ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 8. TEXAS JUDICIAL COUNCIL

CHAPTER 171. REPORTING REQUIREMENTS

1 TAC §171.9, §171.11

The Texas Judicial Council (Council) adopts amendments to 1 Texas Administrative Code §171.9, concerning judicial statistics, and new §171.11 regarding the new performance measures reporting requirements for the Office of Court Administration (OCA). The amendments to §171.9 and new §171.11 are adopted without changes to the proposed text as published in the November 24, 2023, issue of the *Texas Register* (48 TexReg 6811). These rules will not be republished.

The adopted rules comply with the requirements of HB 1182 and HB 2384, enacted during the 88th Regular Session of the Texas Legislature (2023). HB 1182 requires that the Council gather monthly court activity statistics and case-level information on the amount and character of business transacted by each trial court in the state. For trial courts with counties with a population of at least one million, the Council must gather information including, but not limited to: (1) the number of cases assigned to the court; (2) the case clearance rate for the court; (3) the number of cases disposed of by the court; (4) the number of jury panels empaneled by the court; (5) the number of orders of continuance for an attorney before the court or by the court; (6) the number of pleas accepted by the court; (7) the number of cases tried by the judge of the court or before a jury; and (8) the number of cases tried before a visiting or associate judge of the court. The trial courts must provide the information in the form and manner prescribed by OCA, and OCA must publish the information for each court on OCA's website in a searchable format. For counties in excess of a population of one million, the court official for each court in the county must submit, to the appropriate county official, a copy of each required monthly report for publication on the county's public Internet website within a certain prescribed timeframe and in searchable format. HB 2384 requires that OCA annually report, as performance measures, the following information with respect to each district court, statutory county court, statutory probate court, and county court in Texas: (1) the court's clearance rate; (2) the average time a case is before the court from filing to disposition; and (3) the age of the court's active pending caseload.

Pursuant to §2001.029 of the Texas Government Code, the Council gave all interested persons a reasonable opportunity to provide oral and/or written commentary concerning the adoption of these rules.

The comments received from seven clerks did not address the proposed rules but were questions about general implementation issues or about the proposed forms and instructions.

Four clerks asked whether the reporting requirements are in addition to reporting requirements the Council now requires. The Council responds that the new reporting requirements are in addition to existing reporting requirements in Chapter 171 of its administrative rules.

One clerk asked whether the new reports will be generated through their case management system, Local Government Solutions (LGS). The clerk asked whether LGS is aware of the changes or if the clerk's office must notify LGS. The Council responds that OCA has met with and notified case management system vendors in writing about the new reporting requirements and has provided them with reporting templates and reporting instructions. OCA also encourages counties to work with their vendors to ensure successful implementation.

One clerk asked if OCA is creating a new form for the annual performance measure reporting and whether OCA is working with case management system vendors to add the available reports. The Council responds that this is a new report that will collect court level data and will be submitted once a year. The submission method will be an Excel spreadsheet that must be emailed to OCA. OCA has met with and notified case management system vendors in writing about the new reporting requirements and has provided them with reporting templates and reporting instructions. OCA also encourages counties to work with their vendors to ensure successful implementation.

In reference to OCA's instructions for reporting requirements for counties with a population of one million and over concerning the number of cases tried before a visiting judge on long-term assignment, one judge asked how the activity of specialty courts and specialty dockets staffed by visiting judges should be reported. The Council responds that the data element in question captures information only on bench or jury trials held by a visiting judge working on cases for a specific district or county court. It does not capture any activity associated with specialty courts or dockets other than a trial. If a trial is held by the visiting judge and the case is associated with a specific district or county court, the trial would be reported for that district or county court. If a trial is held by the visiting judge and the case is not associated with a specific district or county court, the trial would not be reported.

One county's information technology employee asked about the process of facilitating implementation by Tyler Technologies and how counties will be able to ensure that their specific situations and needs are addressed to make implementation successful. The employee also asked whether each reporting rule will require a separate report. The Council responds that OCA has met with and notified case management system vendors in writing about the new reporting requirements and has provided them with reporting templates and reporting instructions. OCA also encourages counties to work with their vendors to ensure suc-

cessful implementation. Because each rule requires different reporting requirements, separate reports are necessary.

The Council received a comment from a Criminal Manager for a district clerk's office concerning the definition of "disposition" with respect to probate cases. In the instructions prepared as a reference for the additional monthly reporting requirements under §171.9 for counties one million and over in population, OCA states that the dispositions to be reported for probate cases are those cases that were disposed of or in which a judgment or order was entered and states each order or judgment entered is counted as a disposition for each case or subsequent action filed. The instructions provide a link to an Excel file that lists different probate case subcategories and case types and provides more detailed information regarding when a case may be counted as a disposition.

The proposed rules are adopted pursuant to: (1) Texas Government Code § 71.019, the Council's general rulemaking authority; (2) section 71.031 of the Government Code, the Council's authority to study the procedures and practices, work accomplished, and results of state courts and methods for their improvement; (3) the Council's authority under Texas Government Code § 71.033 to design methods for simplifying judicial procedure, expediting the transaction of judicial business, and correcting faults in or improving the administration of justice; and (4) Texas Government Code § 71.035, the Council's authority to gather judicial statistics. The adopted rules implement the changes to Texas Government Code § 71.035 by HB 1182 and to Texas Government Code § 72.083 by HB 2384.

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 February 9, 2024.

TRD-202400510
Maria Elena Ramon
General Counsel
Texas Judicial Council
Effective date: February 29, 2024
Proposal publication date: November 24, 2023
For further information, please call: (512) 936-7553

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 353. MEDICAID MANAGED CARE
SUBCHAPTER E. STANDARDS FOR MEDICAID MANAGED CARE

1 TAC §353.425, §353.427

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts new §353.425, concerning MCO Processing of Prior Authorization Requests Received with Incomplete or Insufficient Documentation, and new §353.427, concerning Accessibility of Information Regarding Medicaid Prior Authorization Requirements.

Section 353.425 is adopted with changes to the proposed text as published in the September 8, 2023, issue of the *Texas Register* (48 TexReg 4948). The rule will be republished.

Section 353.427 is adopted without changes to the proposed text as published in the September 8, 2023, issue of the *Texas Register* (48 TexReg 4948). The rule will not be republished.

BACKGROUND AND JUSTIFICATION

New §353.425 and §353.427 are necessary to comply with Texas Government Code §533.00282, §533.00284, §533.002841, and §531.024163 as added by Senate Bill 1207, 86th Legislature, Regular Session, 2019, which require HHSC to establish a uniform process and timeline for a prior authorization (PA) request submitted with incomplete or insufficient information or documentation and require Medicaid managed care organizations (MCOs) to improve website accessibility of information related to PA requirements.

COMMENTS

The 31-day comment period ended October 9, 2023.

During this period, HHSC received comments regarding the proposed rules from six commenters, including the American Clinical Laboratory Association, Driscoll Health Plan, Myriad Genetics, Texas Association of Health Plans, Texas Council of Community Centers, and Texas Rare Alliance. A summary of comments relating to the rules and HHSC's responses follows.

Comment: One commenter requested an amendment to new §353.425(c) regarding the reference to MCO compliance with Texas Insurance Code (TIC) Chapter 4201. The commenter noted that the authorizing legislation amends the Texas Government Code and does not amend the TIC. The commenter stated that TIC Chapter 4201 varies in applicability to Medicaid MCOs; therefore, HHSC should use the qualification "as applicable" or remove the reference to the TIC.

Response: HHSC agrees with the commenter that the authorizing statute requires HHSC to implement Texas Government Code §533.00282, §533.00284, §533.002841, and §531.024163. In response to this comment, HHSC revised §353.425(c) to remove the reference to Texas Insurance Code Chapter 4201.

Comment: Several commenters requested clarity as to whether the three-day deadline for an MCO to make a final determination in new §353.425(d)(4) is business days or calendar days.

Response: HHSC agrees with the commenters' request for clarity and amended new §353.425(d)(4) to specify that the deadline is three business days.

Comment: One commenter requested an amendment to new §353.425(d) to require an MCO to notify the requesting provider and member when the MCO has received documentation that completes the missing information and require the MCO to give the provider and member a timeline for the MCO's decision.

Response: HHSC declines to revise the rule in response to this comment. Section 353.425(d) already prescribes a timeline for the provider and member to produce missing documentation and prescribes a timeline for the MCO to respond with the MCO's final determination. The rule does not preclude an MCO from notifying the provider and member when missing documentation is received.

Comment: Several commenters requested HHSC amend new §353.425 to extend the number of business days for a provider

to produce the incomplete information requested by an MCO to fulfill the MCO's PA documentation requirements.

Response: HHSC declines to revise the rule in response to this comment. Texas Government Code §533.002841 states that the combined timeframe for a PA determination may not exceed the timeframe for a decision under federally-prescribed timeframes, which is a maximum of 14 calendar days. HHSC carefully considered the allocation of days for each activity to stay within the 14 calendar days.

Comment: Multiple commenters requested that new §353.425 be amended to include an "ordering physician" and "requesting entity" as parties required to be notified by an MCO when a PA request is received with incomplete or insufficient documentation.

Response: HHSC declines to revise the rule in response to this comment. The statutory requirements apply to a requesting provider. However, the rule does not prevent an MCO from notifying the ordering physician or requesting entity in addition to the requesting provider.

Comment: Several commenters shared positive feedback on new §353.427, stating that transparency regarding MCO requirements for documentation will facilitate providers' understanding of which items or services need PA and what documentation must be provided.

Response: HHSC appreciates the commenters' support for the rule.

Comment: One commenter requested that §353.427 be amended to require an MCO's website to include the process and contact information for a provider or member to contact the MCO to appeal a determination on a PA request and file a complaint on a PA determination.

Response: HHSC declines to revise the rule in response to this comment because this information is already available online. The Code of Federal Regulations (CFR) Title 42 §438.10(g)(2)(XI) requires the member handbook to include information about the process to appeal a determination or file a complaint. 42 CFR §438.10(g)(1) requires an MCO to make the handbook available to each enrollee, which may include print or electronic posting. 42 CFR §438.10(c) requires the state to operate a website that includes this information, either directly or by linking to an MCO's website.

Comment: One commenter asked for clarification on whether §353.427(c)(1)(B) requires an MCO to post a copy of the template used for an MCO's notice.

Response: Section 353.427(c)(1)(B) requires an MCO's website to maintain a description of the notice the MCO provides to a provider or member regarding the documentation required to complete a PA determination. This rule does not require an MCO to post the template for the notice. However, the rule does not prevent an MCO from posting the template. HHSC declines to revise the rule in response to this comment.

Comment: One commenter conveyed concerns that PA requests create an administrative burden for patients and caregivers and delay access to care. The commenter noted that transparency about additional MCO requirements for patients would be helpful.

Response: HHSC agrees with the commenter that greater transparency about an MCO's PA documentation requirements will benefit the public by reducing PA requests denied solely because of incomplete information. However, HHSC declines to revise the rules in response to this comment because PA reviews play an important role in confirming service requests are up to date with standards of care, meet the member's needs, and are medically necessary.

STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §32.021(a) and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas. The new sections are also authorized by Texas Government Code §533.00282, §533.00284, §533.002841 and §531.024163.

§353.425. MCO Processing of Prior Authorization Requests Received with Incomplete or Insufficient Documentation.

(a) The rules in this section apply when a prior authorization (PA) request is submitted with incomplete or insufficient information or documentation on behalf of a member who is not hospitalized at the time of the request.

(b) In this section, "incomplete PA request" means a request for service that is missing information or documentation necessary to establish medical necessity as listed in the PA requirements on the managed care organization's (MCO's) website.

(c) An MCO must comply with Title 42 Code of Federal Regulations §438.210, applicable provisions of Texas Government Code Chapter 533, and the PA process and timeline requirements included in an MCO's contract with the Texas Health and Human Services Commission (HHSC).

(d) If an MCO or an entity reviewing a request on behalf of an MCO receives a PA request with incomplete or insufficient information or documentation, the MCO or reviewing entity must comply with the following HHSC requirements.

(1) An MCO reviewing the request must notify the requesting provider and the member, in writing, of the missing information no later than three business days after the MCO receives an incomplete PA request.

(2) If an MCO does not receive the information requested within three business days after the MCO notifies the requesting provider and the PA request will result in an adverse benefit determination, the MCO must refer the PA request to the MCO medical director for review.

(3) The MCO must offer to the requesting physician an opportunity for a peer-to-peer consultation with a physician no less than one business day before the MCO issues an adverse benefit determination.

(4) The MCO must make a final determination as expeditiously as the member's condition requires but no later than three business days after the date the missing information is provided to an MCO.

(e) The HHSC requirements for MCO reconsideration of an incomplete PA request do not affect any related timeline for:

(1) an MCO's internal appeal process;

(2) a Medicaid state fair hearing;

(3) a review conducted by an external medical reviewer; or

(4) any rights of a member to appeal a determination on a PA request.

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 February 8, 2024.

TRD-202400505
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: February 28, 2024
Proposal publication date: September 8, 2023
For further information, please call: (512) 438-4395

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION
SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.7

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.7 Appeals Process, without changes to the text previously published in the November 24, 2023, issue of the *Texas Register* (48 TexReg 6816) and will not be republished.

The purpose of the repeal is to replace the current rule with a new, clarified rule.

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 changes to existing guidance for program subrecipients.

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 an updated and clarified 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 be held November 24, 2023, to December 26, 2023, to receive input on the proposed action. No public comment on the repeal 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 amended 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 February 6, 2024.

TRD-202400448

Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: February 26, 2024
Proposal publication date: November 24, 2023
For further information, please call: (512) 475-3959

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10 TAC §1.7

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 1, Administration, Subchapter A General Policies and Procedures, §1.7 Appeals Process with changes, due to correcting grammar and updating TAC references, to the text previously published in the November 24, 2023, issue of the *Texas Register* (48 TexReg 6817). The rule will be republished.

The purpose of the rule is to make changes to provide greater clarity on the circumstances in which appeals may be filed.

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 changes to existing regulations applicable to Department subrecipients.

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 they are replacing sections 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 the proposed action 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 effect 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 sections would be an updated and clarified rule. 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 rule 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 November 24, 2023, to December 26, 2023, 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.

§1.7. Appeals Process.

(a) Purpose. The purpose of this rule is to provide the procedural steps by which an appeal can be filed relating to Department decisions as authorized by Tex. Gov't Code §2306.0321 and §2306.0504 which together require an appeals process be adopted by rule for the handling of appeals relating to Department decisions and debarment. Appeals relating to competitive low income housing tax credits, or when multifamily loans are contemporaneously layered with competitive low income housing tax credits, and the associated underwriting, are governed by a separate appeals process provided at §11.902 of this title (relating to Appeals Process) (§2306.0321; §2306.6715).

(b) Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. If not defined in this section, capitalized terms used in this section have the meaning in the rules that govern the applicable program under which the appeal is being filed.

(1) Affiliated Party--An individual, corporation, partnership, joint venture, limited liability company, trust, estate, association, cooperative or other organization or entity of any nature whatsoever that directly, or indirectly through one or more intermediaries, has Control of, is Controlled by, or is under common Control with any other Person. All entities that share a Principal are Affiliates.

(2) Appeal--An Appealing Party's notice to the Department to challenge a decision or decisions made by staff and/or the Executive Director regarding an Application, Commitment, Contract, Loan Agreement, Debarment, Underwriting Report, or LURA as governed by this section.

(3) Appeal File--The written record of an Appeal that contains the applicant's Appeal; the correspondence, if any, between Department staff (or the Executive Director) and the Appealing Party; and the final Appeal decision response provided to the Appealing Party.

(4) Appealing Party--The Administrator, Affiliated Party, Applicant, Person, or Responsible Party under subchapter D, §2.102 of this title (relating to Enforcement Definitions) who files, intends to file, or has filed on their behalf, an Appeal before the Department.

(c) Persons Eligible to Appeal. An Appeal may be filed by any Administrator, Applicant, Person, or Responsible Party as provided for in subchapter D, §2.102 of this title, or Affiliated Party of the Administrator, Applicant, Person or Responsible Party who has filed an Application for funds or reservation with the Department, or has received funds or a reservation from the Department to administer.

(d) Grounds to Appeal Staff Decision. Appeals may be filed using this process on the following grounds:

(1) Relating to applying for funds or requesting to be approved for reservation authority an Appealing Party may appeal if there is:

(A) Disagreement with the determination of staff regarding the sufficiency or appropriateness of documents submitted to satisfy evidence of a given threshold or scoring criteria, including the calculation of any scoring based items;

(B) Disagreement with the termination of an application;

(C) Disagreement with the denial of an award or reservation request;

(D) Disagreement with the amount of the award recommended by the Department, unless that amount is the amount requested by the Applicant;

(E) Disagreement with one or more conditions placed on the award or reservation; or

(F) Concern that the documents submitted were not processed by Department staff in accordance with the Application and program rules in effect.

(2) Relating to issues that arise after the award or reservation determination by the Board, an Appealing Party may appeal if there is disagreement with a denial by the Department of a Contract, payment, Commitment, Loan Agreement, or LURA amendment that was requested in writing.

(3) When grounds for appeal are not evidenced or stated in conformance with this Section, the Board or the Executive Director may determine in their discretion that there is good cause for an Appeal because due process interests are sufficiently implicated.

(4) Relating to debarment, a Responsible Party may appeal a determination of debarment, as further provided for in §2.401(k) of this title (relating to General).

(5) Affiliated Party Appeals. An Affiliated Party has the ability to appeal only those decisions that directly impact the Affiliated Party, not the underlying agreements. An Affiliated Party may appeal a finding of failure to adequately perform under an Administrator's Contract, resulting in a "Debarment" or a similar action, as further described in chapter 2, subchapter D of this title, Debarment from Participation in Programs Administered by the Department.

(e) Process for Filing an Appeal of Staff Decision to the Executive Director.

(1) An Appealing Party must file a written Appeal of a staff decision with the Executive Director not later than the seventh calendar day after notice has been provided to the Appealing Party. For purposes of this section, the date of notice will be considered the date of an Application-specific written communication from the Department to the Applicant; in cases in which no Application-specific written communication is provided, the date of notice will be the date that logs are published on the Department's website when such logs are identified as such in the application including but not limited to a Request for Proposals or Notice of Funding Opportunity, or in the rules for the applicable program as a public notification mechanism.

(2) The written appeal must include specific information relating to the disposition of the Application or written request for change to the Contract, Commitment, Loan Agreement, and/or LURA. The Appealing Party must specifically identify the grounds for the Appeal based on the disposition of underlying documents.

(3) Upon receipt of an Appeal, Department staff shall prepare an Appeal File for the Executive Director. The Executive Director shall respond in writing to the Appealing Party not later than the fourteenth calendar day after the date of receipt of the Appeal. The Executive Director may take one of the following actions:

(A) Concur with the Appeal and make the appropriate adjustments to the staff's decision;

(B) Disagree with the Appeal, in concurrence with staff's original determination, and provide the basis for rejecting the Appeal to the Appealing Party; or

(C) In the case of appeals in exigent circumstances (such as conflict with a statutory deadline) or with the consent of the appellant, for appeals received five calendar days or less of the next scheduled Board meeting, the Executive Director may decline to make a decision and have the appeal deferred to the Board per the process outlined in subsection (f)(2) of this section, for final action.

(f) Process for Filing an Appeal of the Executive Director's Decision to the Board.

(1) If the Appealing Party is not satisfied with the Executive Director's response to the Appeal provided in subsection (e)(3) of this section, they may appeal in writing directly to the Board within seven calendar days after the date of the Executive Director's response.

(2) In order to be placed on the agenda of the next scheduled meeting of the Department's Board, the Appeal must be received by the Department at least fourteen days prior to the next scheduled Board meeting. Appeals requested under this section received after the fourteenth calendar day prior to the Board meeting will generally be scheduled at the next subsequent Board meeting. However, the Department reserves the right to place the Appeal on a Board meeting agenda if an Appeal that is timely filed under paragraph (1) of this subsection is received fewer than fourteen calendar days prior to the next scheduled Board meeting. The Executive Director shall prepare Appeal materials for the Board's review based on the information provided.

(3) If the Appealing Party receives additional information after the Executive Director has denied the Appeal, but prior to the posting of the Appeal for Board consideration, the new information must be provided to the Executive Director for further consideration or the Board will not consider any information submitted by the Applicant after the written Appeal. New information will cause the deadlines in this subsection to begin again. The Board will review the Appeal de novo and may consider any information properly considered by the Department in making its prior decision(s).

(4) Public Comment on an Appeal Presented to the Board. The Board will hear public comment on the Appeal under its Public Comment Procedures in §1.10 of this subchapter (relating to Public Comment Procedures). While public comment will be heard, persons making public comment are not parties to the Appeal, and no rights accrue to them under this section or any other Appeal process. Nothing in this section provides a right to Appeal any decision made on an Application, Commitment, Contract, Loan Commitment, or LURA if the Appealing Party does not have grounds to appeal as described in subsection (d) of this section.

(5) In the case of possible actions by the Board regarding Appeals, the Board may:

(A) Concur with the Appealing Party and grant the Appeal; or

(B) Disagree with the Appealing Party, in concurrence with the Executive Director's original determination, and provide the basis for rejecting the Appeal.

(C) In instances in which the Appeal, if granted by the Board would have resulted in an award to the Applicant, the Application shall be evaluated for an award as it relates to the availability of funds, and staff will recommend an action to the Board in the meeting at which the Appeal is heard, or a subsequent meeting. If no funds are available in the current year's funding cycle, then the Appealing Party may be awarded funds from a pool of deobligated funds or other source, if available.

(D) In the case of actions regarding all other Appeals, the Board shall direct staff on what specific remedy is to be provided, allowable under current laws and rules.

(g) Board Decision. Appeals not submitted in accordance with this section will not be considered, unless the Executive Director or Board, in the exercise of its discretion, determines there is good cause to consider the appeal. The decision of the Board is final.

(h) Limited Scope. The appeals process provided in this rule is of general application. Any statutory or specific rule with a different appeal process, including the limitations expressed in subsection (a) of this section, will be governed by the more specific statute or rule. Except as provided for in §2.401 of this title, this section does not apply to matters involving a Contested Case Proceeding under §1.13 of this subchapter (relating to Contested Case Hearing Procedure).

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 February 6, 2024.

TRD-202400449
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: February 26, 2024
Proposal publication date: November 24, 2023
For further information, please call: (512) 475-3959

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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) adopts, without changes to the proposed text as published in the November 10, 2023, issue of the *Texas Register* (48 TexReg 6524), the repeal of 10 TAC Chapter 7, Subchapter A, General Policies and Procedures, §§7.1 - 7.12. The rule will not be published. The purpose of the action is to repeal the current rule, while replacing it with a new rule with revisions to conform to State and Federal regulatory updates under separate action.

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 repeal would be in effect:

1. The repeal does not create or eliminate a government program, but relates to the making changes to an existing activity;

2. The repeal does not require a change in the number of employees of the Department;

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

4. The repeal to the rule will not result in neither an increase nor a decrease in fees paid to the Department;

5. The repeal to the rule will not create a new regulation;

6. The repeal to the rule will repeal an existing regulation;

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

8. The repeal to the rule will neither negatively nor positively affect this state's economy.

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.

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.

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 proposed new rule 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.

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 amended section would be more clarity on the administration of homeless programs. There will not be economic costs to individuals required to comply with the amended section.

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 accepted public comment between November 10, 2023 to December 11, 2023. No comment was received.

The Board adopted the final order adopting the repeal on January 9, 2024.

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

Except as described herein the proposed new rule 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 February 7, 2024.

TRD-202400468
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: February 27, 2024
Proposal publication date: November 10, 2023
For further information, please call: (512) 475-3959

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10 TAC §§7.1 - 7.12

The Texas Department of Housing and Community Affairs (the Department) adopts, without changes to the proposed text as published in the November 10, 2023, issue of the *Texas Register* (48 TexReg 6525), the new 10 TAC Chapter 7, Subchapter A, General Policies and Procedures, §§7.1 - 7.12. The rule will not be republished. The purpose of the proposed action is to update the rule to conform to State and Federal regulatory updates.

GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the adopted new rule would be in effect:

1. The new rule does not create or eliminate a government program, but relates to the making changes to an existing activity;

2. The new rule does not require a change in the number of employees of the Department;

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

4. The new rule will not result in neither an increase nor a decrease in fees paid to the Department;

5. The new rule will not create a new regulation;

6. The new rule will repeal an existing regulation;

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

8. The new rule will neither negatively nor positively affect this state's economy.

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 rule and determined that the proposed rule will not create an economic effect on small or micro-businesses or rural communities.

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

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 proposed rule 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.

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 rule is in effect, the public benefit anticipated as a result of the new section would be more clarity on the administration of homeless programs. There will not be economic costs to individuals required to comply with the section.

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

SUMMARY OF PUBLIC COMMENT. The Department accepted public comment between November 10, 2023 to December 11, 2023. No comment was received.

The Board adopted the final order adopting the new rule on January 9, 2024.

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

Except as described herein the proposed rule 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 February 7, 2024.

TRD-202400469
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: February 27, 2024
Proposal publication date: November 10, 2023
For further information, please call: (512) 475-3959

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SUBCHAPTER B. HOMELESS HOUSING AND SERVICES PROGRAM (HHSP)

10 TAC §§7.21 - 7.29

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 7, Subchapter B, §§7.21 - 7.29, without changes to the proposed text as published in the November 10, 2023, issue of the *Texas Register* (48 TexReg 6532). The rule will not be republished. Homeless Housing and Services Program. The purpose of the action is to repeal the current rule while proposing a new rule to conform to State and Federal regulatory updates under separate action.

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 repeal would be in effect:

1. The repeal does not create or eliminate a government program, but relates to the making changes to an existing activity;

2. The repeal does not require a change in the number of employees of the Department;

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

4. The repeal to the rule will not result in neither an increase nor a decrease in fees paid to the Department;

5. The repeal to the rule will not create a new regulation;

6. The repeal to the rule will repeal an existing regulation;

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

8. The repeal to the rule will neither negatively nor positively affect this state's economy.

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.

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.

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.

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 amended section would be more clarity on the administration of homeless programs. There will not be economic costs to individuals required to comply with the amended section.

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 accepted public comment between November 10, 2023 through December 11, 2023, to receive input on the proposed repeal. No comment was received.

The Board adopted the final order adopting the repeal on January 9, 2024.

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 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 February 7, 2024.

TRD-202400470
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: February 27, 2024
Proposal publication date: November 10, 2023
For further information, please call: (512) 475-3959

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10 TAC §§7.21 - 7.29

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 7, Subchapter B, §§7.21 and 7.25 - 7.29 without changes to the proposed text as published in the November 10, 2023 issue of the *Texas Register* (TexReg 6533). The rules will not be republished. New §§7.22 - 7.24 are adopted with nonsubstantive editorial changes to the proposed text and will be republished. Homeless Hosing and Services Program. The purpose of the action is to repeal the existing rule and simultaneously propose a new rule to conform to State and Federal regulatory updates.

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 would be in effect:

1. The new rule does not create or eliminate a government program, but relates to the making changes to an existing activity;

2. The new rule does not require a change in the number of employees of the Department;

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

4. The new rule will not result in neither an increase nor a decrease in fees paid to the Department;

5. The new rule will not create a new regulation;

6. The new rule will repeal an existing regulation;

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

8. The new rule will neither negatively nor positively affect this state's economy.

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 new rule and determined that the new rule will not create an economic effect on small or micro-businesses or rural communities.

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

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 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.

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 rule is in effect, the public benefit anticipated as a result of the amended section would be more clarity on the administration of homeless programs. There will not be economic costs to individuals required to comply with the amended section.

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 amendment does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT. The Department accepted public comment between November 10, 2023, through December 11, 2023. No comment was received.

The Board adopted the final order adopting the new rule on January 9, 2024.

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

Except as described herein the proposed new rule affects no other code, article, or statute.

§7.22. HHSP Subrecipient Application and Selection.

(a) Any written information provided to the Department in order to execute a Contract is part of the Application, including but not limited to the information in this subsection.

(b) The municipality may apply to administer the funding directly or designate a Private Nonprofit Organization or other governmental entity to apply to administer the funds in the municipality in accordance with Tex. Gov't Code §2306.2585(a).

(1) Designation of administering entity. The municipality that is designating an entity to administer the funds within their jurisdiction shall provide notification to the Department within 60 calendar days of notification of the allocated amount. The notification must be in the form of a resolution or other city council action from the municipality's governing body, and should indicate that the municipality is designating another entity to administer the funds on behalf of the municipality.

(2) The municipality may designate the other entity for one or two years, as desired by the municipality. If designated for two years, the requirement that the resolution or council action be submitted within 60 calendar days of notification of allocated amount will be considered met for the second year since the council action was approved.

(c) Application for funds. Application for funds will be submitted within 60 calendar days of notification of the allocated amount. After 60 calendar days of notification, if no application for funding is received, the funding may be reallocated through the formula outlined in this section to the other areas receiving HHSP funding. The Application for funding will include, but not be limited to:

(1) information sufficient to conduct a Previous Participation review for the municipality or entity designated to administer HHSP funds;

(2) proposed budget;

(3) proposed performance targets; and

(4) activity descriptions.

(d) Prior to Contract execution, entities expected to administer an award of HHSP funds must submit a resolution, governing body action, or other approved documentation approved by entity's direct governing body which includes authorization to enter into a Contract for HHSP funds and title of the person authorized to represent the entity and who also has signature authority to execute a Contract. The documentation submitted must be dated no more than 12 months from the date of Contract execution.

(e) An entity recommended for HHSP funds is subject to the Department's Previous Participation Rule, found in §1.302 of this title (relating to Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of this Subchapter). In addition to the considerations of the Previous Participation Rule, an entity receiving HHSP funds may not be in breach or violation, after notice and a reasonable opportunity to cure, of any contract with the Department or LURA.

(f) Subrecipient must enter into a Contract with the Department governing the use of such funds. If the source of funds for HHSP is funding under another specific Department program, such as the Housing Trust Fund, as authorized by Tex. Gov't Code, §2306.2585(c), the Contract will incorporate any requirements applicable to such funding source.

§7.23. Allocation of Funds and Formula.

(a) Contract Award Funding Limits. The funding will be established by Allocation Formula as described in this section.

(b) HHSP funds will be awarded upon appropriation from the legislature, and will be made available to any of those municipalities subject to the requirements of this rule and be distributed in accordance with the formula set forth in subsection (c) of this section relating to Formula.

(c) General Population Formula. Funds made available under HHSP for the general population shall be distributed in accordance with an Allocation Formula that is calculated each year that takes into account the proportion of the following factors:

(1) population of the municipality, as determined by the most recent available 1 Year American Community Survey (ACS) data;

(2) poverty, defined as persons in the municipality's population with incomes at or below the poverty threshold, as determined by the most recent available 1 Year ACS data;

(3) population of Homeless persons, as determined by the most recent publicly available Point-In-Time Counts submitted to HUD by the CoCs in Texas or by the Texas Homeless Network;

(4) population of Homeless veterans, as determined by the most recent publicly available Point-In-Time Counts submitted to HUD by the CoCs in Texas or by the Texas Homeless Network;

(5) population of Homeless Unaccompanied Youth, Parenting Youth, and Children of Parenting Youth, as determined by the most recent publicly available Point-In-Time Counts submitted to HUD by the CoCs in Texas or by the Texas Homeless Network;

(6) population of persons with disabilities, defined as that percentage of the municipality's population composed of persons with disabilities, as determined by the most recent available 1 Year ACS data; and

(7) incidents of family violence, as determined by reports from local police departments.

(d) The factors enumerated shall be used to calculate distribution percentages for each municipal area based on the following formula:

(1) thirty percent weight for population;

(2) thirty percent weight for poverty populations;

(3) twenty percent weight for the Homeless population;

(4) five percent weight for population of Homeless Veterans;

(5) five percent weight for population of Homeless Unaccompanied Youth, Parenting Youth, and Children of Parenting Youth;

(6) five percent weight for population of persons with disabilities; and

(7) five percent weight for instances of family violence.

(e) Youth Population Formula. Funds made available to HHSP for youth shall be distributed in accordance with an Allocation Formula that is calculated each year that takes into account the proportion of the following factors:

(1) population of the municipality, as determined by the most recent available 1 Year American Community Survey (ACS) data;

(2) poverty, defined as persons in the municipality's population with incomes at or below the poverty threshold, as determined by the most recent available 1 Year ACS data;

(3) population of Homeless Unaccompanied Youth, Parenting Youth, and Children of Parenting Youth, as determined by the most recent publicly available Point-In-Time Counts submitted to HUD by the CoCs in Texas;

(4) population of persons with disabilities, defined as that percentage of the municipality's population composed of persons with disabilities, as determined by the most recent available 1 Year ACS data; and

(5) incidents of family violence, as determined by reports from local police departments.

(f) The factors enumerated shall be used to calculate distribution percentages for each municipal area based on the following formula:

(1) thirty percent weight for population;

(2) thirty percent weight for poverty populations;

(3) thirty percent weight for population of Homeless Unaccompanied Youth, Parenting Youth, and Children of Parenting Youth;

(4) five percent weight for population of persons with disabilities; and

(5) five percent weight for instances of family violence.

(g) Prior to month nine of the Contract, the HHSP Subrecipient may choose to voluntarily deobligate up to 15% of the total amount of funds in the Contract if the HHSP Subrecipient anticipates that it will not expend all the funds. The Department reserves the right to refuse any returned funds prior to the end of the Contract Term. The Department may reallocate the voluntary deobligated funds to existing HHSP Subrecipients with the highest expenditure rates based on percent of funds expended. The eligible HHSP Subrecipients may be required to complete a Previous Participation Review, as outlined in §1.302 of this title (relating to Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of this Subchapter), and any reallocated funds in excess of 25% of the original Contract award will require a complete Previous Participation Review.

§7.24. General HHSP Requirements.

(a) Subrecipient must have written policies and procedures to ensure that sufficient records are established and maintained to enable a determination that HHSP requirements are met.

(b) Subrecipient must have written standards for providing HHSP assistance to Program Participants. The written standards must be applied consistently for all Program Participants. The written standards must include, but not be limited to, Inclusive Marketing outlined in §7.10 of this chapter (relating to Inclusive Marketing).

(c) Rent restriction. Rental assistance cannot be provided unless the gross rent complies with the standard of rent reasonableness established in the Subrecipient's written policies and procedures. Gross rent includes the contract rent and an estimate of utilities established by the Public Housing Authority for the area in which the Dwelling Unit is located.

(d) The occupancy standard set by the Subrecipient must not conflict with local regulations or Texas Property Code §92.010.

(e) Subrecipient must document compliance with the Shelter and Housing Standards in this Chapter, relating to Homelessness Programs, including but not limited to construction and shelter inspection reports, and the Accessibility Standards in Chapter 1, Subchapter B of this title.

(f) If the Subrecipient is providing funds for single family ownership, the requirements of Chapters 20, relating to Single Family Programs Umbrella Rule, and 21 Minimum Energy Efficiency Requirements for Single Family Construction Activities of this Part, will apply.

(g) If the Subrecipient is providing funds to an entity for rental ownership, operations, or providing project-based vouchers/rental assistance, the rental development must comply with the greater of regulatory regulations governing the development or program to which HHSP funds are comingled, or, if none, must comply with local health and safety codes.

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 February 7, 2024.

TRD-202400471

Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: February 27, 2024
Proposal publication date: November 10, 2023
For further information, please call: (512) 475-3959

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SUBCHAPTER C. EMERGENCY SOLUTIONS GRANTS (ESG)

10 TAC §§7.34, 7.37, 7.41

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 7, Subchapter C, §7.34, Continuing Awards; §7.37, Application Review and Administrative Deficiency Process; and §7.41, Contract Term, Expenditure Benchmark, Return of Funds, and Performance Targets, without changes to the proposed text as published in the November 10, 2023, issue of the *Texas Register* (48 TexReg 6538). The rule will not be republished. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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 repeal would be in effect:

1. The repeal does not create or eliminate a government program, but relates to the making changes to an existing activity;

2. The repeal does not require a change in the number of employees of the Department;

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

4. The repeal to the rule will not result in neither an increase nor a decrease in fees paid to the Department;

5. The repeal to the rule will not create a new regulation;

6. The repeal to the rule will repeal an existing regulation;

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

8. The repeal to the rule will neither negatively nor positively affect this state's economy.

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 proposed repeal will not create an economic effect on small or micro-businesses or rural communities.

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.

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.

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 amended section would be more clarity on the administration of homeless programs. There will not be economic costs to individuals required to comply with the amended section.

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 accepted public comment between November 10, 2023 to December 11, 2023. No comment was received.

The Board adopted the final order adopting the repeal on January 9, 2024.

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 February 7, 2024.

TRD-202400472
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: February 27, 2024
Proposal publication date: November 10, 2023
For further information, please call: (512) 475-3959

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10 TAC §§7.34, 7.37, 7.41

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 7, Subchapter C, §7.34, Continuing Awards; §7.37, Application Review and Administrative Deficiency Process; and §7.41, Contract Term, Expenditure Benchmark, Return of Funds, and Performance Targets without changes to the proposed text as published in the November 10, 2023 issue of the *Texas Register* (48 TexReg 6539). The rule will not be republished. The purpose of the new rule is to update the application eligibility process for continuing awards, distinction of the deficiency process, and updating reobligation processes.

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 would be in effect:

1. The new rule does not create or eliminate a government program, but relates to the making changes to an existing activity;

2. The new rule does not require a change in the number of employees of the Department;

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

4. The new rule to the rule will not result in neither an increase nor a decrease in fees paid to the Department;

5. The new rule to the rule will not create a new regulation;

6. The new rule to the rule will repeal an existing regulation;

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

8. The new rule to the rule will neither negatively nor positively affect this state's economy.

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 new rule and determined that the new rule will not create an economic effect on small or micro-businesses or rural communities.

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

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 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.

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 rule is in effect, the public benefit anticipated as a result of the amended section would be more clarity on the administration of homeless programs. There will not be economic costs to individuals required to comply with the amended section.

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

SUMMARY OF PUBLIC COMMENT. The Department accepted public comment between November 10, 2023 to December 11, 2023. No comment was received.

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

Except as described herein the new rule 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 February 7, 2024.

TRD-202400473
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: February 27, 2024
Proposal publication date: November 10, 2023
For further information, please call: (512) 475-3959

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CHAPTER 8. PROJECT RENTAL ASSISTANCE PROGRAM RULE

10 TAC §8.4

The Texas Department of Housing and Community Affairs (the Department) adopts, without changes to the proposed text as published in the December 22, 2023, issue of the *Texas Register* (48 TexReg 7677), the amendment of 10 TAC Chapter 8, Project Rental Assistance Program Rule, §8.4, Qualification Requirements for Existing Developments. The rule will not be republished. The amendment will add reference to a new inspection protocol, NSPIRE, and specify what the minimum NSPIRE score must be to qualify for the 811 PRA Program as an existing development.

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.

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 rule action would be in effect, the action does not create or eliminate a government program, but relate to changes to an existing activity, existing properties qualifying for the 811 PRA Program.

2. The amendment to the rule will not require a change in the number of employees of the Department;

3. The amendment to the rule will not require additional future legislative appropriations;

4. The amendment to the rule will result in neither an increase nor a decrease in fees paid to the Department;

5. The amendment to the rule will not create a new regulation, but merely revises a regulation to reference a new inspection protocol;

6. The amendment to the rule will not repeal an existing regulation;

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

8. The 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 the clarification of what inspection method may be used and what the cut-off score would be for the NSPIRE inspection. 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.

SUMMARY OF PUBLIC COMMENT. Public comment on the rule was open from December 22, 2023, through January 22, 2024. No comment was received.

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

Except as described herein the amendment 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 February 6, 2024.

TRD-202400450
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: February 26, 2024
Proposal publication date: December 22, 2023
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 §§10.401 - 10.406

The Texas Department of Housing and Community Affairs (the Department) adopts the amendment of 10 TAC Chapter 10, Subchapter E, §§10.401 - 10.406, Post Award and Asset Management Requirements with changes to the proposed text as published in the November 24, 2023, issue of the *Texas Register* (48 TexReg 6819). The rules will be republished. The purpose of the amendment is to make corrections to gain consistency across other sections of rules, correct references, 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. It should be noted that §10.401 Housing Tax Credit and Tax Exempt Bond Developments identifies that IRS Forms 8609 will be issued in accordance with revision to Tex. Gov't Code §2306.6724(g) as a result of H.B. 4550 (88th Regular Legislature) passed by the House on May 2, 2023, and effective September 1, 2023.

FISCAL NOTE. Mr. Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the amendment to the rules are in effect, enforcing or administering the amendments do 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 adopted amendment would be in effect:

1. The adopted amendments to the rules do not create or eliminate a government program;

2. The adopted amendments to the rules do not require a change in the number of employees of the Department;

3. The adopted amendments to the rules will not require additional future legislative appropriations;

4. The adopted amendments to the rules will result in neither an increase nor a decrease in fees paid to the Department;

5. The adopted amendments to the rules are not creating a new regulation;

6. The adopted amendments to the rules will not repeal an existing regulation;

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

8. The adopted amendments to the rules 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 proposed 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 adopted amendments.

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.

SUMMARY OF PUBLIC COMMENT. The Department accepted public comment between November 24, 2023, and December 22, 2023. No comments were received from the public during the public comment period.

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

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

§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) 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 inspector to perform these inspections on a quarterly basis and submit the 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.

§10.402. Requests for Subordination Agreements, HUD Amendments to Restrictive Covenants, or HUD Riders to Restrictive Covenants.

(a) Requests for Subordination Agreements, HUD Amendments to Restrictive Covenants or HUD Riders to Restrictive Covenants from the Department must be reviewed and approved by the Department's Asset Management Division and Legal Division prior to execution. The Development Owner must demonstrate that the Development will remain feasible with the proposed new debt. For HTC Developments seeking to refinance within two years from the issuance of the IRS Form(s) 8609, a review of the Development's cost certification will be conducted to determine if the change in the financing structure would have affected the credit award. If it is determined that the change to the financing structure, net of additional costs associated with the refinance, would have resulted in over sourcing the Development, thereby resulting in an adjustment to the credit award, the Development Owner may be required to fund a Special Reserve Account in accordance with §10.404 of this subchapter (relating to Reserve Accounts). Approval from the Board will be required for loan amounts that would cause the Developments to be over-sourced after accounting for the additional costs associated with the refinance and the deposit into the Special Reserve Account. Subordinations or re-subordinations of Developments with Direct Loans from the Department are also subject to the requirements under §13.13(c)(2) of this title (relating to Multifamily Direct Loan Rule) and Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy), including but not limited to §11.302(g)(4).

(b) All requests must include:

(1) Requested document on Department approved template, if available, and completed with the Development specific information;

(2) Documentation such as a loan commitment or application that identifies the proposed loan amount and terms;

(3) If the proposed legal description is different from the legal description in the Department's regulatory agreement, a survey, title commitment, or recorded plat that agrees with the legal description in the requested document. Changes to the Development Site may be subject to further review and approval under §10.405 of this subchapter (relating to Amendments and Extensions); and

(4) Development's most recent 12-month trailing operating statement. If the financial statement indicates that the proposed new debt cannot be supported by the Development, the Development Owner must submit an operating pro forma and a written explanation for the differences from the actual performance of the Development.

§10.403. Review of Annual HOME, HOME-ARP, HOME Match, NSP, TCAP-RF, and National Housing Trust Fund Rents.

(a) Applicability. For participants of the Department's Multifamily HOME, HOME American Rescue Plan HOME-ARP, and NSP Direct Loan program, where Commitment of Funds occurred on or after August 23, 2013, the Department is required by 24 CFR §92.252(f) and for all National Housing Trust Fund (NHTF) recipients by 24 CFR §93.302(c)(2), to review and approve or disapprove HOME/HOME-ARP/NSP/NHTF rents on an annual basis. The Department is also required by 24 CFR §92.219 and §92.252(d)(2) to approve rents for HOME Match units. Development Owners must submit documentation for the review of HOME/HOME-ARP/HOME Match/NSP/NHTF/TCAP-RF rents by no later than August 1st of each year as further described in the Post Award Activities Manual.

(b) Documentation for Review. The Department will furnish a rent approval request packet for this purpose that will include a request for Development information and an Owner's proposed rent schedule and will require submission of a current rent roll, the most recent 12-month operating statement for the Development, and utility allowance information. The Department may request additional documentation to perform a determination, as needed, including but not limited to annual operating statements, market surveys, or other information related to determining whether rents are sufficient to maintain the financial viability of a project or are in compliance with maximum rent limits.

(c) Review Process. Rents will be approved or disapproved within 30 days of receipt of all items required to be submitted by the Development Owner, and will be issued in the form of a signed letter from the Asset Management Division. Development Owners must keep copies of all approval letters on file at the Development site to be reviewed at the time of Compliance Monitoring reviews.

(d) Compliance. Development Owners for whom this section is applicable are subject to compliance under §10.622 of this chapter (relating to Special Rules Regarding Rents and Limit Violations) and may be subject to penalties under §10.625 of this chapter (relating to Events of Noncompliance). Approval of rents by the Asset Management Division will be limited to a review of the documentation submitted and will not guarantee compliance with the Department's rules or otherwise absolve an Owner of any past, current, or future non-compliance related to Department rules, guidance, Compliance Monitoring visits, or any other rules or guidance to which the Development or its Owner may be subject.

§10.404. Reserve Accounts.

(a) Replacement Reserve Account (§2306.186). The Department will require Development Owners to provide regular maintenance to keep housing sanitary, safe and decent by establishing and maintaining a reserve for replacement account for the Development in accordance with Tex. Gov't Code, §2306.186. The reserve account must be established, in accordance with paragraphs (3) - (6) of this subsection, and maintained through annual or more frequent regularly scheduled deposits, for each Unit in a Development of 25 or more rental Units regardless of the amount of rent charged for the Unit. If the Department is processing a request for loan modification or other request under this subchapter and the Development does not have an existing replacement reserve account or sufficient funds in the reserve to meet future capital expenditure needs of the Development as determined by a history of uncorrected UPCS violations, ongoing issues related to keeping housing sanitary, safe, and decent, an account balance below the annual reserve deposit amount as specified in this section, or as indicated by the number or cost of repairs included in a third party Physical Needs Assessment (PNA), the Development Owner will be required to establish and maintain a replacement reserve account or review whether the amount of regular deposits to the replacement reserve account can be increased, regardless of the number of Units at the Development. The Department shall, through cooperation of its divisions responsible for asset management and compliance, ensure compliance with this section. The duties of the Development Owner under this section cease on the date of a change in ownership of the Development; however, the subsequent Development Owner of the Development is subject to the requirements of this section and any additional or revised requirements the Department may impose after reviewing a Development's compliance history, a PNA submitted by the Owner, or the amount of reserves that will be transferred at the time of any property sale.

(1) The LURA requires the Development Owner to begin making annual deposits to the replacement reserve account on the later of the:

(A) Date that occupancy of the Development stabilizes as defined by the First Lien Lender or, in the absence of a First Lien Lender other than the Department, the date the Property is at least 90% occupied; or

(B) The date when the permanent loan is executed and funded.

(2) The Development Owner shall continue making deposits into the replacement reserve account until the earliest of the:

(A) Date on which the owner suffers a total casualty loss with respect to the Development or the date on which the Development becomes functionally obsolete, if the Development cannot be or is not restored;

(B) Date on which the Development is demolished;

(C) Date on which the Development ceases to be used as a multifamily rental property; or

(D) End of the Affordability Period specified by the LURA, or if an Affordability Period is not specified and the Department is the First Lien Lender, then when the Department's loan has been fully repaid or as otherwise agreed by the Owner and Department.

(3) If the Department is the First Lien Lender with respect to the Development or if the establishment of a Reserve Account for repairs has not been required by the First Lien Lender or Bank Trustee, each Development Owner receiving Department assistance for multifamily rental housing shall deposit annually into a separate, Development-specific Reserve Account through the date described in paragraph (2) of this subsection as follows:

(A) For New Construction and Reconstruction Developments, not less than $250 per Unit. Withdrawals from such account will be restricted for up to five years following the date of award except in cases in which written approval from the Department is obtained relating to casualty loss, natural disaster, reasonable accommodations, or demonstrated financial hardship (but not for the construction standards required by the NOFA or program regulations); or

(B) For Adaptive Reuse and Rehabilitation Developments, the greater of the amount per Unit per year either established by the information presented in a Scope and Cost Review in conformance with Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy) or $300 per Unit per year.

(4) For all Developments, a PNA must be conducted at intervals that are consistent with requirements of the First Lien Lender, other than the Department. If the Department is the First Lien Lender, or the First Lien Lender does not require a Third Party PNA, a PNA must be conducted at least once during each five-year period beginning with the 11th year after the awarding of any financial assistance from the Department. PNAs conducted by the Owner at any time or for any reason other than as required by the Department in the year beginning with the 11th year of award must be submitted to the Department for review within 30 days of receipt by the Owner.

(5) Where there is a First Lien Lender other than the Department or a Bank Trustee as a result of a bond trust indenture or tax credit syndication, the Development Owner shall comply with the lesser of the replacement reserve requirements of the First Lien Lender or the requirements in paragraph (3) of this subsection. In addition, the Department should be listed as a party to receive notice under any replacement reserve agreement entered into by the Development Owner. The Development Owner shall submit on an annual basis, within the Department's required Development Owner's Financial Certification packet, requested information regarding:

(A) The reserve for replacement requirements under the first lien loan agreement (if applicable) referencing where those requirements are contained within the loan documents;

(B) Compliance with the first lien lender requirements outlined in subparagraph (A) of this paragraph;

(C) If the Owner is not in compliance with the lender requirements, the Development Owner's plan of action to bring the Development in compliance with all established reserve for replacement requirements; and

(D) Whether a PNA has been ordered and the Owner's plans for any subsequent capital expenditures, renovations, repairs, or improvements.

(6) Where there is no First Lien Lender but the allocation of funds by the Department and Tex. Gov't Code, §2306.186 requires that the Department oversee a Reserve Account, the Development Owner shall provide at their sole expense an escrow agent acceptable to the Department to act as Bank Trustee as necessary under this section. The Department shall retain the right to replace the escrow agent with another Bank Trustee or act as escrow agent at a cost plus fee payable by the Development Owner due to breach of the escrow agent's responsibilities or otherwise with 30 days prior notice of all parties to the escrow agreement.

(7) Penalties and Non-Compliance. If the Development Owner fails to comply with the replacement reserve account requirements stated in this paragraph, and request for extension or waiver of these requirements is not approved by the Department, then a penalty of up to $200 per dwelling Unit in the Development and/or characterization of the Development as being in default with this requirement, may be imposed. Causes include:

(A) A Reserve Account, as described in this section, has not been established for the Development;

(B) The Department is not a party to the escrow agreement for the Reserve Account, if required;

(C) Money in the Reserve Account:

(i) is used for expenses other than necessary repairs, including property taxes or insurance; or

(ii) falls below mandatory annual, monthly, or Department approved deposit levels;

(D) Development Owner fails to make any required deposits;

(E) Development Owner fails to obtain a Third-Party PNA as required under this section or submit a copy of a PNA to the Department within 30 days of receipt; or

(F) Development Owner fails to make necessary repairs in accordance with the Third Party PNA or §10.621 of this chapter (relating to Property Condition Standards).

(8) Department-Initiated Repairs. The Department or its agent may make repairs to the Development within 30 calendar days of written notice from the Department if the Development Owner fails to complete necessary repairs indicated in the submitted PNA or identified by Department physical inspection. Repairs may be deemed necessary if the Development Owner fails to comply with federal, state, and/or local health, safety, or building code requirements. Payment for necessary repairs must be made directly by the Development Owner or through a replacement Reserve Account established for the Development under this section. The Department or its agent will be allowed to produce a Request for Bids to hire a contractor to complete and oversee necessary repairs. In the event the circumstances identified in subparagraphs (A) or (B) of this paragraph occur, funds withdrawn must be replaced from Cash Flow after payment of Operating Expenses but before return to Development Owner or deferred Developer Fee until the mandatory deposit level is replenished. The Department reserves the right to re-evaluate payments to the reserve, increase such payments or require a lump sum deposit to the reserve, or require the Owner to enter into a separate Reserve Agreement if necessary to protect the long term feasibility of the Development. On a case-by-case basis, the Department may determine that the money in the Reserve Account may be used for expenses other than necessary repairs, including property taxes or insurance, if:

(A) Development income before payment of return to Development Owner or deferred Developer Fee is insufficient to meet operating expense and debt service requirements; or

(B) Development income after payment of operating expenses, but before payment of return to Development Owner or deferred developer fee is insufficient to fund the mandatory deposit levels.

(9) Exceptions to Replacement Reserve Account. This section does not apply to a Development for which the Development Owner is required to maintain a Reserve Account under any other provision of federal or state law.

(10) In the event of paragraph (7) or (8) of this subsection occurring, the Department reserves the right to require by separate Reserve Agreement a revised annual deposit amount and/or require Department concurrence for withdrawals from the Reserve Account to bring the Development back into compliance. Establishment of a new Bank Trustee or transfer of reserve funds to a new, separate and distinct account may be required if necessary to meet the requirements of such Agreement. The Agreement will be executed by the Department, Development Owner, and financial institution representative.

(b) Lease-up Reserve Account. A lease-up reserve funds start-up expenses in excess of the revenue produced by the Development prior to stabilization. The Department will consider a reasonable lease-up reserve account based on the documented requirements from a third-party lender, third-party syndicator, or the Department. During the underwriting at the point of the Cost Certification review, the lease-up reserve may be counted as a use of funds only to the extent that it represents operating shortfalls net of escrows for property taxes and property insurance. Funds from the lease-up reserve used to satisfy the funding requirements for other reserve accounts may not be included as a use of funds for the lease-up reserve. Funds from the lease-up reserve distributed or distributable as cash flow to the Development Owner will be considered and restricted as developer fee.

(c) Operating Reserve Account. At various stages during the application, award process, and during the operating life of a Development, the Department will conduct a financial analysis of the Development's total development costs and operating budgets, including the estimated operating reserve account deposit required. For example, this analysis typically occurs at application and cost certification review. The Department will consider a reasonable operating reserve account deposit in this analysis based on the needs of the Development and requirements of third-party lenders or investors. The amount used in the analysis will be the amount described in the project cost schedule or balance sheet, if it is within the range of two to six months of stabilized operating expenses plus debt service. The Department may consider a greater amount proposed or required by the Department, any superior lien lender, or syndicator, if the detail for such greater amount is reasonable and well documented. Reasonable operating reserves in

this chapter do not include capitalized asset management fees, guaranty reserves, or other similar costs. In no instance will operating reserves exceed 12 months of stabilized operating expenses plus debt service (exclusive of transferred replacement reserves for USDA or HUD financed rehabilitation transactions). Operating reserves are generally for the term of the permanent loan. In no instance will operating reserves released within five years be included as a cost.

(d) Special Reserve Account. If the funding program requires or allows for the establishment and maintenance of a Special Reserve Account for the purpose of assisting residents at the Development with expenses associated with their tenancy, this will be established in accordance with a written agreement with the Development Owner.

(1) The Special Reserve Account is funded through a one-time payment or annually through an agreed upon percentage of net cash flow generated by the Development, excess development funds at completion as determined by the Department, or as otherwise set forth in the written agreement. For the purpose of this account, net cash flow is defined as funds available from operations after all expenses and debt service required to be paid have been considered. This does not include a deduction for depreciation and amortization expense, deferred developer fee payment, except as allowed by §11.302(g)(4) of this title (relating to Underwriting Rules and Guidelines), or other payments made to Related Parties or Affiliates, except as allowed by the Department for property management. Proceeds from any refinancing or other fund raising from the Development will be considered net cash flow for purposes of funding the Special Reserve Account unless otherwise approved by the Department. The account will be structured to require Department concurrence for withdrawals.

(2) All disbursements from the account must be approved by the Department.

(3) The Development Owner will be responsible for setting up a separate and distinct account with a financial institution acceptable to the Department. A Special Reserve Account Agreement will be drafted by the Department and executed by the Department and the Development Owner.

(4) The Development Owner must make reasonable efforts to notify tenants of the existence of the Special Reserve Account and how to submit an application to access funds from the Special Reserve. Documentation of such efforts must be kept onsite and made available to the Department upon request.

(e) Other Reserve Accounts. At cost certification, reserves may not include capitalized asset management fees, guaranty reserves, tenant services reserves, working capital reserves, or other similar costs.

§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 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 and all lenders and the syndicator must submit written acknowledgement that they are aware of the changes being requested and confirm any changes in terms as a result of the new election; 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 the LURA. 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 determined 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; or

(F) 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 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. Development Owners will be required to submit a copy of the notification with the amendment request. 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.

(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 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 deadline or after the applicable deadline will not be processed unless accompanied by the applicable fee. Exten-

sion 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.

(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. 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.

(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 trans-

feree 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.

(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; 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).

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 February 7, 2024.

TRD-202400466
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: February 27, 2024
Proposal publication date: November 24, 2023
For further information, please call: (512) 475-3959

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SUBCHAPTER F. COMPLIANCE MONITORING

10 TAC §§10.602, 10.606, 10.621, 10.623, 10.625

The Texas Department of Housing and Community Affairs (the Department) adopts amendments to Chapter 10 Uniform Multifamily Rules, Subchapter F, Compliance Monitoring, §10.602 Notice to Owners and Corrective Action Periods; §10.606 Construction Inspections; §10.621 Property Condition Standards; §10.623 Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period; and the Figure in §10.625 Events of Noncompliance with changes to the text as published in the November 10, 2023, issue of the *Texas Register* (48 TexReg 6542). The rules will be republished. The amendments will delete references to an inspection protocol that is being sunset on September 30, 2024, and replace it with HUD's new inspection protocol, NSPIRE. Additionally, the amendments will clarify when corrective action deadlines may be superseded by federal requirements and adds clarification on the actions an Owner must take when they disagree with an NSPIRE inspection score.

FISCAL NOTE. Mr. Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the amendments to the rules are in effect, enforcing or administering the amendments do 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 adopted amendments would be in effect:

1. The adopted amendments to the rules will not create or eliminate a government program;

2. The adopted amendments to the rules will not require a change in the number of employees of the Department;

3. The adopted amendments to the rules will not require additional future legislative appropriations;

4. The adopted amendments to the rules will result in neither an increase nor a decrease in fees paid to the Department;

5. The adopted amendments to the rules will not create a new regulation;

6. The adopted amendments to the rules will not repeal an existing regulation;

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

8. The adopted amendments to the rules 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 adopted amendments to the rules are in effect, the public benefit anticipated as a result of the action will be the clarification of a required definition. There will not be any economic cost to any individuals required to comply with the adopted amendments.

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.

SUMMARY OF PUBLIC COMMENT. Public comment was accepted from November 10, 2023, through December 11, 2023. Comment was received from two commenters. Comments regarding the proposed amendments were accepted in writing and by e-mail with comments received from:

Sandy Hoy, Vice President & General Counsel, Texas Apartment Association

Sidney Beaty, Research Analyst, Texas Housers

Section §10.602

Comment Summary: No comments received

Section §10.606

Comment Summary: Commenter 2 suggested more specific standards in the Texas Administrative Code to help enforce rules at problem properties, such as requiring NSPIRE inspections under §10.606(b) during construction in cases where the owner has had previous issues with physical conditions at their properties.

Staff Response:

In response to Commenter 2, staff agrees that "problem properties" should have specific standards in the Texas Administrative Code, which the Department does have in 10 TAC Chapter 2, Subchapter A General, Subchapter C, Administrative Penalties, and Subchapter D Debarment. Chapter 2 is the enforcement mechanism that the Department relies on, up to debarment, for properties in poor physical conditions. Additionally, an NSPIRE physical inspection of the property (previously Uniform Physical Condition Standards) is generally conducted at the same time as Final Construction Inspection as outlined in §10.606(b). No change is recommended in response to this comment.

Section §10.621

Comment Summary: Commenter 1 is requesting additional details regarding inspection frequency, sample size and scoring. Commenter 1's questions on the new NSPIRE inspection protocol are:

Will TDHCA follow the same inspection protocol as HUD REAC in inspecting every one to three years based on how high the previous score is?

Will sample size and scoring calculations mirror HUD REAC or be calculated differently?

Will developments auto fail if 30 points or more are lost in a unit?

Will TDHCA provide a minimum 28-day notice of inspection to the Development?

Commenter 2 proposes that TDHCA conduct a follow up inspection when certain deficiencies are found and at properties with low inspections scores. Commenter 2 supports the addition of language added in §10.621(h)(5) that outlines owner responsibilities and removes the owner's ability to refute the severity of a defect in §10.621(i).

Staff Response:

Staff appreciates Commenter's 1 comments and questions regarding the new inspection protocol, NSPIRE. The Department physically inspects all Developments under its jurisdiction at least every three years in accordance with §10.618(b)(4) and has provisions in §10.618(b)(6) that notifies interested parties that the Department reserves the right to conduct additional and more frequent inspections when warranted. Program requirements such as Treasury Regulation 1.425-5 and the HOME Final Rule dictate sample sizes for inspection. Generally, a minimum of a 20% sample of the project and/or development is required, which differs from the U.S. Department of Housing and Urban Development (HUD) Real Estate Assessment Center (REAC) inspection protocol. However, the scoring under NSPIRE will be the same for the Department's Developments as used by HUD REAC. In accordance with NSPIRE final rule and scoring notice, 30 points or more are deducted in the unit portion of the inspection; and may result in a score adjustment to 59. This Unit Threshold of Performance applies to all of the inspected units in a property collectively. However, some deficiencies are "non-scoring" such as smoke detectors, CO2 detectors, handrails and multiple deficiencies for the same item within a unit are only counted once. Per Treasury Regulation 1.42-5 that was updated in February 2019, the Department may only provide a 15- day notice for any review or inspection, which was implemented into our monitoring procedures in 2019.

In response to Commenter 2, the Compliance Division does accelerate physical inspections of Developments that score poorly with a physical inspection in accordance with the provisions in §10.618(b)(6). Staff agrees this could be made clearer in the Compliance Monitoring Rules in Subchapter F, and will add proposed new language to §10.618 the next time the rules are brought out for public comment. Staff appreciates Commenter 2 support of the addition in §10.621(i). No changes are proposed in response to these comments.

Section §10.623

Comment Summary: Commenter 1 indicated that inspection frequency, areas to be inspected and sample size are only for Housing Tax Credit Properties After the Compliance Period. Commenter 1's additional questions on the NSPIRE protocol are:

Will TDHCA use a different scoring system than HUD since the sample size is not in line with HUD?

Will TDHCA follow the same process as HUD regarding the inspectable areas or will TDHCA follow the same process and continue to inspect all exterior buildings and building systems regardless if they are in the building that same units?

Commenter 2 suggests that properties with repeated low or failing inspection scores should be subject to more frequent inspections on a set schedule. Commenter 2 also suggest that TDHCA should require a set number or share of units be randomly selected for inspection to avoid properties guiding inspectors towards specific units and to ensure that tenants are provided advance notice inspection at the property and interior units.

Staff Response:

In response to Commenter 1, the Department will use the same scoring methodology as the U.S. Department of Housing and Urban Development (HUD) that is detailed in the NSPIRE Final Scoring Notice published on July 7, 2023. NSPIRE will retain a 0-100 score for properties inspected by the Department. The Compliance Division will continue to inspect all exterior buildings and building system regardless if a unit is inspected in the building as outlined in §10.618(b)(5). This aligns with the Department's mission of ensuring the health and safety of TDHCA's housing portfolio.

Staff agrees with Commenter 2, and properties with repeated low or failing inspection scores are inspected on an accelerated schedule. Properties that continue to score low are referred to the Department's Enforcement Division and recommended for penalties including up to Debarment. When conducting a monitoring and/or physical inspection, a random selection of units are only provided to property staff the day of the review and/or inspection. Advance notice of units selected is not provided, and units are not selected by property staff for review or inspection. When an inspector cannot gain access to a particular unit, an alternate unit is selected by the Department's physical inspection staff.

Comment Summary: No comments received

STATUTORY AUTHORITY. The adoption of this action is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the action affects no other code, article, or statute.

§10.602. Notice to Owners and Corrective Action Periods.

(a) The Department will provide written notice to the Owner if the Department does not receive the Annual Owner Compliance Report (AOCR) timely or if the Department discovers through monitoring, audit, inspection, review, or any other manner that the Development is not in compliance with the provisions of the LURA, deed restrictions, application for funding, conditions imposed by the Department, this subchapter, or other program rules and regulations, including but not limited to §42 of the Internal Revenue Code.

(b) For a violation other than a violation that poses an imminent hazard or threat to health and safety, the notice will specify a 30 day Corrective Action Period for noncompliance related to the AOCR, and a 90 day Corrective Action Period for other violations. During the Corrective Action Period, the Owner has the opportunity to show that either the Development was never in noncompliance or that the Event of Noncompliance has been corrected. Documentation of correction must be received during the Corrective Action Period for an event to be considered corrected during the Corrective Action Period. The Department may extend the Corrective Action Period for up to six months from the date of the notice to the Development Owner only if there is good cause for granting an extension and the Owner requests an extension during the original 90 day Corrective Action Period, and the request would not cause the Department or the Owner to miss a federal deadline. Requests for an extension may be submitted to: compliance.extensionrequest@tdhca.state.tx.us. If an Owner submits evidence of corrective action during the Corrective Action Period that addresses each finding, but does not fully address all findings, the Department will give the Owner written notice and an additional 10 calendar day period to submit evidence of full corrective action. References in

this subchapter to the Corrective Action Period include this additional 10 calendar day period.

(c) If any communication to the Owner under this section is returned to the Department as refused, unclaimed, or undeliverable, the Development may be considered not in compliance without further notice to the Owner. The Owner is responsible for providing the Department with current contact information, including address(es) (physical and electronic) and phone number(s). The Owner must also provide current contact information to the Department as required by §1.22 of this title (relating to Providing Contact Information to the Department), and ensure that such information is at all times current and correct.

(d) The Department will notify Owners of upcoming reviews and instances of noncompliance. The Department will rely solely on the information supplied by the Owner in the Department's web-based Compliance Monitoring and Tracking System (CMTS) to meet this requirement. It is the Owner's sole responsibility to ensure at all times that such information is current, accurate, and complete. Correspondence sent to the email or physical address shown in CMTS will be deemed delivered to the Owner. Correspondence from the Department may be directly uploaded to the property's CMTS account using the secure electronic document attachment system. Once uploaded, notification of the attachment will be sent electronically to the email address listed in CMTS. 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.

(e) Unless otherwise required by law or regulation, Events of Noncompliance will not be reported to the IRS, referred for enforcement action, considered as cause for possible debarment, or reported in an applicant's compliance history or Previous Participation Review, until after the end of the Corrective Action Period described in this section.

(f) Upon receipt of facially valid complaints the Department may contact the Owner and request submission of documents or written explanations to address the issues raised by the complainant. The deadline to respond to the issue will be specific to the matter. Whenever possible and not otherwise prohibited or limited by law, regulation, or court order, the complaint received by the Department will be provided along with the request for documents or Owner response.

(g) If another federal or state requirement applicable to funding or resources that the Department monitors stipulates that corrective action must be completed with less than a 90 day Corrective Action Period, the Department will inform the Owner in writing and enforce the applicable timeframe.

§10.606. Construction Inspections.

(a) Owners are required to submit evidence of final construction within 30 calendar days of completion in a format prescribed by the Department. Owners are encouraged to request a final construction inspection promptly to allow the Department to inspect Units prior to occupancy to avoid disruption of households in the event that corrective action is required. In addition, the Architect of Record must submit a certification that the Development was built in compliance with all applicable laws, and the Engineer of Record (if applicable) must submit a certification that the Development was built in compliance with the design requirements.

(b) During the inspection, the Department will confirm that committed amenities have been provided and will inspect for compliance with the applicable accessibility requirements. In addition, a National Standards for the Physical Inspection of Real Estate may be completed.

(c) IRS Form(s) 8609 will not be released until the Owner receives written notice from the Department that all noted deficiencies have been resolved.

§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).

§10.623. Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period.

(a) HTC properties allocated credit in 1990 and after are required under §42(h)(6) of the Code to record a LURA restricting the Development for at least 30 years. Various sections of the Code specify monitoring rules State Housing Finance Agencies must implement during the Compliance Period.

(b) After the Compliance Period, the Department will continue to monitor HTC Developments using the criteria detailed in paragraphs (1) - (14) of this subsection:

(1) The frequency and depth of monitoring household income, rents, social services and other requirements of the LURA will be determined based on risk. Factors will include changes in ownership or management, compliance history, timeliness of reports and timeliness of responses to Department requests;

(2) At least once every three years the property will be physically inspected including the exterior of the Development, all building systems and 10% of Low-Income Units. No less than five but no more than 35 of the Development's HTC Low-Income Units will be physically inspected to determine compliance with HUD's National Standards for the Physical Inspection of Real Estate;

(3) Each Development shall submit an annual report in the format prescribed by the Department;

(4) Reports to the Department must be submitted electronically as required in §10.607 of this subchapter (relating to Reporting Requirements);

(5) Compliance monitoring fees will continue to be submitted to the Department annually in the amount stated in the LURA;

(6) All HTC households must be income qualified upon initial occupancy of any Low Income Unit. Proper verifications of income are required, and the Department's Income Certification form must be completed unless the Development participates in the Rural Rental Housing Program or a project-based HUD program, in which case the other program's certification form will be accepted;

(7) Rents will remain restricted for all HTC Low-Income Units. After the Compliance Period, utilities paid to the Owner are accounted for in the utility allowance. TCAP, Exchange, Bond, and THTF Developments layered with Housing Tax Credits no longer within the Compliance Period also include utilities paid to the Owner as part of the utility allowance. The tenant paid portion of the rent plus the applicable utility allowance must not exceed the applicable limit. Any excess rent collected must be refunded;

(8) All additional income and rent restrictions defined in the LURA remain in effect;

(9) For Additional Use Restrictions, defined in the LURA (such as supportive services, nonprofit participation, elderly, etc.), refer to the Development's LURA to determine if compliance is required after the completion of the Compliance Period or if the Compliance Period was specifically extended beyond 15 years;

(10) The Owner shall not terminate the lease or evict low-income residents for other than good cause;

(11) The total number of required HTC Low-Income Units can be maintained Development wide;

(12) Owners may not charge fees for amenities that were included in the Development's Eligible Basis;

(13) Once a calendar year, Owners must continue to collect and maintain current data on each household that includes the number of household members, age, ethnicity, race, disability status student status and rental assistance (if any). This information can be collected on the Department's Annual Eligibility Certification form or the Income Certification form or HUD Income Certification form or USDA Income Certification form; and

(14) Employee occupied units will be treated in the manner prescribed in §10.622(h) of this chapter (relating to Special Rules Regarding Rents and Rent Limit Violations).

(c) After the first 15 years of the Extended Use Period, certain requirements will not be monitored as detailed in paragraphs (1) - (4) of this subsection.

(1) The student restrictions found in §42(i)(3)(D) of the Code. An income qualified household consisting entirely of full time students may occupy a Low-Income Unit. If a Development markets to students or leases more than 15% of the total number of units to student households, the property will be found in noncompliance unless the LURA is amended through the Material Amendments procedures found in §10.405 of this chapter (relating to Amendments);

(2) All households, regardless of income level or 8609 elections, will be allowed to transfer between buildings within the Development;

(3) The Department will not monitor the Development's application fee after the Compliance Period is over; and

(4) Mixed income Developments are not required to conduct annual income recertifications. However, Owners must continue to collect and report data in accordance with subsection (b)(13) of this section.

(d) While the requirements of the LURA may provide additional requirements, right and remedies to the Department or the tenants, the Department will monitor post year 15 in accordance with this section as amended.

(e) Unless specifically noted in this section, all requirements of this chapter, the LURA and §42 of the Code remain in effect for the Extended Use Period. These Post-Year 15 Monitoring Rules apply only to the HTC Developments administered by the Department. Participation in other programs administered by the Department may require additional monitoring to ensure compliance with the requirements of those programs.

§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 if the issue is reportable on IRS Form 8823 for HTC Developments.

Figure: 10 TAC §10.625

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 February 6, 2024.

TRD-202400455
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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Proposal publication date: November 10, 2023
For further information, please call: (512) 475-3959

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SUBCHAPTER H. INCOME AND RENT LIMITS

10 TAC §10.1005

The Texas Department of Housing and Community Affairs (the Department) adopts amendments to 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter H, Income and Rent Limits, §10.1005 without changes to the text as published in the November 10, 2023, issue of the *Texas Register* (48 TexReg 6545). The rule will not be republished. The purpose of the rule amendments is to align definitions and requirements of HOME-Match units among the Compliance Monitoring and Asset Management rules, which are both under the umbrella of Chapter 10 Uniform Multifamily Rules.

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 adopted amendment would be in effect:

1. The adopted amendment to the rule will not create or eliminate a government program;

2. The adopted amendment to the rule will not require a change in the number of employees of the Department;

3. The adopted amendment to the rule will not require additional future legislative appropriations;

4. The adopted amendment to the rule will result in neither an increase nor a decrease in fees paid to the Department;

5. The adopted amendment to the rule will not create a new regulation;

6. The adopted amendment to the rule will not repeal an existing regulation;

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

8. The adopted 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 adopted amendment to the rule is in effect, the public benefit anticipated as a result of the action will be the inclusion of the HOME-Match to codify existing LURAs and align rules among the Division.

There will not be any economic cost to any individuals required to comply with the adopted 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.

SUMMARY OF PUBLIC COMMENT. Public comment was accepted from November 10, 2023 through December 11, 2023. No comment was received.

STATUTORY AUTHORITY. The adoption of this action is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the action 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 February 6, 2024.

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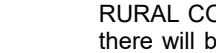

SUBCHAPTER I. PUBLIC FACILITY CORPORATION COMPLIANCE MONITORING

10 TAC §§10.1101 - 10.1107

The Texas Department of Housing and Community Affairs (the Department) presents the adoption of new 10 TAC Subchapter I, §§10.1101 - 10.1107, Public Facility Corporation Compliance Monitoring with changes to all sections as published in the November 10, 2023, issue of the *Texas Register* (48 TexReg 6546). The rules will be republished. The purpose of the adopted new rules is to provide compliance with recent statutory requirements, and as authorized by Tex. Gov't Code §2306.053. The new rules provide guidance on auditing and reporting requirements for Public Facility Corporation multifamily residential developments that are required to be audited no later than June 1, 2024, and the results reviewed and published by the Department.

FISCAL NOTE. Mr. Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the new rules are in effect, enforcing or administering the rule 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 adopted rules would be in effect:

1. The adopted new rules will not create or eliminate a government program;

2. The adopted new rules will change in the number of employees of the Department the enactment of House Bill 2071 (88th Regular Legislature, was appropriated one full time employee for fiscal year 2024 and two full time employees for fiscal year 2025);

3. The adopted new rules will not require additional future legislative appropriations;

4. The adopted new rules will result in neither an increase nor a decrease in fees paid to the Department;

5. The adopted new rules will create a new regulation, which is created as a result of the approved HB 2071.

6. The adopted new rules will not repeal an existing regulation;

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

8. The adopted new rules 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 adopted new rules are in effect, the public benefit anticipated as a result of the new rules will provide a new procedure of monitoring Public Facilities Corporations multifamily residential developments that are generally exempt from ad valorem taxation. There will not be any economic cost to any individuals required to comply with the adopted new rules because there are no fees collected by the Department to perform compliance monitoring on Public Facilities Corporation multifamily residential developments.

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 because the rules apply to Public Facilities Corporation multifamily residential development approved on or after June 18, 2023.

SUMMARY OF PUBLIC COMMENT. Public comment was accepted from November 10, 2023 through December 11, 2023. Comment was received from 10 commenters. Comments regarding the proposed new rules were accepted in writing by mail and e-mail with comments received from:

1. Lora Myrick, President, BETCO Housing Lab

2. Roger Arriaga, TAAHP Executive Director

3. Patricia Murphy, Patricia Murphy Consulting

4. Dawn Brown, Compliance Director, The NRP Group

5. Stephen Toyra, Senior Project Finance Manager-Acquisitions, Fairfield

6. Tamea A. Dula, Counsel, Coats Rose

7. Sandy Hoy, Vice President and General Counsel, Texas Apartment Association

8. Daniel L. Smith, Managing Director, Ojala Partners

9. Ben Martin, Research Director, Texas Housers

10. Cynthia Bast, Chair, Affordable Housing and Community Development Section, Locke Lord LLP

Rule Section §10.1101 Purpose

Comment Summary:

Commenters 2, 6, and 8 propose that the term "Public Facility User" be clearly delegated as a Responsible Party and defined in Section 303.0425(a)(5).

Commenter 6 proposes the reference to Operator be changed to Public Facility User.

Commenter 7 proposes the removal of tenant protections and affirmative marketing requirements from the purpose. The Commenter stated that the tenant protections and affirmative marketing requirements are outlined in leases, statute, and fair housing laws.

Commenter 10 proposes changes to the numbering and use of defined terms for consistency with other sections of the rule.

Staff Response:

Staff agrees with Commenters 2, 6, and 8. Staff has accepted Commenter 10's grammatical adjustment for §10.1101(b), which has been amended to §10.1101(2), and states "Responsible Parties and persons" which is defined in §10.1102.

Staff agrees with Commenter 6. Staff recognizes that the rule used the term Operator in place of Public Facility User. Staff has added the term Public Facility User to the following statement: "for purposes of all provisions within this rule, the terms "Public Facility User" and "Operator" shall have the same meaning and shall be interchangeable".

Staff disagrees with Commenter 7. Section 303.0426(b)(1) requires the Department to determine whether the Public Facility User complies with Sections 303.0421 and 303.0425. Section 303.0425 outlines specific requirements for tenant protections and affirmative marketing.

Staff agrees with Commenter 10 about renumbering and revisions of defined terms.

Rule Section §10.1102 Definitions

Comment Summary:

Commenters 2 and 8 submitted an edited version of the rule proposing additional language to the Audit Report, Auditor, Regulatory Agreement, and Responsible Parties definitions.

Commenter 6 proposes the addition of the definition of Public Facility User from Section 303.0425.

Commenter 7 proposes the removal of the word "approved" from "approved third party auditor" to eliminate confusion on how an auditor is to obtain approval from the Department.

Commenter 8 proposes clarification on the term Auditor as either an individual, a company, or a firm.

Commenter 9 proposes changing the "or" to an "and" as some developments may have multiple regulatory agreements in place.

Commenter 10 proposes several grammatical corrections, the deletion of the reference to Chapter 392 of the Texas Local Government Code, Business Day, Business Hours, and Director. Commenter 10 proposes the addition of the terms Operator, Chief Appraiser, HUD, and Restricted Unit. Commenter 10 suggested a revision to the definition of Regulatory Agreement to align with the Departments definition in the Qualified Allocation Plan.

Staff Response:

Staff agrees with the additional language proposed by Commenters 2 and 8. Per the suggestion of Commenter 6, staff added the term "Public Facility User". Staff has added to the term Public Facility User the following statement "for purposes of all provisions within this rule, the terms "Public Facility User" and "Operator" shall have the same meaning and shall be interchangeable." Therefore, Staff did not incorporate Commenter 2's suggestion to add Public Facility User to the Responsible Parties definitions as the rule already uses "Operator."

Staff agrees with Commenter 6 and the addition of the definition of Public Facility User from Section 303.0425.

Staff agrees with Commenter 7 and the removal of the word "approved" from "approved third party auditor."

Staff agrees with Commenter 8 and the clarification of the term Auditor. Staff has incorporated Commenter 2's suggestion to use "an individual who is an independent auditor."

Staff agrees with Commenter 9. Staff has removed "or" and added "and."

Staff agrees with Commenter 10's grammatical corrections, deletions and additions with the exceptions of the term Operator. Per the suggestion of Commenter 6, staff added the term "Public Facility User" which should be defined to remain consistent with Section 303.0425. Staff recognizes the use of the undefined term Operator throughout the rule. Staff has added to the term Public Facility User the following statement "for purposes of all provisions within this rule, the terms "Public Facility User" and "Operator" shall have the same meaning and shall be interchangeable". Staff disagrees with Commenter 10's suggestion to use the definition of Regulatory Agreement from the Qualified Allocation Plan.

Rule Section §10.1103 Reporting Requirements

Comment Summary:

Commenter 1 proposes a revision of the language in §10.1103(5) as the Department does not have the authority to remove the tax exemption from a development. This power resides with the appraisal district.

Commenters 2 and 8 propose a revision to §10.1103 to only apply reporting requirements to developments that were approved by the applicable Public Facility Corporation or Sponsor of a Public Facility Corporation on or after June 18, 2023, to avoid confusion with existing Public Facility Corporation Developments. Commenters 2 and 8 propose revisions explicitly spelling out the steps and timelines associated with correcting any instances of noncompliance. Commenters 2 and 8 propose the Department clarify whether the term Auditor refers to an individual, company or firm. Commenters 2 and 8 propose a revisions throughout §10.1103 to remove PFC and use Public Facility User, and to add or remove "Auditor" where needed.

Commenter 3 proposes the addition that all affordable properties receiving an ad valorem tax exemption under Texas Local Government Code Chapter 303, regardless of when approved or acquired by the PFC, must comply with the Audit and Monitoring provisions.

Commenter 4 proposes a 90-day corrective action period to align with other Department issued programs, a revision to ensure that noncompliance be reported to all Responsible Parties, and clarification that the tax authority determines the loss of tax exemption.

Commenter 5 proposes the removal of the prohibition to use the same auditor more than three years in a row, that the Audit Reports due date be pushed back to July 1, and that a 90-120 day corrective action period be given.

Commenter 6 proposes removing "PFC" throughout the proposed rule and replacing it with "Public Facility User", and that the Public Facility Users are included on all notifications.

Commenter 7 requests clarification and possible revision on whether all noncompliance is to be reported to the Department, clarification on the use of an HCCP designation as a COS equivalent designation, and on what specific forms and supporting documents will be required to be submitted with the Audit Report, with a concern for confidential identification information sharing. Commenter 7 proposes changing "the loss of tax exemption" to "the recommendation of loss of tax exemption."

Commenter 9 recommends changing the phrase in the introduction or a clarification for "where final financing was approved". Commenter 9 requests TDHCA assemble and release to the public a preliminary summary of PFC developments that are operating under the post June 18, 2023 requirements, requests that the rule clarify what will be in the summary of the Audit Report and that the summary include the following: Rent Schedules, dollar amount of property tax savings and underlying data, additional reductions in rent to meet the 60% requirement, number of tenants using vouchers, Census Track GeoID/FIPS and property geographic coordinates, construction type and PFC information. Commenter 9 also requests ; the Department make all reporting "machine processable" meaning that the data is reasonably structured to allow automated processing and, that the rule makes public the PFC Regulatory Agreement in the same data sharing practices and "machine processable" format.

Commenter 10 requests the addition of "Corrective Action" to the title of §10.1103 and clarification on what the Department will post to their website the word summary as Texas Local Government Code, Chapter 303 requires a posting of the Department's summary not the actual Audit Report. Commenter 10 also requests the addition of what will be included by statute in the notification of noncompliance, and additional language that how the Department will respond after receipt of corrective action. Commenter 10 proposes a revision to the opening statement of §10.1103 to better align with the PFC reporting requirements outlined in Government Code 303, as well as several grammatical and formatting adjustments.

Staff Response:

Staff agrees with Commenter 1 with one exception, the commenter used the word "Development" and staff believes it should be the "Department."

Staff agrees with Commenters 2 and 8 that as written §10.1103 does not fully capture the complexities of grandfathering under HB 2071. Staff agrees with Commenters 2 and 8 that §10.1103 should explicitly spell out the steps to be taken and timelines associated with correcting noncompliance. Staff agrees with the revisions of Commenters 2 and 8 throughout §10.1103 to remove "PFC" and use "Public Facility User", and to add or remove "Auditor" where needed.

Staff disagrees with Commenter 3. Staff has received additional comments on this section that align with HB 2071 from the 88th Texas Legislative Session requirements and has incorporated those comments.

Staff agrees with Commenter 4, that noncompliance be reported to all Responsible Parties, and that the tax authority determine the loss of tax exemption. Staff cannot increase the corrective action period to 90 days as requested by Commenter 4. The Texas Local Government Code, Chapter 303 defines the corrective action period as a 60-day period.

Staff is unable to make the suggested proposals from Commenter 5. The requirement to not engage the same Auditor for more than three consecutive years, the due date of the Audit Reports, and the 60-day corrective action period are explicit requirements outlined in Texas Local Government Code, Chapter 303.

Staff agrees with Commenter 6's revisions throughout §10.1103 to remove "PFC" and use "Public Facility User" and to add the Public Facility User notification.

Staff agrees with Commenter 7 that the proposed rule did not reflect reportable noncompliance, and that the Department must recommend and not impose the loss of tax-exempt status. Commenter 7 inquired about the use of a Housing Credit Certified Professional (HCCP) designation as an equivalent to the Certified Occupancy Specialist (COS) designation. The HCCP designation based on the Housing Tax Credit program, the Department is looking for designations that include knowledge of the Housing and Urban Development (HUD) 4350.3 eligibility requirements, such as the Certified Professional of Occupancy (CPO) and Certified Occupancy Specialist (COS). Commenter 7 also inquired about the submission of Audit Reports, supporting documentation and required forms to the Department and the concern of confidential identification information. The Department will not be requesting the submission of Personal Identifiable Information (PII). The Department is currently in the process of creating the forms and tools.

Staff agrees with Commenter 9 that as written §10.1103 does not fully capture the complexities of grandfathering under HB 2071. Staff is unable to assemble and release a preliminary summary on PFC developments operating under the post June 18, 2023 requirements, as this requirement is not enforceable under Texas Local Government Code, Chapter 303. Staff appreciates the detail of Commenter 9 request for information to be included in the summary report. Staff will consider these suggestions when creating audit formats and tools. Staff does not agree outlining all the summary requirements in the rule are necessary to establish compliance with Texas Local Government Code, Chapter 303. In addition, staff appreciates the request to make the data from the Audit Report, summary and Regulatory Agreement "machine processable."Staff is required to follow all internal policies and procedures for web updates.

Staff agrees with Commenter 10. Staff has made the addition of "Corrective Action" to the title of §10.1103 has clarified that Texas Local Government Code, Chapter 303 requires a posting of TDHCA's summary not the actual Audit Report, and has added what will be included by statute in the notification of noncompliance. Staff did not accept the additional language that outlines what action will occur by the Department after receipt of corrective action, but the edits from other commenters align with the intent of Commenter 10. Staff also did not accept the addition of "Chief Appraiser" to the requirement to submit the Audit Report submission requirements. Staff agrees that statute requires the submission of the Audit Report to both the Department and the Chief Appraiser; however, the Department by statue is not required to ensure compliance with the submission to the Chief Appraiser. Staff agrees with the proposed revision to the opening

statement of §10.1103 to better align with the PFC reporting requirements outlined in Texas Local Government Code, Chapter 303, and several of the grammatical and formatting adjustments.

Rule Section §10.1104 Audit Requirements

Comment Summary:

Commenters 2 and 8 propose clarification of the rent restrictions and recommend the standard of one person per bedroom plus one person, which is used in several non-LIHTC financed HUD programs. Commenters 2 and 8 proposes that the Department or Auditor should not be obligated to review or consider additional rent or occupancy restrictions beyond the requirements of Sections 303.0421 and 303.0425. Commenters 2 and 8 propose that the rule accurately reflect Texas Local Government Code, Chapter 303 annual income recertification requirements at the time of renewal of a lease agreement. Commenters 2 and 8 states that there is no requirement that the total savings for rent-restricted households be equal to at least 60% of the estimated property taxes and the proposed rules incorrectly reference a one-time upfront report required for acquisitions of occupied multifamily developments. Section 303.0426 simply requires the audit report identify the rent savings, but does not impose any threshold. Commenters 2 and 8 submitted an edited version of the rule that includes grammatical corrections, the correct use of Public Facility User, edits to rent restrictions to include the rent allowance outlined in Section 303.0425(f), and annual income recertification requirements.

Commenter 4 inquired what the Department Approved Income Certification form would look like. Commenter 4 proposes the removal of "Audit report to calculate annual savings to households living in the rent-restricted units. The total savings for rent-restricted households must be not less than sixty percent of the estimated amount of the annual ad-valorem taxes that would be imposed on the development without exemption."

Commenter 5 is requesting HB 2071 be revised to mirror the Low Income Housing Tax Credit (LIHTC) program on recertifications and the Available Unit Rule.

Commenter 6 proposes the addition of the words "when possible" to the end of "Original records must be made available to the Auditor", a revision to add "original term" to the 10 year Regulatory Agreement, a revision to the set aside requirements to read "at least", and that the Audit Report requirements correctly reflect the intent of Section 303.0421(d).

Commenter 7 proposes removal of how restricted units be dispersed. Commenter 7 recommends the Department allow the use of equivalent forms vs approved forms from the Department. Commenter 7 inquired if the Department would be providing a tool to help calculate the rent savings requirement. Commenter 7 proposes language be revised to "if a family's share of the rent is $50 or less, Owners may require a minimum annual income of $2,500."

Commenter 9 proposes clarification in the rule on when an auditor should review all files at the Development and when a review only encompasses the sample size, the requirement to disperse units and on the definition of rents. Commenter 9 requests the addition of mandatory fees in the calculation of gross rents, that the phrase "below sixty percent (60%) Area Median Income (AMI)" include "adjusted for family size," and to include affirmative marketing requirements as outlined in §10.801. Commenter 9 strongly supports the current version of the 60% benefit test. Commenter 9 also identified a typo for correction.

Commenter 10 provided an edited version of the rule, which includes several grammatical and formatting corrections to §10.1104. Commenter 10 thinks the language that outlines sample size is unclear regarding what percentage of recertifications the Department intended the auditor to review. Commenter 10 proposes changes to §10.1104 rent and income requirements, as the proposed rule did not include the acquisition income requirements. Commenter 10 inquired if 10TAC §10.801 should be applied to the affirmative marketing requirements. Commenter 10 proposes a modification to the requirement for the PFC to list all of the properties on the website, as statute only requires it list the properties that fall under Texas Local Government Code, Chapter 303.

Staff Response:

Staff agrees with Commenters 2 and 8 concerning the rent restrictions, the removal of the requirement to audit for additional rent and occupancy, recertification at the time of lease renewal, and the correct use of Public Facility User. Staff also agrees that the purposed rule incorrectly referenced one-time upfront report required for acquisitions of occupied multifamily developments and has updated the language to match the statute. Staff did not accept the following edits from Commenters 2 and 8:

"Restricted units are required to recertify at the time of the renewal of a lease agreement, but in no case longer than eighteen months." Texas Local Government Code, Chapter 303, does not allow for the eighteen-month provision.

"Households that exceed the income during an income recertification should follow the Available Unit Rule as outlined in Section 42(g)(2)(D) of the Internal Revenue Code" Texas Local Government Code, Chapter 303 requires the Developments follow Internal Revenue Code Section 42(g)(2)(D). Internal Revenue Code states annual income recertification.

Staff agrees with Commenter 4. Staff has removed incorrectly referenced one-time upfront report required for acquisitions of occupied multifamily developments. In response to the inquiry of Commenter 4, The Department is currently in the process of creating the forms and tools.

Staff is unable to revise HB 2071 per the request of Commenter 5, as this would be a legislative function. However, Texas Local Government Code Chapter 303 currently does require the use of the Available Unit Rule as outlined in Internal Revenue Code Section 42(g)(2)(D) for Public Facility Corporations.

Staff agrees with Commenter 6 that the set-aside requirements should read "at least" and agrees with the spirit of the Regulatory Agreement revision, although staff used the word "initial" vs "original." Staff disagrees with Commenter 6's request to add "when possible". It should be possible that original records be available at all times. Staff agrees with Commenter 6 that §10.1104(b)(8) as written did not correctly reflect Section 303.0421(d) and has revised to match statute.

Staff is unable to remove the requirement for how units are dispersed, or to modify the minimum income standard requirements, requested by Commenter 7, as both of these are explicitly required in Texas Local Government Code, Chapter 303. However, staff has revised the language of the unit disbursement requirement to more closely define the language in Texas Local Government Code,

Chapter 303. Commenter 7 recommended the use of equivalent forms. To establish consistency in reporting and auditing requirements the Department will require the use of any Depart-

ment issued forms and tools. Staff has considered Commenter 7's request; however, staff feels that the Auditor should determine the annual savings and not the Department.

Staff agrees with Commenter 9 on the need to clarify throughout §10.1104 if the auditor should be reviewing the sample units or the development as a whole, how units are dispersed, and how rent limits are established. Staff agrees that a mandatory fee should be included in the gross rent calculation; however, we are unable to include this as a requirement in our rules as Texas Local Government Code, Chapter 303 does not require the use of a mandatory fee in the calculation of rent. Staff appreciates the strong support for the current version of §10.1104(b)(8), however it was brought to the attention of staff during public comment that there is no requirement that the total savings for rent-restricted households should be equal to at least 60% of the estimated property taxes. Section 303.0426(b)(2) simply requires the audit report to identify the rent savings, but it does not impose any threshold. The proposed rule incorrectly referenced a one-time upfront report required for acquisitions of occupied multifamily developments outlined in Section 303.0421(b)(6)(A)(i). Staff disagrees with Commenter 9 on the affirmative marketing requirements. Texas Local Government Code, Chapter 303 outlines the affirmative marketing requirements for Public Facility Corporations, and these requirements do not include compliance with §10.801. Staff appreciates Commenter 9 and the identification of the typo and has corrected this error.

Staff agrees with Commenter 10 that the sample size language was vague. Staff agrees with Commenter 10 that the acquisition income requirements were absent from the proposed rule. Staff agrees that statute does not require the PFC to list all properties. In response to Commenter 10's inquiry about affirmative marketing standards, Texas Local Government Code, Chapter 303 outlines the affirmative marketing requirements for Public Facility Corporations, and these requirements do not include compliance with §10.801. Staff has accepted several of the grammatical corrections and format changes proposed by Commenter 10.

Rule Section §10.1105 Income and Rent Requirements

Comment Summary:

Commenters 2 and 8 submitted an edited version of the rule with the following revisions: "Income and rent limits will be derived from data released by federal agencies including HUD with an imputed family size adjustment of one person per bedroom plus one person."

Commenter 3 proposes the use of the Multifamily Tax Subsidy Project Income Limits and monthly rent calculations as established in §42(g)(2)(C).

Commenter 4 proposes that residents residing in the income qualified units do not have to follow asset verifications or inclusions in the eligibility process.

Commenter 10 proposes the removal of "other federal agencies" from the income and rent limit data requirement, and of the last sentence in §10.1105(c): "In the absence of specified income and or rent limits in a Regulatory Agreement, the Development must rely on a method approved by the Department in writing." Commenter 10 included grammatical corrections. Commenter 10 also inquired if the owner is allowed to use any HUD established rents or if the rules in 10 TAC Subchapter H would apply.

Staff Response:

Staff has accepted Commenters 2 and 8 removal of "federal agencies including." Staff did not accept the addition of "with an imputed family size adjustment of one person per bedroom plus one person." While staff agrees this is the correct rent restriction requirement, this is not the requirement for income and these specific rent requirements are outlined in §10.1104.

Staff disagrees with Commenter 3. Texas Local Government Code, Chapter 303 does not specify the use of Multifamily Tax Subsidy Project Income Limits or the rent limits established by §42(g)(2)(C).

Staff disagrees with Commenter 4, Per Texas Local Government Code, Chapter 303 the use of 24 CFR §5.609 is the definition of annual income and it includes assets.

Staff agrees with Commenter 10's removal of "other federal agencies" from the income and rent limit data requirement, and the last sentence in §10.1105(c) "In the absence of specified income and or rent limit in a Regulatory Agreement, the Development must rely on a method approved by the Department in writing. Staff has accepted Commenter 10's grammatical corrections. In response to Commenter 10 inquiry about if 10 TAC Subchapter H would apply, Texas Local Government Code, 303 does not mention the use of the Department's Income and Rent rule, and the Department will not be applicable to this PFC monitoring rule.

Rule Section §10.1106 Penalties

Comment Summary:

Commenters 2, 7, and 8 submitted an edited version of the rule that includes the following statement in §10.1106: "for the tax year in which a multifamily residential development that is owned by a Public Facility Corporation is determined by the Department based on an Audit to not be in compliance with the requirements of Sections 303.0421 or 303.0425."

Commenter 9 and Commenter 10 are requesting the addition of the county appraisal district that contains the Development.

Commenter 10 proposes some grammatical corrections and the addition of "continuing after all available notice and corrective action periods" and "Chief Appraiser"

Staff Response:

Staff agrees with Commenters 2, 7, and 8. Staff has included the suggested statement.

Staff agrees with Commenters 9 and 10 on the addition of the county appraisal district to §10.1106.

Staff agrees with Commenter 10's grammatical corrections and addition of "continuing after all available notice and corrective action periods," and "Chief Appraiser."

Rule Section §10.1107 Options for Review

Comment Summary:

Commenters 2 and 8 submitted an edited version of the rule with some grammatical corrections to §10.1107 including the correct use of Public Facility User.

Commenter 4 submitted an inquiry into the audit process.

Commenter 7 submitted an inquiry about the appeals and options for review. In addition, Commenter 7 submitted edits to the rule that would require the PFC to appeal to the Department and not the Auditor.

Commenter 10 proposes that the Department cannot not dictate an appeals process with a third party auditor. In addition, Commenter 10 added several grammatical corrections.

Staff Response:

Staff agrees with Commenters 2 and 8 grammatical corrections, and the correct use of Public Facility User.

Staff agrees with Commenter 4 that the proposed rule did not fully capture the steps and the timelines associated with correcting any instance of noncompliance. Staff has incorporated several of the other commenters' suggestion to capture all the steps and timelines.

Staff agrees with Commenter 7, and the options for review have been revised to include a clear path for a Public Facility User to engage with the Department concerning the Audit Report.

Staff agrees with Commenter 10. Staff has made the revision and grammatical corrections.

Additional Comment and Question

Comment Summary:

Commenter 5 is concerned that additional staff positions will be need to be provided given the potential number of Public Facility Corporation properties in the state that are subject to reporting requirements and the short cure periods associated with noncompliance.

Staff Response:

Staff agrees with Commenter 5, the Department was appropriated one full time employee for fiscal year 2024, and an additional two full time employees for fiscal year 2025 for the monitoring oversight of Public Facility Corporations.

STATUTORY AUTHORITY. The adoption of this action is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the action affects no other code, article, or statute.

§10.1101. Purpose.

The purpose of Chapter 10, Subchapter I is to:

(1) Establish rules governing Developments owned or sponsored by a Public Facility Corporation (PFC) that are subject to Sections 303.0421 and 303.0425 of the Texas Local Government Code.

(2) Enable the Department to communicate with Responsible Parties and persons with an interest in the Development, regarding the results of the Audit Report.

(3) Establish qualifications for Auditors and reporting standards and formats.

(4) Implement compliance requirements, tenant protections, and affirmative marketing requirements, as required by Sections 303.0421 and 303.0425 of the Texas Local Government Code.

§10.1102. Definitions.

The capitalized terms or phrases used herein are defined in the title. Any other capitalized terms in the subchapter shall have the meaning defined in Chapter 2306 of the Texas Government Code, Chapter 303, Texas Local Government Code, , and other state or Department rules, as applicable. Defined terms, when not capitalized, are to be read in context and construed according to common usage.

(1) Audit Report--A report completed by an Auditor or compliance expert, in a manner and format prescribed by the Department.

(2) Auditor--An individual who is an independent auditor or compliance expert with an established history of providing similar audits on housing compliance matters, meeting the criteria established herein.

(3) Board--The governing board of the Texas Department of Housing and Community Affairs.

(4) Chief Appraiser--The chief appraiser of the appraisal district in which a Development is located.

(5) Department--The Texas Department of Housing and Community Affairs.

(6) Development--A multifamily residential development owned by a Public Facility Corporation and operated by an Operator.

(7) Housing Choice Voucher Program--The housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. Section 1437(f).

(8) HUD--The United States Department of Housing and Urban Development.

(9) Public Facility Corporation (PFC)--A nonprofit corporation that can be created by a municipality, county, school district, housing authority or a Sponsor, as outlined in Chapter 303 of the Texas Local Government Code.

(10) Public Facility User--a public-private partnership entity or a developer or other private entity that has an ownership interest or a leasehold or other possessory interest in a public facility that is a multifamily residential development. For purposes of all provisions within this rule, the terms "Public Facility User" and "Operator" shall have the same meaning and shall be interchangeable.

(11) Regulatory Agreement--A Land Use Restriction Agreement (LURA), Ground Lease, Deed Restriction, and any similar restrictive instrument that is recorded in the real property records of the county in which the Development is located.

(12) Responsible Parties--The Texas Comptroller of Public Accounts, and with respect to a Development, the applicable Operator, the PFC, the governing body of the PFC's Sponsor, and, if the PFC's Sponsor is a housing authority, the elected officials responsible for appointing the housing authority's governing board.

(13) Restricted Unit--A residential unit in a Development that is reserved for or occupied by a household meeting certain income limitations established in the Regulatory Agreement, with rent for such unit restricted as set forth in these rules. Restricted Units may float in a Development and need not be permanently fixed.

(14) Sponsor--A municipality, county, school district, housing authority, or special district that causes a corporation to be created to act in accordance with Chapter 303, Texas Local Government Code.

(15) Unit Type--Means the type of unit determined by the number of bedrooms.

§10.1103. Reporting Requirements.

The following reporting requirements apply to Developments owned by a Public Facility Corporation (PFC), subject to Sections 303.0421 and 303.0425 of the Texas Local Government Code, and not eligible to be grandfathered under previous law pursuant to the criteria established by House Bill 2071, 88th Texas Legislative Session, effective June 18, 2023.

(1) No later than June 1 of each year, the Public Facility User will submit to the Department an Audit Report from an Auditor, obtained at the expense of the Public Facility User. Concurrently with submission of the Audit Report, the Operator will complete the contact information form available on the Department's website.

(2) The first Audit Report must include a copy of the Regulatory Agreement. The first Audit Report for a Development must be submitted no later than June 1 of the year following the first anniversary of:

(A) The date of the PFC acquisition for an occupied Development; or

(B) The date a newly constructed PFC Development first becomes occupied by one or more tenants.

(3) No later than 60 days after the receipt of the Audit Report, the Department will post a summary of the Audit Report on its website. A copy of the summary will also be provided to the Development and all Responsible Parties. The summary must describe in detail the nature of any noncompliance.

(4) If any noncompliance with Sections 303.0421 and 303.0425 are identified by the Auditor, no later than 45 days after receipt of the Audit Report the Department will notify the Public Facility User. The notification must include a detailed description of the noncompliance and at least one option for corrective action to resolve the noncompliance. The Public Facility User will be given 60 days to correct the noncompliance. At the end of the 60 days, the Department will post a final report on its website.

(5) If all noncompliance is not corrected within the 60 days, the Department will notify the Public Facility User, appropriate appraisal district, and the Texas Comptroller. The Department will also recommend a loss of tax-exempt status.

(6) The qualification of the Auditor must be submitted with each Audit Report. Qualifications must include experience auditing housing compliance, a current Certified Occupancy Specialist (COS) certification or an equivalent certification, and resume. The Auditor may not be affiliated with or related to any Responsible Parties. Additionally, a current or previous Management Agent that has or had oversight of the Development or is/was responsible for reviewing and approving tenant files does not qualify as an Auditor under these rules.

(7) The Public Facility User may not engage the same individual as Auditor for a particular Development for more than three consecutive years. After the third consecutive Audit Report by the same Auditor, the Public Facility User must engage a new Auditor for at least two reporting years before re-engaging with a prior Auditor.

(8) Audit Reports and supporting documentation and required forms must be submitted to the following email address: pfc.monitoring@tdhca.state.tx.us.

§10.1104. Audit Requirements.

(a) The Auditor must use the Department's Public Facility Corporation monitoring forms made available on the website. The review performed by the Auditor may be completed either onsite or electronically. Original records must be made available to the Auditor. The file sample used by the Auditor must contain at least twenty percent (20%) of the total number of Restricted Units for the Development, but no more than a total of fifty (50) household files. The selection of Restricted Units should primarily be new move-ins but should also include at least ten percent (10%) sample of all the household files that have recertified.

(b) The Auditor will ensure Development meets the following requirements and will identify any deficiencies found in the report:

(1) The Development has a properly recorded Regulatory Agreement with an initial minimum 10-year term.

(2) For newly constructed Developments:

(A) At least ten percent (10%) of the units in the Development are reserved for, or occupied by, households at or below sixty percent (60%) Area Median Income (AMI), adjusted for household size, as established by HUD;

(B) At least an additional forty percent (40%) of the units in the Development are reserved for, or occupied by, households at or below eighty percent (80%) AMI, adjusted for household size, as established by HUD.

(3) For occupied Developments acquired by the PFC:

(A) At least twenty-five percent (25%) of the units in the Development are reserved for, or occupied by, households at or below sixty percent (60%) AMI, adjusted for household size, established by HUD; and

(B) At least an additional forty percent (40%) of the units in the Development are reserved for, or occupied by, households at or below eighty percent (80%) AMI, adjusted for household size, as established by HUD; or

(C) The Development meets the household income restrictions set forth in §10.1104(B); and

(D) The Operator expends at least fifteen percent (15%) of the gross cost of the Development, as shown in the settlement statement, on rehabilitating, renovating, reconstructing, or repairing, the Development, with such activities commencing no later than the first anniversary of the date of acquisition, and concluding no later than the third anniversary of the date of acquisition.

(4) Monthly rent for Restricted Units may not exceed thirty percent (30%) of the imputed household income limitation for the unit, adjusted for an imputed family size of one person per bedroom plus one person, as determined by HUD. Notwithstanding the foregoing, if a Restricted Unit is occupied by a household with a Housing Choice Voucher, and the payment standard for that voucher is less than the monthly rent for the Restricted Unit established pursuant to the immediately preceding sentence, the household may be required to pay the difference between the payment standard and the monthly rent.

(5) The percentage of Restricted Units in each Unit Type in the Development, must be the same or greater percentage as the percentage of each Unit Type of units that are not Restricted Units in the Development.

(6) Occupants of Restricted Units are required to recertify at the time of the renewal of a lease agreement, the income of the household using a Department-approved Income Certification form. If a household exceeds the income limit at an annual income recertification, the Operator should follow the Available Unit Rule as outlined in Section 42(g)(2)(D) of the Internal Revenue Code.

(7) The Development must affirmatively market to households participating in the Housing Choice Voucher program and local housing authorities.

(8) The PFC's website must include information about the Development and its compliance with Section 303.0425, Texas Local Government Code, along with its policies on the acceptance of Housing Choice Voucher holders.

(c) The Auditor will review the Development's form of tenant lease and leasing polices to ensure the Development meets the follow-

ing requirements and will report any deficiencies found in the Audit Report:

(1) Public Facility User cannot refuse to rent to an individual or family solely because the individual or family participates in a Housing Choice Voucher program.

(2) Public Facility User cannot require a minimum income standard for families participating in a Housing Choice Voucher program that exceeds two hundred and fifty percent (250%) of the tenant portion of rent.

(3) Each residential lease agreement for a Restricted Unit must provide the following:

(A) The landlord may not retaliate against the tenant or the tenant's guests by taking action because the tenant established, attempted to establish, or participated in a tenant organization;

(B) The landlord may only choose to not renew the lease if the tenant is in material noncompliance with the lease, including nonpayment of rent; committed one or more substantial violations of the lease; failed to provide required information on the income, composition, or eligibility of the tenant's household; or committed repeated minor violations of the lease that: disrupt the livability of the Development, adversely affect the health and safety of any person or the right to quiet enjoyment of the leased premises and related Development facilities, interfere with the management of the Development, or have an adverse financial effect on the Development, including the failure of the tenant to pay rent in a timely manner.

(C) To non-renew a lease, the landlord must provide, at minimum, a thirty (30)-day written notice of non-renewal to the tenant.

(D) Tenants may not waive these protections in a lease or lease addendum.

(d) For occupied Developments acquired by a Public Facility Corporation, the Audit Report must calculate the annual savings to households living in Restricted Units (when compared to the annual rental income that would have been collected on those Restricted Units if they were charged market rate. Market rate will be determined as the highest rent charged for the same Unit Type at the Development; for Developments that do not have market rate units the Auditor must submit a proposed reasonable methodology for determining market rent. The calculated savings is required for exemption eligibility after the first anniversary of the acquisition of the Development. Total savings for rent-restricted households must be no less than sixty percent (60%) of the estimated amount of the annual ad-valorem taxes that would be imposed on the Development without an exemption.

(e) The Auditor must maintain monitoring records and papers for each Audit Report for three years, and must provide the Department and/or the Chief Appraiser a copy of their monitoring records upon request.

§10.1105. Income and Rent Requirements.

(a) Annual Income for a household occupying a Restricted Unit shall be determined consistent with the Section 8 Program administered by the U.S. Department of Housing and Urban Development (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.

(b) Income and rent limits will be derived from data released by HUD.

(c) The income and rent limits specified in the Regulatory Agreement will be used to determine if a household's income and rent is restricted.

§10.1106. Penalties.

Noncompliance with Sections 303.0421 and or 303.0425 of the Texas Local Government Code, or this Subchapter, continuing after all available notice and corrective action periods, will result in a Department report to the Texas Comptroller and Chief Appraiser, and recommendation of loss of the ad valorem exemption for the Development for the tax year in which a multifamily residential development that is owned by a public facility corporation is determined by the Department based on an Audit to not be in compliance with the requirements of Section 303.0421 or 303.0425.

§10.1107. Options for Review.

(a) The Public Facility User must attempt to address any issues of noncompliance identified in the Audit Report with the Auditor, prior to submission of the Audit Report to the Department.

(b) The Public Facility User may request to meet with a Compliance Director or Manager at the Department. The Public Facility User and Auditor, as applicable, must provide all documentation requested by the Department within three calendar days prior to the meeting.

(c) A Public Facility User may request alternative dispute resolution in accordance with the Department's rules regarding such resolution set forth at §1.17 of this title (related to Alternative Dispute Resolution).

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 February 6, 2024.

TRD-202400452
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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Proposal publication date: November 10, 2023
For further information, please call: (512) 936-0661

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 70. INDUSTRIALIZED HOUSING AND BUILDINGS

16 TAC §70.100, §70.101

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 70, §70.100, regarding the Industrialized Housing and Buildings program, without changes to the proposed text as published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5342). This rule will not be republished.

The Commission also adopts amendments to existing rules at 16 TAC Chapter 70, §70.101, regarding the Industrialized Housing and Buildings program, with non-substantive change to the proposed text as published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5342). This rule will be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 70, implement Texas Occupations Code, Chapter 1202, Industrialized Housing and Buildings.

The adopted rules in 16 TAC §70.100 update the mandatory building codes used for the construction of all industrialized housing and buildings, modules, and modular components to more recent versions. The adopted rules in 16 TAC §70.101 amend the mandatory building codes after a determination by the Texas Industrialized Building Code Council that the amendments are in the public interest. These amendments will become effective no earlier than 180 days from the determination date. The adopted rules are necessary to ensure the mandatory building codes used are up to date.

SECTION-BY-SECTION SUMMARY

The adopted rules amend §70.100(a) to set the effective date of the mandatory building codes for April 1, 2024.

The adopted rules amend §70.100(c) through (g) and §70.100(i) to reflect the adoption of the 2021 versions of each mandatory building code.

The adopted rules amend §70.100(h) to reflect the adoption of the 2015 version of the *International Energy Conservation Code* (IECC), identify the applicable edition of the IECC as the edition adopted by rule by the State Energy Conservation Office, and describe how conflict between the IECC and the individual international codes will be resolved.

The adopted rules amend §70.100(j) to reflect the adoption of the 2020 version of the *National Electrical Code*.

The adopted rules amend §70.100(k) to update the graphic table of past editions of mandatory building codes.

The adopted rules amend §70.101(c)(1) to reflect the correct title of Section 101 of the *2021 International Building Code*.

The adopted rules amend §70.101(c)(3) to modify Section 107.1 of the *2021 International Building Code* to allow the filing of submittal documents in a digital format if allowed by the building official.

The adopted rules amend §70.101(c)(4)(A) to modify Section 111.1 of the *2021 International Building Code* to clarify how a certificate of occupancy should be construed.

The adopted rules amend §70.101(c)(6)(A) to reflect the renumbering of former Section 1101.2 to Section 1102.1.

The adopted rules amend §70.101(c)(6)(B) to delete Sections 1103 through 1112.

The adopted rules amend §70.101(c)(7)(A) to reflect the renumbering of former ICC A117.1-09 to ICC A117.1-17.

The adopted rules amend §70.101(c)(7)(B) to update the referenced code sections.

The adopted rules amend §70.101(c)(7)(C) to update the NFPA Standard to *70-20, National Electrical Code*.

The adopted rules amend §70.101(d) to reflect the adoption of the *2021 International Residential Code*.

The adopted rules amend §70.101(d)(1) to reflect the correct title of Section R101 of the 2021 International Residential Code.

The adopted rules amend §70.101(d)(2)(D) by updating the appendices considered part of the code.

The adopted rules amend §70.101(d)(4) to add language regarding the submission of submittal documents.

The adopted rules amend §70.101(d)(5)(A) to clarify how a certificate of occupancy should be construed.

The adopted rules amend §70.101(d)(7) to reflect code language that has been reorganized and is now set out in Section R302.2.2, Common Walls. The language specifies characteristics of common walls in townhouses. The exception previously stated has been removed from the rules and replaced with new language as result of a reorganization of Section R302.2, Townhouses.

The adopted rules add §70.101(d)(7)(A), which amends Section R302.2.2(1) to apply when a Section P2904-compliant fire sprinkler system is provided.

The adopted rules add §70.101(d)(7)(B), which amends Section R302.2.2(2) to apply when a Section P2904-compliant fire sprinkler system is not provided.

The adopted rules add §70.101(d)(7)(C), which amends Section R302.2.2 to apply an exception in a specific circumstance.

The adopted rules amend §70.101(d)(8) to reflect the renumbering of former Section R303.9 to R303.10.

The adopted rules amend §70.101(d)(11)(B) to delete Sections N1101.3 through N1113.

The adopted rules amend §70.101(d)(13)(B) to reflect the adoption of the *2020 National Electrical Code*.

The adopted rules amend §70.101(e) to reflect the adoption of the *2021 International Fuel Gas Code*.

The adopted rules amend §70.101(e)(2)(A) to add language stating that "Additions, alterations or repairs shall not cause an existing installation to become unsafe, hazardous or overloaded."

The adopted rules amend §70.101(e)(3) to reflect the adoption of the *2021 International Existing Building Code*.

The adopted rules amend §70.101(f) to reflect the adoption of the *2021 International Mechanical Code*.

The adopted rules amend §70.101(f)(2)(A) to add language stating that "Additions, alterations or repairs shall not cause an existing installation to become unsafe, hazardous or overloaded."

The adopted rules amend §70.101(f)(3) to reflect the adoption of the *2021 International Existing Building Code*.

The adopted rules amend §70.101(g) to reflect the adoption of the *2021 International Plumbing Code*.

The adopted rules amend §70.101(g)(2)(C) to identify the terms under which moved buildings would be considered compliant with current mandatory building codes.

The adopted rules amend §70.101(g)(3)(A) to reflect the renumbering of former Section 403.5 to Section 403.7.

The adopted rules amend §70.101(g)(3)(B) to reflect the renumbering of former Section 403.5.1 to Section 403.7.1.

The adopted rules amend §70.101(g)(3)(C) to reflect the renumbering of former Section 403.5.2 to Section 403.7.2.

The adopted rules amend §70.101(g)(3)(D) to reflect the renumbering of former Section 403.5.3 to Section 403.7.3.

The adopted rules amend §70.101(g)(4) to reflect the adoption of the *2021 International Existing Building Code*.

The adopted rules amend §70.101(i) to reflect the adoption of the *2021 International Existing Building Code*.

The adopted rules amend §70.101(i)(1) to reflect the changing of the title of the section from Section 101, General to Section 101, Scope and General Requirements.

The adopted rules amend §70.101(i)(3) to reflect the renumbering of former Section 1401.2 to Section 1301.2. The proposed rules also clarify the applicability of the code's provisions to existing occupancies.

The adopted rules amend §70.101(i)(4)(B) to add the effective month and year, March 2012, of the referenced standard.

The adopted rules amend §70.101(j) to reflect the reflect the adoption of the *2020 National Electrical Code*.

The adopted rules amend §70.101(j)(1) to add language clarifying the requirements for conductors rated up to 2000 volts.

The adopted rules add §70.101(j)(3) to remove Section 210.8(F) of the *2020 National Electrical Code* regarding ground-fault circuit interrupters.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5342). The public comment period closed on October 30, 2023. The Department received comments from three interested parties on the proposed rules. The public comments are summarized below. Additionally, the Department received two comments for the advisory board meeting held November 16, 2023. One comment received was a complete restatement of a comment received during the public comment period for the published rules.

Comment: The first comment, from the International Association of Plumbing and Mechanical Officials (IAPMO), recommended the inclusion of the *Uniform Plumbing Code* (UPC) and the *Uniform Mechanical Code* (UMC) as acceptable building codes. This comment was also received in anticipation of the advisory board meeting held November 16, 2023.

Department Response: The comment is outside the scope of the proposed rules. The Department made no changes to the proposed rules in response to this comment.

Comment: The second comment, from the Texas Manufacturing Housing Association, recommended that the IHB program should match the statewide adopted minimum building code standards with its adopted code, or, at a minimum, not be very different from the statewide minimum codes.

Department Response: The comment is outside the scope of the proposed rules. The Department made no changes to the proposed rules in response to this comment.

Comment: The third comment, from the International Code Council, requested the adoption of additional reference standards, published by the ICC, to improve plan and regulation of industrialized buildings.

Department Response: The comment is outside the scope of the proposed rules. The Department made no changes to the proposed rules in response to this comment.

Comment: Sheila Blake offered her public comment during the November 16, 2023, Texas Industrialized Building Code Council meeting. Ms. Blake commented that *2021 International Building Code* and the *2021 International Residential Code* reference the 2016 version of the ASCE-7 engineering standards. With no data after Hurricane Harvey, which landed in Texas in 2017, Ms. Blake asked if there was any consideration offered to these standards during the rulemaking process. She stated that, should the 2016 version of the engineering standards be used, there would be a temporary, but significant, increase in cost to build under that version, as the wind provisions increased in that version before being lowered in the 2022 version.

Department Response: These referenced standards included in the proposed rules were reviewed and vetted by both the rules workgroup of the Code Council and Department staff during the rulemaking process. The Department made no changes to the proposed rules in response to this comment.

CODE COUNCIL RECOMMENDATIONS

The Texas Industrialized Building Code Council met on November 16, 2023, to discuss the proposed rules and the public comments received. The Council recommended that the Commission adopt the proposed rules as published in the *Texas Register.*

STATUTORY AUTHORITY

The adopted rules are proposed under Texas Occupations Code, Chapters 51 and 1202, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 1202. No other statutes, articles, or codes are affected by the adopted rules.

§70.101. Amendments to Mandatory Building Code.

(a) The council shall consider and review all amendments to these codes which are approved and recommended by ICC, and if they are determined to be in the public interest, the amendments shall be effective 180 days following the date of the council's determination or at a later date as set by the council.

(b) Any amendment proposed by a local *building official,* and determined by the council following a public hearing to be essential to the health and safety of the public on a statewide basis, shall become effective 180 days following the date of the council's determination or at a later date as set by the council.

(c) The *2021 International Building Code* shall be amended as follows.

(1) Amend *Section 101 Scope and General Requirement* as follows.

(A) Amend *Section 101.1 Title* to read as follows: "These regulations shall be known as the Building Code of the Texas Industrialized Housing and Buildings Program, hereinafter referred to as 'this code.'"

(B) Amend *Section 101.2 Scope* by adding the following: "Where conflicts occur between the provisions of this code and the provisions of Texas Occupations Code, Chapter 1202, Industrialized Housing and Buildings, or the provisions of 16 Texas Administrative Code, Chapter 70, rules governing the Texas Industrialized Housing and Buildings Program, the provisions of Texas Occupations Code, Chapter 1202 and 16 Texas Administrative Code, Chapter 70 shall control."

(C) Amend *Section 101.2.1 Appendices* by adding the following: "Appendices C, F, and K shall be considered part of this code."

(D) Amend *Section 101.4 Referenced codes* to read as follows: "The other codes listed in Sections 101.4.1 through 101.4.9 and referenced elsewhere in this code shall be considered part of the requirements of this code to the prescribed extent of each such reference. Whenever amendments to the referenced codes have been adopted, each reference to said code shall be considered to reference the amendment as well."

(E) Amend *Section 101.4.7 Existing buildings* to add the following sentence: "Moved industrialized buildings that bear approved certification decals or insignia, and that may also bear an alteration decal, in accordance with the requirements of Texas Occupations Code, Chapter 1202 and 16 Texas Administrative Code, Chapter 70, and that have not been altered or modified since the decal, insignia, or alteration decal was attached, shall be considered to be in compliance with the current mandatory building codes adopted by the Texas Industrialized Building Code Council."

(F) Add new *Section 101.4.8 Electrical* to read as follows: "The provisions of Appendix K shall apply to the installation of electrical systems, including alterations, repairs, replacements, equipment, appliances, fixtures, fittings and appurtenances thereto. Any reference to NFPA 70 or the Electrical Code shall mean the Electrical Code as adopted."

(G) Add new *Section 101.4.9 Accessibility* to read as follows: "Buildings and facilities shall be designed and constructed to be accessible in accordance with this code and the *Texas Accessibility Standards* (TAS). Wherever reference elsewhere in this code is made to ICC A117.1, the TAS of Texas Government Code, Chapter 469, Elimination of Architectural Barriers shall be substituted. Buildings subject to the requirements of the *Texas Accessibility Standards* are described in Administrative Rules of the Texas Department of Licensing and Regulation, 16 Texas Administrative Code, Chapter 68."

(2) Amend *Section 104.1 General* by adding the following: "The term *building official* as used in this code, or as used in the codes and standards referenced in this code, shall mean the Texas Commission of Licensing and Regulation, the executive director of the Texas Department of Licensing and Regulation, the Texas Industrialized Building Code Council, or the local *building official* in accordance with the powers and duties assigned to each in Texas Occupations Code, Chapter 1202, Industrialized Housing and Buildings."

(3) Amend *Section 107.1 General* to read as follows: "Submittal documents consisting of construction documents, statement of special inspections, geotechnical report and other data shall be submitted in two or more sets, or in a digital format if allowed by the *building official,* with each permit application. The construction documents shall be prepared by a registered design professional where required by the statutes of the jurisdiction in which the project is to be constructed. Where special conditions exist, the *building official* is authorized to require additional construction documents to be prepared by a registered design professional. Construction documents depicting the structural design of buildings to be located in hurricane prone regions shall be prepared and sealed by a Texas licensed professional engineer."

(4) Amend *Section 111 Certificate of Occupancy* as follows.

(A) Amend *Section 111.1 Change of occupancy* to read as follows: "A building or structure shall not be used or occupied in whole or in part, and a change in the existing use or occupancy classification of a building or structure or portion thereof shall not be made, until the local building official has issued a certificate of occupancy in accordance with the locally adopted rules and regulations. Issuance of a certificate of occupancy shall not be construed as an approval of a violation of the provisions of this code or of other ordinances of the jurisdiction. Certificates presuming to give authority to violate or cancel the provisions of this code or other ordinances of the jurisdiction shall not be valid. Exception: Certificates of occupancy are not required for work exempt from permits under Section 105.2."

(B) Amend *Section 111.2 Certificate issued* to read as follows. "The local *building official* shall issue a certificate of occupancy in accordance with the locally adopted rules and regulations. After the local *building official* inspects the industrialized house or building and does not find violations of the provisions of this code or other laws that are enforced by the department of building safety, the local *building official* shall issue a record of final inspection authorizing the release of the house or building for occupancy."

(C) Delete Items 1 through 12 of *Section 111.2.*

(D) Amend *Section 111.3 Temporary occupancy* to read as follows: "The local *building official* may issue a temporary certificate of occupancy in accordance with locally adopted rules and regulations."

(E) Add new *Section 111.5 Industrialized housing and buildings installed outside the jurisdiction of a municipality or within a municipality without an inspection department* to read as follows: "The installation of buildings installed outside the jurisdiction of a municipality or within a municipality without an inspection department shall comply with the requirements of Texas Occupations Code, Chapter 1202 and 16 Texas Administrative Code, Chapter 70, Administrative Rules Industrialized Housing and Buildings."

(5) Amend *Section 311.3 Low-hazard storage, Group S-2* by adding the following to the list of uses that are covered by this occupancy group: "Equipment shelters or equipment buildings."

(6) Amend *Chapter 11 Accessibility* as follows.

(A) Amend *Section 1102.1 Design* to read as follows: "Buildings and facilities shall be designed and constructed to be accessible in accordance with this code and the *Texas Accessibility Standards* (TAS)."

(B) Delete *Section 1103* through *Section 1112.*

(7) Amend *Chapter 35 Referenced Standards* as follows.

(A) Delete the following standard: *"ICC A117.1-17, Accessible and Usable Buildings and Facilities".*

(B) Add TDLR, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711 as a promulgating agency; add 2012 TAS, *Texas Accessibility Standards* as adopted under 16 Texas Administrative Code, Chapter 68 as the referenced standard; and add code sections 202, 907.5.2.3.3, 1009.8.2, 1009.9, 1009.11, 1010.2.13.1, 1012.1, 1012.6.5, 1012.10, 1013.4, 1023.9, 1102.1, 1108.2, 1110.1, 1110.2, 1110.5.1, 1110.5.2, 1111.3, 1111.4, 1111.4.2, 1112.3, 1112.4, 1112.5, and 1112.5.2 as the referenced code sections.

(C) Add code section 101.4.8 as a referenced code section for *NFPA Standard 70-20, National Electrical Code*.

(8) Amend *Section K111.1 Adoption* to read as follows: "Electrical systems and equipment shall be designed, constructed and installed in accordance with NFPA 70 except as otherwise provided in this code."

(d) The *2021 International Residential Code* shall be amended as follows.

(1) Amend *Section R101 Scope and General Requirements* as follows.

(A) Amend *Section R101.1 Title* to read as follows: "These regulations shall be known as the Residential Code for One- and Two-family Dwellings of the Texas Industrialized Housing and Buildings Program, hereinafter referred to as 'this code.'"

(B) Amend *Section R101.2 Scope* by adding the following: "Where conflicts occur between the provisions of this code and the provisions of Texas Occupations Code, Chapter 1202, Industrialized Housing and Buildings, or the provisions of 16 Texas Administrative Code, Chapter 70, rules governing the Texas Industrialized Housing and Buildings Program, the provisions of Texas Occupations Code, Chapter 1202 and 16 Texas Administrative Code, Chapter 70 shall control."

(2) Amend *Section R102 Applicability* as follows.

(A) Amend *Section R102.4 Referenced codes and standards* to read as follows: "The codes and standards referenced in this code shall be considered part of the requirements of this code to the prescribed extent of each reference and as further regulated in Sections R102.4.1 through R102.4.4. Whenever amendments to the referenced codes have been adopted, each reference to said code shall be considered to reference the amendment as well."

(B) Add new *Section R102.4.3 Electrical code* to read as follows: "The provisions of the *National Electrical Code,* NFPA 70, shall apply to the installation of electrical systems, including alterations, repairs, replacement, equipment, appliances, fixtures, fittings and appurtenances thereto. Any reference to NFPA 70 or the Electrical Code shall mean the Electrical Code as adopted. Any reference to chapters 34 through 43 of this code shall mean the Electrical Code as adopted."

(C) Add new *Section R102.4.4 TDI Code-Wind design* to read as follows: "The wind design of buildings to be placed in the first tier counties along the Texas coast and designated catastrophe areas as defined by the Texas Department of Insurance (TDI) shall also comply with the current effective code and amendments adopted by the TDI, hereafter referred to as the TDI Code. Where conflicts occur between the provisions of this code and the TDI Code as they relate to the requirements for wind design, the more stringent requirements shall apply. Where conflicts occur between the provisions of this code and the editions of the codes specified by the Texas Department of Insurance as they relate to requirements other than wind design, this code shall apply."

(D) Amend *Section R102.5 Appendices* by adding the following: "Appendices AG, AH, AK, AP, AQ, and AT shall be considered part of this code."

(E) Add new *Section R102.8 Moved industrialized housing* to read as follows: "Moved industrialized housing shall comply with the requirements of the local building official for moved buildings."

(3) Amend *Section R104.1 General* by adding the following: "The term *building official* as used in this code, or as used in the codes and standards referenced in this code, shall mean the Texas Commission of Licensing and Regulation, the executive director of the Texas Department of Licensing and Regulation, the Texas Industrialized Building Code Council, or the local *building official* in accordance with the powers and duties assigned to each in Texas Occupations Code, Chapter 1202, Industrialized Housing and Buildings."

(4) Amend *Section R106.1 Submittal documents* by adding the following: "Submittal documents consisting of construction documents, and other data shall be submitted in two or more sets, or in a digital format if allowed by the building official, with each application for a permit. The construction documents shall be prepared by a registered design professional where required by the statutes of the jurisdiction in which the project is to be constructed. Where special conditions exist, the building official is authorized to require additional construction documents to be prepared by a registered design professional. Construction documents depicting the structural design of buildings to be located in hurricane prone regions and in the first tier counties along the Texas coast and designated catastrophe areas as defined by the Texas Department of Insurance (TDI) shall be prepared and sealed by a Texas licensed professional engineer."

(5) Amend *Section R110 Certificate of Occupancy* as follows.

(A) Amend *Section R110.1 Use and change of occupancy* to read as follows: "A building or structure shall not be used or occupied in whole or in part, and a change in the existing use or occupancy classification of a building or structure or portion thereof shall not be made, until the local *building official* has issued a certificate of occupancy in accordance with locally adopted rules and regulations. Issuance of a certificate of occupancy shall not be construed as an approval of a violation of the provisions of this code or of other ordinances of the jurisdiction. Certificates presuming to give authority to violate or cancel the provisions of this code or other ordinances of the jurisdiction shall not be valid."

(B) Amend *Section R110.2 Change in use* to read as follows: "Changes in the character or use of new industrialized housing are not allowed. Changes in the character or use of existing industrialized housing shall not be made except as authorized by the local *building official."*

(C) Amend *Section R110.3 Certificate issued* to read as follows: "The local *building official* shall issue a certificate of occupancy in accordance with the locally adopted rules and regulations. After the local *building official* inspects the industrialized house or building and does not find violations of the provisions of this code or other laws that are enforced by the department of building safety, then the local *building official* shall issue a record of final inspection authorizing the release of the house or building for occupancy."

(D) Delete Items 1 through 9 of *Section R110.3.*

(E) Amend *Section R110.4 Temporary occupancy* to read as follows: "The local *building official* may issue a temporary certificate of occupancy in accordance with locally adopted rules and regulations."

(F) Add new *Section R110.6 Industrialized housing installed outside the jurisdiction of a municipality or in a municipality without an inspection department* to read as follows: "The installation of industrialized housing installed outside the jurisdiction of a municipality or within a municipality without an inspection department shall comply with the requirements of Texas Occupations Code, Chapter 1202 and 16 Texas Administrative Code, Chapter 70, Administrative Rules Industrialized Housing and Buildings."

(6) Amend *Section R301.2 Climatic and geographic design criteria* by adding the following sentence: "If no additional criteria have been established, or if there is no local jurisdiction to set the additional criteria, then the additional criteria shall be in accordance with the requirements in the footnotes of Table R301.2(1) and Sections R301.2.1 through R301.8 of this code."

(7) Amend *Section R302.2.2 Common walls,* to read as follows: "Common walls separating townhouse units shall be assigned a fire-resistance rating in accordance with item (1) or (2) and shall be rated for fire exposure from both sides. Common walls shall extend to and be tight against the exterior sheathing of the exterior walls, or the inside face of exterior walls without stud cavities, and the underside of the roof sheathing. The common wall shared by two townhouse units shall be constructed without plumbing or mechanical equipment, ducts or vents, other than water-filled fire sprinkler piping in the cavity of the common wall. The wall shall be rated for fire exposure from both sides and shall extend to and be tight against exterior walls and the underside of the roof sheathing. Electrical installations shall be in accordance with the National Electrical Code, NFPA 70 as adopted. Penetrations of the membrane of common walls for electrical outlet boxes shall be in accordance with Section R302.4.

(A) Amend *Section R302.2.2(1),* to read as follows: "Where a fire sprinkler system in accordance with Section P2904 is provided, the common wall shall be not less than a 1-hour fire-resistance-rated wall assembly tested in accordance with ASTM E119 or UL 263 or Section 703.2.2 of the International Building Code."

(B) Amend *Section R302.2.2(2),* to read as follows: "Where a fire sprinkler system in accordance with Section P2904 is not provided, the common wall shall be not less than a 2-hour fire-resistance-rated wall assembly tested in accordance with ASTM E119 or UL 263 or Section 703.2.2 of the International Building Code."

(C) Amend *Section R302.2.2 Common walls - Exception* to read as follows: Exception: "Common walls are permitted to extend to and be tight against the inside of the exterior walls if the cavity between the end of the common wall and the exterior sheathing is filled with a minimum of two 2-inch nominal thickness wood studs."

(8) Amend *Section R303.10 Required heating* to read as follows: "Every dwelling unit shall be provided with heating facilities capable of maintaining a minimum room temperature of 68°F (20°C) at a point 3 feet (914 mm) above the floor and 2 feet (610 mm) from exterior walls in habitable rooms at the design temperature. The installation of one or more portable space heaters shall not be used to achieve compliance with this section."

(9) Amend *Section R313 Automatic Fire Sprinkler Systems* as follows.

(A) Amend *Section R313.1 Townhouse automatic fire sprinkler systems* to read as follows: "The common wall between *townhouses* shall be constructed in accordance with Section R302.2(2) if an automatic residential fire sprinkler system is not installed. The fire-rating of the common wall may be reduced in accordance with Section R302.2(1) if an automatic residential fire sprinkler system is installed in *townhouses."*

(B) Amend *Section R313.2 One- and two-family dwelling automatic fire systems* to read as follows: *"One- and two-family dwelling automatic fire sprinkler systems.* The construction, projections, openings and penetrations of exterior walls of one- and two-family dwellings and accessory buildings shall comply with Table R302.1(1) if an automatic residential fire sprinkler system is not installed. The construction, projections, openings and penetrations of the exterior walls of one- and two-family dwellings and their accessory uses may be constructed in accordance with the requirements of Table R302.1(2) if an automatic residential fire sprinkler system is installed in one- and two-family dwellings."

(10) Amend the second sentence of *Section R902.1 Roofing covering materials* to read as follows: "Class A, B or C roofing shall be installed.

(11) Amend *Chapter 11 [~~RE~~] Energy Efficiency* as follows.

(A) Replace *N1101.2 Intent* with *N1101.2 Compliance* to read as follows: "Compliance shall be demonstrated by meeting the requirements of the *Residential Provisions* of the *International Energy Conservation Code."*

(B) Delete *Section N1101.3* through *Section N1113.*

(12) Delete *Part VIII-Electrical,* Chapters 34 through 43.

(13) Amend *Chapter 44 Referenced Standards* as follows.

(A) Delete code sections N1101.5 and N1101.13 as referenced code sections for *IECC-15, International Energy Conservation Code.*

(B) Add code section R102.4.3 and delete code sections E3401.1, E3401.2, E4301.1, Table E4303.2, E4304.3, and E4304.4 as referenced code sections for *NFPA Standard 70-20, National Electrical Code.*

(C) Add TDI, Texas Department of Insurance, Windstorm Inspections Program, 333 Guadalupe Street, Austin, Texas 78701 as a promulgating agency, add *TDI Code, Building Codes adopted by TDI for the Windstorm Inspection Program,* as the referenced standard, and add code sections R102.4.4 and R106.1 as the referenced code sections.

(14) Amend *Section U101.1 General* to read as follows: "These provisions shall be applicable for new construction where solar-ready provisions are provided."

(e) The *2021 International Fuel Gas Code* shall be amended as follows.

(1) Amend *Section 101 General* as follows.

(A) Amend *Section 101.1 Title* to read as follows: "These regulations shall be known as the Fuel Gas Code of the Texas Industrialized Housing and Buildings Program, hereinafter referred to as 'this code.'"

(B) Amend *Section 101.2 Scope* by adding the following: "Where conflicts occur between the provisions of this code and the provisions of Texas Occupations Code, Chapter 1202, Industrialized Housing and Buildings, or the provisions of 16 Texas Administrative Code, Chapter 70, rules governing the Texas Industrialized Housing and Buildings Program, the provisions of Texas Occupations Code, Chapter 1202 and 16 Texas Administrative Code, Chapter 70 shall control."

(2) Amend *Section 102 Applicability* as follows.

(A) Amend *Section 102.4 Additions, alterations or repairs* to read as follows: "The provisions of the *International Existing Building Code* shall apply to all matters governing the repair, alterations, or additions of existing previously occupied industrialized buildings that are designed to be transported from one commercial site to another commercial site. Additions, alterations, or repairs shall not cause an existing installation to become unsafe, hazardous, or overloaded."

(B) Amend *Section 102.5 Change in occupancy* by adding the following to the beginning of the section: "The provisions of the *International Existing Building Code* shall apply to all matters governing a change in the occupancy of existing previously occupied industrialized buildings that are designed to be transported from one commercial site to another commercial site."

(C) Amend *Section 102.7 Moved buildings* by replacing the first sentence with the following: "Moved industrialized buildings

that bear approved certification decals or insignia, and that may also bear an alteration decal, in accordance with the requirements of Texas Occupations Code, Chapter 1202 and 16 Texas Administrative Code, Chapter 70, and that have not been altered or modified since the decal, insignia, or alteration decal was attached, shall be considered to be in compliance with the current mandatory building codes adopted by the Texas Industrialized Building Code Council."

(D) Amend *Section 102.8 Referenced codes and standards* by adding the following: "Whenever amendments to the referenced codes have been adopted, each reference to said code shall be considered to reference the amendment as well."

(3) Amend *Chapter 8 Referenced Standards* by adding *ICC Standard IEBC-21, International Existing Building Code,* referenced in code sections 102.4 and 102.5.

(f) The *2021 International Mechanical Code* shall be amended as follows.

(1) Amend *Section 101 General* as follows.

(A) Amend *Section 101.1 Title* to read as follows: "These regulations shall be known as the Mechanical Code of the Texas Industrialized Housing and Buildings Program, hereinafter referred to as 'this code.'"

(B) Amend *Section 101.2 Scope* by adding the following: "Where conflicts occur between the provisions of this code and the provisions of Texas Occupations Code, Chapter 1202, Industrialized Housing and Buildings, or the provisions of 16 Texas Administrative Code, Chapter 70, rules governing the Texas Industrialized Housing and Buildings Program, the provisions of Texas Occupations Code, Chapter 1202 and 16 Texas Administrative Code, Chapter 70 shall control."

(2) Amend *Section 102 Applicability* as follows.

(A) Amend *Section 102.4 Additions, alterations or repairs* to read as follows: "The provisions of the *International Existing Building Code* shall apply to all matters governing the repair, alterations, or additions of existing previously occupied industrialized buildings that are designed to be transported from one commercial site to another commercial site. Additions, alterations or repairs shall not cause an existing installation to become unsafe, hazardous or overloaded."

(B) Amend *Section 102.5 Change in occupancy* by replacing the first sentence with the following: "The provisions of the *International Existing Building Code* shall apply to all matters governing a change in the occupancy of existing previously occupied industrialized buildings that are designed to be transported from one commercial site to another commercial site."

(C) Amend *Section 102.7 Moved buildings* by replacing the first sentence with the following: "Moved industrialized buildings that bear approved certification decals or insignia, and that may also bear an alteration decal, in accordance with the requirements of Texas Occupations Code, Chapter 1202 and 16 Texas Administrative Code, Chapter 70, and that have not been altered or modified since the decal, insignia, or alteration decal was attached, shall be considered to be in compliance with the current mandatory building codes adopted by the Texas Industrialized Building Code Council."

(D) Amend *Section 102.8 Referenced codes and standards* by adding the following: "Whenever amendments to the referenced codes have been adopted, each reference to said code shall be considered to reference the amendment as well."

(3) Amend *Chapter 15 Referenced Standards* by adding *ICC Standard IEBC-21, International Existing Building Code,* referenced in code sections 102.4 and 102.5.

(g) The *2021 International Plumbing Code* shall be amended as follows.

(1) Amend *Section 101 General* as follows.

(A) Amend *Section 101.1 Title* to read as follows: "These regulations shall be known as the Plumbing Code of the Texas Industrialized Housing and Buildings Program, hereinafter referred to as 'this code.'"

(B) Amend *Section 101.2 Scope* by adding the following: "Where conflicts occur between the provisions of this code and the provisions of Texas Occupations Code, Chapter 1202, Industrialized Housing and Buildings, or the provisions of 16 Texas Administrative Code, Chapter 70, rules governing the Texas Industrialized Housing and Buildings Program, the provisions of Texas Occupations Code, Chapter 1202 and 16 Texas Administrative Code, Chapter 70 shall control."

(2) Amend *Section 102 Applicability* as follows.

(A) Amend *Section 102.4 Additions, alterations or repairs* by replacing the first sentence with the following: "The provisions of the *International Existing Building Code* shall apply to all matters governing the repair, alterations, or additions of existing previously occupied industrialized buildings that are designed to be transported from one commercial site to another commercial site."

(B) Amend *Section 102.5 Change in occupancy* by adding the following to the beginning of the section: "The provisions of the *International Existing Building Code* shall apply to all matters governing a change in the occupancy of existing previously occupied industrialized buildings that are designed to be transported from one commercial site to another commercial site."

(C) Amend *Section 102.7 Moved buildings* to read as follows: "Moved industrialized buildings that bear approved certification decals or insignia, and that may also bear an alteration decal, in accordance with the requirements of Texas Occupations Code, Chapter 1202 and 16 Texas Administrative Code, Chapter 70, and that have not been altered or modified since the decal, insignia, or alteration decal was attached, shall be considered to be in compliance with the current mandatory building codes adopted by the Texas Industrialized Building Code Council."

(D) Amend *Section 102.8 Referenced codes and standards* by adding the following: "Whenever amendments to the referenced codes have been adopted, each reference to said code shall be considered to reference the amendment as well."

(3) Amend *Section 403 Minimum Plumbing Facilities* as follows.

(A) Add new *Section 403.7 Industrialized housing and buildings exceptions* to read as follows: "Plumbing fixtures for industrialized buildings shall be provided as required by Table 403.1 except as allowed in Sections 403.7.1, 403.7.2 and 403.7.3."

(B) Add new *Section 403.7.1 Buildings that are not normally occupied* to read as follows: "Buildings, such as equipment or communication shelters, that are not normally occupied or that are only occupied to service equipment, shall not be required to provide plumbing facilities. EXCEPTION: Buildings that are not normally occupied that are also classified as a Group H occupancy must be provided with plumbing facilities required for this type of occupancy such as requirements for emergency showers and eyewash stations."

(C) Add new *Section 403.7.2 Other industrialized buildings* to read as follows: "All other industrialized buildings shall contain the minimum plumbing fixtures required in accordance with Table 403.1 unless the building is a non-site specific building and the plans and the data plate contain a special condition/limitation note that the minimum number of required fixtures shall be provided in another building located on the installation site with a path of travel that does not exceed a distance of 500 feet. The plumbing facilities must be accessible to the occupants of the industrialized building. Non-site specific buildings and special condition limitation notes shall be as defined in the 16 Texas Administrative Code, Chapter 70, rules governing the Texas Industrialized Housing and Buildings Program."

(D) Add new *Section 403.7.3 Requirements for service sinks for industrialized buildings* to read as follows: "Commercial industrialized buildings with areas of less than or equal to 1,800 square feet shall not be required to contain a service sink provided that the building contains a lavatory and water closet that can be substituted for the service sink. EXCEPTION: A building of less than 1,800 square feet in area without any plumbing facilities shall comply with section 403.7.2.

(4) Amend *Chapter 15 Referenced Standards* by adding *ICC Standard IEBC-21, International Existing Building Code*, referenced in code sections 102.4 and 102.5.

(h) The 2015 *International Energy Conservation Code* shall be amended as follows.

(1) Amend *Section C101 Scope and General Requirements* and *R101 Scope and General Requirements* as follows.

(A) Amend *Section C101.1 Title* and *Section R101.1 Title* to read as follows: "These regulations shall be known as the Energy Conservation Code of the Texas Industrialized Housing and Buildings Program, hereinafter referred to as "this code."

(B) Amend *Section C101.2 Scope* and *R101.2 Scope* by adding the following: "Where conflicts occur between the provisions of this code and the provisions of Texas Occupations Code, Chapter 1202, Industrialized Housing and Buildings, or the provisions of 16 Texas Administrative Code, Chapter 70, rules governing the Texas Industrialized Housing and Buildings Program, the provisions of Texas Occupations Code, Chapter 1202 and 16 Texas Administrative Code, Chapter 70 shall control."

(2) Amend *Section C102 Alternate Materials - Method of Construction, Design or Insulating Systems* and *R102 Alternate Materials, Design and Methods of Construction and Equipment* as follows.

(A) Add new *Section C102.1.2 Compliance software tools* to read as follows: "The following software tools may be used to demonstrate energy code compliance for commercial buildings. The mandatory requirements of this code apply regardless of the software program that is used to demonstrate compliance. 1. The PLLN/DOE software programs *COMcheck.* 2. Software programs approved by the State Energy Conservation Office. 3. Other software programs if approved by the executive director or the Council."

(B) Add new *Section R102.1.2 Compliance software tools* to read as follows: "The following software tools may be used to demonstrate energy code compliance for commercial buildings. The mandatory requirements of this code apply regardless of the software program that is used to demonstrate compliance. 1. The PLLN/DOE software programs *REScheck.* 2. The Texas Energy Systems Laboratory *International Code Compliance Calculator, IC3.* 3. Software programs approved by the State Energy Conservation Office. 4. Other software programs if approved by the executive director or the Council."

(3) Amend *Section C106.1 Referenced codes and standards* and *Section R106.1 Referenced Codes and Standards* by adding the following: "Whenever amendments to the referenced codes have been adopted, each reference to said code shall be considered to reference the amendment as well."

(4) Add new *Section C401.2.2 Buildings for state agencies and institutions of higher education* to read as follows: "Buildings for state agencies and institutions of higher education shall comply with the energy standard adopted pursuant to Texas Government Code, §447.004 by the State Energy Conservation Office (SECO), and implementation through 34 Texas Administrative Code, Chapter 19, Subchapter C, Energy Conservation Design Standards."

(5) Add new item 4 to *Section R401.2 Compliance* to read as follows: "Alternative for single-family housing only. A manufacturer or builder may choose to use the energy code with any local amendments or alternative compliance paths that are requested by a municipality, county, or group of counties located in the climate zone where the house will be located and are determined by the Texas Energy Systems Laboratory to be equally or more stringent than the energy code adopted by the State Energy Conservation Office (SECO)."

(6) Add new *Section C501.7 Moved buildings* to add the following sentence: "Moved industrialized buildings that bear approved certification decals or insignia, and that may also bear an alteration decal, in accordance with the requirements of Texas Occupations Code, Chapter 1202 and 16 Texas Administrative Code, Chapter 70, and that have not been altered or modified since the decal, insignia, or alteration decal was attached, shall be considered to be in compliance with the current mandatory building codes adopted by the Texas Industrialized Building Code Council."

(7) Amend *Chapter C6 Referenced Standards* and *Chapter R6 Referenced Standards* as follows.

(A) Add to Chapter C6 PNNL/DOE, Pacific Northwest National Laboratory/Department of Energy Conservation, https://www.energycodes.gov/software-and-webtools, as a promulgating agency, COMcheck Version 4.0.5.2 or later, Commercial Energy Compliance Software as the referenced standard, and section C102.1.2 as the referenced code section.

(B) Add to Chapter R6 PNNL/DOE, Pacific Northwest National Laboratory/Department of Energy Conservation, https://www.energycodes.gov/software-and-webtools, as a promulgating agency, REScheck Version 4.6.3 or later, Residential Energy Compliance Software as the referenced standard, and section R102.1.2 as the referenced code section.

(C) Add to Chapter R6 the Texas Energy Systems Laboratory, 402 Harvey Mitchell Parkway South, College Station, Texas 77845-3581, as a promulgating agency, IC3, v 3.10 or later, International Code Compliance Calculator as the referenced standard, and section R102.1.2 as the referenced code section.

(i) The *2021 International Existing Building Code* shall be amended as follows.

(1) Amend *Section 101 Scope and General Requirements* as follows.

(A) Amend *Section 101.1 Title* to read as follows: "These regulations shall be known as the Existing Building Code of the Texas Industrialized Housing and Buildings Program, hereinafter referred to as 'this code.'"

(B) Amend *Section 101.2 Scope* by adding the following: "Where conflicts occur between the provisions of this code and the provisions of Texas Occupations Code, Chapter 1202, Industrial-

ized Housing and Buildings, or the provisions of 16 Texas Administrative Code, Chapter 70, rules governing the Texas Industrialized Housing and Buildings Program, the provisions of Texas Occupations Code, Chapter 1202 and 16 Texas Administrative Code, Chapter 70 shall control."

(2) Amend *Section 102 Applicability* as follows.

(A) Amend *Section 102.4 Referenced codes and standards* to read as follows: "The codes and standards referenced in this code shall be considered to be part of the requirements of this code to the prescribed extent of each such reference and as further regulated in Sections 102.4.1 through 102.4.3. Whenever amendments to the referenced codes have been adopted, each reference to said code shall be considered to reference the amendment as well."

(B) Add new *Section 102.4.3 Accessibility for existing buildings* to read as follows: "Wherever reference elsewhere in this code is made to sections in Chapter 11 of the International Building Code or ICC A117.1, the *Texas Accessibility Standards* (TAS) of Texas Government Code, Chapter 469, Elimination of Architectural Barriers shall be substituted."

(3) Amend *Section 1301.2 Applicability* to read as follows: "Existing buildings in which there is work involving additions, alterations or changes of occupancy shall be made to conform to the requirements of this chapter or the provisions of Chapters 6 through 12. The provisions of Sections 1301.2.1 through 1301.2.6 shall apply to existing occupancies that will continue to be, or are proposed to be, in Groups A, B, E, F, I-2, M, R and S. These provisions shall also apply to Group U occupancies where such occupancies are undergoing a change of occupancy or a partial change in occupancy with separations in accordance with Section 1301.2.2. These provisions shall not apply to buildings with occupancies in Group H, I-1, I-3, or I-4."

(4) Amend *Chapter 16 Referenced Standards* as follows.

(A) Delete the following standard: *"ICC A117.1-09, Accessible and Usable Buildings and Facilities."*

(B) Amend to read as follows: "TDLR, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711 as a promulgating agency; add 2012 TAS - effective March 2012, *Texas Accessibility Standards* as adopted under 16 Texas Administrative Code, Chapter 68 as the referenced standard; and add code sections 102.4, 410.8.2, 410.8.3, 410.8.10, 705.1.2, and 705.1.3 as the referenced code sections."

(j) The *2020 National Electrical Code* shall be amended as follows.

(1) Amend *Article 310.1 Scope* to read as follows: "This article covers general requirements for conductors rated up to and including 2000 volt and their type designations, insulations, markings, mechanical strengths, ampacity ratings, and uses. These requirements do not apply to conductors that form an integral part of equipment, such as motors, motor controllers, and similar equipment, or to conductors specifically provided for elsewhere in this *Code*. Aluminum and copper-clad aluminum shall not be used for branch circuits in buildings classified as a residential occupancy. Aluminum and copper-clad aluminum conductors, of size number 4 AWG or larger, may be used in branch circuits in buildings classified as occupancies other than residential."

(2) Add new *Article 545.14, Testing,* to read as follows.

(A) "(A) Dielectric Strength Test. The wiring of each modular house, building, or component shall be subjected to a 1-minute, 900-volt, dielectric strength test (with all switches closed) between live parts (including neutral conductor) and the house, building, or component ground. Alternatively, the test shall be permitted to be performed at 1080 volts for 1 second. This test shall be performed after branch circuits are complete and after luminaires or appliances are installed. Exception: Listed luminaires or appliances shall not be required to withstand the dielectric strength test. Exception: A DC dielectric tester can be used as an alternate to the use of an AC dielectric tester. The applied test voltage for testing with a DC tester shall be 1.414 times the value of the equivalent AC test voltage."

(B) "(B) Continuity and Operational Tests and Polarity Checks. Each modular house, building, or component shall be subjected to all of the following: (1) An electrical continuity test to ensure that all exposed electrically conductive parts are properly bonded; (2) An electrical operational test to demonstrate that all equipment, except water heaters and electric furnaces, are connected and in working order; (3) Electrical polarity checks of permanently wired equipment and receptacle outlets to determine that connections have been properly made."

(3) Remove Section 210.8(F).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 9, 2024.

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Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-7750

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CHAPTER 121. BEHAVIOR ANALYST

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 121, Subchapter A, §121.1; Subchapter B, §§121.20 - 121.22, 121.27, and 121.30; Subchapter C, §121.65; Subchapter D, §121.71 and §121.75; and Subchapter G, §121.90 and §121.95; new rules at Subchapter B, §121.26; Subchapter D, §§121.70, 121.72-121.74; Subchapter E, §§121.76-121.81; and Subchapter F, §121.85; and the repeal of existing rules at §§121.23, 121.24, 121.26, 121.50, 121.70, and 121.80 regarding the Behavior Analyst program, and the addition of subchapter titles to the existing chapter, without changes to the proposed text as published in the September 8, 2023, issue of the *Texas Register* (48 TexReg 4964). These rules will not be republished. Subchapter A, §121.10 is adopted with changes to the proposed text and will be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 121, implement Texas Occupations Code, Chapters 51, 111, and 506.

The Department is adopting amendments to Chapter 121 in response to its required four-year rule review and to reorganize its guidelines for the use of telehealth by behavior analysts. The amendments also update rule provisions to reflect current Department procedures, restructure the existing rules for better organization, and replace outdated rule language.

The Department published a Notice of Intent to Review its behavior analyst rules as part of the four-year rule review required under Government Code §2001.039 in the April 29, 2022, issue of the *Texas Register* (47 TexReg 2575). The Department reviewed these rules and determined that the rules were still essential in implementing the statutory provisions of Texas Occupations Code, Chapter 506, Behavior Analysts. The Commission re-adopted the rules in their existing form in the November 11, 2022, issue of the *Texas Register* (47 TexReg 7567).

The Department received public comments from the Texas Association for Behavior Analysis, Public Policy Group (TxABA PPG) in response to its Notice of Intent to Review. The re-adoption notice stated that the Department would address those public comments along with the suggested changes resulting from the Department's own review in a future proposed rulemaking. The Department initiated that rulemaking following the readoption of the rules at the conclusion of the Rule Review process.

The proposed rules were presented to and discussed by the Behavior Analyst Advisory Board at its meeting on December 1, 2022. The Advisory Board did not make any changes to the proposed rules and voted to recommend that the proposed rules be published in the *Texas Register* for public comment. The proposed rules were published in the January 6, 2023, issue of the *Texas Register* (48 TexReg 9). The Department received public comments from the Texas Medical Association (TMA) in response to that publication of the proposed rules. After the public comment period concluded, the department withdrew the proposed rules to make further amendments and updates, including amendments related to the public comments received, and re-proposed the rules. The Department's responses to the public comments submitted are specifically addressed in this adoption.

The proposed rules were presented to and discussed by the Behavior Analyst Advisory Board at its meeting on August 15, 2023. The Advisory Board agreed to remove §121.77(b) as unnecessary and made no other changes to the proposed rules. The Advisory Board voted and recommended that the proposed rules with the deletion of §121.77(b) be published in the *Texas Register* for public comment.

SECTION-BY-SECTION SUMMARY

The adopted rules create new Subchapter A, General Provisions.

The adopted rules amend §121.1, Authority, to include Texas Occupations Code, Chapter 111.

The adopted rules amend §121.10, Definitions, to move definitions related to telehealth to Subchapter E, Telehealth. A definition for "applied behavior analysis" is added in response to a comment from TxABA PPG recommending this change. Other amendments clarify terms and remove definitions that are not used throughout the chapter.

The adopted rules create new Subchapter B, Licensing Requirements.

The adopted rules amend outdated language in §121.20, Applications, and relocate provisions to §121.20 from §121.23, Examinations, which was repealed.

The adopted rules amend outdated language in §121.21, Behavior Analyst Licensing Requirements, and relocate provisions to this section from §121.24, Educational Requirements, which was repealed.

The adopted rules amend outdated rule language in §121.22, Assistant Behavior Analyst Licensing Requirements, and move provisions to this section from repealed §121.24, Educational Requirements.

The TxABA PPG in its public comments during the rule review process noted that certification by the Behavior Analyst Certification Board (BACB), or its equivalent, is required to obtain and maintain licensure as a Licensed Behavior Analyst or Licensed Assistant Behavior Analyst. TxABA PPG requested that the department clarify the meaning of equivalent and spell out education and experience requirements of an equivalent certification (proposed §§121.20-121.22).

The Department's response is that the Act defines a certifying entity as "the nationally accredited Behavior Analyst Certification Board or another entity that is accredited by the National Commission for Certifying Agencies or the American National Standards Institute to issue credentials in the professional practice of applied behavior analysis and approved by the department." Further, a behavior analyst or assistant behavior analyst must be certified as a Board Certified Behavior Analyst, a Board Certified Behavior Analyst--Doctoral, or a Board Certified Assistant Behavior Analyst, or have an equivalent certification issued by the certifying entity and meet the requirements specified in §§ 506.252 and 506.253 or 506.254 of the Act, as applicable, and Subchapter B of the rules. Those requirements include a BACB certification or an equivalent certification by an accredited, approved certifying entity, which requires compliance with the certifying entity's educational, examination, professional, ethical, and disciplinary standards.

One need only examine the BACB certification requirements to determine what an equivalent standard should include. Equivalent does not mean identical, so evaluation of the certification is necessary. The department has been given the discretion to compare the accreditation and standards of a certifying entity to those of the BACB to approve or disapprove the certification it issues. Individuals who meet the requirements of the approved certifying entity and are issued a credential that has been approved as utilizing standards equivalent to those of the BACB may apply for licensure. The department does not evaluate individuals' qualifications other than to verify that they satisfy the requirements to obtain the license that are provided in the Act and the rules.

Once a certification that has been issued by an approved entity is deemed equivalent, then those who have obtained that certification may apply without having their certification re-examined. A certification issued by an approved certifying entity may be reevaluated at any time to ascertain that the standards for its issuance continue to be equivalent to those of the BACB, which may change over time. The discretion provided to the Department to evaluate certifying entities and the certifications they issue provides flexibility to evaluate the credential as a whole, given that each particular standard or requirement is unlikely to be identical to those of the BACB. The Department reserves the opportunity to elaborate more specifically regarding potential certifying entities and the standards for the certifications they issue as evaluation of additional certifying entities occurs but has not specified equivalent requirements at this time.

The adopted rules repeal §121.23, Examinations. The text is relocated to the adopted §121.20.

The adopted rules repeal §121.24, Educational Requirements. The text is relocated to the adopted §121.21 and §121.22.

The adopted rules repeal §121.26, Renewal, and replace it with new adopted §121.26, Renewal, due to extensive changes. The adopted section clarifies the requirements for renewal, including term of license, amends outdated rule language, and removes a provision preventing renewal of the license of a person who is in violation of rules or law at the time of renewal.

The adopted rules amend §121.27, Inactive Status, by updating language and adding that there is no fee to move from an active to inactive license status.

The adopted rules amend §121.30, Exemptions, to align the rule with statutory provisions.

The adopted rules repeal §121.50, Reporting Requirements. Text is updated and relocated to the adopted new §121.74, Reporting Requirements.

The adopted rules create new Subchapter C, Behavior Analyst Advisory Board.

The adopted rules amend §121.65, Membership, to update language.

The adopted rules create new Subchapter D, Responsibilities of License Holders.

The adopted rules repeal §121.70, Administrative Practice Responsibilities of License Holders, and replace it with new adopted §121.70, Administrative Practice Responsibilities of License Holders, due to extensive changes. The adopted rules remove duplicative provisions from the section that are included in §121.95; move license display requirements to new §121.72; move recordkeeping requirements to §121.73; and relocate telehealth requirements to Subchapter E, Telehealth.

The adopted rules amend §121.71, Professional Services Practice Responsibilities of License Holders, to update language and to move telehealth requirements to Subchapter E, Telehealth.

The adopted rules add new §121.72, Display of License, which relocates license display provisions and limitations from §121.70.

The adopted rules add new §121.73, Recordkeeping Requirements, which relocates requirements from §121.70 and clarifies who owns and is responsible for maintaining patient records. In its public comments the TMA recommended that the reference to "providers" in §121.73(a)(2) be replaced with "license holder." The department has made this change because the term "provider" is used only in Subchapter E, Telehealth, to refer to license holders who provide telehealth services. In the balance of the rules, as in §121.73(a)(2), the term "license holder" is appropriate.

The adopted rules add new §121.74, Reporting Requirements, which relocates the rules from repealed §121.50 with updates.

The adopted rules amend outdated language in §121.75, Code of Ethics.

The adopted rules create new Subchapter E, Telehealth.

The adopted rules add new §121.76, Definitions Relating to Telehealth, which relocates telehealth definitions from §121.10 and aligns them with other department health professions programs. The TMA in its public comments in response to the earlier proposal of these rules requested that the proposed definition of "telehealth" in §121.76 be amended to incorporate the limitations contained in the underlying definition in Chapter 111, Occupations Code. Specifically, the TMA recommended the following definition:

Telehealth--The use of telecommunications and telecommunications technologies for the exchange of information from one site to another for the provision of behavior analysis services to a client from a provider, including for assessments, interventions, or consultations, to the extent permitted by the definition of "telehealth service" in Occupations Code Chapter 111.001(3) (citation corrected).

The department agrees that behavior analysis license holders, like all health professionals providing telehealth services in Texas, are subject to Occupations Code, Chapter 111, including the definition of "telehealth service." The Act does not define the term, but Chapter 51 directly refers to the definition in Chapter 111. The definition in the rule has been amended to more closely align with the Chapter 111 definition while remaining tailored to the practice of telehealth by behavior analysis license holders. In addition, Chapter 111 has been added to the citation of statutory authority under which the behavior analyst rules are promulgated.

The adopted rules add new §121.77, Service Delivery Methods, which relocates delivery methods defined in §121.10 and §121.70 and aligns them with other department health professions programs.

The adopted rules add new §121.78, Technology and Equipment Requirements, which relocates telecommunications requirements related to equipment and competencies from §121.70 and §121.71.

The adopted rules add new §121.79, License Holder Responsibilities for Providing Telehealth Services and Using Telehealth, which relocates responsibilities for providers from §121.70 and §121.71 and aligns them with other department health professions programs.

The adopted rules add new §121.80, Use of Facilitators with Telehealth, which moves facilitator requirements for telehealth from §121.71.

The adopted rules add new §121.81, Client Contacts and Communications, and relocates requirements regarding notifications to clients and complaint information from §121.70.

The adopted rules repeal §121.80, Fees, which has been moved to new Subchapter F.

The adopted rules create new Subchapter F, Fees.

The adopted rules add new §121.85, Fees, relocating the text from §121.80 without substantive changes.

The adopted rules create new Subchapter G, Enforcement.

The adopted rules amend §121.90, Basis for Disciplinary Action, to include a reference to the Chapter 100 rules and to provide more concise language for disciplinary actions that can be taken against a person.

The adopted rules amend §121.95, Complaints, adding a requirement to include an authorized representative in the complaint process and updating rule language.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the September 8, 2023, issue of the *Texas Register* (48 TexReg 4964). The public comment period closed

on October 9, 2023. The Department did not receive any comments from interested parties on the proposed rules during the comment period that closed on October 9, 2023. The public comments received in response to the earlier proposals are discussed in the justification for this rulemaking.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Behavior Analyst Advisory Board met on December 11, 2023, to discuss the proposed rules and any public comments received. The Advisory Board recommended that the Commission adopt the proposed rules as published in the *Texas Register.* At its meeting on January 30, 2024, the Commission adopted the proposed rules as recommended by the Advisory Board.

16 TAC §§121.23, 121.24, 121.26, 121.50, 121.70, 121.80

STATUTORY AUTHORITY

The adopted repeals are adopted under Texas Occupations Code, Chapters 51, 111, and 506, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted repeals are those set forth in Texas Occupations Code, Chapters 51, 111, and 506. No other statutes, articles, or codes are affected by the adopted repeals.

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 February 9, 2024.

TRD-202400521
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
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For further information, please call: (512) 475-4879

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §121.1, §121.10

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51, 111, and 506, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 111, and 506. No other statutes, articles, or codes are affected by the adopted rules.

§121.10. Definitions.

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

(1) Act--Texas Occupations Code, Chapter 506.

(2) Advertising--The offer to perform behavior analysis services by an individual or business, including utilizing the titles "licensed behavior analyst" or "licensed assistant behavior analyst."

(3) Advisory Board--The Behavior Analyst Advisory Board.

(4) Applicant--A person who applies for a license to use the title "licensed behavior analyst" or "licensed assistant behavior analyst" or to practice behavior analysis.

(5) Applied behavior analysis--The practice of applied behavior analysis is defined and described in the Act, §506.003.

(6) Authorized representative--A person or entity that is legally authorized to represent the interests of a client and perform functions including making decisions about behavior analysis services.

(7) Behavior Analyst Certification Board (BACB)--A certifying entity for persons practicing behavior analysis.

(8) Client--A person who is:

(A) an individual receiving behavior analysis services from a license holder;

(B) an authorized representative of the individual receiving behavior analysis services; or

(C) an individual, institution, school, school district, educational institution, agency, firm, corporation, organization, government or governmental subdivision, business trust, estate, trust, partnership, association, or any other legal entity not receiving behavior analysis services for its own treatment purposes.

(9) Commission--The Texas Commission of Licensing and Regulation.

(10) Department--The Texas Department of Licensing and Regulation.

(11) Direct observation--A method of data collection that consists of observing the object of study in a particular situation or environment.

(12) Executive director--The executive director of the department.

(13) Indirect supervision--Supervision of a person who performs behavior analysis services but which does not occur when services are being provided to a client. This may include behavioral skills training and delivery of performance feedback; modeling technical, professional, and ethical behavior; guiding behavioral case conceptualization, problem-solving, and decision-making repertoires; review of written materials such as behavior programs, data sheets, or reports; oversight and evaluation of the effects of behavioral service delivery; and ongoing evaluation of the effects of supervision.

(14) License--A license issued under the Act authorizing a person to use the title "licensed behavior analyst" or "licensed assistant behavior analyst" or to practice behavior analysis.

(15) License holder--A person who has been issued a license in accordance with the Act to use the title "licensed behavior analyst" or "licensed assistant behavior analyst" or to practice behavior analysis.

(16) Multiple relationship--A personal, professional, business, or other type of interaction by a license holder with a client or

with a person or entity involved with the provision of behavior analysis services to a client that is not related to, or part of, the behavior analysis services.

(17) Service agreement--A signed written contract for behavior analysis services. A service agreement includes responsibilities and obligations of all parties and the scope of behavior analysis services to be provided. A service agreement may be identified by other terms including treatment agreement, Memorandum of Understanding (MOU), or Individualized Education Program (IEP).

(18) Supervision--Supervision of a person who performs behavior analysis services, and may include both direct and indirect supervision. A license holder may engage in direct supervision or indirect supervision in-person and on-site, through telehealth, or in another manner approved by the license holder's certifying entity.

(19) Telehealth--See definitions in Subchapter E. Telehealth.

(20) Treatment plan--A written behavior change program for an individual client. A treatment plan includes consent, objectives, procedures, documentation, regular review, and exit criteria. A treatment plan may be identified by other terms including Behavior Intervention Plan, Behavior Support Plan, Positive Behavior Support Plan, or Protocol.

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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Doug Jennings
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SUBCHAPTER B. LICENSING REQUIREMENTS

16 TAC §§121.20 - 121.22, 121.26, 121.27, 121.30

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51, 111, and 506, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 111, and 506. No other statutes, articles, or codes are affected by the adopted rules.

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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Doug Jennings
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SUBCHAPTER C. BEHAVIOR ANALYST ADVISORY BOARD

16 TAC §§121.65 - 121.69

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51, 111, and 506, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 111, and 506. No other statutes, articles, or codes are affected by the adopted rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. RESPONSIBILITIES OF LICENSE HOLDER

16 TAC §§121.70 - 121.75

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51, 111, and 506, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 111, and 506. No other statutes, articles, or codes are affected by the adopted rules.

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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Doug Jennings
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SUBCHAPTER E. TELEHEALTH

16 TAC §§121.76 - 121.81

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51, 111, and 506, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 111, and 506. No other statutes, articles, or codes are affected by the adopted rules.

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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Doug Jennings
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For further information, please call: (512) 475-4879

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SUBCHAPTER F. FEES

16 TAC §121.85

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51, 111, and 506, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 111, and 506. No other statutes, articles, or codes are affected by the adopted rules.

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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Doug Jennings
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For further information, please call: (512) 475-4879

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SUBCHAPTER G. ENFORCEMENT

16 TAC §121.90, §121.95

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51, 111, and 506, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 111, and 506. No other statutes, articles, or codes are affected by the adopted rules.

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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Doug Jennings
General Counsel
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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 1. GENERAL ADMINISTRATION

SUBCHAPTER G. NOTICE AND PROCESSING PERIODS FOR PERMIT APPLICATIONS

28 TAC §1.814

The commissioner of insurance adopts new 28 TAC §1.814, concerning occupational and business permits and licenses for military service members, military veterans, and military spouses. The new section is adopted with nonsubstantive changes to the proposed text published in the December 1, 2023, issue of the *Texas Register* (48 TexReg 6997). The section will be republished.

REASONED JUSTIFICATION. New §1.814 implements Senate Bill 422, 88th Legislature, 2023, and Chapter 55 of the Occupations Code and aligns the rules of the Texas Department of Insurance (TDI) with 50 USC §4025a. Chapter 55 provides for alternative licensing procedures and requirements for military service members, military veterans, and military spouses. Before the passage of SB 422, Occupations Code §55.0041 required licensing agencies to recognize the out-of-state licenses of military spouses. SB 422 amended §55.0041 to also apply to military service members and to incorporate additional changes. The bill also amended Occupations Code §55.004(d) to apply residency rules to military service members and §55.005(a) to require that licensing agencies' processing and issuance of a license to a military service member, veteran, or spouse be completed within 30 days after application filing.

New §1.814 implements Chapter 55 of the Occupations Code, including §55.0041 as amended by SB 422, by describing the alternative licensing procedures and requirements for license applications by military service members, veterans, and spouses. Under new §1.814, these licensing procedures and requirements apply to all licenses issued by TDI, including the State Fire Marshal's Office. New §1.814 also aligns such procedures and requirements with 50 USC §4025a, which provides for the portability of professional licenses of service members and their spouses.

New subsection (a) of §1.814 provides applicable definitions. New subsection (b) addresses conflicts with other sections in Title 28 of the Administrative Code. New subsection (c) clarifies the applicability of the new section. New subsection (d) describes the alternative licensing requirements available to military service members, veterans, and spouses. New subsection (e) provides for extension of the deadline for license renewal and related fee exemption for military service members who hold a Texas license. New subsection (f) provides for exemption from payment of license application and examination fees. New subsection (g) provides for reciprocity for out-of-state licenses for military service members and military spouses, consistent with SB 422. The text of §1.814(g)(3) as proposed has been changed to correct an error in the citation to 50 USC §4025a. New subsection (h) includes provisions applicable only to military service members and military spouses who are administrators. New subsection (i) provides for expedited licensing procedures. New subsection (j) provides for crediting of a military service member or veteran's military service, training, or education toward apprenticeship requirements or other license requirements. New subsection (k) gives guidance on residency documentation requirements. New subsection (l) provides for TDI's identification of states with licensing requirements that are substantially equivalent to Texas requirements.

Separate adoption orders amend or repeal sections in Chapters 7, 15, 19, 25, and 34 of Title 28 of the Administrative Code for consistency with the provisions in new §1.814.

SUMMARY OF COMMENTS. TDI provided an opportunity for public comment on the rule proposal for a period that ended on January 3, 2024. TDI did not receive any comments on the proposed new section.

STATUTORY AUTHORITY. The commissioner adopts new 28 TAC §1.814 under Occupations Code §§55.002, 55.004(a), 55.0041, 55.007, and 55.008; Government Code §417.004(a); and Insurance Code §§36.109, 4001.005, and 36.001.

Occupations Code §55.002 requires state agencies to adopt rules to exempt certain military service members from increased fees and penalties for failure to timely renew a license.

Occupations Code §55.004(a) requires state agencies to adopt rules for the issuance of a license to certain military service members, military veterans, and military spouses.

Occupations Code §55.0041, which addresses recognition of out-of-state licenses of military service members and military spouses, requires state agencies to adopt rules to implement the section. In addition, Occupations Code §55.0041(f) authorizes state agencies to adopt rules for the issuance of a license to a military service member or military spouse who receives confirmation from TDI of licensure verification and authorization to engage in the business or occupation under Occupations Code §55.0041.

Occupations Code §55.007, which addresses license eligibility requirements for military service members and military veterans, requires state agencies to adopt rules necessary to implement the section. In addition, Occupations Code §55.007(c) provides that such rules may not apply to certain applicants who hold a restricted license or has an unacceptable criminal history.

Occupations Code §55.008, which addresses apprenticeship requirements for certain applicants with military experience, requires TDI to adopt rules necessary to implement the section.

Government Code §417.004(a) authorizes the commissioner to perform supervisory and rule-making functions previously performed by the Texas Commission on Fire Protection under the subsection.

Insurance Code §36.109, which addresses renewal extension for certain persons performing military service, authorizes the commissioner to adopt rules as necessary to implement the section.

Insurance Code §4001.005 authorizes the commissioner to adopt rules necessary to implement Title 13 of the Insurance Code and to meet minimum requirements of federal law.

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.

§1.814. Military Service Member, Military Veteran, and Military Spouse.

(a) Definitions.

(1) The definitions for terms defined in Occupations Code §55.001, concerning Definitions, are applicable to this section, including the terms "military service member," "military veteran," and "military spouse."

(2) for purposes of this section, "license" has the same meaning as "permit," as defined in §1.802 of this title (relating to Definitions), unless the context clearly indicates otherwise, and "licensee" includes anyone who holds a permit issued by the agency.

(b) Conflict. To the extent that provisions in this section conflict with provisions in any other section in this title, this section controls.

(c) Applicability. The provisions in this section apply to all permits as defined in §1.802 of this title, including licenses and certificates of authority for administrators under Chapter 7, Subchapter P of this title (relating to Administrators); surplus lines agents under Chapter 15, Subchapter B of this title (relating to Surplus Lines Agents); insurance professionals under Chapter 19, Subchapter I of this title (relating to General Provisions Regarding Fees, Applications, and Renewals); and insurance premium finance companies under Chapter 25, Subchapter B of this title (relating to Licensing and Regulation); and licenses issued by the state fire marshal under Chapter 34 of this title (relating to State Fire Marshal).

(d) Alternative licensing requirements. Consistent with Occupations Code §55.004, concerning Alternative Licensing for Military Service Members, Military Veterans, and Military Spouses, an applicant for a license who is a military service member, military veteran, or military spouse may complete the following alternative procedures for licensing:

(1) Resident licensing by reciprocity for military service members and military spouses. An applicant who is a military service member or military spouse and who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license may apply for a Texas resident license as provided in subsection (g) of this section.

(2) Resident licensing by reciprocity for military veterans. An applicant who is a military veteran and who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license may apply for a Texas resident license subject to the applicable qualifications for resident licenses as provided in this title and subject to subsection (f) of this section.

(3) Expired resident licenses. An applicant who is a military service member, military veteran, or military spouse and whose Texas resident license has been expired for fewer than five years preceding the application date may request that TDI waive the examination requirement. An applicant requesting this waiver must submit to the applicable licensing office or division of the agency:

(A) a new license application;

(B) identification indicating that the applicant is a military service member; military veteran; or military dependent, if a military spouse;

(C) evidence that the applicant has completed all required continuing education for the periods the applicant was licensed and paid all fines as required under this title; and

(D) a request for waiver that includes an explanation that justifies waiver of the licensing examination.

(e) License renewal extension and fee exemption.

(1) As specified in Occupations Code §55.003, concerning Extension of License Renewal Deadlines for Military Service Members, a military service member who holds a license is entitled to two additional years to complete any requirements related to the renewal of the license, including continuing education requirements, and to submit a renewal application including the following:

(A) the licensee's name, address, and license number;

(B) the licensee's military identification indicating that the individual is a military service member; and

(C) a statement requesting up to two years of additional time to complete the renewal, including continuing education requirements.

(2) A military service member specified in paragraph (1) of this subsection is exempt from additional fees or penalties required under this title for failure to renew a license in a timely manner, as specified in Occupations Code §55.002, concerning Exemption from Penalty for Failure to Renew License.

(3) A military service member specified in paragraph (1) of this subsection must satisfy the continuing education requirement for which the compliance period has been extended before satisfying the continuing education requirement for any other period.

(4) A military service member serving in a combat theater, as provided for in Insurance Code §36.109, concerning Renewal Extension for Certain Persons Performing Military Service, may apply for an exemption from or an extension of time for meeting license renewal requirements, including continuing education requirements. The licensee must request the exemption or extension before the end of the applicable reporting period and must include:

(A) a copy of the order for active duty status, service in a combat theater, or other positive documentation of military service that will demonstrate that the licensee is prevented from compliance;

(B) a clear request for either an extension or exemption, or both;

(C) a statement indicating whether the request is for an extension or exemption, or both, from continuing education requirements or from license renewal;

(D) the expected duration of the assignment; and

(E) any other information the licensee believes may assist the agency or that the agency requests, on a case-by-case basis.

(f) Fee exemptions.

(1) Consistent with Occupations Code §55.009, concerning License Application and Examination Fees, the following applicants are not required to pay any applicable license application fee or examination fee that is otherwise payable to the agency:

(A) a military service member or military veteran whose military service, training, or education substantially meets all of the requirements for the license; or

(B) a military service member, military veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license.

(2) The fee exemption under paragraph (1) of this subsection does not apply to license renewal application fees.

(3) To qualify for the fee exemption under paragraph (1)(A) of this subsection, the applicant must submit as applicable:

(A) the license application, with a request for waiver of the application fee and examination fee;

(B) identification indicating that the applicant is a military service member or military veteran; and

(C) documentation that the applicant's military service, training, or education substantially meets all the requirements for the license.

(4) To qualify for the fee exemption under paragraph (1)(B) of this subsection, the applicant must submit as applicable:

(A) the license application, with a request for waiver of the application fee and examination fee; and

(B) identification indicating that the applicant is a military service member, military veteran, or military spouse.

(g) Reciprocal licenses for military service members and military spouses.

(1) A military service member or military spouse who is licensed in a state with substantially equivalent requirements to those of Texas is eligible for a Texas resident license while the military service member is stationed at a military installation in Texas.

(2) A license granted under paragraph (1) of this subsection is effective for a period of three years from the date the applicant receives confirmation from the agency of receipt of the items described in paragraph (4)(A) - (C) of this subsection and may not be renewed.

(3) Consistent with 50 USC §4025a, concerning Portability of Professional Licenses of Servicemembers and Their Spouses, if military orders require the military service member to continue to be stationed in Texas past the expiration of the license as described in paragraph (2) of this subsection, the licensee may apply for a new license under paragraph (1) of this subsection. A licensee seeking a new license under this paragraph must submit to the applicable licensing office or division of the agency documentation of the military order or orders requiring that the military service member continue to be stationed in Texas past the license expiration date.

(4) To apply for a license under this subsection, the applicant must provide to the applicable licensing office or division of the agency:

(A) an application notifying the agency of the applicant's intent to operate in Texas;

(B) proof of the applicant's residency in Texas and a copy of the applicant's military identification card; and

(C) evidence of good standing from the state with substantially equivalent requirements to the requirements of this state.

(5) Within 30 days after the applicant's submission of the items described in paragraph (4) of this subsection, the agency will verify the applicant's good standing status described in paragraph (4)(C) of this subsection.

(h) Administrators.

(1) A military service member or military spouse who is licensed as an administrator in a state with substantially equivalent requirements as those found in §7.1604 of this title (relating to Application for Certificate of Authority) and Insurance Code Chapter 4151, concerning Third-Party Administrators, may engage as an administrator while the military service member is stationed at a military installation in Texas.

(2) A military service member or military spouse seeking to engage as an administrator under this subsection must:

(A) submit an application notifying the agency of the military service member or military spouse's intent to engage as an administrator in Texas;

(B) submit to the agency proof of the applicant's residency in Texas and a copy of the applicant's military identification card; and

(C) show evidence of good standing from a jurisdiction with substantially equivalent requirements as those found in §7.1604 of this title and Insurance Code Chapter 4151.

(3) Notwithstanding §7.1604 of this title, a military service member or military spouse seeking to engage as an administrator under this subsection will not be assessed any application fees under that section.

(4) A military service member or military spouse authorized to engage as an administrator must comply with and adhere to all other laws and rules applicable to administrators.

(i) Expedited license procedure. Within 30 days of the filing of a license application by a military service member, military veteran, or military spouse, the agency will process the application and issue the license to an applicant who qualifies for the license under subsection (d) of this section, subject to other qualification requirements under this title.

(j) Credit for military service, training, or education.

(1) An applicant who is a military service member or military veteran may submit to the agency documentation of the applicant's military service, training, or education. Such military service, training, or education, after verification by the agency, will be credited to license requirements other than examination requirements. This subsection will not apply to an applicant who holds a restricted license issued by another jurisdiction or who has an unacceptable criminal history.

(2) If an apprenticeship is required for the license, an applicant who is a military service member or military veteran may submit to the agency documentation of the applicant's military service, training, or education that is relevant to the occupation. Such military service, training, or education, after verification by the agency, will be credited to the apprenticeship requirements.

(k) Residency. For an application for a license that has a residency requirement for license eligibility, an applicant who is a military service member or military spouse may establish residency for the purposes of this section by providing the applicable licensing office or division of the agency with a copy of the permanent change of station order or other military order requiring the military service member to be stationed in Texas, or any other documentation of residency for license eligibility permitted under this title.

(l) States with substantially equivalent requirements. For the purposes of this section, the agency will work with non-Texas jurisdictions to:

(1) identify, with respect to each type of license issued by the agency, the jurisdictions that have licensing requirements that are substantially equivalent to the requirements for the license in Texas; and

(2) verify that a military service member or military spouse is licensed in good standing in a jurisdiction described in paragraph (1) of this subsection.

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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CHAPTER 7. CORPORATE AND FINANCIAL REGULATION
SUBCHAPTER P. ADMINISTRATORS

28 TAC §7.1603

The commissioner of insurance adopts amendments to 28 TAC §7.1603, concerning the certificate of authority required for administrators. The amendments are adopted without changes to the proposed text published in the December 1, 2023, issue of the *Texas Register* (48 TexReg 7001). The section will not be republished.

REASONED JUSTIFICATION. The amendments to §7.1603 are necessary to remove redundant provisions and implement Senate Bill 422, 88th Legislature, 2023, which amended Occupations Code §§55.004(d), 55.0041, and 55.005(a). Chapter 55 of the Occupations Code provides for alternative licensing procedures and requirements for military service members, military veterans, and military spouses. Before the passage of SB 422, Occupations Code §55.0041 required licensing agencies to recognize the out-of-state licenses of military spouses. SB 422 amended §55.0041 to also apply to military service members and to incorporate additional changes.

As part of the implementation of SB 422, the Texas Department of Insurance (TDI) is separately adopting new 28 TAC §1.814, which provides alternative licensing procedures and requirements for license applications by military service members, military veterans, and military spouses, consistent with Occupations Code Chapter 55 and 50 USC §4025a. New §1.814 applies to all licenses, permits, certifications, and other authorizations issued by TDI, including certificates of authority for administrators.

Section 7.1603 requires that persons holding themselves out as administrators must hold a certificate of authority under Insurance Code Chapter 4151. Subsections (a), (c), (d), (e), and (f) currently include requirements for military spouses seeking authorization to or who are currently authorized in other states to engage as an administrator. The amendments to §7.1603 remove these provisions, including part of subsection (a), and subsections (c), (d), (e), and (f), which apply to military spouses, because they are made redundant by new §1.814. Amendments also insert the titles of cited Insurance Code provisions in subsection (a).

SUMMARY OF COMMENTS. TDI provided an opportunity for public comment on the rule proposal for a period that ended on January 3, 2024. TDI did not receive any comments on the proposed amendments.

STATUTORY AUTHORITY. The commissioner adopts the amendments to §7.1603 under Occupations Code §55.0041(e) and Insurance Code §36.001.

Occupations Code §55.0041(e), which addresses recognition of out-of-state licenses of military service members and military spouses, requires state agencies to adopt rules to implement the section.

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.

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 February 9, 2024.

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Jessica Barta
General Counsel
Texas Department of Insurance
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Proposal publication date: December 1, 2023
For further information, please call: (512) 676-6555

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CHAPTER 15. SURPLUS LINES INSURANCE
SUBCHAPTER B. SURPLUS LINES AGENTS

28 TAC §15.101

The commissioner of insurance adopts amendments to 28 TAC §15.101, concerning the licensing of surplus lines agents. The amendments are adopted without changes to the proposed text published in the December 1, 2023, issue of the *Texas Register* (48 TexReg 7002). The section will not be republished.

REASONED JUSTIFICATION. The amendments to §15.101 are necessary to remove redundant provisions and implement Senate Bill 422, 88th Legislature, 2023. Chapter 55 of the Occupations Code provides for alternative licensing procedures and requirements for military service members, military veterans, and military spouses. Before the passage of SB 422, Occupations Code §55.0041 required licensing agencies to recognize the out-of-state licenses of military spouses. SB 422 amended §55.0041 to also apply to military service members and to incorporate additional changes.

As part of the implementation of SB 422, TDI is separately adopting new 28 TAC §1.814, which provides alternative licensing procedures and requirements for license applications by military service members, military veterans, and military spouses, consistent with Occupations Code Chapter 55 and 50 USC §4025a. New §1.814 applies to all licenses, permits, certifications, and other authorizations issued by the Texas Department of Insurance (TDI), including surplus lines agent licenses.

Section 15.101 addresses requirements for the licensing of surplus lines agents, and subsection (g) provides licensing requirements for military spouses. The amendments remove subsection (g), which is made redundant by new §1.814, and redesignate the subsections that follow subsection (g) to reflect its removal. In addition, amendments in subsections (b), (e), and (f) and redesignated subsections (g) and (h) add the titles of cited Insurance Code sections, and an amendment to subsection (f) revises the capitalization of the word "Commissioner," for consistency with current TDI rule drafting style.

SUMMARY OF COMMENTS. TDI provided an opportunity for public comment on the rule proposal for a period that ended on January 3, 2024. TDI did not receive any comments on the proposed amendments.

STATUTORY AUTHORITY. The commissioner adopts amendments to 28 TAC §15.101 under Occupations Code §55.0041(e) and Insurance Code §36.001.

Occupations Code §55.0041, which addresses recognition of out-of-state licenses of military service members and military spouses, requires in subsection (e) that state agencies adopt rules to implement the section.

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.

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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CHAPTER 19. LICENSING AND REGULATION OF INSURANCE PROFESSIONALS

The commissioner of insurance adopts the repeal of §19.803 and amended §19.810 in Subchapter I of 28 TAC Chapter 19 and adopts amended §19.1004 in Subchapter K of 28 TAC Chapter 19. These sections concern the licensing of insurance professionals. The amendments and repeal are adopted without changes to the proposed text published in the December 1, 2023, issue of the *Texas Register* (48 TexReg 7004). The sections will not be republished.

REASONED JUSTIFICATION. The amended sections and repeal are necessary to remove redundant provisions and implement Senate Bill 422, 88th Legislature, 2023. Chapter 55 of the Occupations Code provides for alternative licensing procedures and requirements for military service members, military veterans, and military spouses. Before the passage of SB 422, Occupations Code §55.0041 required licensing agencies to recognize the out-of-state licenses of military spouses. SB 422 amended §55.0041 to also apply to military service members and to incorporate additional changes.

As part of the implementation of SB 422, the Texas Department of Insurance (TDI) is separately adopting new 28 TAC §1.814, which provides alternative licensing procedures and requirements for license applications by military service members, military veterans, and military spouses, consistent with Occupations Code Chapter 55 and 50 USC §4025a. New §1.814 applies to all licenses, permits, certifications, and other authorizations TDI issues, including insurance professional licenses.

The amendments to specific sections and the repeal are described in the following paragraphs.

Section 19.803. Section 19.803, which provides procedures for licensing of military service members, military veterans, and military spouses, is repealed. This section is no longer necessary; it is superseded by new 28 TAC §1.814.

Section 19.810. The adopted amendments to §19.810 remove outdated effective dates in subsection (a) and replace references to §19.803 in subsection (b) with references to new 28 TAC §1.814. The amendments also correct erroneous references in subsection (f), correct a grammatical error in subsection (h)(1), and insert the titles of cited Insurance Code and Administrative Code provisions in subsections (a), (c)(2), and (h)(1).

Section 19.1004. The adopted amendments to §19.1004 remove subsection (f), which provides for licensing-related exemptions and extensions for military service members. Subsection (f) is superseded by new 28 TAC §1.814. The amendments also update references to subsection (f) and redesignate the subsections that follow subsection (f) to reflect its removal. In addition, the amendments insert the titles of cited Insurance Code and Administrative Code provisions in subsection (b) and redesignated subsections (f) and (g).

SUMMARY OF COMMENTS. TDI provided an opportunity for public comment on the rule proposal for a period that ended on January 3, 2024. TDI did not receive any comments on the proposed amendments and repeal.

SUBCHAPTER I. GENERAL PROVISIONS REGARDING FEES, APPLICATIONS, AND RENEWALS

28 TAC §19.803

STATUTORY AUTHORITY. The commissioner adopts the repeal of §19.803 under Occupations Code §§55.002, 55.004(a), 55.0041, 55.007, and 55.008, and Insurance Code §§36.109, 4001.005, and 36.001.

Occupations Code §55.002 requires state agencies to adopt rules to exempt certain military service members from increased fees and penalties for failure to timely renew a license.

Occupations Code §55.004(a) requires state agencies to adopt rules for the issuance of a license to certain military service members, military veterans, and military spouses.

Occupations Code §55.0041, which addresses recognition of out-of-state licenses of military service members and military spouses, requires state agencies to adopt rules to implement the section. In addition, Occupations Code §55.0041(f) authorizes state agencies to adopt rules for the issuance of a license to a military service member or military spouse who provides confirmation from TDI of licensure verification and authorization to engage in the business or occupation under Occupations Code §55.0041.

Occupations Code §55.007, which addresses license eligibility requirements for military service members and military veterans, requires state agencies to adopt rules necessary to implement the section.

Occupations Code §55.008, which addresses apprenticeship requirements for certain applicants with military experience, requires state agencies to adopt rules necessary to implement the section.

Insurance Code §36.109, which addresses renewal extension for certain persons performing military service, authorizes the commissioner to adopt rules as necessary to implement the section.

Insurance Code §4001.005 authorizes the commissioner to adopt rules necessary to implement Title 13 of the Insurance Code and to meet minimum requirements of federal law.

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.

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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28 TAC §19.810

STATUTORY AUTHORITY. The commissioner adopts amendments to §19.810 under Occupations Code §§55.002, 55.004(a), and 55.0041, and Insurance Code §§36.109, 4001.005, and 36.001.

Occupations Code §55.002 requires state agencies to adopt rules to exempt certain military service members from increased fees and penalties for failure to timely renew a license.

Occupations Code §55.004(a) requires state agencies to adopt rules for the issuance of a license to certain military service members, military veterans, and military spouses.

Occupations Code §55.0041 which addresses recognition of out-of-state licenses of military service members and military spouses, requires state agencies to adopt rules to implement the section.

Insurance Code §36.109, which addresses renewal extension for certain persons performing military service, authorizes the commissioner to adopt rules as necessary to implement the section.

Insurance Code §4001.005 authorizes the commissioner to adopt rules necessary to implement Title 13 of the Insurance Code and to meet minimum requirements of federal law.

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.

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 K. CONTINUING EDUCATION, ADJUSTER PRELICENSING EDUCATION PROGRAMS, AND CERTIFICATION COURSES

28 TAC §19.1004

STATUTORY AUTHORITY. The commissioner adopts amendments to §19.1004 under Occupations Code §§55.002, 55.004(a), and 55.0041, and Insurance Code §§36.109, 4001.005, and 36.001.

Occupations Code §55.002 requires state agencies to adopt rules to exempt certain military service members from increased fees and penalties for failure to timely renew a license.

Occupations Code §55.004(a) requires state agencies to adopt rules for the issuance of a license to certain military service members, military veterans, and military spouses.

Occupations Code §55.0041, which addresses recognition of out-of-state licenses of military service members and military spouses, requires state agencies to adopt rules to implement the section.

Insurance Code §36.109, which addresses renewal extension for certain persons performing military service, authorizes the commissioner to adopt rules as necessary to implement the section.

Insurance Code §4001.005 authorizes the commissioner to adopt rules necessary to implement Title 13 of the Insurance Code and to meet minimum requirements of federal law.

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.

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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CHAPTER 25. INSURANCE PREMIUM FINANCE

SUBCHAPTER B. LICENSING AND REGULATION

28 TAC §25.24

The commissioner of insurance adopts amendments to 28 TAC §25.24, concerning applications for an insurance premium finance company license. The amendments are adopted without changes to the proposed text published in the December 1, 2023, issue of the *Texas Register* (48 TexReg 7009). The section will not be republished.

REASONED JUSTIFICATION. The amendments to §25.24 are necessary to remove redundant language and implement Senate Bill 422, 88th Legislature, 2023, which amended Occupations Code §§55.004(d), 55.0041, and 55.005(a). Chapter 55 of the Occupations Code provides for alternative licensing procedures and requirements for military service members, military veterans, and military spouses. Before the passage of SB 422, Occupations Code §55.0041 required licensing agencies to recognize the out-of-state licenses of military spouses. SB 422 amended §55.0041 to also apply to military service members and to incorporate additional changes.

As part of the implementation of SB 422, the Texas Department of Insurance (TDI) is separately adopting new 28 TAC §1.814, which provides alternative licensing procedures and requirements for license applications by military service members, military veterans, and military spouses, consistent with Occupations Code Chapter 55 and with 50 USC §4025a. New §1.814 applies generally to all licenses, permits, certifications, and other authorizations issued by TDI, including insurance premium finance company licenses.

Section 25.24 addresses requirements for insurance premium finance company licenses, and subsections (c) and (d) of §25.24 provide alternative licensing procedures for military spouses and related application fee exemption. The amendments remove subsections (c) and (d) because they will be made redundant by new §1.814. In addition, subsection (b) is amended to remove a reference to subsection (d).

SUMMARY OF COMMENTS. TDI provided an opportunity for public comment on the rule proposal for a period that ended on January 3, 2024. TDI did not receive any comments on the proposed amendments.

STATUTORY AUTHORITY. The commissioner adopts amendments to §25.24 under Occupations Code §55.0041 and Insurance Code §651.003 and §36.001.

Occupations Code §55.0041, which addresses recognition of out-of-state licenses of military service members and military spouses, requires state agencies to adopt rules to implement the section.

Insurance Code §651.003 authorizes the commissioner to adopt rules necessary to administer Insurance Code Chapter 651.

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.

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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General Counsel
Texas Department of Insurance
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For further information, please call: (512) 676-6555

CHAPTER 34. STATE FIRE MARSHAL

The commissioner of insurance adopts the repeals of 28 TAC §§34.524, 34.631, 34.726, and 34.833, concerning licenses issued to military service members, military veterans, and military spouses. The repeals are adopted without changes to the proposed text published in the December 1, 2023, issue of the *Texas Register* (48 TexReg 7010). The sections will not be republished.

REASONED JUSTIFICATION. The repeals are necessary to implement Senate Bill 422, 88th Legislature, 2023 and Chapter 55 of the Occupations Code. Chapter 55 provides for alternative licensing procedures and requirements for military service members, military veterans, and military spouses. Before the passage of SB 422, Occupations Code §55.0041 required licensing agencies to recognize the out-of-state licenses of military spouses. SB 422 amended §55.0041 to also apply to military service members and to incorporate additional changes.

As part of the implementation of SB 422, the Texas Department of Insurance (TDI) is separately adopting new 28 TAC §1.814, which provides alternative licensing procedures and requirements for license applications by military service members, military veterans, and military spouses, consistent with Occupations Code Chapter 55 and 50 USC §4025a. New §1.814 applies to all licenses, permits, certifications, and other authorizations issued by TDI, including those issued by the state fire marshal.

Section 34.524 addresses the waiver of application and examination fees, as well as alternative licensing options for military service members, veterans, and spouses, as it relates to fire extinguisher rules.

Section 34.631 addresses the waiver of application and examination fees, as well as alternative licensing options for military service members, veterans, and spouses, as it relates to fire alarm rules.

Section 34.726 addresses the waiver of application and examination fees, as well as alternative licensing options for military service members, veterans, and spouses, as it relates to fire sprinkler rules.

Section 34.833 addresses the waiver of application and examination fees, as well as alternative licensing options for military service members, veterans, and spouses, as it relates to the sale and storage of fireworks.

Sections 34.524, 34.631, 34.726, and 34.833 are repealed because they are made redundant by new §1.814.

SUMMARY OF COMMENTS. TDI provided an opportunity for public comment on the rule proposal for a period that ended on January 3, 2024. TDI did not receive any comments on the proposed repeals.

SUBCHAPTER E. FIRE EXTINGUISHER RULES

28 TAC §34.524

STATUTORY AUTHORITY. The commissioner adopts the repeal of 28 TAC §34.524 under Occupations Code §§55.004(a), 55.0041(e), and 55.008(b); Government Code §417.004(a); and Insurance Code §§6001.051(b), 6001.052(c), and 36.001.

Occupations Code §55.004(a) requires state agencies to adopt rules for the issuance of a license to certain military service members, military veterans, and military spouses.

Occupations Code §55.0041(e), which addresses recognition of out-of-state licenses of military service members and military spouses, requires state agencies to adopt rules to implement the section.

Occupations Code §55.008(b), which addresses apprenticeship requirements for certain applicants with military experience, requires state agencies to adopt rules necessary to implement the section.

Government Code §417.004(a) authorizes the commissioner to perform supervisory and rulemaking functions under the subsection.

Insurance Code §6001.051(b) provides that the commissioner may issue rules necessary to administer Insurance Code Chapter 6001 through the state fire marshal.

Insurance Code §6001.052(c) requires the commissioner to prescribe requirements for applications and qualifications for licenses, permits, and certificates issued under Insurance Code Chapter 6001.

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.

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 F. FIRE ALARM RULES

28 TAC §34.631

STATUTORY AUTHORITY. The commissioner adopts the repeal of 28 TAC §34.631 under Occupations Code §§55.004(a), 55.0041(e), and 55.008(b); Government Code §417.004(a); and Insurance Code §6002.051(b) and §36.001.

Occupations Code §55.004(a) requires state agencies to adopt rules for the issuance of a license to certain military service members, military veterans, and military spouses.

Occupations Code §55.0041(e), which addresses recognition of out-of-state licenses of military service members and military spouses, requires state agencies to adopt rules to implement the section.

Occupations Code §55.008(b), which addresses apprenticeship requirements for certain applicants with military experience, requires state agencies to adopt rules necessary to implement the section.

Government Code §417.004(a) authorizes the commissioner to perform supervisory and rulemaking functions under the subsection.

Insurance Code §6002.051(b) provides that the commissioner may adopt rules as necessary to administer Insurance Code Chapter 6002, including rules the commissioner considers necessary to administer the chapter through the state fire marshal.

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.

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 G. FIRE SPRINKLER RULES

28 TAC §34.726

STATUTORY AUTHORITY. The commissioner adopts the repeal of 28 TAC §34.726 under Occupations Code §§55.004(a), 55.0041(e), and 55.008(b); Government Code §417.004(a); and Insurance Code §6003.051(b) and §36.001.

Occupations Code §55.004(a) requires state agencies to adopt rules for the issuance of a license to certain military service members, military veterans, and military spouses.

Occupations Code §55.0041(e), which addresses recognition of out-of-state licenses of military service members and military spouses, requires state agencies to adopt rules to implement the section.

Occupations Code §55.008(b), which addresses apprenticeship requirements for certain applicants with military experience, requires state agencies to adopt rules necessary to implement the section.

Government Code §417.004(a) authorizes the commissioner to perform supervisory and rulemaking functions under the subsection.

Insurance Code §6003.051(b) provides that the commissioner may issue rules necessary to administer Insurance Code Chapter 6003 through the state fire marshal.

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.

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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Proposal publication date: December 1, 2023
For further information, please call: (512) 676-6555

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SUBCHAPTER H. STORAGE AND SALE OF FIREWORKS

28 TAC §34.833

STATUTORY AUTHORITY. The commissioner adopts the repeal of 28 TAC §34.833 under Occupations Code §§55.004(a), 55.0041(e), 55.008(b), and 2154.052; Government Code §417.004(a); and Insurance Code §36.001.

Occupations Code §55.004(a) requires state agencies to adopt rules for the issuance of a license to certain military service members, military veterans, and military spouses.

Occupations Code §55.0041(e), which addresses recognition of out-of-state licenses of military service members and military spouses, requires state agencies to adopt rules to implement the section.

Occupations Code §55.008(b), which addresses apprenticeship requirements for certain applicants with military experience, requires state agencies to adopt rules necessary to implement the section.

Occupations Code §2154.052 authorizes the commissioner to issue rules to administer Insurance Code Chapter 2154 requires the commissioner to adopt rules regulating issuance of licenses and permits to persons engaged in manufacturing, selling, storing, possessing, or transporting fireworks in this state and adopt rules for applications for licenses and permits.

Government Code §417.004(a) authorizes the commissioner to perform supervisory and rulemaking functions under the subsection.

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.

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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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 58. OYSTERS, SHRIMP, AND FINFISH

SUBCHAPTER A. STATEWIDE OYSTER FISHERY PROCLAMATION

31 TAC §58.21

The Texas Parks and Wildlife Commission in a duly noticed meeting on November 2, 2023 adopted an amendment to 31 TAC §58.21, concerning Taking or Attempting to Take Oysters from Public Oyster Beds: General Rules, without changes to the proposed text as published in the September 29, 2023, issue of the *Texas Register* (48 TexReg 5624) and will not be republished.

The rule temporarily prohibits the harvest of oysters for two years within the boundaries of restoration areas on two reefs: one site in Conditionally Approved Area TX-7 in Galveston Bay (East Redfish Reef, approximately 42.6 acres), and one site in Conditionally Approved Area TX-6 in Galveston Bay (North Dollar Reef, 21.8 acres). The amendment as adopted temporarily closes a total of 64.4 acres of oyster reef for two years. The Texas Department of State Health Services (DSHS) regulates shellfish sanitation and designates specific areas where oysters may be harvested for human consumption. The designation of "Conditionally Approved" or "Approved" is determined by DSHS.

The temporary closures will allow for the planting of oyster cultch to repopulate in those areas and enough time for those oysters to reach legal size for harvest. Oyster cultch is the material to which oyster spat (juvenile oysters) attach in order to create an oyster bed.

Under Parks and Wildlife Code, §76.115, the department may close an area to the taking of oysters when the commission finds that the area is being overworked or damaged or the area is to be reseeded or restocked. Oyster reefs in Texas have been impacted due to drought, flooding, and hurricanes (Hurricane Ike, September 2008 and Hurricane Harvey, August 2017), as well as high harvest pressure. The department's oyster habitat restoration efforts to date have resulted in a total of approximately 1,709

acres of oyster habitat returned to productive habitat within these bays.

Over $3.4 million from the Coronavirus Aid, Relief, and Economic Security (CARES) Act, administered through the Gulf States Marine Fisheries Commission (GSMFC), was awarded to TPWD to restore oyster habitat to offset impacts to commercial oyster fisheries from decreased landings, workforce, and demand for oysters resulting from COVID-19. Funding was also generated as a result of the passage of House Bill 51 (85th Legislature, 2017), which included a requirement that certified oyster dealers re-deposit department-approved cultch materials in an amount equal to thirty percent of the total volume of oysters purchased in the previous license year. Additionally, Shell Oil and Gas has donated $50,000 to the Galveston Bay oyster restoration project. These funds will be used to restore approximately 21 acres on East Redfish Reef and nine acres on North Dollar Reef. Oyster abundance on these reefs has severely declined over time, and the portion of the reefs selected for restoration is characterized by degraded substrates. These sites were selected in collaboration with the commercial oyster industry, which provided input on site prioritization through a series of workshops. Commercial oyster industry representatives also accompanied TPWD on site surveys to determine the suitability of the substrate for restoration. The restoration activities will focus on establishing stable substrate and providing suitable conditions for spat settlement and oyster bed development.

The department received one comment opposing adoption of the rule as proposed. The commenter stated opposition to the 300-ft closure zone imposed by current rule on all shoreline and stated that Christmas Bay should be re-opened "with no land access." The department disagrees with the comment and responds that the proposed rule did not contemplate the 300-ft closure zone and therefore any changes to the provision are beyond the scope of the rulemaking and would require separate rule action. The department also responds that the closure of Christmas Bay was also not contemplated by the proposed rulemaking and therefore any changes to that provision are also beyond the scope of the rulemaking and require separate rule action. No changes were made as a result of the comment.

The department received 18 comments supporting adoption of the rule as proposed.

The amendment is adopted under Parks and Wildlife Code, §76.301, which authorizes the commission to regulate the taking, possession, purchase and sale of oysters, including prescribing the times, places, conditions, and means and manner of taking oysters.

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 February 7, 2024.

TRD-202400465
James Murphy
General Counsel
Texas Parks and Wildlife Department
Effective date: February 27, 2024
Proposal publication date: September 29, 2023
For further information, please call: (512) 389-4775

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 151. GENERAL PROVISIONS

37 TAC §151.4

The Texas Board of Criminal Justice (board) adopts amendments to §151.4, concerning Public Presentations and Comments to the Texas Board of Criminal Justice, with no changes to the proposed text as published in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8182). The rule will not be republished.

The adopted amendments provide additional contact information for individuals with disabilities who have special accommodation needs to reach the board office, and minor word changes.

The board received comments from Ward Larkin on §151.4(d)(1) of the proposed amendments.

Section §151.4(d)(1)

This section requires that twice a year, at the second and fourth regular called meetings of the board, an opportunity shall be provided for public comment on issues that are not part of the TBCJ's posted agenda but are within the board's jurisdiction. The proposed amendments recommended no change to this section.

Mr. Larkin requests the board to modify this section to allow an opportunity for public comment on issues that are not part of the TBCJ's posted agenda but are within the board's jurisdiction at every regular called board meeting.

TBCJ declines to modify the proposed rule as requested by Mr. Larkin as the proposed rule is consistent with statutory language, which requires that the board to provide the public with a reasonable opportunity to speak on any issue under the jurisdiction of the board.

All comments, including any not specifically referenced herein, were fully considered by TBCJ.

The amendments are adopted under Texas Government Code §492.013, which authorizes the board to adopt rules; §492.007, which requires the board to provide the public with a reasonable opportunity to speak on any issue under the jurisdiction of the board; §§551.001-.146, which establishes guidelines for open meetings; Texas Penal Code §30.06, which creates an offense of trespass by license holder with a concealed handgun, and establishes exceptions and defenses for such; and §30.07, which creates an offense of trespass by license holder with an openly carried handgun, and establishes exceptions and defenses for such.

Cross Reference to Statutes: None.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 12, 2024.

TRD-202400559
Kristen Worman
General Counsel
Texas Department of Criminal Justice
Effective date: March 3, 2024
Proposal publication date: December 29, 2023
For further information, please call: (936) 437-6700

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CHAPTER 159. SPECIAL PROGRAMS

37 TAC §159.15

The Texas Board of Criminal Justice adopts amendments to §159.15, concerning the GO KIDS Initiative, without changes to the proposed text as published in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8189). The rule will not be republished.

The adopted amendments are minor word changes.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §492.001, which establishes that the board governs TDCJ; and §492.013, which authorizes the board to adopt rules.

Cross Reference to Statutes: None.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Kristen Worman
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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 800. GENERAL ADMINISTRATION

The Texas Workforce Commission (TWC) adopts amendments to the following sections of Chapter 800, relating to General Administration:

Subchapter B. Allocations, §800.68

Subchapter L. Workforce Diploma Pilot Program, §800.501

TWC adopts the following new section to Chapter 800, relating to General Administration:

Subchapter B. Allocations, §800.69

Amended §800.68, §800.501 and new §800.69 are adopted without changes to the proposal, as published in the November 24, 2023, issue of the *Texas Register* (48 TexReg 6871), and, therefore, the adopted rule text will not be republished.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The amendments to Chapter 800 create new §800.69, Integrated English Literacy and Civics Education Program, which outlines how funds appropriated to the state under Workforce Innovation and Opportunity Act (WIOA), §243, Integrated English Literacy and Civics Education (IELCE), will be allocated through a statewide competition.

The amendments incorporate into rule the requirements of House Bill (HB) 1602 and HB 2575, as passed by the 88th Texas Legislature, Regular Session (2023).

HB 1602 requires TWC to establish rules to develop performance criteria for the prioritization for the continuous award of grant funds. As such, TWC is adopting revisions to Subchapter B. Allocations, §800.68(a).

HB 2575 requires revisions to the definition of "qualified providers" in Subchapter L, Workforce Diploma Pilot Program, §800.501(12).

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 B. ALLOCATIONS

TWC adopts the following amendments to Subchapter B:

§800.68. Adult Education and Literacy

Section 800.68 outlines how the state allocates General Revenue funds as well as WIOA, Title II, Temporary Assistance for Needy Families (TANF) funds to support the Adult Education and Literacy (AEL) program in Texas. Added to §800.68(a) are the HB 1602 requirements relating to priority of awarding grant funds based on performance criteria comparable to Texas Labor Code §315.007. TWC also proposes removing §800.68(d) and placing it in new section, §800.69.

§800.69. Integrated English Literacy and Civics Education Program

New §800.69 sets forth the state's allocation methodology that allows eligible applicants to demonstrate a need for funds to provide IELCE program activities to eligible adult learners across the state.

SUBCHAPTER L. WORKFORCE DIPLOMA PILOT PROGRAM

TWC adopts the following amendments to Subchapter L:

§800.501. Definitions

Section 800.501 is amended to update the definition of "qualified provider" to align with Texas Labor Code §317.004(2)(B), as amended by HB 2575.

PART III. PUBLIC COMMENTS

The public comment period closed on December 25, 2023. No comments were received.

SUBCHAPTER B. ALLOCATIONS

40 TAC §800.68, §800.69

STATUTORY AUTHORITY

The rules are adopted under the following statutory authority:

--Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities; and

--Texas Labor Code Chapter 317, enacted by Senate Bill 1055, 86th Texas Legislature, Regular Session (2019), which required TWC to establish and administer the Workforce Diploma Pilot Program.

Additionally, HB 1602, 88th Texas Legislature, Regular Session (2023), added Texas Labor Code §315.002(b-1), which requires TWC to establish rules developing annual performance criteria for prioritizing the awarding of grant funds.

The adopted rules implement Title 4, Texas Labor Code, particularly Chapter 315.

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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Les Trobman
General Counsel
Texas Workforce Commission
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Proposal publication date: November 24, 2023
For further information, please call: (512) 850-8356

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SUBCHAPTER L. WORKFORCE DIPLOMA PILOT PROGRAM

40 TAC §800.501

STATUTORY AUTHORITY

The rules are adopted under the following statutory authority:

--Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities; and

--Texas Labor Code Chapter 317, enacted by Senate Bill 1055, 86th Texas Legislature, Regular Session (2019), which required TWC to establish and administer the Workforce Diploma Pilot Program.

Additionally, HB 1602, 88th Texas Legislature, Regular Session (2023), added Texas Labor Code §315.002(b-1), which requires TWC to establish rules developing annual performance criteria for prioritizing the awarding of grant funds.

The adopted rules implement Title 4, Texas Labor Code, particularly Chapter 315.

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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Texas Workforce Commission
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CHAPTER 805. ADULT EDUCATION AND LITERACY
SUBCHAPTER C. SERVICE DELIVERY STRUCTURE AND ALIGNMENT

40 TAC §805.41

The Texas Workforce Commission (TWC) adopts amendments to the following section of Chapter 805, relating to Adult Education and Literacy:

Subchapter C. Service Delivery Structure and Alignment, §805.41

Amended §805.41 is adopted without changes to the proposal, as published in the November 24, 2023, issue of the *Texas Register* (48 TexReg 6876), and, therefore, the adopted rule text will not be published.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the Chapter 805 amendments is to align the rules with federal statutory language related to the state's requirement to award multiyear grants on a competitive basis to eligible providers with demonstrated effectiveness within the state.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER C. SERVICE DELIVERY STRUCTURE AND ALIGNMENT

TWC adopts the following amendments to Subchapter C:

§805.41. Procurement and Contracting

Section 805.41(c) outlines the grant duration and term limits, which currently are more restrictive than federal statutory language. TWC seeks to align rule language to statutory language, which creates greater flexibility on defining grant duration.

PART III. PUBLIC COMMENTS

The public comment period closed on December 25, 2023. No comments were received.

PART IV.

STATUTORY AUTHORITY

The rules are adopted under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules affect Title 4, Texas Labor Code, particularly Chapter 315.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 845. TEXAS WORK AND FAMILY POLICIES RESOURCES

The Texas Workforce Commission (TWC) adopts amendments to the following sections of Chapter 845, relating to Texas Work and Family Clearinghouse:

Subchapter A. General Provisions, §845.1 and §845.2

Subchapter B. Dependent Care Grants, §§845.11 - 845.13

Amended §§845.1, 845.2, and 845.11 - 845.13 are adopted without changes to the proposal, as published in the November 24, 2023, issue of the *Texas Register* (48 TexReg 6877), and therefore, the adopted rule text will not be published.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the amendments to Chapter 845 is to implement House Bill (HB) 2975, 88th Texas Legislature, Regular Session (2023), relating to TWC's powers and duties with respect to work and family policies.

The Work and Family Policies Clearinghouse was created to house a grant program to provide assistance and information on dependent care and employment-related family issues, but its funding mechanism was repealed before it was implemented. HB 2975 amended Texas Labor Code Chapter 81 to disband the Clearinghouse and assigns all related responsibilities and rulemaking authority to TWC.

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.)

Texas Government Code §2001.039 requires that every four years each state agency review and consider for readoption, revision, or repeal each rule adopted by that agency. TWC has conducted a rule review of Chapter 845, Texas Work & Family Clearinghouse, and any changes are described in Part II of this preamble.

CHAPTER 845. TEXAS WORK AND FAMILY CLEARINGHOUSE

TWC adopts the following amendment to the title of Chapter 845:

The Chapter 845 title is amended to remove "Clearinghouse" to align with Texas Labor Code Chapter 81 as amended by HB 2975. The chapter title is amended to read "Texas Work and Family Policies Resources."

SUBCHAPTER A. GENERAL PROVISIONS

TWC adopts the following amendments to Subchapter A:

§845.1. Goals and Purpose

Section 845.1 is amended to replace "Clearinghouse" with "Policies Resources" to align with Texas Labor Code Chapter 81, as amended by HB 2975.

§845.2. Definitions

Section 845.2 is amended to remove the definition of "Clearinghouse" in accordance with Texas Labor Code §81.001, as amended by HB 2975. Remaining subsections are renumbered accordingly.

Renumbered §845.2(2) is amended for clarification to replace "Commission" with "Agency."

Renumbered §845.2(3) is amended to replace "Clearinghouse" with "Agency," because HB 2975 removed the clearinghouse from Texas Labor Code Chapter 81 and assigned its former responsibilities to TWC.

SUBCHAPTER B. DEPENDENT CARE GRANTS

TWC adopts the following amendments to Subchapter B:

§845.11. Submission of Grant Requests

Section 845.11 is amended for clarification to replace "Commission" with "Agency."

§845.12. Criteria for Awarding Grants

Section 845.12 is amended for clarification to replace "Commission" with "Agency."

§845.13. Cancellation or Other Corrective Action

Section 845.13 is amended for clarification to replace "Commission" with "Agency."

PART III. PUBLIC COMMENTS

The public comment period closed on December 25, 2023. No comments were received.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §845.1, §845.2

STATUTORY AUTHORITY

The rules are adopted under the general authority of Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The rules are also adopted under the specific authority of HB 2975, 88th Texas Legislature, Regular Session (2023). The bill amended Texas Labor Code §81.0045(b) and §81.007 to grant all program rulemaking authority to TWC, which was previously shared with the Work and Family Policies Clearinghouse, which was abolished by HB 2975.

The adopted rules affect Title 2, Texas Labor Code, particularly Chapter 81.

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. DEPENDENT CARE GRANTS

40 TAC §§845.11 - 845.13

The rules are adopted under the general authority of Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The rules are also adopted under the specific authority of HB 2975, 88th Texas Legislature, Regular Session (2023). The bill amended Texas Labor Code §81.0045(b) and §81.007 to grant all program rulemaking authority to TWC, which was previously shared with the Work and Family Policies Clearinghouse, which was abolished by HB 2975.

The adopted rules affect Title 2, Texas Labor Code, particularly Chapter 81.

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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