Stage II Vapor Recovery registration;

(x) Municipal Solid Waste Type IX;

(xi) Permit by Rule requiring submission of an application under Chapter 106 of this title (relating to Permits by Rule);

(xii) Uranium license; and

(xiii) Air Quality Standard Permits.

(2) Size. Every site shall be assigned points based upon size as determined by the following:

(A) Facility Identification Numbers (FINs): The total number of FINS at a site will be multiplied by 0.02 and rounded up to the nearest whole number.

(B) Water Quality external outfalls:

(i) 10 points for a site with ten or more external outfalls;

(ii) 5 points for a site with at least five, but fewer than ten, external outfalls;

(iii) 3 points for sites with at least two, but fewer than five, external outfalls; and

(iv) 1 point for sites with one external outfall;

(C) Active Hazardous Waste Management Units (AHWMUs):

(i) 10 points for sites with 50 or more AHWMUs;

(ii) 5 points for sites with at least 20, but fewer than 50, AHWMUs;

(iii) 3 points for sites with at least ten, but fewer than 20, AHWMUs; and

(iv) 1 point for sites with at least one but fewer than ten AHWMUs.

(D) Small Entities shall receive 3 points. A small entity is defined as: a city with a population of less than 5,000; a county with a population of less than 25,000; or a small business. A small business is defined as any person, firm, or business which employs, by direct payroll and/or through contract, fewer than 100 full-time employees. A business that is a wholly owned subsidiary of a corporation shall not qualify as a small business if the parent organization does not qualify as a small business.

(E) Underground Storage Tanks (USTs) and Aboveground Storage Tanks (ASTs):

(i) 4 points for sites with 11 or more USTs;

(ii) 3 points for sites with five to ten USTs;

(iii) 3 points for sites with more than 11 ASTs;

(iv) 2 points for sites with three to four USTs;

(v) 2 points for sites with three to ten, ASTs;

(vi) 1 point for sites with one to two USTs; and

(vii) 1 point for sites with one to two ASTs.

(3) Nonattainment area points. Every site located in a nonattainment area shall be assigned 1 point.

(4) The subtotals from paragraphs (1) - (3) of this subsection shall be summed.

(f) Repeat violator.

(1) Repeat violator criteria. A person may be classified as a repeat violator at a site when multiple major, moderate, or minor violations of the same nature and the same environmental media occurs during the preceding five-year compliance period. Same nature is defined as violations that have the same root citation at the subsection level. For example, all rules under §334.50 of this title (relating to Release Detection) (e.g. §334.50(a) or (b)(2) of this title) would be considered same nature. The total complexity points for a site equals the sum of points assigned to a specific site in subsection (e) of this section.

(2) Repeat violation points. Each repeat violation will be:

(A) Assigned 2 points for each minor violation as documented in any final enforcement orders, court judgments, and criminal convictions;

(B) Assigned 10 points for each moderate violation as documented in any final enforcement orders, court judgments, and criminal convictions; and

(C) Assigned 50 points for each major violation as documented in any final enforcement orders, court judgments, and criminal convictions.

(3) A person is a repeat violator at a site when the number of repeat violation points is:

(A) Equal to or greater than 550 for sites with 60 or more complexity points; or,

(B) Equal to or greater than 450 for sites with 45 to 59 complexity points; or,

(C) Equal to or greater than 350 for sites with 30 to 44 complexity points; or,

(D) Equal to or greater than 250 for sites with 15 to 29 complexity points; or,

(E) Equal to or greater than 150 for sites with less than 15 complexity points.

(4) Repeat violator exemption. The executive director shall designate a person as a repeat violator as provided in this subsection, unless the executive director determines the nature of the violations and the conditions leading to the violations do not warrant the designation.

(g) Formula. The executive director shall determine a site rating based upon the following method.

(1) Site rating. For the time period reviewed, the following calculations shall be performed based upon the compliance history at the site.

(A) The number of major violations contained in:

(i) any adjudicated final court judgments and default judgments, shall be multiplied by 160;

(ii) any non-adjudicated final court judgments or consent decrees without a denial of liability shall be multiplied by 140;

(iii) any non-adjudicated final court judgments or consent decrees containing a denial of liability, adjudicated final enforcement orders, and default orders, shall be multiplied by 120;

(iv) any final prohibitory emergency orders issued by the commission shall be multiplied by 120;

(v) any agreed final enforcement orders without a denial of liability shall be multiplied by 100; and

(vi) any agreed final enforcement orders containing a denial of liability shall be multiplied by 80.

(B) The number of moderate violations contained in:

(i) any adjudicated final court judgments and default judgments shall be multiplied by 115;

(ii) any non-adjudicated final court judgments or consent decrees without a denial of liability shall be multiplied by 95;

(iii) any non-adjudicated final court judgments or consent decrees containing a denial of liability, adjudicated final enforcement orders, and default orders, shall be multiplied by 75;

(iv) any agreed final enforcement orders without a denial of liability shall be multiplied by 60; and

(v) any agreed final enforcement orders containing a denial of liability shall be multiplied by 45.

(C) The number of minor violations contained in:

(i) any adjudicated final court judgments and default judgments shall be multiplied by 45;

(ii) any non-adjudicated final court judgments or consent decrees without a denial of liability shall be multiplied by 35;

(iii) any non-adjudicated final court judgments or consent decrees containing a denial of liability, adjudicated final enforcement orders, and default orders, shall be multiplied by 25;

(iv) any agreed final enforcement orders without a denial of liability shall be multiplied by 20; and

(v) any agreed final enforcement orders containing a denial of liability shall be multiplied by 15.

(D) The total number of points assigned for all resolved violations in subparagraphs (A) - (C) of this paragraph will be reduced based on achievement of compliance with all ordering provisions. For the first two years after the effective date of the enforcement order(s), court judgment(s), consent decree(s), and criminal conviction(s), the site will receive the total number of points assigned for violations in subparagraphs (A) - (C) of this paragraph. If all violations in subparagraphs (A) - (C) of this paragraph are resolved and compliance with all ordering provisions is achieved, for each enforcement order(s), court judgment(s), consent decree(s), and criminal conviction(s) :

(i) under two years old, the points associated with the violations in subparagraphs (A) - (C) of this paragraph will be multiplied by 1.0;

(ii) over two years old, the points associated with the violations in subparagraphs (A) - (C) of this paragraph will be multiplied by 0.75;

(iii) over three years old, the points associated with the violations in subparagraphs (A) - (C) of this paragraph will be multiplied by 0.50; and

(iv) over four years old, the points associated with the violations in subparagraphs (A) - (C) of this paragraph will be multiplied by 0.25.

(E) The number of major violations contained in any notices of violation shall be multiplied by 10.

(F) The number of moderate violations contained in any notices of violation shall be multiplied by 4.

(G) The number of minor violations contained in any notices of violation shall be multiplied by 1.

(H) The number of counts in all criminal convictions:

(i) under Texas Water Code (TWC), §§7.145, 7.152, 7.153, 7.162(a)(1) - (5), 7.163(a)(1) - (3), 7.164, 7.168 - 7.170, 7.176, 7.182, 7.183, and all felony convictions under the Texas Penal Code, TWC, Texas Health and Safety Code (THSC), or the United States Code (USC) shall be multiplied by 500; and

(ii) under TWC, §§7.147 - 7.151, 7.154, 7.157, 7.159, 7.160, 7.162(a)(6) - (8), 7.163(a)(4), 7.165 - 7.167, 7.171, 7.177 - 7.181, and all misdemeanor convictions under the Texas Penal Code, TWC, THSC, or the USC shall be multiplied by 250.

(I) The number of chronic excessive emissions events shall be multiplied by 100.

(J) The subtotals from subparagraphs (A) - (I) of this paragraph shall be summed.

(K) If the person is a repeat violator as determined under subsection (f) of this section, then 500 points shall be added to the total in subparagraph (J) of this paragraph. If the person is not a repeat violator as determined under subsection (f) of this section, then zero points shall be added to the total in subparagraph (J) of this paragraph.

(L) If the total in subparagraph (K) of this paragraph is greater than zero, then:

(i) subtract 1 point from the total in subparagraph (K) of this paragraph for each notice of an intended audit conducted under the Audit Act submitted to the agency during the compliance period; or

(ii) if a violation(s) was disclosed as a result of an audit conducted under the Audit Act; as amended, and the site received immunity from an administrative or civil penalty for that violation(s) by the agency, then the following number(s) shall be subtracted from the total in subparagraph (K) of this paragraph:

(I) the number of major violations multiplied by 10;

(II) the number of moderate violations multiplied by 4; and

(III) the number of minor violations multiplied by 1.

(M) The result of the calculations in subparagraphs (J) - (L) of this paragraph shall be divided by the number of investigations conducted during the compliance period multiplied by 0.1 plus the number of complexity points in subsection (e) of this section. If a site does not have any investigation points and the subtotal from subsection (e)(1) - (3) of this section equals zero, then one default point shall be used. Investigations that do not document any violations will be the only ones counted in the compliance history formula. The number of investigations multiplied by 0.1 shall be rounded up to the nearest whole number. If the value is less than zero, then the site rating shall be assigned a value of zero. For the purposes of this chapter, an investigation is a review or evaluation of information by the executive director or executive director's staff or agent regarding the compliance status of a site, excluding those investigations initiated by citizen complaints. An investigation, for the purposes of this chapter, may take the form of a site assessment, file or record review, compliance investigation, or other review or evaluation of information.

(N) If the person receives certification of an environmental management system (EMS) under Chapter 90 of this title (relating to Innovative Programs) and has implemented the EMS at the site for more than one year, then multiply the result in subparagraph (M) of this paragraph by 0.90, which is (1 - 0.10) and this is the maximum reduction that can be received for an EMS. If the person receives credit for a voluntary pollution reduction program or for early compliance, then multiply the result in subparagraph (M) of this paragraph by 0.95, which is (1 - 0.05). The maximum reduction that a site's compliance history may be reduced through voluntary pollution reduction programs in this subparagraph is 0.85, which is (1 - 0.15). If site participates in both EMS and voluntary pollution reduction programs then the maximum reduction that a site's compliance history may be reduced through EMS and voluntary programs in this subparagraph is 0.75, which is (1 - 0.10 - 0.15).

(2) Point ranges. The executive director shall assign the site a classification based upon the compliance history and application of the formula in paragraph (1) of this subsection to determine a site rating, utilizing the following site rating ranges for each classification:

(A) For entities with less than 15 complexity points:

(i) fewer than 0.10 points--high performer;

(ii) 0.10 points to 60 points--satisfactory performer; and

(iii) more than 60 points--unsatisfactory performer.

(B) For entities with 15 or more complexity points:

(i) fewer than 0.10 points--high performer;

(ii) 0.10 points to 55 points€"satisfactory performer; and

(iii) more than 55 points€"unsatisfactory performer.

(3) Mitigating factors. The executive director shall evaluate mitigating factors for a site classified as an unsatisfactory performer.

(A) The executive director may reclassify the site from unsatisfactory to satisfactory performer based upon the following mitigating factors:

(i) other compliance history components included in §60.1(c)(10) - (12) of this title;

(ii) implementation of an EMS not certified under Chapter 90 of this title at a site for more than one year;

(iii) a person, all of whose other sites have a high or satisfactory performer classification, purchased a site with an unsatisfactory performer classification or became permitted to operate a site with an unsatisfactory performer classification if the person entered into a compliance agreement with the executive director regarding actions to be taken to bring the site into compliance prior to the effective date of this rule; and

(iv) voluntarily reporting a violation to the executive director that is not otherwise required to be reported and that is not reported under the Audit Act, or that is reported under the Audit Act but is not granted immunity from an administrative or civil penalty for that violation(s) by the agency.

(B) When a person, all of whose other sites have a high or satisfactory performer classification, purchased a site with an unsatisfactory performer classification or became permitted to operate a site with an unsatisfactory performer classification and the person contemporaneously entered into a compliance agreement with the executive director regarding actions to be taken to bring the site into compliance, the executive director:

(i) shall reclassify the site from unsatisfactory performer to satisfactory performer until such time as the next semi-annual compliance history classification is performed; and

(ii) may, at the time of subsequent compliance history classifications, reclassify the site from unsatisfactory performer to satisfactory performer based upon the executive director's evaluation of the person's compliance with the terms of the compliance agreement.

(h) Person classification. The executive director shall assign a classification to a person by adding the complexity weighted site ratings of all the sites owned and/or operated by that person in the State of Texas. Each site that a person is affiliated to will receive a point value based on the compliance history rating at the site multiplied by the percentage of complexity points that site represents of the person's total complexity points for all sites. Each of these calculated amounts will be added together to determine the person's compliance history rating.

(i) Notice of classifications. Notice of person and site classifications shall be posted on the commission's website after 30 days from the completion of the classification. The notice of classification shall undergo a quality assurance, quality control review period. An owner or operator of a site may review the pending compliance history rating upon request by registering for the Advanced Review of Compliance History.

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 January 15, 2026.

TRD-202600157
Gitanjali Yadav
Deputy Director, Litigation Division
Texas Commission on Environmental Quality
Effective date: February 4, 2026
Proposal publication date: July 25, 2025
For further information, please call: (512) 239-2678

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 401. ADMINISTRATIVE PRACTICE AND PROCEDURE

The Texas Commission on Fire Protection (Commission) adopts amendments to 37 Texas Administrative Code, Chapter 401, Administrative Practice and Procedure, concerning §§401.1, 401.3, 401.7, 401.9, 401.11, 401.13, 401.17, 401.19, 401.21, 401.23, 401.31, 401.41, 401.53, 401.57, 401.59, 401.61, 401.63, 401.67, 401.105, 401.111, 401.113, 401.115, 401.117, 401.119, 401.121, 401.127, 401.129, and 401.131. It also adopts the repeal of §401.17. The amendments and repeal are adopted without change to the proposed text as published in the November 21, 2025 issue of the *Texas Register* (50 TexReg 7521). The rules will not be republished.

Reasoned Justification

The adopted amendments update and clarify administrative procedures and rulemaking processes of the Commission to ensure consistency, transparency, and alignment with current statutory requirements. These changes improve clarity and usability of the Commission's rules without altering substantive regulatory requirements.

Public Comment

The Commission did not receive any public comments regarding the proposed amendments.

SUBCHAPTER A. GENERAL PROVISIONS AND DEFINITIONS

37 TAC §§401.1, 401.3, 401.7, 401.9, 401.11, 401.13

Statutory Authority

The adopted amendments are authorized by Texas Government Code §§419.008 and 419.032, which authorize the Commission to adopt rules for the administration of its powers and duties.

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 January 14, 2026.

TRD-202600117
Mike Wisko
Agency Chief
Texas Commission on Fire Protection
Effective date: February 3, 2026
Proposal publication date: November 21, 2025
For further information, please call: (512) 936-3812

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SUBCHAPTER B. RULEMAKING PROCEEDINGS

37 TAC §401.17

Statutory Authority

The adopted repeal is authorized by Texas Government Code §§419.008 and 419.032, which authorize the Commission to adopt rules for the administration of its powers and duties.

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 January 14, 2026.

TRD-202600118

Mike Wisko
Agency Chief
Texas Commission on Fire Protection
Effective date: February 3, 2026
Proposal publication date: November 21, 2025
For further information, please call: (512) 936-3812

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37 TAC §401.19

Statutory Authority

The adopted amendments are authorized by Texas Government Code §§419.008 and 419.032, which authorize the Commission to adopt rules for the administration of its powers and duties.

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 January 14, 2026.

TRD-202600119
Mike Wisko
Agency Chief
Texas Commission on Fire Protection
Effective date: February 3, 2026
Proposal publication date: November 21, 2025
For further information, please call: (512) 936-3812

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SUBCHAPTER C. EXAMINATION APPEALS PROCESS

37 TAC §401.21, §401.23

Statutory Authority

The adopted amendments are authorized by Texas Government Code §§419.008 and 419.032, which authorize the Commission to adopt rules for the administration of its powers and duties.

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 January 14, 2026.

TRD-202600120
Mike Wisko
Agency Chief
Texas Commission on Fire Protection
Effective date: February 3, 2026
Proposal publication date: November 21, 2025
For further information, please call: (512) 936-3812

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SUBCHAPTER D. DISCIPLINARY PROCEEDINGS

37 TAC §401.31

Statutory Authority

The adopted amendment is authorized by Texas Government Code §§419.008 and 419.032, which authorize the Commission to adopt rules for the administration of its powers and duties.

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 January 14, 2026.

TRD-202600121
Mike Wisko
Agency Chief
Texas Commission on Fire Protection
Effective date: February 3, 2026
Proposal publication date: November 21, 2025
For further information, please call: (512) 936-3812

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SUBCHAPTER E. PREHEARING PROCEEDINGS

37 TAC §401.41

Statutory Authority

The adopted amendment is authorized by Texas Government Code §§419.008 and 419.032, which authorize the Commission to adopt rules for the administration of its powers and duties.

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 January 14, 2026.

TRD-202600122
Mike Wisko
Agency Chief
Texas Commission on Fire Protection
Effective date: February 3, 2026
Proposal publication date: November 21, 2025
For further information, please call: (512) 936-3812

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SUBCHAPTER F. CONTESTED CASES

37 TAC §§401.53, 401.57, 401.59, 401.61, 401.63, 401.67

Statutory Authority

The adopted amendments are authorized by Texas Government Code §§419.008 and 419.032, which authorize the Commission to adopt rules for the administration of its powers and duties.

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 January 14, 2026.

TRD-202600123

Mike Wisko
Agency Chief
Texas Commission on Fire Protection
Effective date: February 3, 2026
Proposal publication date: November 21, 2025
For further information, please call: (512) 936-3812

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SUBCHAPTER G. CONDUCT AND DECORUM, SANCTIONS, AND PENALTIES

37 TAC §401.105

Statutory Authority

The adopted amendments are authorized by Texas Government Code §§419.008 and 419.032, which authorize the Commission to adopt rules for the administration of its powers and duties.

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 January 14, 2026.

TRD-202600172
Mike Wisko
Agency Chief
Texas Commission on Fire Protection
Effective date: February 3, 2026
Proposal publication date: November 21, 2025
For further information, please call: (512) 936-3812

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SUBCHAPTER H. REINSTATEMENT

37 TAC §§401.111, 401.113, 401.115, 401.117, 401.119

Statutory Authority

The adopted amendments are authorized by Texas Government Code §§419.008 and 419.032, which authorize the Commission to adopt rules for the administration of its powers and duties.

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 January 14, 2026.

TRD-202600124
Mike Wisko
Agency Chief
Texas Commission on Fire Protection
Effective date: February 3, 2026
Proposal publication date: November 21, 2025
For further information, please call: (512) 936-3812

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SUBCHAPTER I. NOTICE AND PROCESSING PERIODS FOR CERTIFICATE APPLICATIONS

37 TAC §401.121, §401.127

Statutory Authority

The adopted amendments are authorized by Texas Government Code §§419.008 and 419.032, which authorize the Commission to adopt rules for the administration of its powers and duties.

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 January 14, 2026.

TRD-202600125
Mike Wisko
Agency Chief
Texas Commission on Fire Protection
Effective date: February 3, 2026
Proposal publication date: November 21, 2025
For further information, please call: (512) 936-3812

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SUBCHAPTER J. CHARGES FOR PUBLIC RECORDS

37 TAC §401.129

Statutory Authority

The adopted amendment is authorized by Texas Government Code §§419.008 and 419.032, which authorize the Commission to adopt rules for the administration of its powers and duties.

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 January 14, 2026.

TRD-202600126
Mike Wisko
Agency Chief
Texas Commission on Fire Protection
Effective date: February 3, 2026
Proposal publication date: November 21, 2025
For further information, please call: (512) 936-3812

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SUBCHAPTER K. HISTORICALLY UNDERUTILIZED BUSINESSES

37 TAC §401.131

Statutory Authority

The adopted amendment is authorized by Texas Government Code §§419.008 and 419.032, which authorize the Commission to adopt rules for the administration of its powers and duties.

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 January 14, 2026.

TRD-202600127
Mike Wisko
Agency Chief
Texas Commission on Fire Protection
Effective date: February 3, 2026
Proposal publication date: November 21, 2025
For further information, please call: (512) 936-3812

Review Of Agency Rules

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Housing and Community Affairs

Title 10, Part 1

The Texas Department of Housing and Community Affairs (the Department) files this notice of rule review for 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, 10 TAC §1.3, Sick Leave Pool and Family Leave Pool. The purpose of the proposed action is to conduct a rule review in accordance with Tex. Gov't Code §2001.039, which requires a state agency to review its rules every four years.

The Department has determined that there continues to be a need for this rule, which is to comply with statutory requirements upon agencies to provide in rule a sick leave pool and family leave pool policy. The Department has also determined that no changes to this rule are necessary. This rule proposed for readoption will be noted in the *Texas Register's* Review of Agency Rules section without publication of the text.

REQUEST FOR PUBLIC COMMENT AND INFORMATION RELATED TO COST, BENEFIT OR EFFECT. The Department requests comments on the rule review, and also requests information related to the cost, benefit, or effect of the rule and any applicable data, research, or analysis from any person required to comply with the rule or any other interested person. All comments or questions in response to this notice of rule review may be submitted in writing from February 6, 2026, through March 8, 2026. Written comments may be submitted to Brooke Boston by email to bboston@tdhca.texas.gov. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local time, March 8, 2026.

TRD-202600214
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: January 21, 2026

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The Texas Department of Housing and Community Affairs (the Department) files this notice of rule review for 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.12 Negotiated Rulemaking. The purpose of the proposed action is to conduct a rule review in accordance with Tex. Gov't Code §2001.039, which requires a state agency to review its rules every four years.

At this time, the Department has determined that there continues to be a need for this rule, which is to satisfy Tex. Gov't Code, §2306.082, which requires the Department to encourage negotiated rulemaking. The Department has also determined that no changes to this rule as currently in effect are necessary. This rule proposed for readoption will be noted in the *Texas Register's* Review of Agency Rules section without publication of the text.

REQUEST FOR PUBLIC COMMENT. All comments or questions in response to this notice of rule review may be submitted in writing from February 6, 2026, through March 8, 2026. Written comments may be submitted to Brooke Boston, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, or by email to bboston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local time, March 8, 2026.

TRD-202600219
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: January 21, 2026

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The Texas Department of Housing and Community Affairs (the Department) files this notice of rule review for 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.13, Contested Case Hearing Procedures. The purpose of the proposed action is to conduct a rule review in accordance with Tex. Gov't Code §2001.039, which requires a state agency to review its rules every four years.

At this time, the Department has determined that there continues to be a need for this rule, which is to provide procedures for contested case hearings. The Department has also determined that no changes to this rule as currently in effect are necessary. This rule proposed for readoption will be noted in the *Texas Register's* Review of Agency Rules section without publication of the text.

REQUEST FOR PUBLIC COMMENT. All comments or questions in response to this notice of rule review may be submitted in writing from February 6, 2026, through March 8, 2026. Written comments may be submitted to Brooke Boston, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, or by email to bboston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local time, March 8, 2026.

TRD-202600217
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: January 21, 2026

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The Texas Department of Housing and Community Affairs (the Department) files this notice of rule review for 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.17, Alternative Dispute Resolution. The purpose of the proposed action is to conduct a rule review in accordance with Tex. Gov't Code §2001.039, which requires a state agency to review its rules every four years.

At this time, the Department has determined that there continues to be a need for this rule, which is to satisfy Tex. Gov't Code, §2306.082, which requires the Department to encourage alternative dispute resolution procedures. The Department has also determined that no changes to this rule as currently in effect are necessary. This rule proposed for readoption will be noted in the *Texas Register's* Review of Agency Rules section without publication of the text.

REQUEST FOR PUBLIC COMMENT. All comments or questions in response to this notice of rule review may be submitted in writing from February 6, 2026, through March 8, 2026. Written comments may be submitted to Brooke Boston, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, or by email to bboston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local time, March 8, 2026.

TRD-202600220
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: January 21, 2026

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The Texas Department of Housing and Community Affairs (the Department) files this notice of rule review for 10 TAC Chapter 21, Minimum Energy Efficiency Requirements for Single Family Construction Activities, including §§21.1 through 21.6. The purpose of the proposed action is to conduct a rule review in accordance with Tex. Gov't Code §2001.039, which requires a state agency to review its rules every four years.

The Department has determined that there continues to be a need for this rule to comply with Tex. Gov't Code §2306.187, which requires that the Department develop and adopt rules relating to Minimum Energy Efficiency requirements for new construction, reconstruction, and rehabilitation activities in Single Family Programs. The Department has also determined that no changes to this rule are necessary. This rule proposed for readoption will be noted in the *Texas Register's* Review of Agency Rules section without publication of the text.

REQUEST FOR PUBLIC COMMENT. The Department requests comments on the rule review. All comments or questions in response to this notice of rule review may be submitted in writing from February 6, 2026, through March 8, 2026. Written comments may be submitted to Brooke Boston by email to bboston@tdhca.texas.gov. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local time, March 8, 2026.

TRD-202600221
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: January 21, 2026

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The Texas Department of Housing and Community Affairs (the Department) files this notice of rule review for 10 TAC Chapter 25, Colonia Self-Help Center Program Rule, including §§25.1 through 25.10. The purpose of the proposed action is to conduct a rule review in accordance with Tex. Gov't Code §2001.039, which requires a state agency to review its rules every four years.

The Department has determined that there continues to be a need for this rule, which is to establish the requirements governing the Colonia Self-Help Centers, created pursuant to Subchapter Z of Chapter 2306 of the Tex. Gov't Code. The Department has also determined that no changes to this rule are necessary. This rule proposed for readoption will be noted in the *Texas Register's* Review of Agency Rules section without publication of the text.

REQUEST FOR PUBLIC COMMENT. The Department requests comments on the rule review. All comments or questions in response to this notice of rule review may be submitted in writing from February 6, 2026, through March 8, 2026. Written comments may be submitted to Brooke Boston by email to bboston@tdhca.texas.gov. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local time, March 8, 2026.

TRD-202600223
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: January 21, 2026

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Texas Alcoholic Beverage Commission

Title 16, Part 3

Pursuant to Texas Government Code §2001.039, the Texas Alcoholic Beverage Commission (TABC) will review its rules in Texas Administrative Code, Title 16, Part 3, Chapter 34 (16 TAC §§34.1 - 34.22), relating to Schedule of Sanctions and Penalties. TABC will consider whether the reasons for initially adopting these rules continue to exist and determine whether these rules should be repealed, readopted, or readopted with amendments.

TABC will consider any written comments on the rule review that are received by TABC no later than 5:00 p.m., central time, on March 2, 2026. Send your comments to rules@tabc.texas.gov or to the Office of General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711-3127.

TRD-202600186
Matthew Cherry
Senior Counsel
Texas Alcoholic Beverage Commission
Filed: January 20, 2026

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Pursuant to Texas Government Code §2001.039, the Texas Alcoholic Beverage Commission (TABC) will review its rules in Texas Administrative Code, Title 16, Part 3, Chapter 35 (16 TAC §§35.1 - 35.4), relating to Enforcement. TABC will consider whether the reasons for initially adopting these rules continue to exist and determine whether these rules should be repealed, readopted, or readopted with amendments.

TABC will consider any written comments on the rule review that are received by TABC no later than 5:00 p.m., central time, on March 2, 2026. Send your comments to rules@tabc.texas.gov or to the Office of General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711-3127.

TRD-202600187

Matthew Cherry
Senior Counsel
Texas Alcoholic Beverage Commission
Filed: January 20, 2026

♦ ♦ ♦

Pursuant to Texas Government Code §2001.039, the Texas Alcoholic Beverage Commission (TABC) will review its rules in Texas Administrative Code, Title 16, Part 3, Chapter 37 (16 TAC §37.2 and §37.5), relating to Legal. TABC will consider whether the reasons for initially adopting these rules continue to exist and determine whether these rules should be repealed, readopted, or readopted with amendments.

TABC will consider any written comments on the rule review that are received by TABC no later than 5:00 p.m., central time, on March 2, 2026. Send your comments to rules@tabc.texas.gov or to the Office of General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711-3127.

TRD-202600188
Matthew Cherry
Senior Counsel
Texas Alcoholic Beverage Commission
Filed: January 20, 2026

♦ ♦ ♦

Pursuant to Texas Government Code §2001.039, the Texas Alcoholic Beverage Commission (TABC) will review its rules in Texas Administrative Code, Title 16, Part 3, Chapter 39 (16 TAC §§39.1 - 39.5), relating to Port of Entry. TABC will consider whether the reasons for initially adopting these rules continue to exist and determine whether these rules should be repealed, readopted, or readopted with amendments.

TABC will consider any written comments on the rule review that are received by TABC no later than 5:00 p.m., central time, on March 2, 2026. Send your comments to rules@tabc.texas.gov or to the Office of General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711-3127.

TRD-202600189
Matthew Cherry
Senior Counsel
Texas Alcoholic Beverage Commission
Filed: January 20, 2026

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Texas Education Agency

Title 19, Part 2

Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 152, Commissioner's Rules Concerning Examination Requirements, pursuant to Texas Government Code, §2001.039.

As required by Texas Government Code, §2001.039, TEA will accept comments as to whether the reasons for adopting Chapter 152 continue to exist. The public comment period on the review begins January 30, 2026, and ends March 2, 2026. A form for submitting public comments on the proposed rule review is available on the TEA website at https://tea.texas.gov/about-tea/laws-and-rules/commissioner-rules-tac/commissioner-of-education-rule-review.

TRD-202600200
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: January 21, 2026

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Texas Board of Veterinary Medical Examiners

Title 22, Part 24

The Texas Board of Veterinary Medical Examiners (Board) files this Notice of Intent to Review to consider for re-adoption, revision, or repeal the chapters listed below, in their entirety, contained in Title 22, Part 24, of the Texas Administrative Code. This review is being conducted in accordance with Texas Government Code §2001.039.

Rule Chapters Under Review

Chapter 571, Licensing

Chapter 573, Rules of Professional Conduct

Chapter 575, Practice and Procedure

Chapter 577, General Administrative Duties

During the review, the Board will assess whether the reasons for adopting or readopting the rules in these chapters continue to exist. The Board will review each rule to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current Board procedures. This review is required every four years.

Written comments regarding the review of these chapters may be submitted by mail to Angela Martinez, Legal Assistant, Texas Board of Veterinary Medical Examiners, 1801 Congress Ave, Suite 8.800, Austin, Texas 78701 or by email to comment@veterinary.texas.gov. The deadline for comments is 30 days after publication of this notice in the *Texas Register*.

No changes to the rules in these chapters are being proposed at this time. If the Board determines that changes to the rules are necessary as a result of this rule review, the proposed changes will be published in the Proposed Rules section of the *Texas Register* and will be open for public comment before final adoption by the Board, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

TRD-202600210
Kelly Phelps
General Counsel
Texas Board of Veterinary Medical Examiners
Filed: January 21, 2026

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Texas Juvenile Justice Department

Title 37, Part 11

In accordance with §2001.039, Government Code, the Texas Juvenile Justice Department (TJJD) proposes the review of Title 37, Part 11, Texas Administrative Code, Chapter 344, Employment, Certification, and Training.

TJJD will make an assessment to determine whether the initial reasons for adopting the standards in the given chapter continue to exist and whether the standards reflect current legal and policy considerations, as well as current TJJD procedure.

Comments on the review 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.

TRD-202600133
Jana Jones
General Counsel
Texas Juvenile Justice Department
Filed: January 15, 2026

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Adopted Rule Reviews

Department of State Health Services

Title 25, Part 1

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), adopts the review of the chapter below in Title 25, Part 1, of the Texas Administrative Code (TAC):

Chapter 221, Meat Safety Assurance

Notice of the review of this chapter was published in the November 28, 2025, issue of the *Texas Register* (50 TexReg 7739). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 221 in accordance with Texas Government Code §2001.039, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist.

The agency determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 221. Any amendments, if applicable, to Chapter 221 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 25 TAC Chapter 221 as required by Texas Government Code §2001.039.

TRD-202600175
Jessica Miller
Director, Rules Coordination Office
Department of State Health Services
Filed: January 20, 2026

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Texas Health and Human Services Commission

Title 26, Part 1

The Texas Health and Human Services Commission (HHSC) adopts the review of the chapter below in Title 2, Part 1, of the Texas Administrative Code (TAC):

Chapter 965, Electronic Monitoring in an Individual's Bedroom in a State Supported Living Center

Notice of the review of this chapter was published in the November 21, 2025, issue of the *Texas Register* (50 TexReg 7586). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 965 in accordance with Texas Government Code §2001.039, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist.

The agency determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 965. Any amendments, if applicable, to Chapter 965 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 26 TAC Chapter 965 as required by Texas Government Code §2001.039.

TRD-202600199
Jessica Miller
Director, Rules Coordination Office
Texas Health and Human Services Commission
Filed: January 21, 2026

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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 §10.625

Noncompliance Event	Program(s)	If HTC, on Form 8823?
Violations of the National Standards for the Physical Inspection of Real Estate or Local Codes	All Programs	Yes
Noncompliance related to Affirmative Marketing Requirements	All Programs	No
Development is not available to the general public because of leasing issues	HTC, TCAP, and Exchange	Yes
TDHCA has received notice of possible Fair Housing Act Violation from HUD or DOJ and reported general public use violation in accordance with IRS 8823 Audit Guide Chapter 13	HTC	Yes
TDHCA has referred unresolved Fair Housing Design and Construction issue or other Fair Housing noncompliance to the Texas Workforce Commission	All programs	No
Development has gone through a deed in lieu of foreclosure or foreclosure	All programs	Yes
Development is never expected to comply due to failure to report or allow monitoring	All programs	Yes
Owner did not allow on-site monitoring or physical inspection and/or failed to notify residents resulting in inspection cancelation	All programs	Yes
LURA not in effect	All programs	Yes
Project failed to meet minimum set aside	HTC, TCAP, Exchange and Bonds	Yes
No evidence of, or failure to certify to material participation of a non-profit or HUB, if required by LURA	HTC, TCAP and Exchange	Yes, if non-profit issue, No, if HUB issue
Development failed to meet additional state required rent and occupancy restrictions	All programs	No
Noncompliance with social service requirements	All programs	No

Development failed to provide housing to the elderly as promised at application	All programs	No
Failure to provide special needs housing as required by LURA	All programs	No
Changes in Eligible Basis or Applicable percentage	HTC, TCAP, and Exchange	Yes
Failure to submit all or parts of the Annual Owner's Compliance Report	All programs	Yes for part A, No for other parts
Failure to submit reports or notices as required by §10.607 of this subchapter	All programs	No
Noncompliance with utility allowance requirements described in §10.614 of this subchapter and/or Treasury Regulation §1.42-10	All programs	Yes if rent exceeds limit, no if related to noncompliance with other requirements, such as posting, updating etc.
Noncompliance with lease requirements described in §10.613 and/or §10.624 of this subchapter	All programs	No
Asset Management Division has reported that Development has failed to establish and maintain a reserve account in accordance with §10.404 of this Chapter	All programs	No
Failure to provide a notary public as promised at application	HTC, TCAP, and Exchange	No
Violation of the Unit Vacancy Rule	HTC, TCAP, and Exchange	Yes
Casualty Loss	All programs	Yes
Failure to provide monitoring and/or physical inspection documentation	All programs	No
Failure to provide amenity as required by LURA	All programs	No

Failure to pay asset management, compliance monitoring or other required fee	HTC, TCAP, ERA, Bond, NHTF, TCAP-RF, Exchange, HOME-ARP, HOME Match, and HOME/NSP Developments committed funds after August 23, 2013	No
Change in ownership without Department approval (other than removal of a general partner in accordance with §10.406 of this chapter)	All programs	No
Noncompliance with written policy and procedure requirements	All programs	No, unless finding is because Owner refused to lease to Section 8 households
Program Unit not leased to Low-Income household/ Household income above income limit upon initial Occupancy	All programs	Yes
Program unit occupied by nonqualified students	HTC, TCAP, and Exchange during the Compliance Period, Bond, HOME, 811 PRA, and HOME-ARP Developments	Yes
Low Income Units used on a transient basis	HTC, TCAP, Exchange and Bond	Yes
Violation of the Available Unit Rule	All programs, but only during the Compliance Period for HTC, TCAP, and Exchange	Yes
Gross rent exceeds the highest rent allowed under the LURA or other deed restriction	All programs	Yes

Failure to provide Tenant Income Certification and documentation	All programs	Yes
Unit not available for rent	All programs	Yes
Failure to collect data required by §10.612	All programs	No
Development evicted or terminated the tenancy of a low-income tenant for other than good cause	HTC, TCAP, Exchange, HOME, HOME- ARP, ERA, HOME Match, TCAP-RF, NHTF, and NSP	Yes
Household income increased above 80 percent at recertification and Owner failed to properly determine rent	HOME, TCAP-RF, HOME Match, ERA, and HOME ARP	No
Violation of the Integrated Housing Rule	All programs	No
Failure to resolve final construction deficiencies within the corrective action period	All programs	No
Noncompliance with the required accessibility requirements such as §504 of the Rehabilitation Act of 1973, the 2010 ADA standards as modified in the Department rules, or other accessibility related requirements of a Department rule, or as reflected in a Contract or LURA	All programs	No
Noncompliance with the notice to the Department requirements described in §10.609 of this subchapter	All programs	No
Failure to reserve Units for Section 811 participants	811 PRA	No
Failure to notify the Department of the availability of units, notices of termination, and outcomes of referred applications as described in accordance with §8.6 of this title.	811 PRA	No
Owner failed to check required criminal history	811 PRA	No
Failure to properly use or document Enterprise Income Verification System as required for 811 PRA	811 PRA	No
Failure to provide or document HUD forms required for Section 811 PRA	811 PRA	No

Accepted funding that limits Section 811 participation	811 PRA	No
Failure to document, calculate, or collect income and/or rent as required	811 PRA, HOME ARP	No
Failure to use HUD model lease or HUD Tenant Addendum, as required by the federal program	811 PRA , a Development subject to the 2025 HOME Final Rule, a Development with Department issued Project-Based Vouchers	No
Failure to meet, maintain, or disperse Section 811 units	811 PRA	No
Failure to conduct interim certifications	811 PRA	No
Failure to conduct annual income recertification	811 PRA	No
Asset Management Division has reported that Owner has failed to submit rents on an annual basis in accordance with §10.403 of this chapter	HOME, NSP, TCAP RF, HOME Match, HOME- ARP, and NHTF	No
Failure to document or comply with eligibility requirements for 811 PRA	811 PRA	No
Noncompliance with CHDO Requirements	HOME	No
Failure to disperse unit designations across all Unit Types – Average Income only	HTC, TCAP and Exchange	No
Household income designations was improperly changed or removed	All programs	No
Failure to maintain the specific unit mix required in the Contract or Land Use Restriction Agreement (LURA)	HOME, HOME-ARP, ERA, HOME Match, 811 PRA, TCAP-RF, HTF, and NHTF	No
Increased a household's rent more than one time during a 12-month period	All programs	No
Failure to issue a notice of rent increase in accordance with §10.622 of this subchapter	All programs	No
Failure to market to veterans and/or Public Housing Authority (PHA) waitlist as required in the LURA or application	All programs	No
Failure to include veteran statement in the application	All programs	No

Failure to accept rent that was paid on time and in full	All programs	No
Terminated utilities controlled by the Development Owner during a period prohibited by the applicable federal program or under state law	All programs	No
Failure to calculate, charge, collect, or refund a security or pet deposit as required for 811 PRA	811 PRA	No
A fee or deposit was charged that is impermissible for 811 PRA	811 PRA	No
Failure to issue utility allowance reimbursement in accordance with Section 811 only	811 PRA	No
Failure to provide or document initial or reminder notices for recertification as required for 811 PRA	811 PRA	No
Failure to document or comply with unit inspection file requirements for 811 PRA	811 PRA	No
Failure to conduct move-in or initial certification for 811 PRA	811 PRA	No
Failure to provide or document notice of change in tenant rent or utility reimbursement for 811 PRA	811 PRA	No
Failure to document or comply with move-out requirements for 811 PRA	811 PRA	No
Failure to conduct a transfer, gross rent change, move- out, change in household or Non-interim certification as required for 811 PRA	811 PRA	No
Failure to terminate assistance or tenancy as required for 811 PRA	811 PRA	No
Failure to submit completed IRS Form(s) 8609 with Part II completed by the second monitoring review	HTC, Exchange, and TCAP	No
Failure to provide notice to applicants and households prior to the LURA term ending	All programs	No
Failure to maintain and/or provide evidence of insurance, including but not limited to, builder's risk during construction, property insurance, general liability, fidelity bonds, and flood insurance, as applicable	All programs	No

Failure to timely pay all property taxes, or maintain applicable exemptions to limit property taxes, resulting in a property tax lien and/or property tax suit	HOME, HOME-ARP, ERA, TCAP, TCAP-RF, NHTF, and NSP	No
Failure to display Fair Housing poster as required for 811 PRA	811 PRA	No
Failure to respond to a reasonable accommodation request per 10 TAC §1.204(d)	All programs	No
Failure to document or comply with occupancy requirements for 811 PRA	811 PRA	No
Noncompliance with the Mitigation for Schools requirement of the LURA or application	All programs	No

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas State Affordable Housing Corporation

Public Comment Needed: Draft Joint Venture Development Guidelines

The Texas State Affordable Housing Corporation (TSAHC) Draft Joint Venture Development Guidelines are now available for public comment. The draft was approved for publication by the Board of Directors at the Board Meeting held on January 20, 2026. A copy of the Draft Joint Venture Development Guidelines may be found on TSHAC's website at: www.tsahc.org.

Please submit public comment via email to **DevFinance@tsahc.org** with the subject line: **"JV Development Guidelines Public Comment."**

Public comments must be submitted for consideration by **March 2, 2026, at 5:00 p.m.**

TRD-202600197
David Long
President
Texas State Affordable Housing Corporation
Filed: January 20, 2026

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Comptroller of Public Accounts

Notice of Appraised Value Threshold for Hearing Eligibility

In compliance with Property Tax Code, §6.425(g), the Comptroller of Public Accounts has determined that a property's minimum appraised value for the 2026 tax year, as determined by the local appraisal district, must be $62,883,169 to be eligible for a protest hearing in front of a local appraisal review board special panel for that tax year.

Inquiries may be submitted to Shannon Murphy, Director, Property Tax Assistance Division, P.O. Box 13528 Austin, Texas 78711 or to the email address: ptad.rulecomments@cpa.texas.gov.

Issued in Austin, Texas, on January 20, 2026.

TRD-202600177
Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
Filed: January 20, 2026

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003, §303.009, and §304.003 Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/26/26 - 02/01/26 is 18.00% for consumer[1] credit.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/26/26 - 02/01/26 is 18.00% for commercial[2] credit.

The postjudgment interest rate as prescribed by §304.003 for the period of 02/01/26 - 02/28/26 is 6.75%.

[1] Credit for personal, family, or household use.

[2] Credit for business, commercial, investment, or other similar purpose.

TRD-202600202
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: January 21, 2026

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Credit Union Department

Application to Amend Articles of Incorporation (January)

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration.

An application was received from Tarrant County's Credit Union, Fort Worth, Texas. The credit union is proposing to a change in place of business.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all the information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-202600201
Robert W. Etheridge
Commissioner
Credit Union Department
Filed: January 21, 2026

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Education Service Center, Region 16

Official Notice 2026

Persons interested in filing for positions on the Board of Directors of Region 16 Education Service Center, an organization that provides educational services to 60 school districts and three charter schools in the north 26 counties of the Texas Panhandle, may do so at the office of the Executive Director (5800 Bell Street, Amarillo, Texas) during regular office hours (8:00 a.m. to 5:00 p.m.) Monday through Thursday, (8:00 a.m. to 4:00 p.m.) Friday, beginning Sunday, February 1, 2026. Deadline for filing is Friday, February 20, 2026, at 5:00 p.m.

Interested persons may file in person or, upon request, may receive a filing form by mail with the return by certified mail postmarked no later than 4:00 p.m., February 20, 2026.

Phone: (806) 677-5015; Mailing address: 5800 Bell Street, Amarillo, Texas 79109-6230.

The Board of Directors shall be elected by place. The following places (by counties) that are up for election are described as follows:

Place 4: Counties of Hansford, Hemphill, Hutchinson, Lipscomb, Ochiltree and Roberts

Place 5: That part of Potter and Randall counties included in the boundaries of the Amarillo Independent School District

To hold the office of an Education Service Center Board of Director, one must:

Be a United States of America citizen;

Be at least 18 years of age;

Be a resident of the region served and of the geographic area included in the place designated outlined above;

To hold the office of Board member, one may not:

Be engaged professionally in education;

Be a member of a board of any educational agency or institution.

Should there be an uncontested election; the Region 16 ESC Board has determined that no election will be held.

TRD-202600191
Dr. Tanya Larkin
Executive Director
Education Service Center, Region 16
Filed: January 20, 2026

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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 **March 3, 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 **March 3, 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: 48Forty Solutions, LLC; DOCKET NUMBER: 2023-1291-MLM-E; IDENTIFIER: RN105417265; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: air curtain incinerator; PENALTY: $9,969; ENFORCEMENT COORDINATOR: Kadrienn Woodard, (713) 767-3602; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, REGION 12 - HOUSTON.

(2) COMPANY: Bonnie Helwig Huckabee; DOCKET NUMBER: 2025-1916-WR-E; IDENTIFIER: RN102703071; LOCATION: Miles, Tom Green County; TYPE OF FACILITY: operator; PENALTY: $200; ENFORCEMENT COORDINATOR: Madison Travis, (512) 239-4687; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(3) COMPANY: CHRISTOVAL RIVER RETREAT, LLC; DOCKET NUMBER: 2025-1929-WR-E; IDENTIFIER: RN112290465; LOCATION: Christoval, Tom Green County; TYPE OF FACILITY: operator; PENALTY: $350; ENFORCEMENT COORDINATOR: Alejandra Basave, (713) 767-3751; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, REGION 13 - SAN ANTONIO.

(4) COMPANY: City of Aspermont; DOCKET NUMBER: 2025-1140-PWS-E; IDENTIFIER: RN101403764; LOCATION: Aspermont, Stonewall County; TYPE OF FACILITY: public water supply; PENALTY: $1,562; ENFORCEMENT COORDINATOR: Anjali Talpallikar, (512) 239-2507; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(5) COMPANY: City of Emory; DOCKET NUMBER: 2025-0891-PWS-E; IDENTIFIER: RN101221406; LOCATION: Emory, Rains County; TYPE OF FACILITY: public water supply; PENALTY: $1,100; ENFORCEMENT COORDINATOR: Anjali Talpallikar, (512) 239-2507; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(6) COMPANY: City of Georgetown; DOCKET NUMBER: 2023-1100-EAQ-E; IDENTIFIER: RN102727799; LOCATION: Georgetown, Williamson County; TYPE OF FACILITY: recreational park; PENALTY: $52,500; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET: $42,000; ENFORCEMENT COORDINATOR: Elizabeth Vanderwerken, (512) 239-5900; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(7) COMPANY: City of Mount Calm; DOCKET NUMBER: 2025-1472-MWD-E; IDENTIFIER: RN101919835; LOCATION: Christoval, Hill County; TYPE OF FACILITY: wastewater treatment facility; PENALTY: $9,920; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET: $7,936; ENFORCEMENT COORDINATOR: Amy Lane, (512) 239-2614; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(8) COMPANY: City of Smiley; DOCKET NUMBER: 2025-1221-PWS-E; IDENTIFIER: RN101200756; LOCATION: Smiley, Gonzales County; TYPE OF FACILITY: public water supply; PENALTY: $788; ENFORCEMENT COORDINATOR: Corinna Willis, (512) 239-2504; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(9) COMPANY: EOG Resources, Inc.; DOCKET NUMBER: 2025-1058-AIR-E; IDENTIFIER: RN108927583; LOCATION: Orla, Loving County; TYPE OF FACILITY: natural gas processing plant; PENALTY: $3,001; ENFORCEMENT COORDINATOR: John Burkett, (512) 239-4169; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, REGION 12 - HOUSTON.

(10) COMPANY: Elme Baese Road, LLC; DOCKET NUMBER: 2025-1036-WR-E; IDENTIFIER: RN112181961; LOCATION: Elm Mott, McLennan County; TYPE OF FACILITY: construction site and impoundment; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Alejandra Basave, (713) 767-3751; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, REGION 13 - SAN ANTONIO.

(11) COMPANY: Energy Transfer Nederland Terminal LLC; DOCKET NUMBER: 2025-1239-IWD-E; IDENTIFIER: RN100214626; LOCATION: Nederland, Jefferson County; TYPE OF FACILITY: petroleum marine terminal and packing facility; PENALTY: $20,850; ENFORCEMENT COORDINATOR: Samantha Smith, (512) 239-2099; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, REGION 12 - HOUSTON.

(12) COMPANY: Enterprise Midland Basin Midstream LLC; DOCKET NUMBER: 2025-1380-AIR-E; IDENTIFIER: RN109963256; LOCATION: Big Springs, Howard County; TYPE OF FACILITY: compressor station; PENALTY: $3,375; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET: $1,350; ENFORCEMENT COORDINATOR: Trenton White, (903) 535-5155; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, REGION 05 - TYLER.

(13) COMPANY: Enterprise Products Operating LLC; DOCKET NUMBER: 2025-1238-IWD-E; IDENTIFIER: RN102323268; LOCATION: Mont Belvieu, Chambers County; TYPE OF FACILITY: organic chemicals manufacturing facility; PENALTY: $19,688; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET: $7,875; ENFORCEMENT COORDINATOR: Samantha Smith, (512) 239-2099; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, REGION 12 - HOUSTON.

(14) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2022-1063-AIR-E; IDENTIFIER: RN100210319; LOCATION: La Porte, Harris County; TYPE OF FACILITY: chemical manufacturing plant; PENALTY: $378,427; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET: $189,213; ENFORCEMENT COORDINATOR: Krystina Sepulveda, (956) 430-6045; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, REGION 15 - HARLINGEN.

(15) COMPANY: FMR Texas Limited Partnership; DOCKET NUMBER: 2025-0755-PST-E; IDENTIFIER: RN105453187; LOCATION: Westlake, Tarrant County; TYPE OF FACILITY: operator; PENALTY: $1,750; ENFORCEMENT COORDINATOR: Adriana Fuentes, (956) 425-6010; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, REGION 15 - HARLINGEN.

(16) COMPANY: Flower Mound Hospital Partners, LLC; DOCKET NUMBER: 2025-1624-MLM-E; IDENTIFIER: RN105632681; LOCATION: Flower Mound, Denton County; TYPE OF FACILITY: hospital; PENALTY: $5,257; ENFORCEMENT COORDINATOR: Celicia Garza, (210) 657-8422; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, REGION 13 - SAN ANTONIO.

(17) COMPANY: Fort Bend County Municipal Utility District 152; DOCKET NUMBER: 2025-1689-MWD-E; IDENTIFIER: RN104293808; LOCATION: Rosenberg, Fort Bend County; TYPE OF FACILITY: wastewater treatment facility; PENALTY: $900; ENFORCEMENT COORDINATOR: Monica Larina, (512) 239-2545; REGIONAL OFFICE: 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401, REGION 14 - CORPUS CHRISTI.

(18) COMPANY: HOUSTON HOUSING AUTHORITY; DOCKET NUMBER: 2025-1046-IHW-E; IDENTIFIER: RN101801991; LOCATION: Houston, Harris County; TYPE OF FACILITY: tracts of land; PENALTY: $175,000; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET: $175,000; ENFORCEMENT COORDINATOR: Karolyn Kent, (512) 239-2536; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(19) COMPANY: Hailiang Copper Texas Inc; DOCKET NUMBER: 2025-1351-AIR-E; IDENTIFIER: RN102411352; LOCATION: Sealy, Austin County; TYPE OF FACILITY: copper tubing facility; PENALTY: $5,950; ENFORCEMENT COORDINATOR: John Burkett, (512) 239-4169; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, REGION 12 - HOUSTON.

(20) COMPANY: Hidalgo County Drainage District 1; DOCKET NUMBER: 2025-1308-WQ-E; IDENTIFIER: RN105591697; LOCATION: McAllen, Hidalgo County; TYPE OF FACILITY: drainage district; PENALTY: $4,500; ENFORCEMENT COORDINATOR: Madison Travis, (512) 239-4687; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(21) COMPANY: ISP Technologies Inc.; DOCKET NUMBER: 2024-1559-AIR-E; IDENTIFIER: RN100825272; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: chemical manufacturing plant; PENALTY: $7,635; ENFORCEMENT COORDINATOR: Christina Ferrara, (512) 239-5081; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, REGION 12 - HOUSTON.

(22) COMPANY: KUYKENDALL, SIDNEY EUGENE; DOCKET NUMBER: 2026-0029-OSI-E; IDENTIFIER: RN103399473; LOCATION: Midlothian, Ellis County; TYPE OF FACILITY: operator; PENALTY: $175; ENFORCEMENT COORDINATOR: Amy Lane, (512) 239-2614; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(23) COMPANY: Kundan Greenwood, LP; DOCKET NUMBER: 2025-0992-PWS-E; IDENTIFIER: RN106059066; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; PENALTY: $1,040; ENFORCEMENT COORDINATOR: Obianuju Iyasele, (512) 239-5280; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, REGION 12 - HOUSTON.

(24) COMPANY: L'Oreal USA S/D, Inc.; DOCKET NUMBER: 2025-1178-IHW-E; IDENTIFIER: RN107153314; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: product distribution facility; PENALTY: $330; ENFORCEMENT COORDINATOR: Eresha DeSilva, (713) 767-3669; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, REGION 12 - HOUSTON.

(25) COMPANY: Linde Inc.; DOCKET NUMBER: 2025-1197-IWD-E; IDENTIFIER: RN102684974; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: air separation plant; PENALTY: $17,187; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET: $6,875; ENFORCEMENT COORDINATOR: Madison Crawford, (512) 239-4603; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(26) COMPANY: Lyondell Chemical Company; DOCKET NUMBER: 2025-0976-AIR-E; IDENTIFIER: RN102523107; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical manufacturing plant; PENALTY: $12,525; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET: $5,010; ENFORCEMENT COORDINATOR: Christina Ferrara, (512) 239-5081; REGIONAL

OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, REGION 12 - HOUSTON.

(27) COMPANY: MES Capital, LLC; DOCKET NUMBER: 2025-1194-PWS-E; IDENTIFIER: RN104422605; LOCATION: Dumas, Moore County; TYPE OF FACILITY: public water supply; PENALTY: $1,276; ENFORCEMENT COORDINATOR: Corinna Willis, (512) 239-2504; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(28) COMPANY: MUNIZ, JOSE; DOCKET NUMBER: 2024-1799-WQ-E; IDENTIFIER: RN111935391; LOCATION: Tyler, Smith County; TYPE OF FACILITY: construction site; PENALTY: $10,191; ENFORCEMENT COORDINATOR: Madison Travis, (512) 239-4687; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(29) COMPANY: Mr. W Fireworks, Inc.; DOCKET NUMBER: 2023-1706-IHW-E; IDENTIFIER: RN111751434; LOCATION: Hereford, Deaf Smith County; TYPE OF FACILITY: fireworks warehouse; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Karolyn Kent, (512) 239-2536; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(30) COMPANY: NAMELESS HOLLOW COUNCIL OF CO-OWNERS; DOCKET NUMBER: 2025-0994-PWS-E; IDENTIFIER: RN101191039; LOCATION: Leander, Travis County; TYPE OF FACILITY: public water supply; PENALTY: $1,460; ENFORCEMENT COORDINATOR: Savannah Jackson, (512) 239-4306; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(31) COMPANY: New Tex Trucking, LLC; DOCKET NUMBER: 2025-1917-WR-E; IDENTIFIER: RN112281845; LOCATION: Dime Box, Lee 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.

(32) COMPANY: North American Silica Sand, LLC; DOCKET NUMBER: 2024-1670-WQ-E; IDENTIFIER: RN111275566; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: construction sand and gravel facility; PENALTY: $18,000; ENFORCEMENT COORDINATOR: Samantha Smith, (512) 239-2099; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, REGION 12 - HOUSTON.

(33) COMPANY: POYNOR COMMUNITY WATER SUPPLY CORPORATION; DOCKET NUMBER: 2025-1141-PWS-E; IDENTIFIER: RN101450336; LOCATION: Palestine, Henderson County; TYPE OF FACILITY: public water supply; PENALTY: $2,280; ENFORCEMENT COORDINATOR: Katherine Argueta, (512) 239-4131; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, REGION 12 - HOUSTON.

(34) COMPANY: Red River Authority of Texas; DOCKET NUMBER: 2025-1181-PWS-E; IDENTIFIER: RN101250728; LOCATION: Quanah, Hardeman County; TYPE OF FACILITY: public water supply; PENALTY: $2,875; ENFORCEMENT COORDINATOR: Katherine Mckinney, (512) 239-4619; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

(35) COMPANY: S6 Trucking, LLC; DOCKET NUMBER: 2025-0986-WQ-E; IDENTIFIER: RN111289245; LOCATION: Johnson City, Blanco County; TYPE OF FACILITY: ready mix concrete plant; PENALTY: $40,000; ENFORCEMENT COORDINATOR: Samantha Smith, (512) 239-2099; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, REGION 12 - HOUSTON.

(36) COMPANY: Sunnydale Water Supply Corporation; DOCKET NUMBER: 2025-1077-PWS-E; IDENTIFIER: RN101231710; LOCATION: Littlefield, Lamb County; TYPE OF FACILITY: public water supply; PENALTY: $3,135; ENFORCEMENT COORDINATOR: Obianuju Iyasele, (512) 239-5280; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, REGION 12 - HOUSTON.

(37) COMPANY: Targa Delaware LLC; DOCKET NUMBER: 2025-1119-AIR-E; IDENTIFIER: RN111843389; LOCATION: Kermit, Winkler County; TYPE OF FACILITY: natural gas processing plant; PENALTY: $4,226; ENFORCEMENT COORDINATOR: Morgan Kopcho, (512) 239-4167; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, REGION 13 - SAN ANTONIO.

(38) COMPANY: The Dow Chemical Company; DOCKET NUMBER: 2025-0808-AIR-E; IDENTIFIER: RN100225945; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: chemical manufacturing plant; PENALTY: $5,625; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET: $2,250; ENFORCEMENT COORDINATOR: John Burkett, (512) 239-4169; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, REGION 12 - HOUSTON.

(39) COMPANY: Tor Texas, LLC; DOCKET NUMBER: 2025-1638-MSW-E; IDENTIFIER: RN105575948; LOCATION: Hutchins, Dallas County; TYPE OF FACILITY: recycling facility; PENALTY: $21,418; ENFORCEMENT COORDINATOR: Celicia Garza, (210) 657-8422; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, REGION 13 - SAN ANTONIO.

(40) COMPANY: YES Companies EXP2, LLC; DOCKET NUMBER: 2025-0958-PWS-E; IDENTIFIER: RN101439578; LOCATION: Aledo, Parker County; TYPE OF FACILITY: public water supply; PENALTY: $2,832; ENFORCEMENT COORDINATOR: Emerson Rinewalt, (512) 239-1131; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, CENTRAL OFFICE - AUSTIN.

TRD-202600176
Gitanjali Yadav
Deputy Director, Litigation Division
Texas Commission on Environmental Quality
Filed: January 20, 2026

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Notice of an Application to Amend a Certificate of Adjudication Application No. 19-2113A

Notice Issued January 16, 2026

Susan Crawford Tracy seeks to amend her portion of Certificate of Adjudication No. 19-2113 to add a diversion point on the West Prong Medina River, San Antonio River Basin. More information on the application and how to participate in the permitting process is given below.

The application and partial fees were received on March 31, 2021. Additional information was received on April 29, 2021, and remaining fees were received on May 5, 2021. The application was declared administratively complete and filed with the Office of the Chief Clerk on May 7, 2021.

The Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include a special condition requiring screens on any new diversion structures. The application, technical memoranda, and Executive Director's draft permit 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 January 30, 2026. 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 January 30, 2026. The Executive Director may approve the application unless a written request for a contested case hearing is filed by January 30, 2026.

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. 2113 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 TEST 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-202600215
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 21, 2026

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Notice of District Petition - D-12162025-021

Notice issued January 16, 2026

TCEQ Internal Control No. D-12162025-021: FM 2933 Farm and Ranch, LLC, a Texas limited liability company, Christie Farm, Ltd., a Texas limited partnership, Timothy Alan Christie and Bill Corbett Christie, Jr., trustee of the Testamentary Residual Trust for the benefit of Bill Corbett Christie, Jr., created under the Will of Bill Corbett Christie, Sr., and John Erwin Christie, trustee of the Testamentary Residual Trust for the benefit of John Erwin Christie created under the Will of Bill Corbett Christie, Sr., and Forestar (USA) Real Estate Group, a Delaware corporation, (Petitioners) filed a petition for creation of Collin County Municipal Utility District No. 14 (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 Petitioners hold 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 245.254 acres located within Collin County, Texas; and (4) none of the land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any city. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain, own, operate, repair, improve and extend a waterwork and wastewater 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 waters; and (4) purchase, construct acquire, improve, maintain, and operate such additional facilities, systems, plants, and enterprises, and road facilities 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 $80,665,000 ($55,940,000 for water, wastewater, and drainage plus $24,725,000 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 es-

pañol, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at www.tceq.texas.gov.

TRD-202600218
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 21, 2026

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Notice of District Petition - D-12232025-033

Notice issued January 15, 2025

TCEQ Internal Control No. D-12232025-033: Pine Creek Lakes LLC, (Petitioner) filed a petition for creation of Montgomery-San Jacinto Counties Municipal Utility District No. 2 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) 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 300.0 acres located within Montgomery County, Texas and San Jacinto County, Texas; and (4) none of the land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any city. The petition further states that the proposed District will: (1) purchase, 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 waters; and (4) such other purchase, construction, acquisition, improvement, maintenance and operation of such additional facilities, systems, plants and enterprises, road facilities, and park and recreational facilities, 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 $33,700,000 ($30,300,000 for water, wastewater, and drainage plus $1,200,000 for recreation plus $2,200,000 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-202600216
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 21, 2026

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AO) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AO, the commission shall allow the public an opportunity to submit written comments on the proposed AO. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 3, 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 the proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. 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 attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 3, 2026**. The designated attorney are available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: JIFFY SAC MART, INC. dba Jiffy Sak; DOCKET NUMBER: 2023-1130-PST-E; TCEQ ID NUMBER: RN101490183; LOCATION: 6105 Techni Center Drive in Austin, Travis County; TYPE OF FACILITY: an underground storage tank system and a

convenience store with retail sales of gasoline; PENALTY: $33,089; STAFF ATTORNEY: Casey Kurnath, Litigation, MC 175, (512) 239-5932; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, Room 179, Austin, Texas 78753, (512) 339-2929.

(2) COMPANY: Roy Dawkins dba Shady Meadows Mobile Home Park; DOCKET NUMBER: 2022-1031-PWS-E; TCEQ ID NUMBER: RN110777687; LOCATION: 760 Farm-to-Market Road 78 in Cibolo, Guadalupe County; TYPE OF FACILITY: a public water system; PENALTY: $4,239; STAFF ATTORNEY: Casey Kurnath, Litigation, MC 175, (512) 239-5932; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-202600178
Gitanjali Yadav
Deputy Director, Litigation Division
Texas Commission on Environmental Quality
Filed: January 20, 2026

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 293

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 Texas Administrative Code (TAC) Chapter 293, Water Districts, §293.23, under the requirements of Texas Water Code, §36.3011; and Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would implement House Bill (HB) 2080 from the 89th Legislature, 2025, Regular Session. The proposed rulemaking would clarify that a review panel is an advisory board and not a governmental body. It would also require that the recording secretary be a TCEQ employee and to specify that records maintained by the recording secretary must be provided to the executive director and are public documents. The proposed rulemaking would include notice requirements for meetings or hearings held by the review panel. The proposal would also require the commission to reimburse review panel members for actual expenses incurred while engaging in activities on behalf of the panel. The proposed rulemaking would extend the timeframe to process the petition if the panel seeks technical assistance from the Texas Water Development Board and would specify that the review panel may request legal assistance from the commission's Office of Public Interest Counsel. Lastly, the proposed rulemaking would clarify that the review panel is not prohibited from seeking technical assistance or legal advice from entities other than TWDB and OPIC.

The commission will hold a hold a hybrid virtual and in-person public hearing on this proposal in Austin on February 24, 2026, at 2:00 p.m. in building E, room 201S at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing at 1:30 p.m.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by Friday, February 20, 2026. To register for the hearing, please email *Rules@tceq.texas.gov* and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on Monday, February 23, 2026, to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:

https://events.teams.microsoft.com/event/9ca36b32-14f2-4295-b5f6-94987017d629@871a83a4-a1ce-4b7a-8156-3bcd93a08fba

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

If you need translation services, please contact TCEQ at (800) 687-4040. Si desea información general en español, puede llamar al (800) 687-4040.

Written comments may be submitted to Vanessa Onyskow-Lang, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov*. Electronic comments may be submitted at: https://tceq.commentinput.com/. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Rule Project Number 2026-001-293-OW. The comment period closes March 3, 2026. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Cindy Hooper, Rule Project Manager, Water Availability Division, (512) 239-4271.

TRD-202600134
Amy L. Browning
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: January 15, 2026

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Texas Health and Human Services Commission

Criminal History Requirements for Child Care Operations

26 TAC §745.661 (relating to What types of criminal convictions may affect a person's ability to be present at an operation?) states that HHSC will review the three criminal history requirements charts with information regarding specific crimes that may affect a person's ability to be present at a child care operation annually to determine whether any changes are needed. HHSC will then publish any changes as an "In Addition" document in the *Texas Register* and make them available on the Child Care Regulation public website. The three charts are titled: (1) Licensed or Certified Child Care Operations: Criminal History Requirements; (2) Foster or Adoptive Placements: Criminal History Requirements; and (3) Registered Child Care Homes and Listed Family Homes: Criminal History Requirements.

On November 14, 2025, HHSC published the proposed changes to the charts in the *Texas Register* (50 TexReg 7447) and made them available on the Child Care Regulation public website. The written public comment period for the *Texas Register* publication closed on December 13, 2025. HHSC received one comment from one public commenter. The comment relates generally to all three charts. A summary of this comment and HHSC's response are as follows:

COMMENT: Commenter suggested that only convictions be subject to review, and not arrests, dismissed charges, or accusations. The commenter indicated that revoking permits based only on arrests, dismissed charges, or accusations is unlawful and can negatively affect a person's

mental or physical health if there is a loss of employment, income, and reputation.

RESPONSE: HHSC disagrees with the comment and declines to revise the charts. HHSC has authority through Texas Government Code §411.114 to receive criminal history record information, which includes arrest records per §411.082. A valid arrest must be supported by probable cause, which Texas courts have described as a reasonable ground for belief of guilt that is particularized with respect to the person arrested. The severity of conduct constituting certain criminal offenses is concerning enough to preclude a person from being present in a regulated childcare facility while due process for the arrest is occurring. Accordingly, HHSC must be able to consider and act on recent arrests to ensure the safety of children in regulated childcare.

HHSC adopted the three Criminal History Requirements charts without changes to the proposed text as published in the November 14, 2025, issue of the *Texas Register* (50 TexReg 7447).

TRD-202600179
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: January 20, 2026

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Texas Department of Housing and Community Affairs

Notice of Funding Availability (NOFA) Release for 2026-1 Home Investment Partnership Program (HOME) - Multifamily Rental Development

The Texas Department of Housing and Community Affairs (the Department) announces the availability of $35,235,073 in HOME. Each year the Department receives an allocation of Home Investment Partnership funds for Multifamily Rental Development. Each year funds from the HOME allocation are used by the Department in the form of below market interest rate, construction to permanent loans to developing entities for the construction and/or rehabilitation of 30%, 50%, 60% and 80% AMI units.

The Department's application acceptance period for the 2026-2 HOME NOFA beings February 27 and concludes June 1, 2026.

Interested applicants must meet the requirements set forth in the NOFA, 10 TAC Chapter 11, 10 TAC Chapter 13, and all applicable CFR and federal rules.

The application forms contained in this packet and submission instructions are available on the Department's web site at https://www.tdhca.texas.gov/apply-funds. Should you have any questions, please contact Priscilla Stevenson at or priscilla.stevenson@tdhca.texas.gov.

TRD-202600142
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: January 15, 2026

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Texas Department of Insurance

Company Licensing

Application for Pharmacists Mutual Insurance Company, a foreign fire and/or casualty company, to change its name to Pharmacists Insurance Company. The home office is in Algona, Iowa.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Andrew Guerrero, 1601 Congress Ave., Suite 6.900, Austin, Texas 78701.

TRD-202600205
Justin Beam
Chief Clerk
Texas Department of Insurance
Filed: January 21, 2026

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Texas Department of Licensing and Regulation

Scratch Ticket Game Number 2724 "SLOTS OF LUCK"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2724 is "SLOTS OF LUCK". The play style is "slots - multiple line".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2724 shall be $10.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2724.

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: MONEY BAG SYMBOL, BALLOON SYMBOL, BERRY SYMBOL, BILL SYMBOL, SAILBOAT SYMBOL, BOW SYMBOL, CAR SYMBOL, CHEST SYMBOL, CHIP SYMBOL, COFFEE SYMBOL, DICE SYMBOL, EMERALD SYMBOL, FIREWORKS SYMBOL, FLAG SYMBOL, FLOWER SYMBOL, HOUSE SYMBOL, KEY SYMBOL, LUGGAGE SYMBOL, MOON SYMBOL, MUSIC SYMBOL, NECKLACE SYMBOL, PLANE SYMBOL, POT OF GOLD SYMBOL, RAINBOW SYMBOL, RING SYMBOL, SILVER SYMBOL, SPADE SYMBOL, STAR SYMBOL, SUN SYMBOL, TROPHY SYMBOL, VAULT SYMBOL, WALLET SYMBOL, WATCH SYMBOL, WISHBONE SYMBOL, 2X SYMBOL, 5X SYMBOL, 10X SYMBOL, $10.00, $20.00, $30.00, $50.00, $100, $200, $500, $1,000, $5,000, $10,000 and $250,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2724 - 1.2D

PLAY SYMBOL	CAPTION
MONEY BAG SYMBOL	BAG
BALLOON SYMBOL	BALLOON
BERRY SYMBOL	BERRY
BILL SYMBOL	BILL
SAILBOAT SYMBOL	BOAT
BOW SYMBOL	BOW
CAR SYMBOL	CAR
CHEST SYMBOL	CHEST
CHIP SYMBOL	CHIP
COFFEE SYMBOL	COFFEE
DICE SYMBOL	DICE
EMERALD SYMBOL	EMRLD
FIREWORKS SYMBOL	FIREWKS
FLAG SYMBOL	FLAG
FLOWER SYMBOL	FLOWER
HOUSE SYMBOL	HOUSE
KEY SYMBOL	KEY
LUGGAGE SYMBOL	LUGGAGE
MOON SYMBOL	MOON
MUSIC SYMBOL	MUSIC
NECKLACE SYMBOL	NECKLACE
PLANE SYMBOL	PLANE
POT OF GOLD SYMBOL	POTGLD
RAINBOW SYMBOL	RAINBOW
RING SYMBOL	RING
SILVER SYMBOL	SILVER
SPADE SYMBOL	SPADE

STAR SYMBOL	STAR
SUN SYMBOL	SUN
TROPHY SYMBOL	TROPHY
VAULT SYMBOL	VAULT
WALLET SYMBOL	WALLET
WATCH SYMBOL	WATCH
WISHBONE SYMBOL	WISHBONE
2X SYMBOL	DBL
5X SYMBOL	WINX5
10X SYMBOL	WINX10
$10.00	TEN$
$20.00	TWY$
$30.00	TRTY$
$50.00	FFTY$
$100	ONHN
$200	TOHN
$500	FVHN
$1,000	ONTH
$5,000	FVTH
$10,000	10TH
$250,000	250TH

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 (2724), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 050 within each Pack. The format will be: 2724-0000001-001.

H. Pack - A Pack of the "SLOTS OF LUCK" Scratch Ticket Game contains 050 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 050 will both be exposed.

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 "SLOTS OF LUCK" Scratch Ticket Game No. 2724.

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 "SLOTS OF LUCK" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose ninety-six (96) Play Symbols. If a player reveals 3 matching Play Symbols in the same SPIN, the player wins the prize for that SPIN. If the player reveals 2 matching Play Symbols and a "2X" Play Symbol in the same SPIN, the player wins DOUBLE the prize for that SPIN. If the player reveals 2 matching Play Symbols and a "5X" Play Symbol in the same SPIN, the player wins 5 TIMES the prize for that SPIN. If the player reveals 2 matching Play Symbols and a "10X" Play Symbol in the same SPIN, the player wins 10 TIMES the prize for that SPIN. 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 ninety-six (96) 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 ninety-six (96) 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 ninety-six (96) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the ninety-six (96) 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. A Ticket can win up to twenty-four (24) times in accordance with the prize structure.

B. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

D. There will be no matching non-winning SPINs on a Ticket. SPINs are considered matching if they have the same Play Symbols in the same spots.

E. No three (3) or more matching non-winning Play Symbols will appear in adjacent positions diagonally or vertically.

F. The "2X" (DBL), "5X" (WINX5) and "10X" (WINX10) Play Symbols will only appear on winning Tickets and will appear on winning SPINs as dictated by the prize structure.

G. No more than two (2) matching non-winning Play Symbols will appear in one (1) SPIN.

H. Identical non-winning Prize Symbols will never appear more than three (3) times on a Ticket.

I. Non-winning Prize Symbols will never be the same as winning Prize Symbol(s).

2.3 Procedure for Claiming Prizes.

A. To claim a "SLOTS OF LUCK" Scratch Ticket Game prize of $10.00, $20.00, $30.00, $50.00, $100, $200 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any

Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $30.00, $50.00, $100, $200 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "SLOTS OF LUCK" Scratch Ticket Game prize of $1,000, $5,000, $10,000 or $250,000, 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 "SLOTS OF LUCK" 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 "SLOTS OF LUCK" 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 "SLOTS OF LUCK" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 8,040,000 Scratch Tickets in Scratch Ticket Game No. 2724. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2724 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$10.00	964,800	8.33
$20.00	482,400	16.67
$30.00	281,400	28.57
$50.00	281,400	28.57
$100	73,700	109.09
$200	17,755	452.83
$500	2,680	3,000.00
$1,000	402	20,000.00
$5,000	26	309,230.77
$10,000	20	402,000.00
$250,000	6	1,340,000.00

*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 3.82. 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. 2724 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. 2724, 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-202600211
Deanne Rienstra
Interim General Counsel Lottery and Charitable Bingo
Texas Department of Licensing and Regulation
Filed: January 21, 2026

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North Central Texas Council of Governments

Notice of Contract Award for Integration and Support Services for HOV Discount

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of contract award. The request appeared in the August 22, 2025, issue of the *Texas Register* (50 TexReg 5499). The selected entity will perform technical and professional work for integration and support services for HOV Discount.

The entity selected for this project is Milligan Partners, LLC, 17250 Dallas Parkway, Dallas, Texas 75248 for a contract amount not to exceed $520,000 (An initial one-year term of up to $227,000 and four one-year optional renewals totaling approximately $293,000).

Issued in Arlington, Texas on January 15, 2026.

TRD-202600131
Todd Little
Executive Director
North Central Texas Council of Governments
Filed: January 15, 2026

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Public Utility Commission of Texas

Notice of Application to Adjust High-Cost Support Under 16 TAC §26.407(h)

Notice is given to the public of an application filed with the Public Utility Commission of Texas (Commission) on January 13, 2026, seeking a determination of need for continued support from the Small and Rural Incumbent Local Exchange Company Universal Service Plan.

Docket Title and Number: Application of North Texas Telephone Company to Adjust High-Cost Support under 16 TAC §26.407(h), Docket Number 59243.

The Application: North Texas Telephone Company requests a high-cost support adjustment increase of $45,115 in annual high-cost support. According to North Texas Telephone Company, the requested adjustment complies with the cap of 140% of the annualized support the provider was authorized to receive in the prior 12 months, as required by 16 Texas Administrative Code §26.407(g)(1).

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477 as a deadline to intervene may be imposed. Hearing- and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 59243.

TRD-202600203
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: January 21, 2026

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Notice of Application to Adjust High-Cost Support Under 16 TAC §26.407(h)

Notice is given to the public of an application filed with the Public Utility Commission of Texas (Commission) on January 13, 2026, seeking a determination of need for continued support from the Small and Rural Incumbent Local Exchange Company Universal Service Plan.

Docket Title and Number: Application of Totelcom Communications, LLC to Adjust High-Cost Support under 16 TAC §26.407(h), Docket Number 59244.

The Application: Totelcom Communications, LLC requests a high-cost support adjustment increase of $377,434 in annual high-cost support. According to Totelcom Communications, LLC, the requested adjustment complies with the cap of 140% of the annualized support the provider was authorized to receive in the 12 months, as required by 16 Texas Administrative Code §26.407(g)(1).

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1 (888) 782-8477 as a deadline to intervene may be imposed. Hearing- and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 59244.

TRD-202600204
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: January 21, 2026

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Texas Department of Transportation

Notice - Virtual Public Hearing

Virtual Public Hearing

Tuesday, February 24, 2026

Acquisition of PAs 38, 39 and 40 Gulf Intracoastal Waterway (GIWW) Dredge Material Placement Area Parcel

CSJ (Project Number): 5500-00-079

Galveston County, Texas

The Texas Department of Transportation (TxDOT) is proposing to acquire multiple parcels of land to use as placement areas for materials dredged from the Gulf Intracoastal Waterway (GIWW) in Galveston County, Texas. This notice advises the public that TxDOT will be conducting an online virtual public hearing on the proposed project. The virtual hearing will be available on Tuesday, February 24, 2026, by 5:00 p.m. and will remain available for comment until Wednesday, March 11, 2026, at 11:59 p.m. To log onto the virtual public hearing, go to the following web address at the date and time indicated above: *www.txdot.gov/projects/hearings-meetings/maritime/2026/acquisition-of-pas-022426.html*. The virtual hearing will consist of a pre-recorded video presentation and will include both audio and visual components. Please note that the presentation will not be available on the website until the time and date listed above.

If you do not have internet access, you may call (512) 468-5600 between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, to ask questions and access project materials during the project development process.

Formal written comments may be provided by mail or email as explained below. All written comments will be considered by TxDOT and included as part of the official record. Responses to comments will be prepared by TxDOT, included as part of the hearing and project record and made available online at *www.txdot.gov/projects/hearings-meetings/maritime/2026/acquisition-of-pas-022426.html*.

This notice is provided as required by the Texas Coastal Waterways Act, Transportation Code, Section 51.006. The proposed parcels of land to be considered for acquisition include Placement Areas (PA) 38, 39 and 40. PA 38 is an approximately 203-acre parcel of land in the Burrell Franks Survey, Abstract Number 65, Galveston County, Texas. PA 39 is an approximately 226-acre parcel of land in the Jones Shaw Survey, Abstract Number 179, Galveston County, Texas. PA 40 is an approximately 236-acre parcel of land in the Jones Shaw Survey, Abstract Number 179, and the Abraham Van Nordstrand Survey, Abstract Number 203, Galveston County, Texas

TxDOT is acquiring the property to fulfill its responsibilities as the non-federal sponsor of the GIWW. These responsibilities include providing right of way and placement areas for the U.S. Army Corps of Engineers (USACE) operation and maintenance of the GIWW. Right of way and displacement requirements are not applicable for this acquisition.

Environmental documentation, maps and drawings showing the project location, and other information regarding the proposed project are available for inspection online at *www.txdot.gov/projects/hearings-meetings/maritime/2026/acquisition-of-pas-022426.html*.

Maps, USACE environmental documentation, and other displays concerning the proposed site will be available during the virtual public hearing. These displays are on file and available for inspection from Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m. at the TxDOT Stassney Campus, 6230 E. Stassney Lane, Austin, Texas

78744. To schedule an appointment, please contact Ray Newby at (512) 917-9357.

The virtual public hearing will be conducted in English. If you need an interpreter or document translator because English is not your primary language or have difficulty communicating effectively in English, one will be provided to you. If you need an interpreter, document translator, or have a disability and need assistance, special arrangements can be made to accommodate most needs. If you need interpretation or translation services or are a person with a disability who requires an accommodation to participate in the virtual public hearing, please contact the TxDOT Maritime Division at (512) 486-5600 no later Thursday, February 19, 2026. Please be aware that advance notice is required as some services and accommodations may require time for TxDOT to arrange.

Written comments from the public regarding the proposed project may be submitted by mail to the TxDOT Stassney Campus, Attn: Maritime Division, 6230 E. Stassney Lane, Austin, Texas 78744. Comments may also be submitted electronically to ray.newby@txdot.gov or online at *https://www.txdot.gov/projects/hearings-meetings/maritime/2026/acquisition-of-pas-012726.html*. Comments must be received on or before Wednesday, March 11, 2026, to be considered part of the official virtual public hearing record.

Responses to written comments received will be available online at *https://www.txdot.gov/projects/hearings-meetings/maritime/2026/acquisition-of-pas-022426.html* once they have been prepared.

If you have any general question or concerns regarding the proposed project or the virtual hearing, please contact Ray Newby, Waterways Program Coordinator, Maritime Division at (512) 917-9357 or ray.newby@txdot.gov.

TRD-202600128
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Filed: January 14, 2026

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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 51 (2026) is cited as follows: 51 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 "51 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 51 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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