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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 4. MEDICAID HOSPITAL SERVICES

1 TAC §355.8052, §355.8061

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §355.8052, concerning Inpatient Hospital Reimbursement, and §355.8061, concerning Outpatient Hospital Reimbursement.

BACKGROUND AND PURPOSE

The purpose of this proposal is to specify that High-Cost Clinician Administered Drugs and Biologics (HCCADs), Long-Acting Reversible Contraceptive (LARC) devices, and Donor Human Milk Services will be reimbursed outside the all-patient refined diagnosis-related group (APR-DRG) inpatient reimbursement and filed on a separate outpatient claim. The non-risk payment will be paid at the lesser of billed charges or the fee-for-service reimbursement amount with the fee schedule acting as the upper-payment limit. For more information regarding payment methodology, please refer to §355.8085, concerning Reimbursement Methodology for Physicians and Other Practitioners. This rule update increases efficiency in the delivery of HCCADs, LARCs and Human Breast milk. A hospital administering these services will be reimbursed separately from the Inpatient Hospital APR-DRG reimbursement methodology. DRG payments exclude separate reimbursement for HCCADs, LARCS and Human Breast milk, all which can range from hundreds of dollars to millions of dollars per client.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §355.8052(b) adds definitions for "Donor Human Milk Services," "High-Cost Clinician Administered Drugs and Biologics (HCCADS)," and "Long-Acting Reversible Contraceptive (LARC) devices." The definition for "Impact file" is amended for clarity. The definition for "Mean length of stay" is amended to correct punctuation. The subsection is renumbered to account for the addition and deletion of paragraphs.

The proposed amendment to §355.8052(i) adds a new paragraph with a list of services exempt from the inpatient hospital reimbursement methodology. The paragraphs are renumbered to account for the addition and a reference is updated in new paragraph (5).

The proposed amendment to §355.8061 updates the term "Human Breast Milk Processing, Storage and Distribution" to "Donor Human Milk Services." New subsection (e) is added to list the inpatient services that will be reimbursed on a separate outpatient claim. The following subsection is renumbered to account for the addition.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

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

(6) the proposed rules will expand an existing regulation;

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Victoria Grady, Director of Provider Finance, has determined that for each year of the first five years the rules are in effect, the public benefit will be accessibility, minimal delays, and appropriate reimbursement for HCCAD treatments.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the rules do not impose any additional fees or costs on those who are required to comply.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC HEARING

A public hearing to receive comments on the proposal will be held by HHSC through a webinar. The meeting date and time will be posted on the HHSC Communications and Events website at https://hhs.texas.gov/about-hhs/communications-events and https://pfd.hhs.texas.gov/rate-packets.

Please contact the Provider Finance Department Hospital Finance section at pfd_hospitals@hhsc.state.tx.us if you have questions.

PUBLIC COMMENT

Written comments on the proposal may be submitted to the HHSC Provider Finance Department, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030, or by e-mail to pfd_hospitals@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R090" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32.

The amendment affects Texas Government Code §531.0055, Chapter 531, and Texas Human Resources Code Chapter 32.

§355.8052. Inpatient Hospital Reimbursement.

(a) Introduction. The Texas Health and Human Services Commission (HHSC) uses the methodology described in this section to calculate reimbursement for a covered inpatient hospital service.

(b) Definitions.

(1) Add-on--An amount that is added to the base Standard Dollar Amount (SDA) to reflect high-cost functions and services or regional cost differences.

(2) Adjudicated--The approval or denial of an inpatient hospital claim by HHSC.

(3) Base standard dollar amount (base SDA)--A standardized payment amount calculated by HHSC, as described in subsections (c) and (d) of this section, for the costs incurred by prospectively paid hospitals in Texas for furnishing covered inpatient hospital services.

(4) Base year--For the purpose of this section, the base year is a state fiscal year (September through August) to be determined by HHSC.

(5) Base year claims--For the purposes of rate setting (including Diagnosis-related group (DRG) relative weights, Mean length of stay (MLOS) and Days Thresholds, and rebasing or realignment of base rates) effective September 1, 2021, and after HHSC includes Medicaid inpatient fee-for-service (FFS) and Managed Care Organization (MCO) encounters that meet the criteria in subparagraphs (A) - (F) of this paragraph in the Base Year claims data. For base rates set prior to September 1, 2021, individual sets of base year claims are compiled for children's hospitals and urban hospitals for the purposes of rate setting and realignment. All Medicaid inpatient fee-for-service (FFS) and Primary Care Case Management (PCCM) inpatient hospital claims for reimbursement filed by an urban or children's hospital that:

(A) had a date of admission occurring within the base year;

(B) were adjudicated and approved for payment during the base year and the six-month grace period that immediately followed the base year, except for such claims that had zero inpatient days;

(C) were not claims for patients who are covered by Medicare;

(D) were not Medicaid spend-down claims;

(E) were not claims associated with military hospitals, out-of-state hospitals, state-owned teaching hospitals, and freestanding psychiatric hospitals; and

(F) individual sets of base year claims are compiled for children's hospitals and urban hospitals for the purposes of rate setting and rebasing.

(6) Children's hospital--A Medicaid hospital designated by Medicare as a children's hospital and exempted by Centers for Medicare and Medicaid Services (CMS) from the Medicare prospective payment system.

(7) Cost outlier payment adjustment--A payment adjustment for a claim with extraordinarily high costs.

(8) Cost outlier threshold--One factor used in determining the cost outlier payment adjustment.

(9) Day outlier payment adjustment--A payment adjustment for a claim with an extended length of stay.

(10) Day outlier threshold--One factor used in determining the day outlier payment adjustment.

(11) Diagnosis-related group (DRG)--The classification of medical diagnoses as defined in the 3M™All Patient Refined Diagnosis Related Group (APR-DRG) system or as otherwise specified by HHSC. Each DRG has four digits. The last digit of the Diagnosis-Related Group is the Severity of Illness (SOI). SOI indicates the seriousness of the condition on a scale of one to four: minor, moderate, major, or extreme. SOI may increase if secondary diagnoses are present, in addition to the primary diagnosis.

(12) Donor Human Milk Services--Breast milk donated by healthy breastfeeding postpartum women to provide health benefits to newborn infants, especially high-risk infants.

(13) [~~(12)~~] Final settlement--Reconciliation of Medicaid cost in the CMS form 2552-10 hospital fiscal year end cost report performed by HHSC within six months after HHSC receives the cost report audited by a Medicare intermediary, or HHSC.

(14) [~~(13)~~] Final standard dollar amount (final SDA)--The rate assigned to a hospital after HHSC applies the add-ons and other adjustments described in this section.

(15) [~~(14)~~] Geographic wage add-on--An adjustment to a hospital's base SDA to reflect geographical differences in hospital wage levels. Hospital geographical areas correspond to the Core-Based Statistical Areas (CBSAs) established by the federal Office of Management and Budget in 2003.

(16) [~~(15)~~] HHSC--The Texas Health and Human Services Commission, or its designee.

(17) High-Cost Clinician Administered Drugs and Biologics (HCCADs)--

(A) HCCADs are high-cost specialty drugs and biologics whose manufacturers have signed up to participate in the Medicaid Drug Rebate Program (MDRP) and whose National Drug Code (NDC) show as rebate-eligible on the MDRP file provided by CMS.

(B) HCCADs can be administered to a patient by a licensed provider in an inpatient or outpatient setting.

(C) HCCADs are excluded from the All-Patient Refined Diagnosis Related Group (APR-DRG) and are billed on a separate outpatient claim with Type of Bill (TOB) 131. The associated inpatient or outpatient charges with the same date of service are billed separately with TOB 111.

(D) Details regarding HCCAD drugs and biologics included on the inpatient high-cost drug list can be found on the state's Vendor Drug Program website.

(E) Drugs and Biologics on the HCCAD list are reimbursed to hospitals pursuant to §355.8085 of this subchapter (relating to Reimbursement Methodology for Physicians and Other Practitioners).

(18) [~~(16)~~] Impact file--The Inpatient Prospective Payment System (IPPS) Final Rule Impact File that contains data elements listed by provider. The file is used to calculate [~~used by the CMS in calculating~~] Medicare rates and impacts. The impact file is publicly available on the CMS website.

(19) [~~(17)~~] Inflation update factor--Cost of living index based on the annual CMS Prospective Payment System Hospital Market Basket Index.

(20) [~~(18)~~] Inpatient Ratio of cost-to-charge (RCC)--A ratio that covers all applicable Medicaid hospital costs and charges relating to inpatient care.

(21) [~~(19)~~] In-state children's hospital--A hospital located within Texas that is recognized by Medicare as a children's hospital and is exempted by Medicare from the Medicare prospective payment system.

(22) [~~(20)~~] Interim payment--An initial payment made to a hospital that is later settled to Medicaid-allowable costs, for hospitals reimbursed under methods and procedures in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA).

(23) [~~(21)~~] Interim rate--The ratio of Medicaid allowed inpatient costs to Medicaid allowed inpatient charges filed on a hospital's cost report, expressed as a percentage. The interim rate established during a cost report settlement for an urban hospital or a rural hospital reimbursed under this section excludes the application of TEFRA target caps and the resulting incentive and penalty payments.

(24) Long-Acting Reversible Contraceptive (LARC) devices--Methods of birth control that provide effective contraception for an extended period without requiring user action.

(25) [~~(22)~~] Managed Care Organization (MCO) Adjustment Factor--Factor used to estimate managed care premium tax, risk margin, and administrative costs related to contracting with HHSC. The estimated amounts are subtracted from appropriations.

(26) [~~(23)~~] Mean length of stay (MLOS)--One factor used in determining the payment amount calculated for each DRG,[~~;~~] the average number of inpatient days per DRG.

(27) [~~(24)~~] Medical education add-on--An adjustment to the base SDA for an urban teaching hospital to reflect higher patient care costs relative to non-teaching urban hospitals.

(28) [~~(25)~~] Military hospital--A hospital operated by the armed forces of the United States.

(29) [~~(26)~~] New Hospital--A hospital that was enrolled as a Medicaid provider after the end of the base year and has no base year claims data.

(30) [~~(27)~~] Out-of-state children's hospital--A hospital located outside of Texas that is recognized by Medicare as a children's hospital and is exempted by Medicare from the Medicare prospective payment system.

(31) [~~(28)~~] Realignment--Recalculation of the base SDA and add-ons using current RCCs, inflation factors, and base year claims as specified by HHSC or its designee, for one or more hospital types. Realignment will occur based on legislative direction.

(32) [~~(29)~~] Rebasing--Calculation of all SDAs and add-ons, DRG relative weights, MLOS, and day outlier thresholds for all hospitals using a base period as specified by HHSC,or its designee. Rebasing will occur based on legislative direction.

(33) [~~(30)~~] Relative weight--The weighting factor HHSC assigns to a DRG representing the time and resources associated with providing services for that DRG.

(34) [~~(31)~~] Rural base year stays--An individual set of base year stays is compiled for rural hospitals for the purposes of rate setting and realignment. All inpatient FFS claims and inpatient managed care encounters for reimbursement filed by a rural hospital that:

(A) had a date of admission occurring within the base year;

(B) were adjudicated and approved for payment during the base year or the six-month period that immediately followed the base year, except for such stays that had zero inpatient days;

(C) were not stays for patients who are covered by Medicare; and

(D) were not Medicaid spend-down stays; and were not stays associated with military hospitals, out-of-state hospitals, state-owned teaching hospitals, and freestanding psychiatric hospitals.

(35) [~~(32)~~] Rural hospital--A hospital enrolled as a Medicaid provider that:

(A) is located in a county with 68,750 or fewer persons according to the 2020 U.S. Census;

(B) is designated by Medicare as a Critical Access Hospital (CAH), a Sole Community Hospital (SCH), or a Rural Referral Center (RRC) that is not located in a Metropolitan Statistical Area (MSA), as defined by the U.S. Office of Management and Budget; or

(C) meets all of the following:

(i) has 100 or fewer beds;

(ii) is designated by Medicare as a CAH, a SCH, or a RRC; and

(iii) is located in an MSA.

(36) [~~(33)~~] Safety-Net add-on--An adjustment to the base SDA for a safety-net hospital to reflect the higher costs of providing Medicaid inpatient services in a hospital that provides a significant percentage of its services to Medicaid and/or uninsured patients.

(37) [~~(34)~~] Safety-Net hospital--An urban or children's hospital that meets the eligibility and qualification requirements described in §355.8065 of this division (relating to Disproportionate Share Hospital Reimbursement Methodology) for the most recent federal fiscal year for which such eligibility and qualification determinations have been made.

(38) [~~(35)~~] Standard Dollar Amount (SDA)--A standardized payment amount calculated by HHSC for the costs incurred by prospectively-paid hospitals in Texas for furnishing covered inpatient hospital services.

(39) [~~(36)~~] State-owned teaching hospital--Acute care hospitals owned and operated by the state of Texas.

(40) [~~(37)~~] Teaching hospital--A hospital for which CMS has calculated and assigned a percentage Medicare education adjustment factor under 42 CFR §412.105.

(41) [~~(38)~~] Teaching medical education add-on--An adjustment to the base SDA for a children's teaching hospital with a program approved by the Accreditation Council for Graduate Medical Education (ACGME) to reflect higher patient care costs relative to non-teaching children's hospitals.

(42) [~~(39)~~] TEFRA target cap--A limit set under the Social Security Act §1886(b) (42 U.S.C. §1395ww(b)) and applied to a hospital's cost settlement under methods and procedures in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). TEFRA target cap is not applied to services provided to patients under age 21, and incentive and penalty payments associated with this limit are not applicable to those services.

(43) [~~(40)~~] Tentative settlement--Reconciliation of cost in the Medicare/Medicaid hospital fiscal year-end cost report performed by HHSC within six months after HHSC receives an acceptable cost report filed by a hospital.

(44) [~~(41)~~] Texas provider identifier (TPI)--A unique number assigned to a provider of Medicaid services in Texas.

(45) [~~(42)~~] Trauma add-on--An adjustment to the base SDA for a trauma hospital to reflect the higher costs of obtaining and maintaining a trauma facility designation, as well as the direct costs of providing trauma services, relative to non-trauma hospitals or to hospitals with lower trauma facility designations. To be eligible for the trauma add-on, a hospital must be eligible to receive an allocation from the trauma facilities and emergency medical services account under Texas Health and Safety Code Chapter 780.

(46) [~~(43)~~] Trauma hospital--An inpatient hospital that meets the Texas Department of State Health Services criteria for a Level I, II, III, or IV trauma facility designation under 25 Texas Administrative Code §157.125 (relating to Requirements for Trauma Facility Designation).

(47) [~~(44)~~] Universal mean--Average base year cost per claim for all urban hospitals.

(48) [~~(45)~~] Urban hospital--Hospital located in a metropolitan statistical area and not fitting the definition of rural hospitals, children's hospitals, state-owned teaching hospitals, or freestanding psychiatric hospitals.

(c) Base children's hospitals SDA calculations. HHSC will use the methodologies described in this subsection to determine average statewide base SDA and a final SDA for each children's hospital.

(1) HHSC calculates the average base year cost per claim as follows.

(A) To calculate the total inpatient base year cost per children's hospital:

(i) sum the allowable inpatient charges by hospital for the base year claims; and

(ii) multiply clause (i) of this subparagraph by the hospital's inpatient RCC and the inflation update factors to inflate the base year cost to the current year.

(B) Sum the amount of all hospitals' base year costs from subparagraph (A) of this paragraph.

(C) Subtract an amount equal to the estimated outlier payment amount for the base year claims for all children's hospitals from subparagraph (B) of this paragraph.

(D) To derive the average base year cost per claim, divide the result from subparagraph (C) of this paragraph by the total number of base year claims.

(2) HHSC calculates the base children's SDA as follows.

(A) From the amount determined in paragraph (1)(C) of this subsection, HHSC sets aside an amount for add-ons as described in paragraph (3) of this subsection. In determining the amount to set aside, HHSC considers factors including other funding available to reimburse high-cost hospital functions and services, available data sources, historical costs, Medicare practices, and feedback from hospital industry experts.

(B) The amount remaining from paragraph (1)(C) of this subsection after HHSC sets aside the amount for add-ons in subparagraph (A) of this paragraph is then divided by the sum of the relative weights for all children's base year claims to derive the base SDA.

(3) A children's hospital may receive increases to the base SDA for any of the following.

(A) Add-on amounts, which will be determined or adjusted based on the following.

(i) Impact files.

(I) HHSC will use the most recent finalized impact file available at the time of realignment to calculate add-ons; and

(II) HHSC will use the impact file in effect at the last realignment to calculate add-ons for new hospitals, except as otherwise specified in this section.

(ii) Geographic wage reclassification. If a hospital becomes eligible for the geographic wage reclassification under Medicare, the hospital will become eligible for the adjustment upon the next realignment.

(iii) Teaching medical education add-on during the fiscal year. If a hospital becomes eligible for the teaching medical education add-on, the hospital will receive an increased final SDA to include these newly eligible add-ons, effective for claims that have a date of discharge occurring on or after the first day of the next state fiscal year.

(iv) Safety-net add-on during the fiscal year. The hospital will receive an increased final SDA to include these newly eligible add-ons, effective for claims that have a date of discharge occurring on or after the first day of the next state fiscal year.

(v) New children's hospital teaching medical education add-on. If an eligible children's hospital is new to the Medicaid program and a cost report is not available, the teaching medical education add-on will be calculated at the beginning of the state fiscal year after a cost report is received.

(B) Geographic wage add-on.

(i) CBSA assignment. For claims with dates of admission beginning September 1, 2013, and continuing until the next realignment, the geographic wage add-on for children's hospitals will be calculated based on the corresponding CBSA in the impact file in effect on September 1, 2011.

(ii) Designated impact file. Subsequent add-ons will be based on the impact file available at the time of realignment.

(iii) Wage index. To determine a children's hospital geographic wage add-on, HHSC first calculates a wage index for Texas as follows.

(I) HHSC identifies the Medicare wage index factor for each CBSA in Texas.

(II) HHSC identifies the lowest Medicare wage index factor in Texas.

(III) HHSC divides the Medicare wage index factor in subclause (I) of this clause for each CBSA by the lowest Medicare wage index factor identified in subclause (II) of this clause and subtracts one from each resulting quotient.

(iv) County assignment. HHSC will initially assign a hospital to a CBSA based on the county in which the hospital is located. A hospital that has been approved for geographic reclassification under Medicare may request that HHSC recognize its Medicare CBSA reclassification under the process described in subparagraph (E) of this paragraph.

(v) Medicare labor-related percentage. HHSC uses the Medicare labor-related percentage available at the time of realignment.

(vi) Geographic wage add-on calculation. The final geographic wage add-on is equal to the product of the base SDA calculated in subsection (c)(2)(B) of this section, the wage index calculated in clause (iii)(III) of this subparagraph, and the Medicare labor-related percentage in clause (v) of this subparagraph.

(C) Teaching medical education add-on.

(i) Eligibility. A teaching hospital that is a children's hospital is eligible for the teaching medical education add-on. Each children's hospital is required to confirm, under the process described in subparagraph (E) of this paragraph, that HHSC's determination of the hospital's eligibility for the add-on is correct.

(ii) Teaching medical education add-on calculation.

(I) For each children's hospital, identify the total hospital medical education cost from each hospital cost report or reports that cross over the base year.

(II) For each children's hospital, sum the amounts identified in subclause (I) of this clause to calculate the total medical education cost.

(III) For each children's hospital, calculate the average medical education cost by dividing the amount from subclause (II) of this clause by the number of cost reports that cross over the base year.

(IV) Sum the average medical education cost per hospital to determine a total average medical education cost for all hospitals.

(V) For each children's hospital, divide the average medical education cost for the hospital from subclause (III) of this clause by the total average medical education cost for all hospitals from subclause (IV) of this clause to calculate a percentage for the hospital.

(VI) Divide the total average medical education cost for all hospitals from subclause (IV) of this clause by the total base year cost for all children's hospitals from subsection (c)(1)(B) of this section to determine the overall teaching percentage of Medicaid cost.

(VII) For each children's hospital, multiply the percentage from subclause (V) of this clause by the percentage from subclause (VI) of this clause to determine the teaching percentage for the hospital.

(VIII) For each children's hospital, multiply the hospital's teaching percentage by the base SDA amount to determine the teaching medical education add-on amount.

(D) Safety-Net add-on.

(i) Eligibility. If a children's hospital meets the definition of a "safety-net hospital" as defined in subsection (b) of this section, it is eligible for a safety-net add-on.

(ii) Add-on amount. HHSC calculates the safety-net add-on amounts annually or at the time of realignment as follows.

(I) For each eligible hospital, determine the following amounts for a period of 12 contiguous months specified by HHSC:

(-a-) total allowable Medicaid inpatient days for fee-for-service claims;

(-b-) total allowable Medicaid inpatient days for managed care encounters;

(-c-) total relative weights for fee-for-service claims; and

(-d-) total relative weights for managed care encounters.

(II) Determine the total allowable days for eligible safety-net hospitals by summing the amounts in items (-a-) and (-b-) of this subclause.

(III) Determine the hospital's percentage of total allowable days to the total in subclause (II) of this clause.

(IV) Determine the hospital's portion of appropriated safety-net funds before the MCO adjustment factor is applied by multiplying the amount in subclause (III) of this clause for each hospital by the total safety-net funds deflated to the data year.

(V) For each hospital, multiply item (-d-) of this subclause by the relevant MCO adjustment factor.

(VI) Sum the amounts in item (-c-) of this subclause and subclause (V) of this clause for each hospital.

(VII) To calculate the safety-net add-on, divide the amount in subclause (IV) of this clause by the amount in subclause (VI) of this clause for each hospital. The result is the safety-net add-on.

(iii) Reconciliation. Effective for costs and revenues accrued on or after September 1, 2015, HHSC may perform a reconciliation for each hospital that received the safety-net add-on to identify any such hospitals with total Medicaid reimbursements for inpatient and outpatient services in excess of their total Medicaid and uncompensated care inpatient and outpatient costs. For hospitals with total Medicaid reimbursements in excess of total Medicaid and uncompensated care costs, HHSC may recoup the difference.

(E) Add-on status verification.

(i) Notification. HHSC will determine a hospital's initial add-on status by reference to the impact file at the time of realignment, Medicaid days, and relative weight information from HHSC's fiscal intermediary. HHSC will notify the hospital of the CBSA to which the hospital is assigned, the Medicare teaching hospital designation for children's hospitals as applicable, and any other related information determined relevant by HHSC. For state fiscal years 2017 and after, HHSC will also notify eligible hospitals of the data used to calculate the safety-net add-on. HHSC may post the information on its website, send the information through the established Medicaid notification procedures used by HHSC's fiscal intermediary, send through other direct mailing, or provide the information to hospital associations to disseminate to their member hospitals.

(ii) Rate realignment. HHSC will calculate a hospital's final SDA using the add-on status initially determined by HHSC unless, within 14 calendar days after the date of the notification, HHSC receives notification in writing from the hospital, in a format determined by HHSC, that any add-on status determined by HHSC is incorrect and:

(I) the hospital provides documentation of its eligibility for a different teaching medical education add-on or teaching hospital designation;

(II) the hospital provides documentation that it is approved by Medicare for reclassification to a different CBSA; or

(III) for state fiscal years 2017 and after, the hospital provides documentation of different data and demonstrates to HHSC's satisfaction that the different data should be used to calculate the safety-net add-on.

(iii) Annual SDA calculation. HHSC will calculate a hospital's final SDA annually using the add-on status initially determined during realignment by HHSC unless, within 14 calendar days after the date of the notification, HHSC receives notification in writing from the hospital, in a format determined by HHSC, that any add-on status determined by HHSC is incorrect and:

(I) the hospital provides documentation of a new teaching program or new teaching hospital designation; or

(II) for state fiscal years 2017 and after, the hospital provides documentation of different data and demonstrates to HHSC's satisfaction that the different data should be used to calculate the safety-net add-on.

(iv) Failure to notify. If a hospital fails to notify HHSC within 14 calendar days after the date of the notification that the add-on status as initially determined by HHSC includes one or more add-ons for which the hospital is not eligible, resulting in an overpayment, HHSC will recoup such overpayment and will prospectively reduce the SDA accordingly.

(4) Final children's hospital SDA calculations. HHSC calculates a children's hospital's final SDA as follows.

(A) Add all add-on amounts for which the hospital is eligible to the base SDA.

(B) For labor and delivery services provided to adults age 18 or older in a children's hospital, the final SDA is equal to the base SDA for urban hospitals without add-ons, calculated as described in subsection (d)(4)(E)(i) of this section plus the urban hospital geographic wage add-on for an urban hospital located in the same CBSA as the children's hospital providing the service.

(C) For new children's hospitals that are not teaching hospitals, for which HHSC has no base year claim data, the final SDA is the base SDA plus the hospital's geographic wage add-on. The SDA will be inflated from the base year to the current period at the time of enrollment or to state fiscal year 2015, whichever is earlier.

(D) For new children's hospitals that qualify for the teaching medical education add-on, as defined in subsection (b) of this section, for which HHSC has no base year claim data, the final SDA is calculated based on one of the following options until realignment is performed with base year claim data for the hospital. A new children's hospital must notify the HHSC Provider Finance Department of its selected option within 60 days from the date the hospital is notified of its provider activation by HHSC's fiscal intermediary. If the HHSC Provider Finance Department does not receive timely notice of the option, HHSC will assign the hospital the SDA calculated as described in clause (i) of this subparagraph. The SDA calculated based on the selected option will be effective retroactive to the first day of the provider's enrollment.

(i) Children's hospital base SDA plus the applicable geographic wage add-on and the minimum teaching add-on for existing children's hospitals. No settlement of costs is required for services reimbursed under this option. The SDA will be in effect until the next realignment when a new SDA will be determined. The SDA will be inflated from the base year to the current period at the time of enrollment or to state fiscal year 2015, whichever is earlier.

(ii) Children's base SDA plus the applicable geographic wage add-on and the maximum teaching add-on for existing children's hospitals. A cost settlement is required for services reimbursed under this option. The SDA will be in effect for the hospital until the next realignment when a new SDA will be determined. The SDA will be inflated from the base year to the current period at the time of enrollment or to state fiscal year 2015, whichever is earlier.

(d) Base urban hospital SDA calculations. HHSC will use the methodologies described in this subsection to determine the average statewide base SDA and the final SDA for each urban hospital.

(1) HHSC calculates the average base year cost per claim (the universal mean) as follows.

(A) To calculate the total inpatient base year cost per urban hospital:

(i) sum the allowable inpatient charges by hospital for the base year claims; and

(ii) multiply clause (i) of this subparagraph by the hospital's inpatient RCC and the inflation update factors to inflate the base year cost to the current year.

(B) Sum the amount for all hospitals' base year costs from subparagraph (A) of this paragraph.

(C) To derive the average base year cost per claim, divide the result from subparagraph (B) of this paragraph by the total number of base year claims.

(2) HHSC calculates the base urban SDA as follows.

(A) From the amount determined in paragraph (1)(B) of this subsection for urban hospitals, HHSC sets aside an amount for add-ons as described in paragraph (3) of this subsection. In determining the amount to set aside, HHSC considers factors including other funding available to reimburse high-cost hospital functions and services, available data sources, historical costs, Medicare practices, and feedback from hospital industry experts.

(B) The amount remaining from paragraph (1)(B) of this subsection after HHSC sets aside the amount for add-ons in subparagraph (A) of this paragraph is then divided by the total number of base year claims to derive the base SDA.

(3) An urban hospital may receive increases to the base SDA for any of the following.

(A) Add-on amounts, which will be determined or adjusted based on the following.

(i) Impact files.

(I) HHSC will use the most recent finalized impact file available at the time of realignment to calculate add-ons; and

(II) HHSC will use the impact file in effect at the last realignment to calculate add-ons for new hospitals, except as otherwise specified in this section.

(ii) Geographic wage reclassification. If a hospital becomes eligible for the geographic wage reclassification under Medicare, the hospital will become eligible for the adjustment upon the next realignment.

(iii) Medical education add-on during fiscal year. If an existing hospital has a change in its medical education operating adjustment factor under Medicare, the hospital will become eligible for the adjustment to its medical education add-on upon the next realignment.

(iv) New medical education add-on. If a hospital becomes eligible for the medical education add-on after the most recent realignment:

(I) the hospital will receive a medical education add-on, effective for claims that have a date of discharge occurring on or after the first day of the next state fiscal year; and

(II) HHSC will calculate the add-on using the impact file in effect at the time the hospital initially claims eligibility for the medical education add-on; and

(III) this amount will remain fixed until the next realignment.

(B) Geographic wage add-on.

(i) Designated impact file. Subsequent add-ons will be based on the impact file available at the time of realignment.

(ii) Wage index. To determine an urban geographic wage add-on, HHSC first calculates a wage index for Texas as follows.

(I) HHSC identifies the Medicare wage index factor for each CBSA in Texas;

(II) HHSC identifies the lowest Medicare wage index factor in Texas;

(III) HHSC divides the Medicare wage index factor identified in subclause (I) of this clause for each CBSA by the lowest Medicare wage index factor identified in subclause (II) of this clause and subtracts one from each resulting quotient.

(iii) County assignment. HHSC will initially assign a hospital to a CBSA based on the county in which the hospital is located. A hospital that has been approved for geographic reclassification under Medicare may request that HHSC recognize its Medicare CBSA reclassification under the process described in subparagraph (F) of this paragraph.

(iv) Medicare labor-related percentage. HHSC uses the Medicare labor-related percentage available at the time of realignment.

(v) Geographic wage add-on calculation. The final geographic wage add-on is equal to the product of the base SDA calculated in subsection (d)(2)(B) of this section, the wage index calculated in clause (ii)(III) of this subparagraph, and the Medicare labor-related percentage in clause (iv) of this subparagraph.

(C) Medical education add-on.

(i) Eligibility. If an urban hospital meets the definition of a teaching hospital, as defined in subsection (b) of this section, it is eligible for the medical education add-on. Each hospital is required to confirm, under the process described in subparagraph (F) of this paragraph, that HHSC's determination of the hospital's eligibility and medical education operating adjustment factor under Medicare for the add-on is correct.

(ii) Add-on amount. HHSC multiplies the base SDA calculated in subsection (d)(2)(B) of this section by the hospital's Medicare education adjustment factor to determine the hospital's medical education add-on amount.

(D) Trauma add-on.

(i) Eligibility.

(I) If an urban hospital meets the definition of a trauma hospital, as defined in subsection (b) of this section, it is eligible for a trauma add-on.

(II) HHSC initially uses the trauma level designation associated with the physical address of a hospital's TPI. A hospital may request that HHSC, under the process described in subparagraph (F) of this paragraph use a higher trauma level designation associated with a physical address other than the hospital's TPI address.

(ii) Add-on amount. To determine the trauma add-on amount, HHSC multiplies the base SDA:

(I) by 28.3 percent for hospitals with Level 1 trauma designation;

(II) by 18.1 percent for hospitals with Level 2 trauma designation;

(III) by 3.1 percent for hospitals with Level 3 trauma designation; or

(IV) by 2.0 percent for hospitals with Level 4 trauma designation.

(iii) Reconciliation with other reimbursement for uncompensated trauma care. Subject to General Appropriations Act and other applicable law:

(I) if a hospital's allocation from the trauma facilities and emergency medical services account administered under Texas Health and Safety Code Chapter 780, is greater than the total trauma add-on amount estimated to be paid to the hospital under this section during the state fiscal year, the Department of State Health Services will pay the hospital the difference between the two amounts at the time funds are disbursed from that account to eligible trauma hospitals; and

(II) if a hospital's allocation from the trauma facilities and emergency medical services account is less than the total trauma add-on amount estimated to be paid to the hospital under this section during the state fiscal year, the hospital will not receive a payment from the trauma facilities and emergency medical services account.

(E) Safety-Net add-on.

(i) Eligibility. If an urban hospital meets the definition of a safety-net hospital as defined in subsection (b) of this section, it is eligible for a safety-net add-on.

(ii) Add-on amount. HHSC calculates the safety-net add-on amounts annually or at the time of realignment as follows.

(I) For each eligible hospital, determine the following amounts for a period of 12 contiguous months specified by HHSC:

(-a-) total allowable Medicaid inpatient days for fee-for-service claims;

(-b-) total allowable Medicaid inpatient days for managed care encounters;

(-c-) total relative weights for fee-for-service claims; and

(-d-) total relative weights for managed care encounters.

(II) Determine the total allowable days for eligible safety-net hospitals by summing the amounts in items (-a-) and (-b-) of this subclause.

(III) Determine the hospital's percentage of total allowable days to the total in subclause (II) of this clause.

(IV) Determine the hospital's portion of appropriated safety-net funds before the MCO adjustment factor is applied by multiplying the amount in subclause (III) of this clause for each hospital by the total safety-net funds deflated to the data year.

(V) For each hospital, multiply item (-d-) of this subclause by the relevant MCO adjustment factor.

(VI) Sum the amounts in item (-c-) of this subclause and subclause (V) of this clause for each hospital.

(VII) To calculate the safety-net add-on, divide the amount in subclause (IV) of this clause by the amount in subclause (VI) of this clause for each hospital. The result is the safety-net add-on.

(iii) Reconciliation. Effective for costs and revenues accrued on or after September 1, 2015, HHSC may perform a reconciliation for each hospital that received the safety-net add-on to identify any such hospitals with total Medicaid reimbursements for inpatient and outpatient services in excess of their total Medicaid and uncompensated care inpatient and outpatient costs. For hospitals with total Medicaid reimbursements in excess of total Medicaid and uncompensated care costs, HHSC may recoup the difference.

(F) Add-on status verification.

(i) Notification. HHSC will determine a hospital's initial add-on status by reference to the impact file available at the time of realignment or at the time of eligibility for a new medical education add-on as described in subparagraph (A)(iv) of this paragraph; the Texas Department of State Health Services' list of trauma-designated hospitals; and Medicaid days and relative weight information from HHSC's fiscal intermediary. HHSC will notify the hospital of the CBSA to which the hospital is assigned, the Medicare education adjustment factor assigned to the hospital for urban hospitals, the trauma level designation assigned to the hospital, and any other related information determined relevant by HHSC. For state fiscal years 2017 and after, HHSC will also notify eligible hospitals of the data used to calculate the safety-net add-on. HHSC may post the information on its website, send the information through the established Medicaid notification procedures used by HHSC's fiscal intermediary, send through other direct mailing, or provide the information to the hospital associations to disseminate to their member hospitals.

(ii) During realignment, HHSC will calculate a hospital's final SDA using the add-on status initially determined by HHSC unless, within 14 calendar days after the date of the notification, the HHSC Provider Finance Department receives notification in writing from the hospital, in a format determined by HHSC, that any add-on status determined by HHSC is incorrect and:

(I) the hospital provides documentation of its eligibility for a different medical education add-on or teaching hospital designation;

(II) the hospital provides documentation that it is approved by Medicare for reclassification to a different CBSA;

(III) the hospital provides documentation of its eligibility for a different trauma designation; or

(IV) for state fiscal years 2017 and after, the hospital provides documentation of different data and demonstrates to HHSC's satisfaction that the different data should be used to calculate the safety-net add-on.

(iii) Annually, HHSC will calculate a hospital's final SDA using the add-on status initially determined during realignment by HHSC unless, within 14 calendar days after the date of the notification, HHSC receives notification in writing from the hospital (in a format determined by HHSC) that any add-on status determined by HHSC is incorrect and:

(I) the hospital provides documentation of a new teaching program or new teaching hospital designation; or

(II) the hospital provides documentation of its eligibility for a different trauma designation; or

(III) for state fiscal years 2017 and after, the hospital provides documentation of different data and demonstrates to HHSC's satisfaction that the different data should be used to calculate the safety-net add-on.

(iv) If a hospital fails to notify HHSC within 14 calendar days after the date of the notification that the add-on status as initially determined by HHSC includes one or more add-ons for which the hospital is not eligible, resulting in an overpayment, HHSC will recoup such overpayment and will prospectively reduce the SDA accordingly.

(4) Urban hospital final SDA calculations. HHSC calculates an urban hospital's final SDA as follows.

(A) Add all add-on amounts for which the hospital is eligible to the base SDA. These are the fully funded final SDAs.

(B) Multiply the final SDA determined in subparagraph (A) of this paragraph by each urban hospital's total relative weight of the base year claims.

(C) Sum the amount calculated in subparagraph (B) of this paragraph for all urban hospitals.

(D) Divide the total funds appropriated for reimbursing inpatient urban hospital services under this section by the amount determined in subparagraph (C) of this paragraph.

(E) To determine the budget-neutral final SDA:

(i) multiply the base SDA in paragraph (2) of this subsection by the percentage determined in subparagraph (D) of this paragraph;

(ii) multiply each of the add-ons described in paragraph (3)(B)-(E) by the percentage determined in subparagraph (D) of this paragraph; and

(iii) sum the results of clauses (i) and (ii) of this subparagraph.

(F) For new urban hospitals for which HHSC has no base year claim data, the final SDA is a base SDA plus any add-ons for which the hospital is eligible, multiplied by the percentage determined in subparagraph (D) of this paragraph.

(e) Rural hospital SDA calculations. HHSC will use the methodologies described in this subsection to determine the final SDA for each rural hospital.

(1) HHSC calculates the rural final SDA as follows.

(A) Base year cost. Calculate the total inpatient base year cost per rural hospital.

(i) Total the inpatient charges by hospital for the rural base year stays.

(ii) Multiply clause (i) by the hospital's inpatient RCC and the inflation update factors to inflate the rural base year stays to the current year of the realignment.

(B) Full-cost SDA. Calculate a hospital-specific full-cost SDA by dividing each hospital's base year cost, calculated as described in subparagraph (A) of this paragraph, by the sum of the relative weights for the rural base year stays.

(C) Calculating the SDA floor and ceiling.

(i) Calculate the average adjusted hospital-specific SDA from subparagraph (B) of this paragraph for all rural hospitals with more than 50 claims.

(ii) Calculate the standard deviation of the hospital-specific SDAs identified in subparagraph (B) of this paragraph for all rural hospitals with more than 50 claims.

(iii) Calculate an SDA floor as clause (i) minus clause (ii) multiplied by a factor, determined by HHSC to maintain budget neutrality.

(iv) Calculate an SDA ceiling as clause (i) plus clause (ii) multiplied by a factor, determined by HHSC to maintain budget neutrality.

(D) Assigning a final hospital-specific SDA.

(i) If the adjusted hospital-specific SDA from subparagraph (B) is less than the SDA floor in subparagraph (C)(iii) of this paragraph, the hospital is assigned the SDA floor amount as the final SDA.

(ii) If the adjusted hospital-specific SDA from subparagraph (B) is more than the SDA ceiling in subparagraph (C)(iv), the hospital is assigned the SDA ceiling amount as the final SDA.

(iii) Assign the adjusted hospital-specific SDA as the final SDA to each hospital not described in clauses (i) and (ii) of this subparagraph.

(2) Alternate SDA for labor and delivery. For labor and delivery services provided by rural hospitals on or after September 1, 2023, the final SDA is the alternate SDA for labor and delivery stays, which is equal to the final SDA determined in paragraph (1)(D) of this subsection plus an SDA add-on sufficient to increase paid claims by no less than $1,500.

(3) HHSC calculates a new rural hospital's final SDA as follows.

(A) For new rural hospitals for which HHSC has no base year claim data, the final SDA is the mean rural SDA in paragraph (1)(C)(i) of this subsection.

(B) The mean rural SDA assigned in subparagraph (A) of this paragraph remains in effect until the next realignment.

(4) Minimum Fee Schedule. Effective March 1, 2021, MCOs are required to reimburse rural hospitals based on a minimum fee schedule. The minimum fee schedule is the rate schedule as described above.

(5) Biennial review of rural rates. Every two years, HHSC will calculate new rural SDAs using the methodology in this subsection to the extent allowed by federal law and subject to limitations on appropriations.

(f) Final SDA for military and out-of-state. The final SDA for military and out-of-state hospitals is the urban hospital base SDA multiplied by the percentage determined in subsection (d)(4)(D) of this section.

(g) DRG statistical calculations. HHSC rebases the relative weights, MLOS, and day outlier threshold whenever the base SDAs for urban hospitals are recalculated. The relative weights, MLOS, and day outlier thresholds are calculated using data from urban hospitals and apply to all hospitals. The relative weights that were implemented for urban hospitals on September 1, 2012, apply to all hospitals until the next realignment.

(1) Recalibration of relative weights. HHSC calculates a relative weight for each DRG as follows.

(A) Base year claims are grouped by DRG.

(B) For each DRG, HHSC:

(i) sums the base year costs per DRG as determined in subsection (d) of this section;

(ii) divides the result in clause (i) of this subparagraph by the number of claims in the DRG; and

(iii) divides the result in clause (ii) of this subparagraph by the universal mean, resulting in the relative weight for the DRG.

(2) Recalibration of the MLOS. HHSC calculates the MLOS for each DRG as follows.

(A) Base year claims are grouped by DRG.

(B) For each DRG, HHSC:

(i) sums the number of days billed for all base year claims; and

(ii) divides the result in clause (i) of this subparagraph by the number of claims in the DRG, resulting in the MLOS for the DRG.

(3) Recalibration of day outlier thresholds. HHSC calculates a day outlier threshold for each DRG as follows.

(A) Calculate for all claims the standard deviations from the MLOS in paragraph (2) of this subsection.

(B) Remove each claim with a length of stay (number of days billed by a hospital) greater than or equal to three standard deviations above or below the MLOS. The remaining claims are those with a length of stay less than three standard deviations above or below the MLOS.

(C) Sum the number of days billed by all hospitals for a DRG for the remaining claims in subparagraph (B) of this paragraph.

(D) Divide the result in subparagraph (C) of this paragraph by the number of remaining claims in subparagraph (B) of this paragraph.

(E) Calculate one standard deviation for the result in subparagraph (D) of this paragraph.

(F) Multiply the result in subparagraph (E) of this paragraph by two and add that to the result in subparagraph (D) of this paragraph, resulting in the day outlier threshold for the DRG.

(4) If a DRG has fewer than five base year claims, HHSC will use National Claim Statistics and a scaling factor to assign a relative weight, MLOS, and day outlier threshold.

(5) Adjust the MLOS, day outlier, and relative weights to increase or decrease with SOI to coincide with the National Claim Statistics.

(h) DRG grouper logic changes. Beginning September 1, 2021, HHSC may adjust DRG statistical calculations to align with annual grouper logic changes. The changes will remain budget neutral unless rates are rebased, and additional funding is appropriated by the legislature. The adjusted relative weights, MLOS, and day outlier threshold apply to all hospitals until the next adjustment or rebasing described in subsection (g) of this section.

(1) Base year claim data and rural base year stays are regrouped, using the latest grouping software version to determine DRG assignment changes by comparing the newly assigned DRG to the DRG assignment from the previous grouper version.

(2) For DRGs impacted by the grouping logic changes, relative weights must be adjusted. HHSC adjusts a relative weight for each impacted DRG as follows.

(A) Divide the total cost for all claims in the base year by the number of claims in the base year.

(B) Base year claims and rural base year stays are grouped by DRG, and for each DRG, HHSC:

(i) sums the base year costs for all claims in each DRG;

(ii) divides the result in clause (i) of this subparagraph by the number of claims in each DRG; and

(iii) divides the result in clause (ii) of this subparagraph by the amount determined in subparagraph (A) of this paragraph, resulting in the relative weight for the DRG.

(3) Recalibration of the MLOS. HHSC calculates the MLOS for each DRG as follows.

(A) Base year claims and rural base year stays are grouped by DRG.

(B) For each DRG, HHSC:

(i) sums the number of days billed for all base year claims; and

(ii) divides the result in clause (i) of this subparagraph by the number of claims in the DRG, resulting in the MLOS for the DRG.

(4) Recalibration of day outlier thresholds. HHSC calculates a day outlier threshold for each DRG as follows.

(A) Calculate for all claims the standard deviations from the MLOS in paragraph (3) of this subsection.

(B) Remove each claim with a length of stay (number of days billed by a hospital) greater than or equal to three standard deviations above or below the MLOS. The remaining claims are those with a length of stay less than three standard deviations above or below the MLOS.

(C) Sum the number of days billed by all hospitals for a DRG for the remaining claims in subparagraph (B) of this paragraph.

(D) Divide the result in subparagraph (C) of this paragraph by the number of remaining claims in subparagraph (B) of this paragraph.

(E) Calculate one standard deviation for the result in subparagraph (D) of this paragraph and multiply by two.

(F) Add the result of subparagraph (E) of this paragraph to the result in subparagraph (D) of this paragraph, resulting in the day outlier threshold for the DRG.

(5) If a DRG has fewer than five base year claims, HHSC will use National Claim Statistics and a scaling factor to assign a relative weight, MLOS, and day outlier threshold.

(6) Adjust the MLOS, day outliers, and relative weights to increase or decrease with SOI to coincide with the National Claim Statistics.

(i) Reimbursements.

(1) Calculating the payment amount. HHSC reimburses a hospital a prospective payment for covered inpatient hospital services by multiplying the hospital's final SDA as calculated in subsections (c) - (f) of this section as applicable, by the relative weight for the DRG assigned to the adjudicated claim. The resulting amount is the payment amount to the hospital.

(2) Inpatient reimbursement exceptions. The following are exceptions to the reimbursement methodology defined in §355.8061(e) of this subchapter (relating to Outpatient Hospital Reimbursement).

(A) Long-Acting Reversible Contraceptive devices.

(B) Donor Human Milk Services.

(C) Certain High-Cost Clinician Administered Drugs.

(3) [~~(2)~~] Full payment. The prospective payment as described in paragraph (1) of this subsection is considered full payment

for covered inpatient hospital services. A hospital's request for payment in an amount higher than the prospective payment will be denied.

(4) [~~(3)~~] Day and cost outlier adjustments. HHSC pays a day outlier or a cost outlier for medically necessary inpatient services provided to clients under age 21 in all Medicaid participating hospitals that are reimbursed under the prospective payment system. If a patient age 20 is admitted to and remains in a hospital past his or her 21st birthday, inpatient days and hospital charges after the patient reaches age 21 are included in calculating the amount of any day outlier or cost outlier payment adjustment.

(A) Day outlier payment adjustment. HHSC calculates a day outlier payment adjustment for each claim as follows.

(i) Determine whether the number of medically necessary days allowed for a claim exceeds:

(I) the MLOS by more than two days; and

(II) the DRG day outlier threshold as calculated in subsection (g)(3) of this section.

(ii) If clause (i) of this subparagraph is true, subtract the DRG day outlier threshold from the number of medically necessary days allowed for the claim.

(iii) Multiply the DRG relative weight by the final SDA.

(iv) Divide the result in clause (iii) of this subparagraph by the DRG MLOS described in subsections (g)(2) or (h)(3) of this section to arrive at the DRG per diem amount.

(v) Multiply the number of days in clause (ii) of this subparagraph by the result in clause (iv) of this subparagraph.

(vi) Multiply the result in clause (v) of this subparagraph by 60 percent.

(vii) Multiply the allowed charges by the current interim rate to determine the cost.

(viii) Subtract the DRG payment amount calculated in clause (iii) of this subparagraph from the cost calculated in clause (vii) of this subparagraph.

(ix) The day outlier amount is the lesser of the amount in clause (vi) of this subparagraph or the amount in clause (viii) of this subparagraph.

(x) For urban and rural hospitals, multiply the amount in clause (ix) of this subparagraph by 90 percent to determine the final day outlier amount. For children's hospitals the amount in clause (ix) of this subparagraph is the final day outlier amount.

(B) Cost outlier payment adjustment. HHSC makes a cost outlier payment adjustment for an extraordinarily high-cost claim as follows.

(i) To establish a cost outlier, the cost outlier threshold must be determined by first selecting the lesser of the universal mean of base year claims and rural base year stays multiplied by 11.14 or the hospital's final SDA multiplied by 11.14.

(ii) Multiply the full DRG prospective payment by 1.5.

(iii) The cost outlier threshold is the greater of clause (i) or (ii) of this subparagraph.

(iv) Subtract the cost outlier threshold from the amount of reimbursement for the claim established under cost reimbursement principles described in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA).

(v) Multiply the result in clause (iv) of this subparagraph by 60 percent to determine the amount of the cost outlier payment.

(vi) For urban and rural hospitals, multiply the amount in clause (v) of this subparagraph by 90 percent to determine the final cost outlier amount. For children's hospitals the amount in clause (v) of this subparagraph is the final cost outlier amount.

(C) Final outlier determination.

(i) If the amount calculated in subparagraph (A)(ix) of this paragraph is greater than zero and the amount calculated in subparagraph (B)(vi) of this paragraph is greater than zero, HHSC pays the higher of the two amounts.

(ii) If the amount calculated in subparagraph (A)(ix) of this paragraph is greater than zero and the amount calculated in subparagraph (B)(vi) of this paragraph is less than or equal to zero, HHSC pays the day outlier amount.

(iii) If the amount calculated in subparagraph (B)(vi) of this paragraph is greater than zero and the amount calculated in subparagraph (A)(ix) of this paragraph is less than or equal to zero, HHSC pays the cost outlier amount.

(iv) If the amount calculated in subparagraph (A)(ix) of this paragraph and the amount calculated in subparagraph (B)(vi) of this paragraph are both less than or equal to zero HHSC will not pay an outlier for the admission.

(D) If the hospital claim resulted in a downgrade of the DRG related to reimbursement denials or reductions for preventable adverse events, the outlier payment will be determined by the lesser of the calculated outlier payment for the non-downgraded DRG or the downgraded DRG.

(5) [~~(4)~~] Interim bill. A hospital may submit a claim to HHSC before a patient is discharged, but only the first claim for that patient will be reimbursed the prospective payment described in paragraph (1) of this subsection. Subsequent claims for that stay are paid zero dollars. When the patient is discharged, and the hospital submits a final claim to ensure accurate calculation for potential outlier payments for clients younger than age 21, HHSC recoups the first prospective payment and issues a final payment in accordance with paragraphs (1) and (4)[~~(3)~~] of this subsection.

(6) [~~(5)~~] Patient transfers and split billing. If a patient is transferred, HHSC establishes payment amounts as specified in subparagraphs (A) - (D) of this paragraph. HHSC manually reviews transfers for medical necessity and payment.

(A) If the patient is transferred from a hospital to a nursing facility, HHSC pays the transferring hospital the total payment amount of the patient's DRG.

(B) If the patient is transferred from one hospital (transferring hospital) to another hospital (discharging hospital), HHSC pays the discharging hospital the total payment amount of the patient's DRG. HHSC calculates a DRG per diem and a payment amount for the transferring hospital as follows.

(i) Multiply the DRG relative weight by the final SDA.

(ii) Divide the result in clause (i) of this subparagraph by the DRG MLOS described in subsections (g)(2) or (h)(3) of this section, to arrive at the DRG per diem amount.

(iii) To arrive at the transferring hospital's payment amount:

(I) for a patient age 21 or older, multiply the result in clause (ii) of this subparagraph by the lesser of the DRG MLOS, the transferring hospital's number of medically necessary days allowed for the claim, or 30 days; or

(II) for a patient under age 21, multiply the result in clause (ii) of this subparagraph by the lesser of the DRG MLOS or the transferring hospital's number of medically necessary days allowed for the claim.

(C) HHSC makes payments to multiple hospitals transferring the same patient by applying the per diem formula in subparagraph (B) of this paragraph to all the transferring hospitals and the total DRG payment amount to the discharging hospital.

(D) HHSC performs a post-payment review to determine if the hospital that provided the most significant amount of care received the total DRG payment. If the review reveals that the hospital that provided the most significant amount of care did not receive the total DRG payment, an adjustment is initiated to reverse the payment amounts. The transferring hospital is paid the total DRG payment amount and the discharging hospital is paid the DRG per diem.

(j) Cost reports. Each hospital must submit an initial cost report at periodic intervals as prescribed by Medicare or as otherwise prescribed by HHSC.

(1) Each hospital must send a copy of all cost reports audited and amended by a Medicare intermediary to HHSC within 30 days after the hospital's receipt of the cost report. Failure to submit copies or respond to inquiries on the status of the Medicare cost report will result in provider vendor hold.

(2) HHSC uses data from these reports when realigning or rebasing to calculate base SDAs, DRG statistics, and interim rates and to complete cost settlements.

(k) Cost Settlement.

(1) The cost settlement process is limited by the TEFRA target cap set pursuant to the Social Security Act §1886(b) (42 U.S.C. §1395ww(b)) for children's and state-owned teaching hospitals.

(2) Notwithstanding the process described in paragraph (1) of this subsection, HHSC uses each hospital's final audited cost report, which covers a fiscal year ending during a base year period, for calculating the TEFRA target cap for a hospital.

(3) HHSC may select a new base year period for calculating the TEFRA target cap at least every three years.

(4) HHSC increases a hospital's TEFRA target cap in years in which the target cap is not reset under this paragraph, by multiplying the hospital's target cap by the CMS Prospective Payment System Hospital Market Basket Index adjusted to the hospital's fiscal year.

(5) For a new children's hospital, the base year for calculating the TEFRA target cap is the hospital's first full 12-month cost reporting period occurring after the date the hospital is designated by Medicare as a children's hospital. For each cost reporting period after the hospital's base year, an increase in the TEFRA target cap will be applied as described in paragraph (4) of this subsection, until the TEFRA target cap is recalculated as described in paragraph (3) of this subsection.

(6) After a Medicaid participating hospital is designated by Medicare as a children's hospital, the hospital must submit written notification to HHSC's provider enrollment contact, including documents verifying its status as a Medicare children's hospital. Upon receipt of the written notification from the hospital, HHSC will convert the hospital to the reimbursement methodology described in this subsection retroactive to the effective date of designation by Medicare.

(l) Out-of-state children's hospitals. HHSC calculates the prospective payment rate for an out-of-state children's hospital as follows:

(1) HHSC determines the overall average cost per discharge for all in-state children's hospitals by:

(A) summing the Medicaid allowed cost from tentative or final cost report settlements for the base year; and

(B) dividing the result in subparagraph (A) of this paragraph by the number of in-state children's hospitals' base year claims.

(2) HHSC determines the average relative weight for all in-state children's hospitals' base year claims by:

(A) assigning a relative weight to each claim pursuant to subsections (g)(1)(B)(iii) or (h)(2)(B)(iii) of this section;

(B) summing the relative weights for all claims; and

(C) dividing by the number of claims.

(3) The result in paragraph (1) of this subsection is divided by the result in paragraph (2) of this subsection to arrive at the adjusted cost per discharge.

(4) The adjusted cost per discharge in paragraph (3) of this subsection is the payment rate used for payment of claims.

(5) HHSC reimburses each out-of-state children's hospital a prospective payment for covered inpatient hospital services. The payment amount is determined by multiplying the result in paragraph (4) of this subsection by the relative weight for the DRG assigned to the adjudicated claim.

(m) Merged hospitals.

(1) When two or more Medicaid participating hospitals merge to become one participating provider and the participating provider is recognized by Medicare, the participating provider must submit written notification to HHSC's provider enrollment contact, including documents verifying the merger status with Medicare.

(2) The merged entity receives the final SDA of the hospital associated with the surviving TPI. HHSC will reprocess all claims for the merged entity back to the effective date of the merger or the first day of the fiscal year, whichever is later.

(3) HHSC will not recalculate the final SDA of a hospital acquired in an acquisition or buyout unless the acquisition or buyout resulted in the purchased or acquired hospital becoming part of another Medicaid participating provider. HHSC will continue to reimburse the acquired hospital based on the final SDA assigned before the acquisition or buyout.

(4) When Medicare requires a merged hospital to maintain two Medicare provider numbers because they are in different CBSAs, HHSC assigns one base TPI with a separate suffix for each facility. Both suffixes receive the SDA of the primary hospital TPI which remains active.

(n) Adjustments. HHSC may adjust a hospital's final SDA in accordance with §355.201 of this chapter (relating to Establishment and Adjustment of Reimbursement Rates for Medicaid).

(o) Additional data. HHSC may require a hospital to provide additional data in a format and at a time specified by HHSC. Failure to

submit additional data as specified by HHSC may result in a provider vendor hold until the requested information is provided.

§355.8061. Outpatient Hospital Reimbursement.

(a) Introduction. The Texas Health and Human Services Commission (HHSC), or its designee reimburses outpatient hospital services under the reimbursement methodology described in this section.

(1) For services provided on and after the date that the modernized Medicaid Management Information System (MMIS) becomes operational, HHSC, or its designee, will reimburse all hospital providers based on an outpatient prospective payment system (OPPS). This includes all hospitals as defined in §355.8052 of this division (relating to Inpatient Hospital Reimbursement), including rural, urban, and Children's. The OPPS used for reimbursement is the 3M™ Enhanced Ambulatory Patient Groups (EAPG) calculator. EAPGs are a visit-based classification system intended to reflect the type of resources utilized in outpatient encounters for patients with similar clinical characteristics.

(2) The following are exceptions to the OPPS reimbursement methodology.

(A) Reimbursement for Long-Acting Reversible Contraceptive devices.

(B) Donor Human Milk Services. [~~Human Breast Milk Processing, Storage and Distribution.~~]

(C) Certain Drugs Paid to Managed Care Organizations on a Non-Risk Basis, as determined by HHSC.

(D) Cochlear implant devices and certain high cost nerve stimulators.

(E) Non-Emergent emergency room services as described in subsection (b)(1)(C) of this section.

(F) State owned teaching hospitals outpatient reimbursement is based on cost principals as described in subsection (b) of this section.

(3) For services prior to the date that the modernized MMIS becomes operational, reimbursement is outlined below in subsection (b) of this section except as described in subsections (c) and (d) of this section, HHSC will reimburse for outpatient hospital services based on a percentage of allowable charges and an outpatient interim rate.

(b) Interim reimbursement.

(1) HHSC will determine a percentage of allowable charges, which are charges for covered Medicaid services determined through claims adjudication.

(A) For high volume providers that received Medicaid outpatient payments equaling at least $200,000 during calendar year 2004.

(i) For children's hospitals and state-owned hospitals as defined in §355.8052 of this division, the percentage of allowable charges is 76.03 percent, except as described in subparagraph (C) of this paragraph.

(ii) For rural hospitals as defined in §355.8052 of this division, the percentage of allowable charges is 100 percent.

(iii) For all other providers, the percentage of allowable charges is 72.00 percent.

(B) For all providers not considered high volume providers as determined in paragraph (1)(A) of this subsection.

(i) For children's hospitals and state-owned hospitals as defined in §355.8052 of this division, the percentage of allowable charges is 72.27 percent.

(ii) For rural hospitals as defined in §355.8052 of this division, the percentage of allowable charges is 100 percent.

(iii) For all other providers, the percentage of allowable charges is 68.44 percent.

(C) For outpatient emergency department (ED) services that do not qualify as emergency visits are exempt from the OPPS reimbursement described in subsection (a)(1) of this section. For these services, which are listed in the Texas Medicaid Provider Procedures Manual and other updates on the claims administrator's website, HHSC will reimburse:

(i) rural hospitals, as defined in §355.8052 of this division, an amount not to exceed 65 percent of allowable charges after application of the methodology in paragraph (1)(A) and (1)(B) of this subsection, which will result in a payment that does not exceed 65 percent of allowable cost; and

(ii) all other hospitals, a flat fee set at a percentage of the Medicaid acute care physician office visit amount for adults.

(2) HHSC will determine an outpatient interim rate for each non-rural hospital, which is the ratio of Medicaid allowable outpatient costs to Medicaid allowable outpatient charges derived from the hospital's Medicaid cost report.

(A) For a non-rural hospital with at least one tentative cost report settlement completed prior to September 1, 2013, the interim rate is the rate in effect on August 31, 2013, except the hospital will be assigned the interim rate calculated upon completion of any future cost report settlement if that interim rate is lower.

(B) For a non-rural new hospital that does not have at least one tentative cost report settlement completed prior to September 1, 2013, the default interim rate is 50 percent until the interim rate is adjusted as follows.

(i) If the non-rural hospital files a short-period cost report for its first cost report, the hospital will be assigned the interim rate calculated upon completion of the hospital's first tentative cost report settlement.

(ii) The hospital will be assigned the interim rate calculated upon completion of the hospital's first full-year tentative cost report settlement.

(iii) The hospital will retain the interim rate calculated as described in clause (ii) of this subparagraph, except it will be assigned the interim rate calculated upon completion of any future cost report settlement if that interim rate is lower.

(C) Interim claim reimbursement for non-rural hospitals is determined by multiplying the amount of a hospital's outpatient allowable charges after applying any reductions to allowable charges made under paragraph (1) of this subsection by the outpatient interim rate in effect on the date of service.

(D) Interim claim reimbursement determined in subparagraph (C) of this paragraph will be cost-settled at both tentative and final audit of a non-rural hospital's cost report. The calculation of allowable costs will be determined based on the amount of allowable charges after applying any reductions to allowable charges made under paragraph (1) of this subsection.

(i) Interim payments for claims with a date of service prior to September 1, 2013, will be cost settled.

(ii) Interim payments for claims with a date of service on or after September 1, 2013, will be included in the cost report interim rate calculation, but will not be adjusted due to cost settlement unless the settlement calculation indicates an overpayment.

(iii) HHSC will calculate an interim rate at tentative and final cost settlement for the purposes described in subparagraph (B) of this paragraph.

(iv) If a hospital's interim claim reimbursement for all outpatient services, excluding imaging, clinical lab and outpatient emergency department services that do not qualify as emergency visits, for the hospital's fiscal year exceeded the allowable costs for those services, HHSC will recoup the amount paid to the hospital in excess of allowable costs.

(v) If a hospital's interim claim reimbursement for all outpatient services, excluding imaging, clinical lab and outpatient emergency department services that do not qualify as emergency visits, for the hospital's fiscal year was less than the allowable costs for those services, HHSC will not make additional payments through cost settlement to the hospital for service dates on or after September 1, 2013.

(3) HHSC will determine an outpatient interim rate for each rural hospital, which is the ratio of Medicaid allowable outpatient costs to Medicaid allowable outpatient charges derived from the hospital's Medicaid cost report.

(A) For a rural hospital with at least one tentative cost report settlement completed prior to September 1, 2021, the interim rate effective on September 1, 2021, is the rate calculated in the latest initial cost report with an additional percentage increase, not to exceed an interim rate of 100 percent. After September 1, 2021, a rural hospital will be assigned the interim rate calculated upon completion of each initial or amended initial cost report, with an additional percentage increase, not to exceed an interim rate of 100 percent.

(B) For a new rural hospital that does not have at least one initial cost report completed prior to September 1, 2021, the default interim rate is 50 percent until the interim rate is adjusted as follows.

(i) If the rural hospital files a short-period cost report for their first cost report, the hospital will continue to receive the default rate until completion of the first full-year initial cost report.

(ii) The rural hospital will be assigned the interim rate calculated upon completion of a review of the hospital's first full-year initial or amended initial cost report, with an additional percentage increase, not to exceed an interim rate of 100 percent.

(C) Interim claim reimbursement for a rural hospital is determined by multiplying the amount of a hospital's outpatient allowable charges after applying any reductions to allowable charges made under paragraph (1) of this subsection by the outpatient interim rate in effect on the date of service as described in subparagraph (A) of this paragraph.

(D) Interim claim reimbursement determined in subparagraph (C) of this paragraph will not be cost-settled for services rendered on or after September 1, 2021.

(c) Outpatient hospital surgery. Outpatient hospital non-emergency surgery is reimbursed in accordance with the methodology for ambulatory surgical centers as described in §355.8121 of this subchapter (relating to Reimbursement).

(d) Outpatient hospital imaging.

(1) For services provided on and after the date that the modernized MMIS becomes operational, all hospitals will be reimbursed based on an outpatient prospective payment system (OPPS). The OPPS used for reimbursement is the 3M™ Enhanced Ambulatory Patient Groups (EAPG) calculator.

(2) For services prior to the date that the modernized MMIS becomes operational, for all hospitals except rural hospitals, as defined in §355.8052 of this division, outpatient hospital imaging services are not reimbursed under the outpatient reimbursement methodology described in subsection (b) of this section. Outpatient hospital imaging services are reimbursed according to an outpatient hospital imaging service fee schedule that is based on a percentage of the Medicare Outpatient Prospective Payment System fee schedule for similar services. If a resulting fee for a service provided to any Medicaid beneficiary is greater than 125 percent of the Medicaid adult acute care fee for a similar service, the fee is reduced to 125 percent of the Medicaid adult acute care fee.

(3) For services prior to the date that the modernized MMIS becomes operational, for rural hospitals, outpatient hospital imaging services are reimbursed based on a percentage of the Medicare Outpatient Prospective Payment System fee schedule for similar services.

(e) Outpatient fee based reimbursement. The following inpatient services will be reimbursed on a separate outpatient claim.

(1) Certain High-Cost Clinician Administered Drugs.

(2) Donor Human Milk Services.

(3) Long-Acting Reversible Contraceptive devices.

(f) [~~(e)~~] Minimum Fee Schedule. Effective September 1, 2020, Managed Care Organizations are required to reimburse rural hospitals based on a minimum fee schedule. The minimum fee schedules are the rates specific to rural hospitals, as described in subsections (b) - (d) of this section.

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

Filed with the Office of the Secretary of State on November 7, 2024.

TRD-202405407
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: December 22, 2024
For further information, please call: (512) 487-3480

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 23. SINGLE FAMILY HOME PROGRAM

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 23, Single Family HOME Program Rule. The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repealed chapter would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson has also determined that for each year of the first five years the proposed repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held November 22, 2024, to December 27, 2024, to receive input on the proposed repealed chapter. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Erin Mikulenka, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email HOME@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Central time, December 27, 2024.

SUBCHAPTER A. GENERAL GUIDANCE

10 TAC §23.1, §23.2

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

Except as described herein the proposed repealed chapter affects no other code, article, or statute.

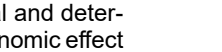
§23.1. Applicability and Purpose.

§23.2. Definitions.

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

Filed with the Office of the Secretary of State on November 8, 2024.

TRD-202405418
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: December 22, 2024
For further information, please call: (512) 475-3959



SUBCHAPTER B. AVAILABILITY OF FUNDS, APPLICATION REQUIREMENTS, REVIEW AND AWARD PROCEDURES, GENERAL ADMINISTRATIVE REQUIREMENTS, AND RESALE AND RECAPTURE OF FUNDS

10 TAC §§23.20 - 23.29

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

Except as described herein the proposed repealed chapter affects no other code, article, or statute.

§23.20. Availability of Funds and Regional Allocation Formula.

§23.21. Application Forms and Materials and Deadlines.

§23.22. Contract Award Application Review Process for Open Application Cycles.

§23.23. Reservation System Participant Review Process.

§23.24. Administrative Deficiency Process.

§23.25. General Threshold Criteria.

§23.26. Contract Benchmarks and Limitations.

§23.27. Reservation System Participant (RSP) Agreement.

§23.28. General Administrative Requirements.

§23.29. Resale and Recapture Provisions.

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

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3959

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SUBCHAPTER C. HOMEOWNER RECONSTRUCTION ASSISTANCE PROGRAM

10 TAC §§23.30 - 23.32

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

Except as described herein the proposed repealed chapter affects no other code, article, or statute.

§23.30. Homeowner Reconstruction Assistance (HRA) Threshold and Selection Criteria.

§23.31. Homeowner Reconstruction Assistance (HRA) General Requirements.

§23.32. Homeowner Reconstruction Assistance (HRA) Administrative Requirements.

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

Filed with the Office of the Secretary of State on November 8, 2024.

TRD-202405420
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: December 22, 2024
For further information, please call: (512) 475-3959

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SUBCHAPTER D. CONTRACT FOR DEED PROGRAM

10 TAC §§23.40 - 23.42

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

Except as described herein the proposed repealed chapter affects no other code, article, or statute.

§23.40. Contract for Deed (CFD) Threshold and Selection Criteria.

§23.41. Contract for Deed (CFD) General Requirements.

§23.42. Contract for Deed (CFD) Administrative Requirements.

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

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3959

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SUBCHAPTER E. TENANT-BASED RENTAL ASSISTANCE PROGRAM

10 TAC §§23.50 - 23.52

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

Except as described herein the proposed repealed chapter affects no other code, article, or statute.

§23.50. Tenant-Based Rental Assistance (TBRA) Threshold and Selection Criteria.

§23.51. Tenant-Based Rental Assistance (TBRA) General Requirements.

§23.52. Tenant-Based Rental Assistance (TBRA) Administrative Requirements.

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

Filed with the Office of the Secretary of State on November 8, 2024.

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3959

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SUBCHAPTER F. SINGLE FAMILY DEVELOPMENT PROGRAM

10 TAC §§23.60 - 23.62

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

Except as described herein the proposed repealed chapter affects no other code, article, or statute.

§23.60. Single Family Development (SFD) Threshold and Selection Criteria.

§23.61. Single Family Development (SFD) General Requirements.

§23.62. Single Family Development (SFD) Administrative Requirements.

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

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: December 22, 2024
For further information, please call: (512) 475-3959

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SUBCHAPTER G. HOMEBUYER ASSISTANCE WITH NEW CONSTRUCTION (HANC)

10 TAC §§23.70 - 23.72

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

Except as described herein the proposed repealed chapter affects no other code, article, or statute.

§23.70. Homebuyer Assistance with New Construction (HANC) Threshold and Selection Criteria.

§23.71. Homebuyer Assistance with New Construction (HANC) General Requirements.

§23.72. Homebuyer Assistance with New Construction (HANC) Administrative Requirements.

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

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: December 22, 2024
For further information, please call: (512) 475-3959

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CHAPTER 23. SINGLE FAMILY HOME PROGRAM

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 23, Single Family HOME Program Rule. The purpose of the proposed new chapter is to update the rule to implement a more germane rule and better align administration to state and federal requirements.

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

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

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

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

1. The proposed new rules do not create or eliminate a government program, but relates to the readoption of this rule which makes changes to administration of the Department's Single Family HOME Program activities, including Homeowner Reconstruction Assistance, Contract for Deed, Tenant-Based Rental Assistance, Single Family Development, and Homebuyer Assistance with New Construction.

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

3. The proposed new rules do not require additional future legislative appropriations.

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

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

6. The proposed new rule will not expand or repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the administration of the Department's Single Family HOME Program.

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

8. The proposed new rule will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this proposed new rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.111.

1. The Department has evaluated this proposed new rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. There are approximately 60 rural communities currently participating in construction activities under the Single Family HOME Program that are subject to the proposed new rule for which no economic impact of the rules is projected during the first year the rules are in effect.

3. The Department has determined that because the proposed new rules serves to clarify and update existing requirements and does not establish new requirements for which there would be an associated cost, there will be no economic effect on small or micro-businesses or rural communities.

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

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

The Department has evaluated the proposed new rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the proposed new rule has no economic effect on local employment because the rule serves to clarify and update existing requirements and does not establish new requirements or activities that may positively or negatively impact local economies.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that participation in the Single Family HOME Program is at the discretion of the local government or other eligible subrecipients, there are no "probable" effects of the proposed new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the proposed new rules are in effect, the public benefit anticipated as a result of the rule will be an updated and more germane rule. There will not be any economic cost to any individuals required to comply with the new section because the HOME Program provides reimbursement to those entities that are subject to the rule for the cost of compliance with the rule.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson has also determined that for each year of the first five years the proposed 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 because the Single Family HOME Program is a federally funded program, and no increase in the requirement to match federal funds is proposed in the rule.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held November 22, 2024, to December 27, 2024, to receive input on the new proposed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Erin Mikulenka, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or email HOME@tdhca.texas.gov. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Central time, December 27, 2024.

SUBCHAPTER A. GENERAL GUIDANCE

10 TAC §23.1, §23.2

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

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

§23.1. Applicability and Purpose.

(a) Applicability. This Chapter governs the use and administration of all HOME single family Activities funds provided to the Texas Department of Housing and Community Affairs (the "Department") by the U.S. Department of Housing and Urban Development (HUD) pursuant to Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990 as amended (42 U.S.C. §§12701 - 12839) and HUD regulations at 24 CFR Part 92, as amended. Chapter 20 of this Title relating to Single Family Programs Umbrella Rule and Chapters 1 and 2 of this Title will apply to all single family activities, including Single Family Development. Unless otherwise noted herein or required by law, all provisions of this Chapter apply to any Application for a Contract award, or any Reservation submitted or received on or after the date of adoption of this Chapter. Existing Agreements or current pending Applications may be amended in writing at the request of the Administrator or Applicant, and with Department approval, so that all provisions of this Chapter apply to the Agreement or Application. Amendments proposing only partial adoption of this Chapter are prohibited. No amendment adopting this Chapter shall be granted if, in the discretion of the Department, any of the provisions of this Chapter conflict with the Notice of Funding Availability (NOFA) under which the existing Agreement was awarded or Application was submitted. The Governing Board may waive rules subject to this Chapter for good cause to meet the purpose of the HOME Program as described further in subsection (b) of this section, provided the waiver does not conflict with the federal regulations governing the use of these funds, or impact federally imposed obligation or expenditure deadlines governing the HOME Program.

(b) Purpose. The State's HOME Program is designed to:

(1) focus on the areas with the greatest housing need described in the State Consolidated Plan;

(2) provide funds for home ownership and rental housing through acquisition, Reconstruction, New Construction, and Tenant-Based Rental Assistance;

(3) promote partnerships among all levels of government and the private sector, including nonprofit and for-profit organizations; and

(4) provide low, very low, and extremely low-income families with affordable, decent, safe, and sanitary housing.

§23.2. Definitions.

These words when used in this Chapter shall have the following meanings, unless the context clearly indicates otherwise. Additional definitions may be found in Tex. Gov't Code Chapter 2306 or Chapter 20 of this Title relating to Single Family Programs Umbrella Rule.

(1) Area Median Family Income--The income limits published annually by the U.S. Department of Housing and Urban Development (HUD) for the Housing Choice Voucher Program that is used by the Department to determine the eligibility of Applicants for the HOME Program, also referred to as AMFI. All Households assisted with HOME funds must have income at or below 80% AMFI.

(2) CFR--Code of Federal Regulations.

(3) Commitment of Funds--Occurs when the funds are awarded to an Administrator for a specific Activity approved by the Department and set up in the Integrated Disbursement and Information System (IDIS) established by HUD.

(4) Construction Completion Date--The Construction Completion Date shall be the date of completion of all improvements as stated on the affidavit of completion, provided that the affidavit is filed within ten days of the stated date of completion or the date of filing as outlined in Tex. Prop. Code §53.106.

(5) Date of Assistance--The date that assistance is provided to the Household. For Tenant-Based Rental Assistance, this is the start date of the rental subsidy. For Homeowner Reconstruction Assistance and Contract for Deed, this is the date of the loan closing or date of execution of grant agreement. For Single Family Development and Homebuyer Assistance with New Construction, this is the date that the Household executes the purchase agreement.

(6) Development Site--The area, or if scattered site, areas on which the development is proposed to be located.

(7) Direct Activity Costs--The total costs of hard construction costs, demolition costs, aerobic septic systems, refinancing costs (as applicable), acquisition and closing costs for acquisition of real property, and rental and utility subsidy and deposits.

(8) HOME Final Rule--The regulations with amendments promulgated at 24 CFR, Part 92 as published by HUD for the HOME Investment Partnerships Program at 42 U.S.C. §§12701 - 12839.

(9) Homeownership--Ownership in fee simple title in a one to four unit dwelling or in a condominium unit, or equivalent form of ownership approved by the Department. Homeownership is not right to possession under a contract for deed, installment contract, or land contract that has not converted into a deed for title ownership.

(10) Identity of Interest--An acquisition will be considered to be an Identity of Interest transaction when the purchaser has any financial interest whatsoever in the seller or lender or is subject to common control, or any family relationship by virtue of blood, marriage, or adoption exists between the purchaser and the seller or lender.

(11) Match--Funds contributed to an Activity that meet the requirements of 24 CFR §§92.218 - 92.220. Match contributed to an Activity does not include mortgage revenue bonds, non-HOME-assisted projects, and cannot include any other sources of Department funding unless otherwise approved in writing by the Department.

(12) New Construction--Construction of a new Single Family Housing Unit which involves:

(A) Construction on a lot that was not the site of a Single Family Housing Unit on the date HOME assistance was requested;

(B) Construction of a new Single Family Housing Unit following acquisition; or

(C) Construction of a site-built Single Family Housing Unit that replaces a manufactured housing unit.

(13) Person--Any individual, partnership, corporation, association, unit of government, community action agency, or public or private organization of any character.

(14) Persons with Special Needs--Individuals or categories of individuals determined by the Department to have unmet housing needs as provided in the Consolidated Plan and the State's One Year Action Plan.

(15) Predevelopment Costs--Costs consistent with 24 CFR §92.212 related to a specific eligible Activity including:

(A) Predevelopment housing project costs that the Department determines to be customary and reasonable, including but not limited to consulting fees, costs of preliminary financial applications, legal fees, architectural fees, engineering fees, engagement of a development team, and site control;

(B) Pre-construction housing project costs that the Department determines to be customary and reasonable, including but not limited to, the costs of obtaining firm construction loan commitments, architectural plans and specifications, zoning approvals, engineering studies and legal fees; and

(C) Predevelopment costs do not include general operational or administrative costs.

(16) Principal--A Person, or Persons, that will exercise Control over a partnership, corporation, limited liability company, trust, or any other private entity. In the case of:

(A) Partnerships: Principals include all General Partners, special limited partners, and Principals with ownership interest;

(B) Corporations: Principals include any officer authorized by the board of directors to act on behalf of the corporation, including the president, vice president, secretary, treasurer, and all other executive officers, and each stock holder having a ten percent or more interest in the corporation; and

(C) Limited liability companies: Principals include all managing members, members having a ten percent or more interest in the limited liability company or any officer authorized to act on behalf of the limited liability company.

(17) Reconstruction--Has the same meaning as the defined term in 24 CFR §92.2.

(18) Reservation System Participant (RSP)--Administrator who has executed a written Agreement with the Department that allows for participation in the Reservation System.

(19) Service Area--The city(ies), county(ies) and/or place(s) identified in the Application and/or Agreement that the Administrator will serve.

(20) Third Party--A Person who is not:

(A) An Applicant, Administrator, Borrower, General Partner, Developer, Development Owner, or General Contractor; or

(B) An Affiliate, Affiliated Party to the Applicant, Administrator, Borrower, General Partner, Developer, Development Owner, or General Contractor; or

(C) A Person receiving any portion of the administration, contractor fee, or developer fee.

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

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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SUBCHAPTER B. AVAILABILITY OF FUNDS, APPLICATION REQUIREMENTS, REVIEW AND AWARD PROCEDURES, GENERAL ADMINISTRATIVE REQUIREMENTS, AND RESALE AND RECAPTURE OF FUNDS

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

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

§23.20. Availability of Funds and Regional Allocation Formula.

Funds made available through an open Application cycle and subject to regional allocation formula shall be made available to each region and subregion for a time period to be specified in the applicable NOFA, after which the funds remaining shall collapse and be made available statewide.

§23.21. Application Forms and Materials and Deadlines.

(a) The Department will produce an Application to satisfy the Department's requirements to be qualified to administer HOME activities. The Application will be available on the Department's website.

(b) The Department must receive all Applications by the deadline specified in the NOFA.

§23.22. Application Review Process.

(a) Contract award review process for open Application cycles. An Application received by the Department in response to an open Application cycle NOFA will be assigned a "Received Date." An Application will be prioritized for review based on its "Received Date." Application acceptance dates may be staggered under an open Application cycle to prioritize Applications which propose to serve areas identified in Tex. Gov't Code §2306.127 as priority for certain communities. An Application with outstanding administrative deficiencies under §23.24 of this chapter, may be suspended from further review until all administrative deficiencies have been cured or addressed to the Department's satisfaction. Applications that have completed the review process may be presented to the Board for approval with priority over Applications that continue to have administrative deficiencies at the time Board materials are prepared, regardless of "Received Date." If all funds available under a NOFA are awarded, all remaining Applicants will be notified and the remaining Applications will not be processed.

(b) Reservation System Participant review process. An Application for a Reservation System Participant (RSP) Agreement shall be reviewed and if approved under chapter 1, Subchapter C of this title, as amended or superseded, concerning Previous Participation Review of Department Awards, and not denied under §23.24 of this chapter, will be drafted and processed in the order in which it was accepted to be executed and made effective.

(c) Administrative deficiency review process. The administrative deficiency process allows staff to request that an Applicant provide clarification, correction, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in evaluating the Application. Staff will request such information via a deficiency notice. Staff will send the deficiency notice via an email or if an email address is not provided in the Application, by facsimile to the Applicant. Responses must be submitted electronically to the Department. A review of the Applicant's response may reveal that issues initially identified as an administrative deficiency are actually determined to be beyond the scope of an administrative deficiency process, meaning that they are in fact matters of a material nature not susceptible to being resolved. Department staff may, in good faith, provide an Applicant confirmation that an administrative deficiency response has been received or that such response is satisfactory. Communication from staff that the response was satisfactory does not establish any entitlement to points, eligibility status, or to any presumption of having fulfilled any requirements. Final determination regarding the sufficiency of documentation submitted to cure an administrative deficiency as well as the distinction between material and non-material missing information are reserved for the Executive Director or authorized designee, and Board, as applicable.

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

(e) The time period for responding to a deficiency notice commences on the first day following the deficiency notice date. If an administrative deficiency is not resolved to the satisfaction of the Department by 5:00 p.m., central time, on the 14th day following the date of the deficiency notice, the application may be terminated. The Department may accept a corrected Board Resolution submitted after the deficiency deadline on the condition that the corrected Board Resolution resolves the deficiencies to the satisfaction of the Department, but the Board Resolution must be received and deemed satisfactory by the Department before the RSP Agreement or Contract start date. Applicants that have been terminated may reapply.

§23.23. General Threshold Criteria.

General Threshold. All Applicants and Applications to administer a HOME Program award from the Department must submit or comply with the following:

(1) An Applicant certification of compliance with state rules promulgated by the Department, and federal laws, rules and guidance governing the HOME Program as provided in the Application.

(2) A Resolution from the Applicant's direct governing body which includes:

(A) Authorization of the submission of the Application specifying the NOFA under which funds are requested for Contract award Applications;

(B) Commitment and amount of cash reserves, if applicable, for use during the Contract or RSP Agreement term;

(C) Source of funds for Match obligation and Match amount to be contributed as a percentage of Direct Activity Costs, if applicable;

(D) Title of the person authorized to represent the organization and who also has signature authority to execute a Contract and grant agreement or loan documents, as applicable, unless otherwise stated; and

(E) Date that the resolution was passed by the governing body, which must be within six months preceding Application submission for Reservation System Participation Agreement Applications, and no earlier than the date of the Department's Governing Board approval of the NOFA for Contract award Applications.

(3) An Applicant must be registered in the System for Award Management (SAM) and have a current Unique Entity Identification (UEID) number.

(4) Service Area. Applicants must include the Service Area proposed for the Contract or RSP Agreement for all Activity types. Administrators must state whether the Service Area is limited to only certain cities within any county in the proposed Service Area.

(A) The Service Area for TBRA must include the entire rural or urban area of a county as identified in the Application, excluding Participating Jurisdictions. However, Service Areas must include Participating Jurisdictions as applicable if the Agreement includes access to the Persons with Disabilities set-aside; or

(B) The Service Area may be limited to the boundaries of the jurisdiction of the Applicant if the Applicant for TBRA is a unit of local government.

(5) Match. The Department shall use population figures from the most recently available U.S. Census Bureau's American Community Survey (ACS) as of the date of submission of the Application to determine the applicable Match for cities with a population of less than 5,000 persons. The Department shall use the population figures from the most recent Population Estimates from the U.S. Census Bureau's QuickFacts for all counties and for cities with a population that exceeds 5,000 persons. The Department may incentivize or provide preference to Applicants committing to provide additional Match above the requirement of this paragraph. Such incentives may be established as selection criteria in the NOFA.

(A) Excluding Applications under the disaster relief and persons with disabilities set-asides, Match shall be required for Homeowner Reconstruction Assistance (HRA) and Homebuyer Assistance with New Construction (HANC) based on the tiers described in clauses (i) and (ii) of this subparagraph:

(i) Zero percent of Direct Activity Costs, exclusive of Match, is required as Match when:

(I) the Service Area includes the entire unincorporated area of a county and where the population of Administrator's Service Area is less than or equal to 20,000 persons; or

(II) When the Service Area does not include the entire unincorporated area of a county and the population of the Administrator's Service Area is less than or equal to 3,000 persons.

(ii) One percent of Direct Activity Costs, exclusive of Match, is required as Match for every 1,000 in population to a maximum of 25 percent.

(B) Applicants that charge customary fees related to the construction of single-family housing must waive all fees that otherwise apply to any HOME Activity. These fee waivers must be reported as Match, regardless of whether Match is otherwise required based on population and activity type. Applicants must submit their schedule of fees related to construction, if applicable, with their Application for a Contract or Reservation System Participation Agreement.

(6) Cash Reserve Threshold Requirements. Documentation, as described in subparagraphs (A) and (B) of this paragraph, must be submitted at the time of Application that demonstrates that the Applicant has at least $80,000 in cash reserves if the Application includes construction Activities, and at least $30,000 in cash reserves if the Application is for Tenant-Based Rental Assistance only. The cash reserves may be utilized to facilitate administration of the program, and to ensure the capacity to cover costs prior to reimbursement or costs determined to be ineligible for reimbursement. The amount of the cash reserve commitment must be included in the Applicant's resolution. To meet this requirement, Applicants must submit:

(A) financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or

(B) evidence of an available line of credit or equivalent tool in an amount equal to or exceeding the requirement in this paragraph.

(7) A NOFA may include incentives or otherwise require architectural plans to incorporate "green building" elements.

(8) Applications proposing development using the Community Housing Development Organization (CHDO) set-aside must submit an Application for CHDO certification. Applicants must meet the requirement for CHDO certification as defined in §13.2 of this title (relating to the Multifamily Direct Loan Rule).

(9) Other Threshold and/or Selection criteria for this Activity may be outlined in the NOFA.

(10) An Application must be substantially complete when received by the Department. An Application will be terminated if an entire tab of the Application is missing; has excessive omissions of documentation from the threshold or selection criteria or uniform Application documentation; or is so unclear, disjointed, or incomplete that a thorough review cannot reasonably be performed by the Department, as determined by the Department. Such Application will be terminated without being processed as an administrative deficiency. To the extent that a review was able to be performed, specific reasons for the Department's termination will be included in the notification sent to the Applicant but, because of the suspended review, may not include an all-inclusive list of deficiencies in the Application.

§23.24. Contract Benchmarks and Limitations.

(a) Contract Award Funding Limits. Limits on the total amount of a Contract award will be established in the NOFA.

(b) Contract Award Terms. Homeowner Reconstruction Assistance awards will have a Contract term of not more than 21 months, exclusive of any applicable affordability period or loan term. Single Family Development awards will have a Contract term of not more than 24 months, exclusive of any applicable affordability period or loan term. Tenant-Based Rental Assistance awards will have a Contract term of not more than 36 months.

(c) Contract Award Benchmarks. Administrators must have attained environmental clearance for the contractually required number of Households served within six months of the effective date of the Contract. Contract Administrators must submit to the Department complete Activity setup information for the Commitment of Funds of all contractually required Households in accordance with the requirements herein within nine months from the effective date of the Contract. All remaining funds will be deobligated and reallocated in accordance with chapter 1 of this title relating to Reallocation of Financial Assistance.

(d) Voluntary deobligation. The Administrator may fully deobligate funds in the form of a written request signed by the signatory, or successor thereto, of the Contract. The Administrator may partially deobligate funds under a Contract in the form of a written request from the signatory if the letter also deobligates the associated number of targeted Households, funds for administrative costs, and Match and the partial deobligation would not have impacted the award of the Contract. Voluntary deobligation of a Contract does not limit an Administrator's ability to participate in an open application cycle.

(e) The Department may request information regarding the performance or status under a Contract prior to a Contract benchmark or at various times during the term of a Contract. Administrator must respond within the time limit stated in the request. Prolonged or repeated failure to respond may result in suspension of funds and ultimately in termination of the Contract by the Department.

(f) Pre-Contract Costs.

(1) The Administrator may be reimbursed for eligible administrative and Activity soft costs incurred before the effective date of the Contract in accordance with 24 CFR §92.212 and at the sole discretion of the Department.

(2) A Community Housing Development Organization may be reimbursed for Predevelopment Costs as defined in this chapter for an Activity funded under Single Family Development.

(3) In no event will the Department reimburse expenses incurred more than six months prior to Governing Board approval of the Administrator's award.

(g) Amendments to Contract awards will be processed in accordance with chapter 20 of this title, relating to Single Family Programs Umbrella Rule.

§23.25. Reservation System Participant (RSP) Agreement.

(a) Terms of Agreement. The term of an RSP Agreement will not exceed 36 months. Execution of an RSP Agreement does not guarantee the availability of funds under a reservation system. Reservations submitted under an RSP agreement will be subject to the provisions of this chapter in effect as of the date of submission by the Administrator.

(b) Limits on Number of Reservations. Except for Activities submitted under the Disaster set-aside, RSP Administrators may have no more than five Reservations per county within the RSP's Service Area submitted to the Department for approval at any given time, except that Tenant-Based Rental Assistance Reservations submitted for approval under an RSP Agreement is limited to 30 at any given time.

(c) Extremely Low-Income Households. Except for Households submitted under the Disaster set-aside, each RSP will be required to serve at least one extremely low-income Household out of every four Households submitted and approved for assistance. For purposes of this subsection, extremely low-income is defined as families that are either at or below 30 percent AMFI for the county in which they will reside or have an income that is lower than the statewide 30 percent income limit without adjustments to HUD limits.

(d) Match. Administrators must meet the Match requirement per Activity approved for assistance. Match may not be transferred from one Activity to another Activity.

(e) Completion of Construction. For Activities involving construction, construction must be complete within 12 months from the Commitment of Funds for the Activity, unless amended in accordance with subsection (g) of this section.

(f) Household commitment contract term. The term of a Household commitment contract may not exceed 12 months, except that the Household commitment contract term for Tenant-Based Rental Assistance may not exceed 24 months. Household commitment contracts may commence after the end date of an RSP Agreement only in cases when the Administrator has submitted a Reservation on or before the termination date of the RSP Agreement.

(g) Amendments to Household commitment contracts may be considered by the Department provided the approval does not conflict with the federal regulations governing use of these funds, or impact federally imposed obligation or expenditure deadlines.

(1) The Executive Director's authorized designee may approve an amendment that extends the term of a Household commitment contract by not more than six months, except that the term of a Household commitment contract for Tenant-Based Rental Assistance may not be extended to exceed a total Household commitment contract term of 24 months.

(2) The Executive Director's authorized designee may approve one or more amendments to a Household commitment contract to:

(A) extend the Construction Completion Date by not more than six months;

(B) extend the term of rental subsidy up to a total term of 24 months;

(C) extend the draw period by not more than three months after the Construction Completion Date or termination of rental subsidy; or

(D) to increase Activity funds within the limitations set forth in this chapter.

(3) The Executive Director may approve amendments to a Household commitment contract, except amendments to extend the contract term of a Household Commitment contract by more than 12 months.

(h) Pre-agreement costs. The Administrator may be reimbursed for eligible administrative and Activity soft costs incurred before the effective date of the RSP Agreement in accordance with 24 CFR §92.212 and at the sole discretion of the Department. In no event will the Department reimburse expenses incurred more than six months prior to the effective date of the RSP Agreement.

(i) Administrator must remain in good standing with the Department, the state of Texas, and HUD. If an Administrator is not in good standing, participation in the Reservation System will be suspended and may result in termination of the RSP Agreement.

§23.26. General Administrative Requirements.

Unless otherwise provided in this chapter, the Administrator or Developer must comply with the requirements described in paragraphs (1) - (21) of this section, for the administration and use of HOME funds:

(1) Complete training, as applicable.

(2) Provide all applicable Department Housing Contract System access request information and documentation requirements.

(3) Establish and maintain sufficient records at its regular place of business and make available for examination by the Department, HUD, the U.S. General Accounting Office, the U.S. Comptroller, the State Auditor's Office of Texas, the Comptroller of Public Accounts, or any of their duly authorized representatives, throughout the applicable record retention period.

(4) For non-Single Family Development Contracts, develop and establish written procurement procedures that comply with federal, state, and local procurement requirements including:

(A) Develop and comply with written procurement selection criteria and committees, including appointment of a procurement officer to manage any bid process;

(B) Develop and comply with a written code of conduct governing employees, officers, or agents engaged in administering HOME funds;

(C) Ensure consultant or any procured service provider does not participate in or direct the process of procurement for services. A consultant cannot assist in their own procurement before or after an award is made;

(D) Ensure that procedures established for procurement of building construction contractors do not include requirements for the provision of general liability insurance coverage in an amount to

exceed the value of the contract and do not give preference for contractors in specific geographic locations;

(E) Ensure that building construction contractors are procured in accordance with State and Federal regulations for single family HOME Activities;

(F) To the extent that a set of architectural plans are generated and used by an Administrator for more than one Single Family Housing Unit, the Department will reimburse only for the first time a set of architectural plans is used, unless any subsequent site specific fees are paid to a Third Party architect or licensed engineer for the reuse of the plans on that subsequent specific site, as demonstrated by a contract with the third-party;

(G) Ensure that professional service providers (consultants) are procured using an open competitive procedure and are not procured based solely on the lowest priced bid; and

(H) Ensure that any Request for Proposals or Invitation for Bid include:

(i) an equal opportunity disclosure and a notice that bidders are subject to search for listing on the Excluded Parties List;

(ii) bidders' protest rights and an outline of the procedures bidders must take to address procurement related disputes;

(iii) a conflict of interest disclosure;

(iv) a clear and accurate description of the technical requirements for the material, product, or service to be procured. The description must include complete, adequate, and realistic specifications;

(v) for sealed bid procedures, disclose the date, time and location for public opening of bids and indicate a fixed-price contract;

(vi) must not have a term of services greater than five years; and

(vii) for competitive proposals, disclose the specific election/evaluation criteria.

(5) In instances where a potential conflict of interest exists, follow procedures to submit required documentation to the Department sufficient to submit an exception request to HUD for any conflicts prohibited by 24 CFR §92.356. The request submitted to the Department must include a disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict by newspaper publication, a description of how the public disclosure was made, and an attorney's opinion that the conflict does not violate state or local law. No HOME funds will be committed to or reserved to assist a Household impacted by the conflict of interest regulations until HUD has granted an exception to the conflict of interest provisions.

(6) Perform environmental clearance procedures, as required, before acquiring any Property or before performing any construction activities, including demolition, or before the occurrence of the loan closing, if applicable.

(7) Develop and comply with written Applicant intake and selection criteria for program eligibility that promote and comply with Fair Housing requirements and the State's One Year Action Plan.

(8) Complete Applicant intake and Applicant selection. Notify each Applicant Household in writing of either acceptance or denial of HOME assistance within 60 days following receipt of the intake application.

(9) Determine the income eligibility of a Household using the "Annual Income" as defined at 24 CFR §5.609, by using the list of income included in HUD Handbook 4350.3 (or most recent version), and excluding from income those items listed in HUD's Updated List of Federally Mandated Exclusions from Income. The Single Family HOME Program will implement the applicable requirements of the Housing Opportunity Through Modernization Act (HOTMA) not later than January 1, 2025.

(10) Complete an updated income eligibility determination of a Household if the date of certification is more than six months prior to the Date of Assistance.

(11) For single family Activities involving construction, perform initial inspection in accordance with chapter 20 of this title (relating to Single Family Programs Umbrella Rule). Property inspections must include photographs of the front, back, and side elevations of the housing unit and at least one picture of each of the kitchen, family room, each bedroom and each bathrooms. The inspection must be signed and dated by the inspector and the Administrator. The photographs submitted with the initial inspection should evidence the deficiencies noted on the initial inspection and must clearly show the entire property, including other buildings located on the property.

(12) Submit a substantially complete request for the Commitment or Reservation of Funds, loan closing preparation, and for disbursements. Administrators must upload all required information and verification documentation in the Housing Contract System. Requests determined to be substantially incomplete will not be reviewed and may be disapproved by the Department. Expenses for which reimbursement is requested must be documented as incurred. If the Department identifies administrative deficiencies during review, the Department will allow a cure period of 14 calendar days beginning at the start of the first day following the date the Administrator or Developer is notified of the deficiency. If any administrative deficiencies remain after the cure period, the Department, in its sole discretion, may disapprove the request. Disapproved requests will not be considered sufficient to meet the performance benchmark and shall not constitute a Reservation of Funds.

(13) Submit signed program documents timely as may be required for the completion of a Commitment or Reservation of Funds, and for closing preparation of the loan or grant documents. Department reserves the right to cancel or terminate Activities when program documents are not executed timely, in the Department's sole and reasonable discretion.

(14) Not proceed or allow a contractor to proceed with construction, including demolition, on any Activity or development without first completing the required environmental clearance procedures, preconstruction conference and receiving notice to proceed, if applicable, and execution of grant agreement or loan closing with the Department, whichever is applicable.

(15) Submit any Program Income received by the Administrator or Developer to the Department within 14 days of receipt; any fund remittance to the Department, including refunds, must include a written explanation of the return of funds, the Contract number, name of Administrator or Developer, Activity address and Activity number, and must be sent to the Department's accounting division.

(16) Submit required documentation for project completion reports no later than 60 days after the completion of the Activity, unless this term is extended though amendment.

(17) For Contract awards, submit certificate of Contract Completion within 14 days of the Department's request.

(18) Submit to the Department reports or information regarding the operations related to HOME funds provided by the Department.

(19) Submit evidence with the final draw for construction related activities that the builder has provided a one-year warranty specifying at a minimum that materials and equipment used by the contractor will be new and of good quality unless otherwise required, the work will be free from defects other than those inherent in the work as specified, and the work will conform to the requirements of the contract documents.

(20) Provide the Household all warranty information for work performed by the builder and any materials purchased for which a manufacturer or installer's warranty is included in the price.

(21) If required by state or federal law, place the appropriate bonding requirement in any contract or subcontract entered into by the Administrator or Developer in connection with a HOME award. Failure to include the bonding requirement in subcontracts may result in termination of the RSP Agreement.

§23.27. Project Cost Limitations.

(a) Direct Activity Costs for construction, exclusive of Match funds, are limited to the amounts described in this section; however, not more than once per year, the Board in its sole discretion, may increase or decrease by up to five percent of the limitation for Direct Activity Costs. Total Activity costs may not exceed HUD Subsidy Limits. Dollar amounts in a Household commitment contract are set at the time of Contract execution and may not be adjusted through this process. Current limit amounts under this section will be reflected on the Department's website.

(b) Reconstruction and New Construction of site-built housing: the lesser of $150 per square foot of conditioned space or $175,000; or for Households of five or more Persons that require a four-bedroom unit, the lesser of $150 per square foot of conditioned space, or $200,000; and

(c) Direct Activity Costs for acquisition and placement of a unit of Manufactured Housing, including demolition or removal of existing housing and exclusive of Match funds, is limited to $125,000.

(d) Direct Activity Costs for conversion of a Contract for Deed, including closing costs paid from HOME funds, is limited to $40,000.

(e) In addition to the Direct Activity Costs allowable under subsections (b) and (c) of this section, additional funds in the amount of $15,000 may be used to pay for each of the following, as applicable:

(1) Necessary environmental mitigation as identified during the Environmental review process;

(2) Installation of an aerobic septic system; and

(3) Homeowner requests for accessibility features.

(f) Activity soft costs eligible for reimbursement for Activities of the following types are limited to:

(1) Acquisition or refinance, and New Construction of site-built housing: no more than $15,000 per housing unit; and

(2) Acquisition or refinance, and replacement with an MHU: no more than $10,000 per housing unit.

(g) Project Cost Limitations for Tenant-Based Rental Assistance Activities are limited as described in Subchapter E of this chapter.

(h) Projects Costs must not exceed the federal subsidy limit, unless waived by HUD.

(i) Unless waived by HUD, the purchase price of acquired property and the post-improvement value of the unit may not exceed the limitations set forth in 24 CFR §92.254. Compliance with the purchase price limitation must be evidenced prior to loan closing with an as-built appraisal.

(j) Administrative Cost Limitations.

(1) Funds for administrative costs are limited to no more than five percent of the Direct Activity Costs, exclusive of Match funds, for HRA.

(2) Funds for administrative costs are limited to no more than eight percent of the Direct Activity Costs, exclusive of Match funds, for CFD and HANC.

(3) For TBRA, Administrators must select one method under which funds for administrative costs and Activity soft costs may be reimbursed prior to execution of an RSP agreement or at Application for an award of funds. All costs must be reasonable and customary for the Administrator's Service Area. Applicants and Administrators may choose from one of the following options, and in any case funds for Administrative costs may be increased by an additional one percent of Direct Activity Costs if Match is provided in an amount equal to five percent or more of Direct Activity Costs:

(A) Funds for Administrative costs are limited to four percent of Direct Activity Costs, excluding Match funds, and Activity soft costs are limited to $1,200 per Household assisted. Activity soft costs may reimburse expenses for costs related to determining Household income eligibility, including recertification, and conducting Housing Quality Standards (HQS) inspections. All costs must be reasonable and customary for the Administrator's Service Area; or

(B) Funds for Administrative costs are limited to ten percent of Direct Activity Costs, excluding Match funds, and Administrator may not be reimbursed for Activity soft costs.

§23.28. Design and Quality Requirements.

(a) Each Single Family Housing Unit constructed with HOME funds must meet the design and quality requirements as described in paragraphs (1) - (6) of this subsection, and plans must be certified by a licensed architect or engineer:

(1) Current applicable International Residential Code, local codes, ordinances, and zoning ordinances in accordance with 24 CFR §92.251(a);

(2) Requirements in chapters 20 and 21 of this title;

(3) Units must Include the following amenities: Wired with RG-6 COAX or better and CAT3 phone cable or better to each bedroom and living room; Blinds or window coverings for all windows; Disposal and Energy-Star or equivalently rated dishwasher (must only be provided as an option to each Household); Oven/Range; Exhaust/vent fans (vented to the outside) in bathrooms; Energy-Star or equivalently rated lighting in all rooms, which may include LED bulbs. The living room and each bedroom must contain at least one ceiling lighting fixture and wiring must be capable of supporting ceiling fans; and Paved off-street parking for each unit to accommodate at least one mid-sized car and access to on-street parking for a second car;

(4) Units must contain no less than two bedrooms. Each Single Family Housing Unit must contain complete physical facilities and fixtures for living, sleeping, eating, cooking, and sanitation;

(5) Each bedroom must be no less than 100 square feet; have a length or width no less than 8 feet; be self-contained with a

door; have at least one window that provides exterior access; and have at least one closet that is not less than two feet deep and three feet wide and high enough to contain at least five feet of hanging space; and

(6) Units must be no less than 800 total net square feet for a two bedroom Single Family Housing Unit; no less than 1,000 total net square feet for a three bedroom and two bathroom Single Family Housing Unit; and no less than 1,200 total net square feet for a four bedroom and two bathroom Single Family Housing Unit.

(7) An exception to paragraphs (2) - (6) may be requested by the Household and approved by the Division Director prior to submission of the Activity. A request for an exception must include the specific feature or design requirement for which the exception is requested, and must include justification for the exception.

(b) Units selected by Households assisted under the Tenant-Based Rental Assistance Program must meet the applicable federal requirements for the HOME Program as of the date of initial occupancy and any subsequent inspection.

§23.29. Resale and Recapture Provisions.

(a) Recapture is the primary method the Department will use to recoup HOME funds under 24 CFR §92.254(a)(5)(ii).

(b) To ensure continued affordability, the Department has established the recapture provisions described in paragraphs (1) -(4) of this subsection and further defined in 24 CFR §92.254(a)(5)(ii).

(1) In the event that a federal affordability period is required and the assisted property is rented, leased, or no member of the Household has it as the Principal Residence, the entire HOME investment is subject to recapture. The Department will include any loan payments previously made when calculating the amount subject to recapture. Loan forgiveness is not the same thing as loan payments for purposes of this subsection.

(2) In the event that a federal affordability period is required and the assisted property is sold, including through a short sale, deed in lieu of foreclosure, or foreclosure, prior to the end of the affordability period, the Department will recapture the available amount of net proceeds based on the requirements of 24 CFR §92.254, and as outlined in the State's One Year Action Plan.

(3) The Household can sell the unit to any willing buyer at any price. In the event of sale to a qualified low-income purchaser of a HOME-assisted unit, the qualified low-income purchaser may assume the existing HOME loan and assume the recapture obligation entered into by the original buyer if no additional HOME assistance is provided to the low-income purchaser. In cases in which the subsequent homebuyer needs HOME assistance in excess of the balance of the original HOME loan, the HOME subsidy (the direct subsidy as described in 24 CFR §92.254) to the original homebuyer must be recaptured. A separate HOME subsidy must be provided to the new homebuyer, and a new affordability period must be established based on that assistance to the buyer.

(4) If there are no net proceeds from the sale, no repayment will be required of the Household and the balance of the loan shall be forgiven as outlined in the State's applicable One Year Action Plan.

(c) The Department has established the resale provisions described in paragraphs (1) -(7) of this subsection, only in the event that the Department must impose the resale provisions of 24 CFR §92.254(a)(i).

(1) Resale is defined as the continuation of the affordability period upon the sale or transfer, rental or lease, refinancing, and no member of the Household is occupying the property as their Principal Residence.

(2) In the event that a federal affordability period is required and the assisted property is rented or leased, or no member of the Household has it as the Principal Residence, the HOME investment must be repaid.

(3) In the event that a federal affordability period is required and the assisted property is sold or transferred in lieu of foreclosure to a qualified low-income buyer at an affordable price, the HOME loan balance shall be transferred to the subsequent qualified buyer and the affordability period shall remain in force to the extent allowed by law.

(4) The resale provisions shall remain in force from the date of loan closing until the expiration of the required affordability period.

(5) The Household is required to sell the home at an affordable price to a reasonable range of low-income homebuyers that will occupy the home as their Principal Residence. Affordable to a reasonable range of low-income buyers is defined as targeting Households that have income between 70 and 80 percent AMFI and meet all program requirements.

(A) The seller will be afforded a fair return on investment defined as the sum of down payment and closing costs paid from the initial seller's cash at purchase, closing costs paid by the seller at sale, the principal payments only made by the initial homebuyer in excess of the amount required by the loan, and any documented capital improvements in excess of $500.

(B) Fair return on investment is paid to the seller at sale once first mortgage debt is paid and all other conditions of the initial written agreement are met. In the event there are no funds for fair return, then fair return does not exist. In the event there are partial funds for fair return, then the appropriate partial fair return shall remain in force.

(6) The appreciated value is the affordable sales price less first mortgage debt less fair return.

(A) If appreciated value is zero, or less than zero, then no appreciated value exists.

(B) The initial homebuyer's investment of down payment and closing costs divided by the Department's HOME investment equals the percentage of appreciated value that shall be paid to the initial homebuyer or persons as otherwise directed by law. The balance of appreciated value shall be paid to the Department.

(7) The property qualified by the initial Household will be encumbered with a lien for the full affordability period.

(d) In the event the housing unit transfers by devise, descent, or operation of law upon the death of the assisted homeowner, forgiveness of installment payments under the loan may continue until maturity or the penalty amount for noncompliance under the conditional grant agreement may be waived, if the new Household qualifies for assistance in accordance with this subchapter. If the new Household does not qualify for assistance in accordance with this chapter, forgiveness of installment payments will cease and repayment of scheduled payments under the loan will commence and continue until maturity or payment of a penalty amount under the conditional grant agreement may be required in accordance with the terms of the conditional grant agreement.

(e) Forgiveness of installment payments under the loan may continue until maturity or the penalty amount under conditional grant agreement may be waived by the Department if the housing unit is sold by the decedent's estate to a purchasing Household that qualifies for assistance in accordance with this chapter.

(f) Grants subject to conditional grant agreements are not subject to the entire penalty amount in the event the property is no longer the Principal Residence of any Household member.

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

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SUBCHAPTER C. HOMEOWNER RECONSTRUCTION ASSISTANCE PROGRAM

10 TAC §23.30, §23.31

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

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

§23.30. Homeowner Reconstruction Assistance (HRA) General Requirements.

(a) Program funds may be used for the following under this subchapter:

(1) Reconstruction of housing on the same site meeting the following conditions:

(A) Replacement of an owner-occupied site-built house with either a new site-built house or a new Manufactured Housing Unit (MHU) on the same site;

(B) Replacement of an owner-occupied MHU with a new MHU on the same site;

(C) A unit that is not owner-occupied has been destroyed may be eligible for Reconstruction under subparagraph (A) or (B) of this paragraph if:

(i) the unit was the Principal Residence of the Household as of the date of destruction where evidence of the Household's Principal Residence is established by a homestead exemption from the local taxing jurisdiction and Household certification in effect at the date of destruction; and

(ii) HOME funds are committed within 12 months of the date of destruction.

(2) New Construction of housing meeting the following conditions:

(A) Construction of site-built housing on the same site to replace an existing owner-occupied MHU;

(B) Replacement of existing owner-occupied housing with an MHU or construction of site-built housing on another site contingent upon written approval of the Department; or

(C) Replacement of a housing unit determined to be uninhabitable within four years of submission of a Reservation for funds on the same site or another site when:

(i) the unit has been rendered uninhabitable as a direct result of a natural or man-made disaster, a condemnation order from the unit of local government, or a determination from the unit of local government that the unit presents an imminent threat to life, health, and safety of occupants; and

(ii) the Household's Principal Residence is established by a homestead exemption from the local taxing jurisdiction as of the date of the disaster, condemnation order, or determination of uninhabitably though a Certification.

(b) If a housing unit has an existing mortgage loan and Department funds are provided in the form of a loan, the Department will require a first lien position if the existing mortgage loan has an outstanding balance that is less than the investment of HOME funds and any of the statements described in paragraphs (1) - (3) of this subsection are true:

(1) A federal affordability period is required;

(2) Any existing mortgage has been in place for less than three years from the date the Household applies for assistance; or

(3) The HOME loan is structured as a repayable loan.

(c) The Household must be current on any existing mortgage loans or home equity loans. If the Department's assistance is provided in the form of a loan, the property cannot have any existing home equity loan liens.

(d) Total Project costs, exclusive of Match funds, are limited to the amounts described in §23.27, Project Cost Limitations.

(e) For New Construction Activities, the assistance to an eligible Household shall be in the form of a loan in the amount of the Direct Activity Costs excluding Match funds. The loan will be at zero percent interest and include deferral of payment and annual pro rata forgiveness with a term based on the federal affordability requirements as defined in 24 CFR §92.254.

(f) For Reconstruction Activities, the assistance to an eligible Household will be in the form of a grant agreement with a five year affordability period.

(g) To ensure affordability, the Department will impose resale and recapture provisions established in this Chapter.

§23.31. Homeowner Reconstruction Assistance (HRA) Administrative Requirements.

(a) Commitment or Reservation of Funds. The Administrator must submit the true and complete information, certified as such, with a request for the Commitment or Reservation of Funds as described in paragraphs (1) - (20) of this subsection:

(1) Head of Household name and address of housing unit for which assistance is being requested;

(2) A budget that includes the amount of Activity funds specifying the acquisition costs, construction costs, soft costs and administrative costs requested, a maximum of five percent of hard construction costs for contingency items, proposed Match to be provided, evidence that Direct Activity Cost and Soft Cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) Verification of environmental clearance;

(4) A copy of the Household's intake application on a form prescribed by the Department;

(5) Certification of the income eligibility of the Household signed by the Administrator and all Household members age 18 or over, and including the date of the income eligibility determination. In instances where the total Household income is within $3,000 of the 80 percent AMFI, all documentation used to determine the income of the Household;

(6) Project cost estimates, construction contracts, and other construction documents necessary to ensure applicable property standard requirements will be met at completion;

(7) When assistance is provided in the form of a loan, provide written consent from all Persons who have a valid lien or ownership interest in the Property;

(8) In the instance of relocation from one site to another site, the Household must document Homeownership of the existing unit to be replaced and must establish Homeownership of the lot on which the replacement housing unit will be constructed. The Household must agree to the demolition of the existing housing unit. HOME Activity funds cannot be used for the demolition of the existing unit and any funding used for the demolition is not eligible Match; however, solely for a Activity under this paragraph, the Administrator Match obligation may be reduced by the cost of such demolition without any Contract amendment;

(9) Identification of any Lead-Based Paint (LBP);

(10) For housing units located within the 100-year floodplain or otherwise required to carry flood insurance by federal or local regulation, certification from the Household that they understand the flood insurance requirements;

(11) Consent to demolish from any existing mortgage lien holders and consent to subordinate to the Department's loan, if applicable;

(12) If applicable, documentation to address or resolve any potential conflict of interest, Identity of Interest, duplication of benefit, or floodplain mitigation;

(13) A title commitment or policy or a down date endorsement to an existing title policy evidencing the Household's ownership of the property:

(A) For New Construction Activities, a title commitment or down-date endorsement to an existing title policy the effective date title commitment must be no more than 60 days prior to of the date of Activity submission. Title commitments for loan projects that expire prior to the loan closing date must be updated and must not have any adverse changes; and

(B) For Reconstruction Activities, a title report or a title commitment dated not more than six months prior to the date of Activity submission;

(14) Documents evidencing ownership, such as a warranty deed, life estate, or 99-year leasehold;

(15) If the housing to be replaced is an MHU, a Statement of Ownership and Location (SOL) for the MHU;

(16) Tax certificate that evidences a current paid status, and in the case of delinquency, evidence of an approved payment plan with the taxing authority and evidence that the payment plan is current;

(17) In the instances of replacement with an MHU, information necessary to draft loan documents or grant agreements to issue SOL;

(18) Life event documentation, as applicable, and all information necessary to prepare any applicable affidavits such as marital status and heirship;

(19) For disaster relief set-aside Activities, evidence that the housing unit occupied by the eligible Household was damaged as a direct result of a federal, state, or locally declared disaster that occurred less than four years prior to the submission of the Activity; and

(20) Any other documentation necessary to evidence that the Activity meets the program requirements.

(b) Loan closing or grant agreement. In addition to the documents required under subsection (a) of this section, the Administrator must submit the appraisal or other valuation method approved by the Department which establishes the post construction value of improvements for Activities involving construction prior to the issuance of grant or loan documents by the Department.

(c) Disbursement of funds. The Administrator must comply with all of the requirements described in paragraphs (1) - (12) of this subsection, for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Administrator's compliance with requirements described in paragraphs (1) - (12) of this subsection, may be required with a request for disbursement:

(1) For construction costs associated with a loan, a down date endorsement to the title policy not older than the date of the last disbursement of funds or 45 days, whichever is later. For release of retainage the down date endorsement must be dated at least 40 days after the Construction Completion Date;

(2) For construction costs associated with a grant agreement, an interim lien waiver or final lien waiver. For release of retainage the release on final payment must be dated at least 40 days after the Construction Completion Date;

(3) If applicable, a maximum of 50 percent of Activity funds for an Activity may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of Activity funds disbursed;

(4) Property inspections, including photographs of the front, back, and side elevations of the housing unit and at least one picture of the each of the kitchen, family room, each bedroom and each bathroom with date and property address reflected on each photo. The inspection must be signed and dated by the inspector and Administrator;

(5) Certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursal of, and accounting for, funds provided; that no Person that would benefit from the award of HOME funds; that it has satisfied any applicable cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service; and that the service does not violate any conflict of interest provisions;

(6) The executed grant agreement or original, executed, legally enforceable loan documents and statement of location, if applicable, for each assisted Household containing remedies adequate to enforce any applicable affordability requirements. Original documents must evidence that such agreements have been recorded in the real property records of the county in which the housing unit is located and the original documents must be returned, duly certified as to recordation by the appropriate county official;

(7) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness for expenditures submitted for reimbursement. The Department may request Administrator to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to Administrator as may be necessary or advisable for compliance with all program requirements;

(8) The request for funds for administrative costs must be proportionate to the amount of Direct Activity Costs requested or already disbursed;

(9) Include the withholding of ten percent of hard construction costs for retainage. Retainage will be held until at least 40 days after the Construction Completion Date;

(10) For final disbursement requests, submission of documentation required for Activity completion reports and evidence that the demolition or, if an MHU, salvage and removal of all dilapidated housing units on the lot, certification or other evidence acceptable to Department that the replacement house, whether site-built or MHU, was constructed or placed on and within the same lot for which ownership was established and on and within the same lot secured by the loan or grant agreement, if applicable, and evidence of floodplain mitigation;

(11) The final request for disbursement must be submitted to the Department with support documentation no later than 60 days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract; and

(12) For costs associated with insurance policies, including title policies and homeowner insurance policies, charged as Activity costs, evidence of payment of the cost must be submitted with the retainage request.

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

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SUBCHAPTER D. CONTRACT FOR DEED PROGRAM

10 TAC §23.40, §23.41

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

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

§23.40. Contract for Deed (CFD) General Requirements.

(a) Program funds may be utilized for Acquisition or refinance, and New Construction, of single family housing units occupied by the purchaser as shown on an executory contract for conveyance.

(b) The Department shall limit the availability of funds for CFD for a minimum of 60 days for Activities proposing to serve Households whose income does not exceed 60 percent AMFI, and for properties located in a Colonia as defined in Tex. Gov't Code §2306.083.

(c) The Department will require a first lien position.

(d) Total Project costs, exclusive of Match funds, are limited to the amounts described in §23.27, Project Cost Limitations.

(e) The assistance to an eligible Household shall be in the form of a loan in the amount of the Direct Activity Costs excluding Match funds. The loan will be at zero percent interest and include deferral of payment and annual pro rata forgiveness with a term based on the federal affordability requirements as defined in 24 CFR §92.254. For refinancing activities, the minimum loan term and affordability period is 15 years, regardless of the amount of HOME assistance.

(f) To ensure affordability, the Department will impose resale or recapture provisions established in this Chapter.

§23.41. Contract for Deed (CFD) Administrative Requirements.

(a) Commitment or Reservation of Funds. The Administrator must submit true and correct information, certified as such, with a request for the Commitment or Reservation of Funds as described in paragraphs (1)-(15) of this subsection:

(1) Head of Household name and address of housing unit for which assistance is being requested;

(2) A budget that includes the amount of Activity funds specifying the acquisition costs, construction costs, soft costs and administrative costs requested, a maximum of five percent of hard construction costs for contingency items, proposed Match to be provided, evidence that Activity and soft costs limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) Verification of environmental clearance;

(4) A copy of the Household's intake application on a form prescribed by the Department;

(5) Certification of the income eligibility of the Household signed by the Administrator and all Household members age 18 or over, and including the date of the income eligibility determination. In instances the total Household income is within $3,000 of the 80 percent AMFI, all documentation used to determine the income of the Household;

(6) Project cost estimates, construction contracts, and other construction documents necessary to ensure applicable property standard requirements will be met at completion;

(7) Identification of Lead-Based Paint (LBP);

(8) For housing units located within the 100-year floodplain or otherwise required to carry flood insurance by federal or local regulation, certification from the Household that they understand the flood insurance requirements;

(9) If applicable, documentation to address or resolve any potential Conflict of Interest, Identity of Interest, duplication of benefit, or floodplain mitigation;

(10) Appraisal which includes post construction improvements for Activities involving construction;

(11) A title commitment to issue a title policy that evidences the property will transfer with no tax lien, child support lien,

mechanic's or materialman's lien or any other restrictions or encumbrances that impair the good and marketable nature of title to the ownership interest and that the definition of Homeownership will be met. The effective date of the title commitment must be no more than 60 days prior to the date of Activity submission. Commitments that expire prior to execution of closing must be updated at closing and must not have any adverse changes in order to close;

(12) In the instances of replacement with an MHU, information necessary to draft loan documents and issue Statement of Ownership and Location (SOL);

(13) Life event documentation, as applicable, and all information necessary to prepare any applicable affidavits such as marital status and heirship;

(14) A copy of the recorded executory contact and a current payoff statement; and

(15) Any other documentation necessary to evidence that the Activity meets the program requirements.

(b) Disbursement of funds. The Administrator must comply all of the requirements described in paragraphs (1) - (12) of this subsection, for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Administrator's compliance with requirements described in paragraphs (1) - (12) of this subsection may be required with a request for disbursement:

(1) For construction costs, a down date endorsement to the title policy not older than the date of the last disbursement of funds or 45 days, whichever is later. For release of retainage the down date endorsement must be dated at least 40 days after the Construction Completion Date;

(2) If applicable, a maximum of 50 percent of Activity funds for an Activity may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of Activity funds disbursed;

(3) Property inspections, including photographs of the front, back, and side elevations of the housing unit and at least one picture of each of the kitchen, family room, each bedroom and each bathroom with date and property address reflected on each photo. The inspection must be signed and dated by the inspector and Administrator;

(4) Certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursal of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

(5) Original, executed, legally enforceable loan documents, and statement of location, as applicable, for each assisted Household containing remedies adequate to enforce any applicable affordability requirements. Original documents must evidence that such agreements have been recorded in the real property records of the county in which the housing unit is located and the original documents must be returned, duly certified as to recordation by the appropriate county official. This provision is not applicable for funds made available at the loan closing;

(6) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness of each expenditure submitted for reimbursement. The Department may request Administrator or Developer to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to Administrator as may be necessary or advisable for compliance with all program requirements;

(7) The request for funds for administrative costs must be proportionate to the amount of Direct Activity Costs requested or already disbursed;

(8) Table funding requests must be submitted to the Department with complete documentation no later than 14 calendar days prior to the anticipated loan closing date. Such a request must include a draft closing disclosure, title company payee identification information, the Administrator or Developer's authorization for disbursement of funds to the title company, request letter from title company to the Comptroller of Public Accounts with bank account wiring instructions, and invoices for costs being paid at closing;

(9) Include the withholding of ten percent of hard construction costs for retainage. Retainage will be held until at least 40 days after the Construction Completion Date;

(10) For final disbursement requests, submission of documentation required for Activity completion reports and evidence that the demolition or, if an MHU, salvage and removal of all dilapidated housing units on the lot, certification or other evidence acceptable to Department that the replacement house, whether site-built or MHU, was constructed or placed on and within the same lot secured by the loan, and evidence of floodplain mitigation;

(11) The final request for disbursement must be submitted to the Department with support documentation no later than 60 days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract; and

(12) For costs associated with insurance policies, including title policies and homeowner's insurance policies charged as Activity costs, evidence of payment of the cost must be submitted with the retainage request.

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

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SUBCHAPTER E. TENANT-BASED RENTAL ASSISTANCE PROGRAM

10 TAC §23.50, §23.51

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

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

§23.50. Tenant-Based Rental Assistance (TBRA) General Requirements.

(a) Households assisted under the general set-aside must participate in a self-sufficiency program, as described in the Administrator's policies and procedures.

(b) The amount of assistance will be determined using the HUD Housing Choice Voucher method.

(c) Late fees are not an eligible HOME cost. Late fees incurred for the subsidy portion of rent must be paid by the Administrator from a non-HOME funding source.

(d) A Household certifying to zero income must also complete a questionnaire that includes a series of questions regarding how basic hygiene, dietary, transportation, and other living needs are met.

(e) The minimum Household contribution toward gross monthly rent must be ten percent of the Household's adjusted monthly income. The maximum Household contribution toward gross monthly rent at initial occupancy is limited to 40 percent of the Household's gross monthly income.

(f) Activity funds are limited to:

(1) Rental subsidy: Each rental subsidy term is limited to no more than 24 months. Total lifetime assistance to a Household may not exceed 36 months cumulatively, except that a maximum of 24 additional months of assistance, for a total of 60 months cumulatively may be approved if:

(A) the Household has applied for a Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program, and is placed on a waiting list during their TBRA participation tenure; and

(B) the Household has not been removed from the waiting list for the Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program due to failure to respond to required notices or other ineligibility factors; or

(C) the Administrator submits documentation evidencing that:

(i) no Public Housing Authority within a 50 mile radius of the Household's address during their participation in TBRA has opened their waitlist during the term of the Household's participation in TBRA, or has excluded the Household's application for placement on the waiting list for any reason other than eligibility or failure to respond to required notices, such as a randomized drawing of applications that may be placed on the waitlist; and

(ii) no waiting list was opened during the term of the Household's participation in TBRA for any HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program located within a 50 mile radius of the Household's address during their participation in TBRA; or

(iii) the Household is not eligible for placement on a waiting list for any HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program located within a 50 mile radius of the Household's address during their participation in TBRA; and

(D) the Household has not been denied participation in the Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program while they were being assisted with HOME TBRA; and

(E) the Household did not refuse to participate in the Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program when a voucher was made available.

(2) Security deposit: no more than the amount equal to two month's rent for the unit.

(3) Utility deposit in conjunction with a TBRA rental subsidy.

(g) The payment standard is determined at the Date of Assistance. The payment standard utilized by the Administrator must be:

(1) The U.S. Department of Housing and Urban Development (HUD) published Small Area Fair Market Rent (SAFMR) for any area in which a SAFMR is available. In areas where an SAFMR is not published by HUD, the payment standard must be the HUD-published Fair Market Rent (FMR) for the county. HUD-published SAFMRs and FMRs will become effective for the HOME Program on January 1 of each year following publication;

(2) For a HOME-assisted unit, the current applicable HOME rent; or

(3) The Administrator may submit a written request to the Department for approval of a different payment standard. The request must be evidenced by a market study or documentation that the PHA serving the market area has adopted a different payment standard. An Administrator may request a Reasonable Accommodation as defined in §1.204 of this Title for a specific Household if the Household, because of a disability, requires the features of a specific unit, and units with such features are not available in the Service Area at the payment standard.

(h) Administrator must not approve a unit if the owner is by consanguinity, affinity, or adoption the parent, child, grandparent, grandchild, sister, or brother of any member of the assisted Household, unless the Administrator determines that approving the unit would provide Reasonable Accommodation for a Household member who is a Person with Disabilities. This restriction against Administrator approval of a unit only applies at the time the Household initially receives assistance under a Contract or Agreement, but does not apply to Administrator approval of a recertification with continued tenant-based assistance in the same unit.

(i) Administrators must maintain Written Policies and Procedures established for the HOME Program in accordance with §10.802 of this Title, except that where the terms Owner, Property, or Development are used Administrator or Program will be substituted, as applicable. Additionally, the procedures in subsection (j) of this section (relating to the Violence Against Women Act (if in conflict with the provisions in §10.802 of this Title) will govern).

(j) Administrators serving a Household under a Reservation Agreement may not issue a Certificate of Eligibility to the Household prior to reserving funds for the Activity without prior written consent of the Department.

(k) Administrators are required to comply with regulations and procedures outlined in the Violence Against Women Act (VAWA), and provide tenant protections as established in the Act.

(1) An Administrator of Tenant-Based Rental Assistance must provide all Applicants (at the time of admittance or denial) and Households (before termination from the Tenant-Based Rental Assistance program or from the dwelling assisted by the Tenant-Based Rental Assistance Coupon Contract) the Department's "Notice of Occupancy Rights under the Violence Against Women Act", (based on HUD form 5380) and also provide to Households "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking" (HUD form 5382) prior to execution of a Rental Coupon Contract and before termination of assistance from the Tenant-Based Rental Assistance program or from the dwelling assisted by the Tenant-Based Rental Assistance coupon contract.

(2) Administrator must notify the Department within three days when tenant submits a Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and/or alternate documentation to Administrator and must submit a plan to Department for continuation or termination of assistance to affected Household members.

(3) Notwithstanding any restrictions on admission, occupancy, or terminations of occupancy or assistance, or any Federal, State or local law to the contrary, Administrator may "bifurcate" a rental coupon contract, or otherwise remove a Household member from a rental coupon contract, without regard to whether a Household member is a signatory, in order to evict, remove, terminate occupancy rights, or terminate assistance to any individual who is a recipient of TBRA and who engages in criminal acts of physical violence against family members or others. This action may be taken without terminating assistance to, or otherwise penalizing the person subject to the violence.

§23.51. Tenant-Based Rental Assistance (TBRA) Administrative Requirements.

(a) Commitment or Reservation of Funds. The Administrator must submit the documents described in paragraphs (1) - (10) of this subsection, with a request for the Commitment or Reservation of Funds:

(1) Head of Household name and address of housing unit for which assistance is being requested;

(2) A budget that includes the amount of Direct Activity Costs, Activity soft costs, administrative costs requested, Match to be provided, evidence that Direct Activity Cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) Verification of environmental clearance;

(4) A copy of the Household's intake application on a form prescribed by the Department;

(5) Certification of the income eligibility of the Household signed by the Administrator, and all Household members age 18 or over, and including the date of the income eligibility determination. Administrator must submit documentation used to determine the income and rental subsidy of the Household;

(6) Identification of Lead-Based Paint (LBP);

(7) If applicable, documentation to address or resolve any potential conflict of interest or duplication of benefit;

(8) Project address within 90 days of preliminary set up approval, if applicable;

(9) For Households assisted under the Disaster set-aside, verification that the household was displaced or is at-risk of displacement as a direct result of a Federal, State, or Locally declared disaster approved by the Department within four years of the date of Activity submission; and

(10) Any other documentation necessary to evidence that the Activity meets the program requirements.

(b) Disbursement of funds. The Administrator must comply with all of the requirements described in paragraphs (1) - (7) of this subsection for a request for disbursement of funds. Submission of documentation related to the Administrator compliance with requirements described in paragraphs (1) - (7) of this subsection may be required with a request for disbursement:

(1) If required or applicable, a maximum of 50 percent of Direct Activity Costs for an Activity may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of Direct Activity Costs disbursed;

(2) Certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursal of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

(3) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness of each expenditure submitted for reimbursement. The Department may request Administrator to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to the Administrator or Developer as may be necessary or advisable for compliance with all Program Requirements;

(4) With the exception of a maximum of 25 percent of the total funds available for administrative costs, the request for funds for administrative costs must be proportionate to the amount of Direct Activity Costs requested or already disbursed;

(5) Monthly subsidy may not be requested earlier than the tenth day of the month prior to the upcoming subsidized month;

(6) For final disbursement requests, submission of documentation required for Activity completion reports; and

(7) The final request for disbursement must be submitted to the Department with support documentation no later than 60 days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract.

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SUBCHAPTER F. SINGLE FAMILY DEVELOPMENT PROGRAM

10 TAC §23.60, §23.61

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

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

§23.60. Single Family Development (SFD) General Requirements.

(a) Program funds under this subchapter may be used for the Development of new single family housing for homeownership that complies with affordability requirements as defined at 24 CFR §92.254. Direct Activity Costs, exclusive of Match funds, are limited to the amounts described in§ 23.27, Project Cost Limitations.

(b) In addition to the requirements of Chapter 1, Subchapter B of this Title and Subchapter B of this Chapter, Applicants for an award of Single Family Development funds must submit a proposed development plan. The proposed development plan must be consistent with the requirements of this Chapter, all other federal and state rules, and include:

(1) a floor plan and front exterior elevation for each proposed unit which reflects the exterior building composition;

(2) a FEMA Issued Flood Map that identifies the location of the proposed site(s);

(3) letters from local utility providers, on company letterhead, confirming each site has access to the following services: water and wastewater, sewer, electricity, garbage disposal and natural gas, if applicable;

(4) documentation of site control of each proposed lot: A recorded warranty deed with corresponding executed settlement statement; or a contract or option for the purchase of the proposed lots that is valid for at least 180 days from the date of application submission; and

(5) an "as vacant" appraisal of at least one of the proposed lots if the Applicant has an Identity of Interest with the seller or current owner of the property; or any of the proposed property is part of a newly developed or under-development subdivision in which at least three other third-party sales cannot be evidenced. The purchase price of any lot in which the current owner has an Identity of Interest must not exceed the appraised value of the vacant lot at the time of Activity submission. The appraised value of the lot may be included in the sales price for the homebuyer transaction.

(6) The Department may prioritize Applications or otherwise incentivize Applications that partner with other lenders to provide permanent purchase money financing for the purchase of Single Family Housing Units developed with funds provided under this subchapter.

(c) Program funds under this subchapter are only eligible to be administered by a CHDO certified as such by the Department if administered utilizing the CHDO set-aside. A separate grant for CHDO operating expenses may be awarded to CHDOs that receive a Contract award if funds are provided for this purpose in the NOFA. A CHDO may not receive more than one grant of CHDO operating funds in an amount not to exceed $50,000 within any one year period, and may not draw more than $25,000 in CHDO operating funds in any twelve month period from any source, including CHDO operating funds from other HOME Participating Jurisdictions.

(d) Direct Activity Cost are limited to the costs described in § 23.27, Project Cost Limitations.

(e) Developer fees (including consulting fees) are limited to 15 percent of the total hard construction costs. The developer fee will be reduced by one percent per month or partial month that the construction period exceeds the original term of the construction period financing.

(f) General Contractor Fees are limited to 15 percent of the total hard construction costs. The General Contractor is defined as one who contracts for the construction of an entire development Activity, rather than a portion of the work. The General contractor hires subcontractors, such as plumbing contractors, electrical contractors, etc., coordinates all work, and is responsible for payment to the subcontractors. A prime subcontractor will also be treated as a General Contractor, and any fees payable to the prime subcontractor will be treated as fees to the General Contractor, in the scenarios described in paragraphs (1) and (2) of this subsection:

(1) Any subcontractor, material supplier, or equipment lessor receiving more than 50 percent of the contract sum in the construction contract will be deemed a prime subcontractor; or

(2) If more than 75 percent of the contract sum in the construction contract is subcontracted to three or fewer subcontractors, material suppliers, and equipment lessors, such parties will be deemed prime subcontractors.

(g) Construction period financing for each unit shall be structured as a zero percent interest loan with a 12-month term. The maximum construction loan amount may not exceed the total development cost less developer fees/profit, closing costs associated with the permanent mortgage financing, and ineligible Activity costs. Prior to construction loan closing, a sales contract must be executed with a qualified homebuyer.

(h) In the instance that the total development cost equals more than 100 percent of the appraised value, the portion of the development cost that exceeds 100 percent of the appraised value will be granted to the developer to buy down the purchase price. Reasonable and customary seller closing costs may be provided with HOME funds as a grant to the Developer.

(i) Direct assistance to the buyer will be structured as a first and/or second lien loan(s):

(1) A first-lien, fully amortizing, repayable loan with a 30-year term may be provided by the Department and will initially be evaluated at zero percent interest. The loan amount will not exceed the total development cost combined with reasonable and customary buyer's closing costs. Should the estimated housing payment, including all funding sources, be less than the minimum required housing payment for the minimum term, the Department may charge an interest rate to the homebuyer such that the total estimated housing payment is no less than the required minimum housing payment. In no instance shall the interest rate charged to the homebuyer exceed five percent, and such result may deem the applicant as overqualified for assistance.

(A) The total Mortgage Loan may include costs incurred for the total development cost and Mortgage Loan Closing Costs, exclusive of Match funds.

(B) The total Debt-to-Income Ratio shall not exceed the limitations set forth in Chapter 20 of this Title.

(C) For buyers whose income is equal to or less than 50 percent AMFI, the minimum required housing payment shall be no less than 15 percent of the household's gross income. For homebuyers whose income exceeds 50 percent AMFI, the minimum required hous-

ing payment shall be no less than 20 percent of the household's gross income.

(2) Downpayment and closing costs assistance is limited to the lesser of downpayment required by a third-party lender and reasonable and customary buyer's closing costs, or the amount required to ensure affordability of the HOME financing. Downpayment and closing cost assistance may not exceed ten percent of the total development cost and shall be structured as a five or ten-year deferred, forgivable loan with a subordinate lien, in accordance with the required federal affordability period.

(3) A first lien conventional mortgage not provided by the Department must meet the mortgage financing requirements outlined in Chapter 20 of this Title.

(j) Earnest money is limited to no more than $1,000, which may be credited to the homebuyer at closing, but may not be reimbursed as cash.

(k) If a Household should become ineligible or otherwise cease participation and a replacement Household is not located within 90 days of the end of the construction period, all additional funding, closings, and draws on the award will cease and the Department will require the Applicant to repay any outstanding construction debt in full.

(l) The Division Director may approve the use of alternative floor plans or lots from those included in the approved Application, provided the requirements of this section can still be met and such changes do not materially affect the total budget.

(m) To ensure affordability, the Department will impose resale or recapture provisions established in this Chapter.

§23.61. Single Family Development (SFD) Administrative Requirements.

(a) Commitment or Reservation of Funds. The Administrator must submit true and correct information, certified as such, with a request for the Commitment of Funds as described in paragraphs (1) - (12) of this subsection:

(1) Head of Household name and address of housing unit for which assistance is being requested;

(2) A budget that includes the amount of Activity funds specifying the acquisition cost, construction costs, contractor fees, and developer fees, as applicable. A maximum of five percent of hard construction costs for contingency items, proposed Match to be provided, evidence that Activity Cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) Verification of environmental clearance;

(4) A copy of the Household's intake application on a form prescribed by the Department;

(5) Certification of the income eligibility of the Household signed by the Administrator and all Household members age 18 or over, and including the date of the income eligibility determination. All documentation used to determine the income of the Household must be provided;

(6) Project cost estimates, construction contracts, and other construction documents necessary, in the Department's sole determination, to ensure applicable property standard requirements will be met at completion;

(7) Identification of Lead-Based Paint (LBP) if site remediation is needed;

(8) Executed sales contract and documentation that the first lien mortgage meets the eligibility requirements;

(9) Evidence that the housing unit will be located outside the 100-year floodplain;

(10) If applicable, documentation to address or resolve any potential conflict of interest, Identity of Interest, duplication of benefit, or floodplain mitigation;

(11) Appraisal, which includes post construction improvements; and

(12) Any other documentation necessary to evidence that the Activity meets the program requirements.

(b) Construction Loan closing. The Administrator must submit the documents described in paragraphs (1) - (2) of this subsection, with a request for the preparation of loan closing with the request for the Commitment of Funds:

(1) A title commitment to issue a title policy that evidences the property will transfer with no tax lien, child support lien, mechanic's or materialman's lien or any other restrictions or encumbrances that impair the good and marketable nature of title to the ownership interest and that the definition of Homeownership will be met. The effective date of the title commitment must be no more than 60 days prior to the date of project submission. Commitments that expire prior to execution of closing must be updated at closing and must not have any adverse changes in order to close; and

(2) Within 90 days after the loan closing date, the Administrator must submit to the Department the original recorded deed of trust and transfer of lien, if applicable. Failure to submit these documents within 90 days after the loan closing date will result in the Department withholding payment for disbursement requests.

(c) Disbursement of funds. The Administrator must comply with the requirements described in paragraphs (1) - (11) of this subsection, for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Administrator compliance with requirements described in paragraphs (1) - (11) of this subsection may be required with a request for disbursement:

(1) For construction costs, an interim construction binder advance endorsement not older than the date of the last disbursement of funds or 45 days, whichever is later. For release of retainage a down date endorsement to the mortgagee policy issued to the homebuyer dated at least 40 days after the Construction Completion Date;

(2) If required or applicable, a maximum of 50 percent of Direct Activity Costs for an Activity may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of Activity funds disbursed;

(3) Property inspections, including photographs of the front, back, and side elevations of the housing unit and at least one picture of each of the kitchen, family room, each bedroom and each bathroom with date and property address reflected on each photo. The inspection must be signed and dated by the inspector and Administrator or Developer;

(4) Certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursal of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has provided a source of Match or has satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for

the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

(5) Original, executed, legally enforceable loan documents containing remedies adequate to enforce any applicable affordability requirements. Original documents must evidence that such agreements have been recorded in the real property records of the county in which the housing unit is located and the original documents must be returned, duly certified as to recordation by the appropriate county official;

(6) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness for expenditures submitted for reimbursement. The Department may request Administrator or Developer to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to Administrator or Developer as may be necessary or advisable for compliance with all Program Requirements;

(7) Table funding requests must be submitted to the Department with complete documentation no later than 14 days prior to the anticipated loan closing date. Such a request must include a draft settlement statement, title company payee identification information, the Administrator or Developer's authorization for disbursement of funds to the title company, request letter from title company to the Comptroller of Public Accounts with bank account wiring instructions, and invoices for costs being paid at closing;

(8) Include the withholding of ten percent of hard construction costs for retainage. Retainage will be held until at least 40 days after the Construction Completion Date;

(9) For final disbursement requests, submission of documentation required for Activity completion reports;

(10) The final request for disbursement must be submitted to the Department with support documentation no later than 60 days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract; and

(11) For costs associated with insurance policies, including title policies and homeowner's insurance policies, charged as Activity costs, evidence of payment of the cost must be submitted with the retainage request.

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

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SUBCHAPTER G. HOMEBUYER ASSISTANCE WITH NEW CONSTRUCTION (HANC)

10 TAC §23.70, §23.71

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

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

§23.70. Homebuyer Assistance with New Construction (HANC) General Requirements.

(a) Eligible Activities must meet the ownership requirement in paragraph (1) of this subsection and an Activity described in paragraph (2) of this subsection:

(1) Ownership requirement. A site must be owned by the beneficiary or the HOME Activity must include one of the two following Activities:

(A) Acquisition of existing single family housing or a parcel; or

(B) Refinance of non-owner occupied real property parcel not prohibited for single family housing by zoning or restrictive covenants.

(2) All Activities must include New Construction of a unit of single family housing not occupied by the Household prior to assistance; New Construction described in this subsection includes the purchase and installation of a new unit of Manufactured Housing (MHU).

(b) The unit of housing in any of the Activities described in subsection (a) of this section must be occupied by the assisted Household as their principal residence for a minimum of 15 years from the Construction Completion Date.

(c) If the assisted property is owned by the Household prior to participation, the Household must be current on any existing Mortgage Loans and taxes, and the property cannot have any existing home equity loan liens. HOME funds may not be utilized to refinance loans made or insured by any federal program.

(d) Total Project costs, exclusive of Match funds, are limited to the amounts described in §23.27, Project Cost Limitations.

(e) Homebuyers may choose to obtain financing for the acquisition or construction, or any combination thereof, from a third-party lender so long as the loan meets the requirements of §20.13 of this Title (relating to Loan, Lien and Mortgage Requirements for Activities).

(f) Direct assistance will be structured as a fully amortizing, repayable loan and will initially be evaluated at zero percent interest. The minimum loan term shall be equal to the required federal affordability period based on the HOME investment, and shall be calculated by setting the total estimated housing payment (including principal, interest, property taxes, insurance, and any other homebuyer assistance), equal to at least the minimum required housing payment. Should the estimated housing payment, including all funding sources, be less than the minimum required housing payment for the minimum term, the Department may charge an interest rate to the homebuyer such that the total estimated housing payment is no less than the required minimum housing payment. In no instance shall the interest rate charged to the homebuyer exceed five percent and such result may deem the applicant as overqualified for assistance. The term shall not exceed 30 years and not be less than 15 years.

(1) The total Mortgage Loan may include costs incurred for Acquisition or Refinance, Mortgage Loan closing costs, and Direct Activity Costs, exclusive of Match funds.

(2) The total Debt-to-Income Ratio shall not exceed the limitations set forth in Chapter 20 of this Title.

(3) For buyers whose income is equal to or less than 50 percent AMFI, the minimum required housing payment shall be no less than 15 percent of the household's gross income. For homebuyers whose income exceeds 50 percent AMFI, the minimum required housing payment shall be no less than 20 percent of the household's gross income.

(g) Earnest money may be credited to the homebuyer at closing, but may not be reimbursed as cash. HOME funds may be used to pay other reasonable and customary closing costs that are HOME eligible costs.

(h) To ensure affordability, the Department will impose recapture provisions established in this Chapter.

§23.71. Homebuyer Assistance with New Construction (HANC) Administrative Requirements.

(a) Commitment or Reservation of Funds. The Administrator must submit the true and complete information, certified as such, with a request for the Commitment or Reservation of Funds as described in paragraphs (1) - (15) of this subsection:

(1) Head of Household name and address of housing unit for which assistance is being requested;

(2) A budget that includes the amount of Activity funds specifying the acquisition costs, construction costs, soft costs and administrative costs requested, a maximum of five percent of hard construction costs for contingency items, proposed Match to be provided, evidence that Direct Activity Cost and Soft Cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) Verification of environmental clearance from the Department;

(4) A copy of the Household's intake application on a form prescribed by the Department;

(5) Certification of the income eligibility of the Household signed by the Administrator and all Household members age 18 or over, and including the date of the income eligibility determination. All documentation used to determine the income of the Household must be provided;

(6) Project cost estimates, construction contracts, and other construction documents necessary to ensure applicable property standard requirements will be met at completion;

(7) Identification of any Lead-Based Paint (LBP) if activity involves an existing unit and certification that LBP will be mitigated as required by 24 CFR §92.355;

(8) Evidence that the housing unit will be located outside of the 100-year floodplain;

(9) If applicable, documentation to address or resolve any potential conflict of interest, Identity of Interest, or duplication of benefit;

(10) Information necessary to draft Mortgage Loan documents, including issuance of an SOL;

(11) Life event documentation, as applicable, and all information necessary to prepare any applicable affidavits such as marital status and heirship;

(12) Documentation of homebuyer completion of a homebuyer counseling program/class provided by a HUD certified housing counselor;

(13) For Activities involving acquisition of real property:

(A) A title commitment to issue a title policy that evidences that the property will transfer with no tax lien, child support lien, mechanics or materialman's lien or any other restrictions or encumbrances that impair the good and marketable nature of title to the ownership interest and that the definition of Homeownership will be met. The effective date of the title commitment must be no more than 60 days prior to the date of project submission. Commitments that expire prior to execution of closing must be updated at closing and must not have any adverse changes in order to close;

(B) Executed sales contract; and

(C) A loan estimate or letter from any other lender confirming that the loan terms and closing costs will be consistent with the executed sales contract, the first lien Mortgage Loan requirements, and the requirements of this Chapter;

(14) For Activities that do not involve acquisition of real property:

(A) A title commitment or policy, or a down date endorsement to an existing title policy, and the actual documents, or legible copies thereof, establishing the Household's ownership, such as a warranty deed or ground lease for a 99-year leasehold. The effective date of the title commitment must be no more than 60 days prior to of the date of project submission. Title commitments for loan projects that expire prior to the loan closing date must be updated and must not have any adverse changes. These documents must evidence the definition of Homeownership is met;

(B) A tax certificate that evidences a current paid status;

(C) Written consent from all Persons who have a valid lien or ownership interest in the Property;

(D) Consent to demolish from any existing Mortgage Loan lien holders and consent to subordinate to the Department's loan, if applicable; and

(15) Any other documentation necessary to evidence that the Activity meets the Program requirements.

(b) Loan closing. In addition to the documents required under subsection (a) of this section, the Administrator must submit the appraisal or other valuation method approved by the Department which establishes the post construction value of improvements prior to the issuance of loan documents by the Department.

(c) Disbursement of funds. The Administrator must comply with all of the requirements described in paragraphs (1) - (11) of this subsection, for a request for disbursement of funds to reimburse eligible costs incurred. Submission of additional documentation related to the Administrator's compliance with requirements described in paragraphs (1) - (11) of this subsection, may be required with a request for disbursement:

(1) For construction costs that are part of a loan subject to the requirements of this subsection, a down date endorsement to the title policy not older than the date of the last disbursement of funds or 45 days, whichever is later, is required. For release of retainage, the down date endorsement must be dated at least 40 days after the Construction Completion Date;

(2) If applicable, a maximum of 50 percent of Activity funds for an Activity may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of Activity funds disbursed;

(3) Property inspections, including photographs of the front, back, and side elevations of the housing unit and at least one picture of each of the kitchen, family room, each bedroom, and each bathroom with date and property address reflected on each photo, are required to be submitted. The inspection must be signed and dated by the inspector and Administrator;

(4) Certification of the following is required:

(A) That its fiscal control and fund accounting procedures are adequate to assure the proper disbursal of, and accounting for, funds provided;

(B) That no Person that would benefit from the award of HOME funds has satisfied the Applicant's cash reserve obligation or made promises in connection therewith;

(C) That each request for disbursement of HOME funds is for the actual cost of providing a service; and

(D) That the service does not violate any conflict of interest provisions;

(5) Original, fully executed, legally enforceable loan documents for each assisted Household containing remedies adequate to enforce any applicable affordability requirements are required. Certified copies of fully executed, recorded loan documents that are required to be recorded in the real property records of the county in which the housing unit is located must be returned to the Department, duly certified as to recordation by the appropriate county official. This documentation prior to disbursement is not applicable for funds made available at the loan closing;

(6) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness for expenditures submitted for reimbursement. The Department may request Administrator to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to Administrator as may be necessary or advisable for compliance with all program requirements;

(7) The request for funds for administrative costs must be proportionate to the amount of Direct Activity Costs requested or already disbursed;

(8) Disbursement requests must include the withholding of ten percent of hard construction costs for retainage. Retainage will be held until at least 40 days after the Construction Completion Date;

(9) For final disbursement requests, the following is required:

(A) Submission of documentation required for Activity completion reports and evidence that the demolition or, if an MHU, salvage and disposal of all dilapidated housing units on the lot;

(B) Certification or other evidence acceptable to Department that the replacement house, whether site-built or MHU, was constructed or placed on and within the same lot for which ownership was established and on and within the same lot secured by the loan; and

(C) A final appraisal of the property after completion of improvements;

(10) The final request for disbursement must be submitted to the Department with support documentation no later than 60 days after the termination date of the Contract in order to remain in compliance with the Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract; and

(11) For costs associated with insurance policies, including title policies and homeowner insurance policies charged as Activity costs, evidence of payment of the cost must be submitted with the retainage request.

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TITLE 22. EXAMINING BOARDS

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 531. CANONS OF PROFESSIONAL ETHICS AND CONDUCT

22 TAC §531.20

The Texas Real Estate Commission (TREC) proposes amendments to §531.20, Information About Brokerage Services.

The proposed amendments to §531.20 and the form adopted by reference (the Information About Brokerage Services (IABS) notice) are made as a result of the recent industry changes surrounding broker compensation to clarify to the consumer that any brokerage fees are not set by law and are negotiable.

Abby Lee, Deputy General Counsel, has determined that for the first five-year period the proposed amendment is in effect, there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the section. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendment. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendment. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Lee also has determined that for each year of the first five years the section as proposed are in effect, the public benefit anticipated as a result of enforcing the section will be increased consumer awareness regarding brokerage compensation practices.

For each year of the first five years the proposed amendment is in effect the amendment will not:

create or eliminate a government program;

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

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

require an increase or decrease in fees paid to the agency;

create a new regulation;

expand, limit or repeal an existing regulation;

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

positively or adversely affect the state's economy.

Comments on the proposal may be submitted through the online comment submission form at https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules, to Abby Lee, Deputy General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendment is proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. The amendment is also proposed under Texas Occupations Code, §1101.558, which requires the Commission to prescribe the text of the IABS notice.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendment.

§531.20. Information About Brokerage Services.

(a) The Commission adopts by reference the Information About Brokerage Services Notice, TREC No. IABS 1-1 [~~1-0~~] (IABS Notice). The IABS Notice is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

(b) Each license holder shall provide:

(1) a link to a completed IABS Notice in a readily noticeable place on the homepage of each business website, labeled:

(A) "Texas Real Estate Commission Information About Brokerage Services", in at least 10 point font; or

(B) "TREC Information About Brokerage Services", in at least 12 point font; and

(2) the completed IABS Notice at the first substantive communication as required under §1101.558, Texas Occupations Code.

(c) For purposes of §1101.558, Texas Occupations Code, the completed IABS Notice can be provided:

(1) by personal delivery by the license holder;

(2) by first class mail or overnight common carrier delivery service;

(3) in the body of an email; or

(4) as an attachment to an email, or a link within the body of an email, with a specific reference to the IABS Notice in the body of the email.

(d) The link to a completed IABS Notice may not be in a footnote or signature block in an email.

(e) For purposes of this section, business website means a website on the internet that:

(1) is accessible to the public;

(2) contains information about a license holder's real estate brokerage services; and

(3) the content of the website is controlled by the license holder.

(f) For purposes of providing the link required under subsection (b)(1) on a social media platform, the link may be located on:

(1) the account holder profile; or

(2) a separate page or website through a direct link from the social media platform or account holder profile.

(g) License holders may reproduce the IABS Notice published by the Commission, provided that the text of the IABS Notice is copied verbatim and the spacing, borders and placement of text on the page must appear to be identical to that in the published version of the IABS Notice, except that the Broker Contact Information section may be prefilled.

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

Filed with the Office of the Secretary of State on November 7, 2024.

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Abby Lee
Deputy General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: December 22, 2024
For further information, please call: (512) 936-3057

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CHAPTER 534. GENERAL ADMINISTRATION

22 TAC §534.8

The Texas Real Estate Commission (TREC) proposes new 22 TAC §534.8, Employee Sick and Family Leave Pools, in Chapter 534, General Administration.

The new rule is proposed to address the operation and procedures of both the employee sick and family leave pool required by sections 661.002 and 661.022, Texas Government Code.

Abby Lee, Deputy General Counsel, has determined that for the first five-year period the new rule is in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the new rule. There is no significant economic cost anticipated for persons who are required to comply with the proposed new rule. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Lee also has determined that for each year of the first five years the section as proposed are in effect, the public benefit anticipated as a result of enforcing the section will be greater legal accuracy and clarity in the rules.

Except as otherwise provided, for each year of the first five years the new rule is in effect, the rule will not:

create or eliminate a government program;

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

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

require an increase or decrease in fees paid to the agency;

expand, limit or repeal an existing regulation;

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

positively or adversely affect the state's economy.

The proposal does create a new regulation; however, the regulation is required by law.

Comments on the proposal may be submitted through the online comment submission form at https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules, to Abby Lee, Deputy General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The new rule is proposed under §1101.151, Occupations Code, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. The new rule is also proposed under sections 661.002 and 661.022, Texas Government Code, which requires a state agency to adopt rules and prescribe procedures relating to the operation of the agency sick and family leave pools.

The statutes affected by this proposal are Chapters 1101 and 1102, Occupations Code. No other statute, code or article is affected by the proposed new rule.

§534.8. Employee Sick and Family Leave Pools.

(a) The Agency's Director of Human Resources is designated as the administrator for both the Agency's sick leave pool and family leave pool.

(b) The Director of Human Resources, with the approval of the Executive Director, will prescribe and implement policies to effectuate the operation of the pools.

(c) The policies and procedures must be consistent with the provisions of Chapter 661, Texas Government Code, and will be included in the Agency's employee handbook.

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

Filed with the Office of the Secretary of State on November 7, 2024.

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Texas Real Estate Commission
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CHAPTER 535. GENERAL PROVISIONS
SUBCHAPTER F. REQUIREMENTS FOR EDUCATION PROVIDERS, COURSES AND INSTRUCTORS FOR QUALIFYING EDUCATION

22 TAC §535.65

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.65, Responsibilities and Operations of Providers of Qualifying Courses.

The proposed amendment to §535.65(g)(1)(B)(i) replaces the phrase "check the photo identification" with "verify the identification" of each student to: (i) broaden the language in recognition of technology developments that may allow for this required verification in different ways; (ii) help alleviate concerns about the security of a student's personal data while taking a course; and (iii) make consistent with language used elsewhere in the rule. The remainder of the amendments to §535.65 remove the requirement to have a qualifying course examination proctored and to have a proctor in situations where a course is delivered through the use of technology and there are more than 20 students at a remote site. The proctoring requirements were recommended to be removed out of concerns that: (i) the exam requirement was unnecessary because the licensing examination itself is proctored; and (ii) the requirements generally are overly burdensome. The term "classroom delivery" is added to §535.65(g)(1)(C) to specify that the obligation applies to that type of course. The language in §535.65(h)(5) is reworded for consistency with similar language found in §535.72.

The proposed amendments were recommended by the Education Standards Advisory Committee and the Texas Real Estate Inspector Committee.

Abby Lee, Deputy General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Lee also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated will be improved clarity and integrity in rule and processes for members of the public, including students of qualifying courses, as well as education providers.

For each year of the first five years the proposed amendments are in effect the amendments will not:

create or eliminate a government program;

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

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

require an increase or decrease in fees paid to the agency;

create a new regulation;

expand, limit, or repeal an existing regulation;

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

positively or adversely affect the state's economy.

Comments on the proposal may be submitted through the online comment submission form at https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules, to Abby Lee, Deputy General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

§535.65. Responsibilities and Operations of Providers of Qualifying Courses.

(a) Responsibility of Providers.

(1) A provider is responsible for:

(A) the administration of each course, including, but not limited to, compliance with any prescribed period of time for any required course topics required by the Act, Chapter 1102, and Commission rules;

(B) maintaining student attendance records and pre-enrollment agreements;

(C) verifying instructor qualification, performance and attendance;

(D) proper examination administration;

(E) validation of student identity acceptable to the Commission;

(F) maintaining student course completion records;

(G) ensuring all advertising complies with subsection (c) of this section;

(H) ensuring that instructors or other persons do not recruit or solicit prospective sales agents, brokers, easement or right-of-way agents, or inspectors during course presentation; and

(I) ensuring staff is reasonably available for public inquiry and assistance.

(2) A provider may not promote the sale of goods or services during the presentation of a course.

(3) A provider may remove a student and not award credit if a student does not participate in class, or disrupts the orderly conduct of a class, after being warned by the provider or the instructor.

(4) If a provider approved by the Commission does not maintain a fixed office in Texas for the duration of the provider's approval to offer courses, the provider shall designate a resident of this state as attorney-in-fact to accept service of process and act as custodian of any records in Texas that the provider is required to maintain by this section. A power-of-attorney designating the resident must be filed with the Commission in a form acceptable to the Commission.

(b) Use of Qualified Instructor.

(1) Except as provided by this subsection, a provider must use an instructor that is currently qualified under §535.63 of this subchapter (relating to Qualifications for Instructors of Qualifying Courses) to teach the specified course.

(2) Each instructor shall be selected on the basis of expertise in the subject area of instruction and ability as an instructor.

(3) A provider shall require specialized training or work experience for instructors teaching specialized subjects such as law, appraisal, investments, taxation or home inspection.

(4) An instructor shall teach a course in substantially the same manner represented to the Commission in the instructor's manual or other documents filed with the application for course approval.

(5) A provider may use the services of a guest instructor who does not meet the instructor qualifications under §535.63 of this subchapter for qualifying real estate, easement or right-of-way, or inspector courses provided that person instructs for no more than 10% of the total course time.

(c) Advertising.

(1) The following practices are prohibited:

(A) using any advertising which does not clearly and conspicuously contain the provider's name on the first page or screen of the advertising;

(B) representing that the provider's program is the only vehicle by which a person may satisfy educational requirements;

(C) conveying a false impression of the provider's size, superiority, importance, location, equipment or facilities, except that a provider may use objective information published by the Commission regarding pass rates if the provider also displays next to the passage rate in a readily noticeable fashion:

(i) A hyperlink to the Commission website's Education Provider Exam Passage Rate page labeled "TREC Provider Exam Pass Rates" for digital media; or

(ii) A URL to the Commission website's Education Provider Exam Passage Rate page labeled "TREC Provider Exam Pass Rates" for non-digital media;

(D) promoting the provider directly or indirectly as a job placement agency, unless the provider is participating in a program recognized by federal, state, or local government and is providing job placement services to the extent the services are required by the program;

(E) making any statement which is misleading, likely to deceive the public, or which in any manner tends to create a misleading impression;

(F) advertising a course under a course name other than the course name approved by the Commission; or

(G) advertising using a name that implies the course provider is the Texas Real Estate Commission, including use of the acronym "TREC", in all or part of the course provider's name.

(2) Any written advertisement by a provider that includes a fee that the provider charges for a course must display any additional fees that the provider charges for the course in the same place in the advertisement and with the same degree of prominence.

(3) The provider shall advertise a course for the full clock hours of time for which credit is awarded.

(4) The provider is responsible for and subject to sanctions for any violation of this subsection by any affiliate or other third party marketer or web hosting site associated with or used by the provider.

(d) Pre-enrollment agreements for approved providers.

(1) Prior to a student enrolling in a course, a provider approved by the Commission shall provide the student with a pre-enrollment agreement that includes all of the following information:

(A) the tuition for the course;

(B) an itemized list of any fees charged by the provider for supplies, materials, or books needed in course work;

(C) the provider's policy regarding the refund of tuition and other fees, including a statement addressing refund policy when a student is dismissed or withdraws voluntarily;

(D) the attendance requirements;

(E) the acceptable makeup procedures, including any applicable time limits and any fees that may be charged for makeup sessions;

(F) the procedure and fees, if applicable, associated with exam proctoring;

(G) the procedure and fees for taking any permitted makeup final examination or any permitted re-examination, including any applicable time limits; and

(H) the notices regarding potential ineligibility for a license based on criminal history required by §53.152, Texas Occupations Code.

(2) A pre-enrollment agreement must be signed by a representative of the provider and the student prior to commencement of the course.

(e) Refund of fees by approved provider.

(1) A provider shall establish written policies governing refunds and contingency plans in the event of course cancellation.

(2) If a provider approved by the Commission cancels a course, the provider shall:

(A) fully refund all fees collected from students within a reasonable time; or

(B) at the student's option, credit the student for another course.

(3) The provider shall inform the Commission when a student requests a refund because of a withdrawal due to the student's dissatisfaction with the quality of the course.

(4) If a provider fails to give the notice required by subsection (d)(1)(H) of this section, and an individual's application for a license is denied by the Commission because the individual has been convicted of a criminal offense, the provider shall reimburse the individual the amounts required by §53.153, Texas Occupations Code.

(f) Course materials.

(1) Before the course starts, a provider shall give each student copies of or, if a student has online access, provide online access to any materials to be used for the course.

(2) A provider shall update course materials to ensure that current and accurate information is provided to students as provided for under §535.62 of this subchapter (relating to Approval of Qualifying Courses).

(g) Presentation of courses.

(1) Classroom Delivery.

(A) The location for the course must:

(i) be conducive to instruction, such as a classroom, training room, conference room, or assembly hall that is separate and apart from work areas;

(ii) be adequate for the class size;

(iii) pose no threat to the health or safety of students; and

(iv) allow the instructor to see and hear each student and the students to see and hear the instructor, including when offered through the use of technology.

(B) The provider must:

(i) verify [~~check~~] the [~~photo~~] identification of each student at class sign up and when signing in for each subsequent meeting of the class;

(ii) ensure the student is present for the course for the hours of time for which credit is awarded;

(iii) provide a 10 minute break per hour at least every two hours; and

(iv) not have daily course segments that exceed 12 hours.

(C) For [~~If the course is~~] a qualifying or non-elective continuing education classroom delivery course delivered through the use of technology where [~~and~~] there are more than 20 students registered for the course, the provider will also use [~~:~~]

[~~(i)~~] a monitor [~~at the broadcast origination site~~] to verify identification of each student, monitor active participation of each student and facilitate questions for the instructor. [~~; and~~]

[~~(ii)~~ ~~a proctor at each remote site with more than 20 students to verify identification of each student, monitor active participation of each student and proctor any on-site examination~~].

(D) Makeup Session for Classroom Courses.

(i) A provider may permit a student who attends at least two-thirds of an originally scheduled qualifying course to complete a makeup session to satisfy attendance requirements.

(ii) A member of the provider's staff must approve the makeup procedure to be followed. Acceptable makeup procedures are:

(I) attendance in corresponding class sessions in a subsequent offering of the same course; or

(II) the supervised presentation by audio or video recording of the class sessions actually missed.

(iii) A student shall complete all class makeup sessions no later than the 90th day after the date of the completion of the original course.

(iv) A student who attends less than two-thirds of the originally scheduled qualifying course is not eligible to complete a makeup session. The student shall automatically be dropped from the course with no credit.

(2) Distance Education Delivery. The provider must ensure that:

(A) the student taking all topics of the course and completing all quizzes and exercises is the student receiving credit for the course through a student identity verification process acceptable to the Commission;

(B) a qualified instructor is available to answer students' questions or provide assistance as necessary in a timely manner;

(C) a student has completed all instructional modules and attended any hours of live instruction required for a given course; and

(D) a qualified instructor is responsible for providing answers and rationale for the grading of the course work.

(3) A provider is not required to present topics in the order outlined for a course on the corresponding course approval form.

(4) The periods of time prescribed to each unit of a topic for a qualifying course as outlined on the corresponding course approval form are recommendations and may be altered to allow instructors flexibility to meet the particular needs of their students.

(5) Notwithstanding subsections (3) - (4) of this section, all units must be presented within the prescribed topic.

(h) Course examinations.

(1) The final examination given at the end of each course must be given in the manner submitted to and approved by the Commission. All final examinations must be closed book.

(2) Final examination questions must be kept confidential and be significantly different from any quiz questions and exercises used in the course.

(3) A provider shall not permit a student to view or take a final examination before the completion of regular course work and any makeup sessions required by this section.

(4) A provider must rotate all versions of the examination required by §535.62(b)(7) of this subchapter throughout the approval period for a course in a manner acceptable to the Commission and [~~examinations~~] must~~:~~

[~~(A)~~] require an unweighted passing score of 70%. [~~; and~~]

[~~(B) be proctored by a member of the provider faculty or staff, or third party proctor acceptable to the Commission, who:~~]

~~*(i)* is present at the test site or able to monitor the student through the use of technology acceptable to the Commission; and~~]

~~*(ii)* has positively identified that the student taking the examination is the student registered for and who took the course.~~]

(5) A provider must administer the examination under conditions that ensure the student taking the examination is the student who registered for and took the course. [~~The following are examples of acceptable third party proctors:~~]

[~~(A) employees at official testing or learning/tutoring centers;~~]

[~~(B) librarians at a school, university, or public library;~~]

[~~(C) college or university administrators, faculty, or academic advisors;~~]

[~~(D) clergy who are affiliated with a specific temple, synagogue, mosque, or church; and~~]

[~~(E) educational officers of a military installation or correctional facility.~~]

(6) A provider may not give credit to a student who fails a final examination and a subsequent final examination as provided for in subsection (i) of this section.

(i) Subsequent final course examination.

(1) If a student fails a final course examination, a provider may permit the student to take a subsequent final examination only after the student has completed any additional course work prescribed by the provider.

(2) A student shall complete the subsequent final examination no later than the 90th day after the date the original class concludes. The subsequent final examination must be a different version of the original final examination given to the student and must comply with §535.62(b)(8) of this subchapter and subsection (h) of this section.

(3) If a student fails to timely complete the subsequent final examination as required by this subsection, the student shall be automatically dropped from the course with no credit.

(4) A student who fails the final course examination a second time is required to retake the course and the final course examination.

(j) Course completion certificate.

(1) Upon successful completion of a qualifying course, a provider shall issue a course completion certificate. The course completion certificate shall include:

(A) the provider's name and approval number;

(B) the instructor's name;

(C) the course title;

(D) course numbers;

(E) the number of classroom credit hours;

(F) the course delivery method;

(G) the dates the student began and completed the course; and

(H) the printed name and signature of an official of the provider on record with the Commission.

(2) A provider may withhold any official completion documentation required by this subsection from a student until the student has fulfilled all financial obligations to the provider.

(3) A provider shall maintain adequate security against forgery for official completion documentation required by this subsection.

(k) Instructor and course evaluations.

(1) A provider shall provide each student enrolled in a course with an instructor and course evaluation form or provide a link

to an online version of the form that a student can complete and submit any time after course completion.

(2) An instructor may not be present when a student is completing the evaluation form and may not be involved in any manner with the evaluation process.

(3) When evaluating an instructor or course, a provider shall use all of the questions from the evaluation form approved by the Commission, in the same order as listed on that form. A provider may add additional questions to the end of the Commission evaluation questions or request the students to also complete the provider's evaluation form.

(4) A provider shall maintain any comments made by the provider's management relevant to instructor or course evaluations with the provider's records.

(5) At the Commission's request, a provider shall produce instructor and course evaluation forms for inspection by Commission staff.

(l) Maintenance of records for a provider of qualifying courses.

(1) A provider shall maintain records of each student enrolled in a course for a minimum of four years following completion of the course, including course and instructor evaluations and student enrollment agreements.

(2) A provider shall maintain financial records sufficient to reflect at any time the financial condition of the school.

(3) A school's financial statement and balance sheets must be available for audit by Commission staff, and the Commission may require presentation of financial statements or other financial records.

(4) All records may be maintained electronically but must be in a common format that is legible and easily printed or viewed without additional manipulation or special software.

(m) Changes in ownership or operation of an approved provider of qualifying courses.

(1) An approved provider shall obtain the approval of the Commission at least 30 days in advance of any material change in the operations of the provider by submitting the Qualifying Education Provider Supplement Application, including but not limited to changes in:

(A) operations or records management; and

(B) the location of the main office and any other locations where courses are offered.

(2) An approved provider requesting approval of a change in ownership shall provide all of the following information or documents to the Commission:

(A) an Education Provider Application reflecting all required information for each owner and the required fee;

(B) a Principal Information Form for each proposed new owner who holds at least 10% interest in the school;

(C) financial documents to satisfy standards imposed by §535.61 of this subchapter (relating to Approval of Providers of Qualifying Courses), including a $20,000 surety bond for the proposed new owner; and

(D) business documentation reflecting the change.

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

Filed with the Office of the Secretary of State on November 7, 2024.

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Abby Lee
Deputy General Counsel
Texas Real Estate Commission
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SUBCHAPTER G. REQUIREMENTS FOR CONTINUING EDUCATION PROVIDERS, COURSES AND INSTRUCTORS

22 TAC §535.70, §535.72

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.70, Definitions, and §535.72, Approval of Non-elective Continuing Education Courses.

The proposed amendment to §535.70 removes the definition of "proctor." The proposed amendments to §535.72(g)(3)(B) remove the proctoring requirement for inspector non-elective continuing education course examinations for distance education delivery and make clarifying changes for rule consistency. Both changes were recommended out of concerns that: (i) the exam proctoring requirement was unnecessary; and (ii) the requirements generally are overly burdensome.

The proposed amendments were recommended by the Education Standards Advisory Committee and the Texas Real Estate Inspector Committee.

Abby Lee, Deputy General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Lee also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated will be improved clarity and integrity in rule and processes for members of the public, including students, as well as education providers.

For each year of the first five years the proposed amendments are in effect the amendments will not:

create or eliminate a government program;

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

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

require an increase or decrease in fees paid to the agency;

create a new regulation;

expand, limit or repeal an existing regulation;

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

positively or adversely affect the state's economy.

Comments on the proposal may be submitted through the online comment submission form at https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules, to Abby Lee, Deputy General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

§535.70. Definitions.

The following words and terms, when used in Subchapter G of this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Broker Responsibility Course--The course required by §1101.458 of the Act.

(2) CE--Continuing education.

(3) CE instructor--A person chosen by a provider to teach continuing education courses.

(4) CE provider--Any person approved by the Commission; or specifically exempt by the Act, Chapter 1102, Texas Occupation Code, or Commission rule; that offers a course for which continuing education credit may be granted by the Commission to a license holder or applicant.

(5) Classroom delivery--A method of course delivery where the instructor and students interact face to face and in real time, in either the same physical location, or through the use of technology.

(6) Distance education delivery--A method of course delivery other than classroom delivery, including online and correspondence delivery.

(7) Combination delivery--A combination of classroom and distance education where at least 50% of the course is offered through classroom delivery.

(8) Elective CE course--A continuing education course, other than a Non-elective CE course, approved by the Commission as acceptable to fulfil the continuing education hours needed to renew a license.

(9) Non-elective CE course--A continuing education course, for which the subject matter of the course is specifically mandated by the Act, Chapter 1102, or Commission rule, that a license holder is required to take prior to renewal of a license.

(10) Legal Update Courses--Required courses created for and approved by the Texas Real Estate Commission to satisfy the eight hours of continuing education required by §1101.455 of the Act.

(11) Person--Any individual, partnership, corporation, or other legal entity, including a state agency or governmental subdivision.

~~[(12) Proctor--A person who monitors a final examination for a course offered by a provider under the guidelines contained in this section. A proctor may be a course instructor, the provider, an employee of a college or university testing center, a librarian, or other person approved by the Commission.]~~

§535.72. Approval of Non-elective Continuing Education Courses.

(a) General requirements.

(1) The non-elective continuing education courses must be conducted as prescribed by the rules in this subchapter.

(2) Elective continuing education courses are approved and regulated under §535.73 of this subchapter (relating to Approval of Elective Continuing Education Courses).

(b) Application for approval to offer non-elective real estate or inspector CE courses.

(1) A CE provider seeking to offer a specific non-elective real estate or inspector CE course as outlined in this section shall:

(A) for a non-elective real estate course:

(i) submit a Real Estate Non-Elective Continuing Education CE Course Application to the Commission; and

(ii) pay the fee required by §535.101 of this chapter (relating to Fees); and

(B) for a non-elective real estate inspection course:

(i) submit an Inspector Non-Elective Continuing Education CE Course Application to the Commission; and

(ii) pay the fee required by §535.210 of this chapter (relating to Fees).

(2) A provider may file a single application for a CE course offered through multiple delivery methods. A fee is required for content review of each CE course and for each distinct delivery method utilized by a provider for that course.

(3) A provider who seeks approval of a new delivery method for a currently approved CE course must submit a new application, and pay all required fees, including a fee for content review.

(4) The Commission may:

(A) request additional information be provided to the Commission relating to an application; and

(B) terminate an application without further notice if the applicant fails to provide the additional information not later than the 60th day after the Commission mails the request.

(c) Commission approval of non-elective course materials. Every two years, the Commission shall approve subject matter and course materials to be used for the following non-elective continuing education courses:

(1) a four-hour Legal Update I: Laws, Rules and Forms course;

(2) a four-hour Legal Update II: Agency, Ethics and Hot Topics course;

(3) a six-hour Broker Responsibility course; and

(4) an eight-hour Inspector Legal and Ethics and Standards of Practice Review course.

(d) Course expiration.

(1) Each legal update course expires on December 31 of each odd-numbered year.

(2) Each broker responsibility course expires on December 31 of each even-numbered year.

(3) Each Inspector Legal and Ethics and Standards of Practice Review course expires on August 31 of each odd-numbered year.

(e) Delivery method. Non-elective CE courses must be delivered by one of the following delivery methods:

(1) classroom delivery;

(2) distance education delivery; or

(3) a combination of (1) and (2) of this subsection if at least 50% of the combined course is offered by classroom delivery.

(f) Except as provided in this section, non-elective CE courses must meet the presentation requirements of §535.65(g) of this chapter (relating to Responsibilities and Operations of Providers of Qualifying Courses). The provider must submit a course completion roster in accordance with §535.75(d) of this subchapter (relating to Responsibilities and Operations of Continuing Education Providers). Non-elective real estate courses are designed by the Commission for interactive classroom delivery. Acceptable demonstration of methods to engage students in interactive discussions and activities to meet the course objectives and time requirements are required for approval.

(g) Course examinations. A provider must administer a final examination promulgated by the Commission for non-elective CE courses.

(1) Real estate non-elective CE courses. The examination will be included in course instruction time. Each student will complete the examination independently followed by a review of the correct answers by the instructor. There is no minimum passing grade required to receive credit.

(2) Inspector non-elective CE courses for classroom delivery.

(A) The examination will be given as a part of class instruction time with each student answering the examination questions independently followed by a review of the correct answers by the instructor.

(B) A student is not required to receive a passing grade on the examination to receive course credit.

(3) Inspector non-elective CE courses for distance education delivery.

(A) An examination is required after completion of regular course work.

(B) The examination must be:

~~*[(i)* proctored by a member of the provider faculty or staff, or third party proctor set out in §535.65(h)(5) of this chapter, who is present at the test site and has positively identified that the student taking the examination is the student who registered for and took the course; or~~]

(i) [~~(ii)~~] administered [~~using a computer~~] under conditions [~~that satisfy the Commission~~] that ensure the student taking the examination is the student who registered for and took the course; and

(ii) [~~(iii)~~] kept confidential.

(C) A provider may permit a student to take one subsequent final examination if the student fails the initial final examination. The subsequent final examination must be:

(i) different from the initial final examination; and

(ii) completed no later than the 30th day after the date the original course concludes.

(D) Credit will not be awarded to a student for a course where the student receives a pass rate on a final examination or subsequent final exam below 70%.

(E) A student who fails the subsequent final course examination is required to retake the course and the final course examination.

(h) Approval of currently approved courses by a secondary provider.

(1) If a CE provider wants to offer a course currently approved for another provider, that secondary provider must:

(A) submit the CE course application supplement form(s);

(B) submit written authorization to the Commission from the provider for whom the course was initially approved granting permission for the subsequent provider to offer the course; and

(C) pay the fee required by §535.101 of this chapter or §535.210 of this chapter.

(2) If approved to offer the currently approved course, the secondary provider is required to:

(A) offer the course as originally approved, assume the original expiration date, include any approved revisions, use all materials required for the course; and

(B) meet the requirements of §535.75 of this subchapter.

(i) Approval notice. A CE Provider shall not offer non-elective continuing education courses until the provider has received written notice of the approval from the Commission.

(j) Required revision of a currently approved non-elective CE course. Providers are responsible for keeping current on changes to the Act and Commission rules and must supplement materials for approved non-elective CE courses to present the current version of all applicable statutes and rules on or before the effective date of those changes.

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

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Abby Lee
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SUBCHAPTER Q. ADMINISTRATIVE PENALTIES

22 TAC §535.191

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.191, Schedule of Administrative Penalties, in Chapter 535, General Provisions.

The amendment is proposed to: (i) clarify that a person may only pay an administrative penalty in an authorized manner; and (ii) add that if an online payment is authorized, such a payment may be subject to fees set by the Department of Information Resources that are in addition to the administrative penalty assessed by the Commission.

Abby Lee, Deputy General Counsel, has determined that for the first five-year period the proposed amendment is in effect, there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendment. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendment. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Lee also has determined that for each year of the first five years the section as proposed is in effect, the public benefit anticipated as a result of enforcing the section will be greater clarity in the rules.

For each year of the first five years the proposed amendments are in effect the amendment will not:

create or eliminate a government program;

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

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

require an increase or decrease in fees paid to the agency;

create a new regulation;

expand, limit or repeal an existing regulation;

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

positively or adversely affect the state's economy.

Comments on the proposal may be submitted through the online comment submission form at https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules, to Abby Lee, Deputy General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendment is proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. The amendment is also proposed under Texas Occupations Code, §1101.702, which requires the Commission adopt by rule a schedule of administrative penalties.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendment.

§535.191. Schedule of Administrative Penalties.

(a) The Commission may suspend or revoke a license or take other disciplinary action authorized by the Act in addition to or instead of assessing the administrative penalties set forth in this section.

(b) The administrative penalties set forth in this section take into consideration all of the criteria listed in §1101.702(b) of the Act.

(c) An administrative penalty range of $100 - $1,500 per violation per day may be assessed for violations of the following sections of the Act and Rules:

(1) §1101.552;

(2) §1101.652(a)(3);

(3) §1101.652(a)(8);

(4) §1101.652(a-1)(3);

(5) §1101.652(b)(23);

(6) §1101.652(b)(29);

(7) §1101.652(b)(33);

(8) 22 TAC §535.21(a);

(9) 22 TAC §535.53;

(10) 22 TAC §535.65;

(11) 22 TAC §535.91(d);

(12) 22 TAC §535.121;

(13) 22 TAC §535.154;

(14) 22 TAC §535.155;

(15) 22 TAC §535.157; and

(16) 22 TAC §535.300.

(d) An administrative penalty range of $500 - $3,000 per violation per day may be assessed for violations of the following sections of the Act and Rules:

(1) §§1101.652(a)(4) - (7);

(2) §1101.652(a-1)(2);

(3) §1101.652(b)(1);

(4) §§1101.652(b)(7) - (8);

(5) §1101.652(b)(12);

(6) §1101.652(b)(14);

(7) §1101.652(b)(22);

(8) §1101.652(b)(28);

(9) §§1101.652(b)(30) - (31);

(10) §1101.654(a);

(11) 22 TAC §531.18;

(12) 22 TAC §531.20;

(13) 22 TAC §535.2;

(14) 22 TAC §535.6(c) - (d);

(15) 22 TAC §535.16;

(16) 22 TAC §535.17; and

(17) 22 TAC §535.144.

(e) An administrative penalty range of $1,000 - $5,000 per violation per day may be assessed for violations of the following sections of the Act and Rules:

(1) §1101.351;

(2) §1101.366(d);

(3) §1101.557(b);

(4) §1101.558;

(5) §§1101.559(a) and (c);

(6) §1101.560;

(7) §1101.561(b);

(8) §1101.615;

(9) §1101.651;

(10) §1101.652(a)(2);

(11) §1101.652(a-1)(1);

(12) §§1101.652(b)(2) - (6);

(13) §§1101.652(b)(9) - (11);

(14) §1101.652(b)(13);

(15) §§1101.652(b)(15) - (21);

(16) §§1101.652(b)(24) - (27);

(17) §1101.652(b)(32);

(18) 22 TAC §535.141(f);

(19) 22 TAC §§535.145 - 535.148; and

(20) 22 TAC §535.156.

(f) The Commission may assess an additional administrative penalty of up to two times that assessed under subsections (c), (d) and (e) of this section, subject to the maximum penalties authorized under §1101.702(a) of the Act, if a person has a history of previous violations.

(g) Payment of an administrative penalty must be submitted in a manner acceptable to the Commission. Payments authorized to be submitted online may be subject to fees set by the Department of Information Resources that are in addition to the administrative penalty assessed by the Commission.

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

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SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §535.219

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.219, Schedule of Administrative Penalties, in Chapter 535, General Provisions.

The amendment is proposed to: (i) clarify that a person may only pay an administrative penalty in an authorized manner; and (ii) add that if an online payment is authorized, such a payment may be subject to fees set by the Department of Information Resources that are in addition to the administrative penalty assessed by the Commission.

Abby Lee, Deputy General Counsel, has determined that for the first five-year period the proposed amendment is in effect, there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the section. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendment. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendment. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Lee also has determined that for each year of the first five years the section as proposed is in effect, the public benefit anticipated as a result of enforcing the section will be greater clarity in the rules.

For each year of the first five years the proposed amendments are in effect, the amendment will not:

create or eliminate a government program;

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

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

require an increase or decrease in fees paid to the agency;

create a new regulation;

expand, limit or repeal an existing regulation;

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

positively or adversely affect the state's economy.

Comments on the proposal may be submitted through the online comment submission form at https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules, to Abby Lee, Deputy General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendment is proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. The amendment is also proposed under Texas Occupations Code, §1102.403, which allows the Commission to impose

an administrative penalty as provided by Subchapter O, Chapter 1101, pursuant to that section.

The statute affected by this proposal is Texas Occupations Code, Chapter 1102. No other statute, code or article is affected by the proposed amendment.

§535.219. Schedule of Administrative Penalties.

(a) The Commission may suspend or revoke a license or take other disciplinary action authorized by Chapter 1102 in addition to or instead of assessing the administrative penalties set forth in this section.

(b) The administrative penalties set forth in this section consider the criteria listed in §1101.702(b) of the Act.

(c) An administrative penalty range of $100 - $1,500 per violation per day may be assessed for violations of the following sections of Chapter 1101, Chapter 1102 and this subchapter:

(1) §1101.652(a)(8);

(2) §1102.118;

(3) §1102.305;

(4) 22 TAC §535.216(c);

(5) 22 TAC §535.217;

(6) 22 TAC §535.220(a) - (d) and (g);

(7) 22 TAC §535.221; and

(8) 22 TAC §535.223.

(d) An administrative penalty range of $500 - $3,000 per violation per day may be assessed for violations of the following sections of Chapter 1101, Chapter 1102 and this subchapter:

(1) §§1101.652(a)(3) - (4);

(2) §1102.301;

(3) 22 TAC §535.222;

(4) 22 TAC §535.226(d) - (e); and

(5) 22 TAC §§535.227 - 535.233.

(e) An administrative penalty of $1,000 - $5,000 per violation per day may be assessed for violations of the following sections of Chapter 1101, Chapter 1102 and this subchapter:

(1) §§1101.652(a)(2), (5) - (6);

(2) §1102.101;

(3) §1102.102;

(4) §1102.103;

(5) §1102.302;

(6) §1102.303;

(7) §1102.304;

(8) 22 TAC §535.208(e)(2);

(9) 22 TAC §535.211;

(10) 22 TAC §535.215;

(11) 22 TAC §535.220(e)(1), (3) - (7); and

(12) 22 TAC §535.224(b)(1) - (2).

(f) The Commission may assess an administrative penalty of up to two times that outlined under subsections (c), (d), and (e) of this section, subject to the maximum penalties authorized under §1101.702(a) of the Act, if a person has a history of previous violations.

(g) Payment of an administrative penalty must be submitted in a manner acceptable to the Commission. Payments authorized to be submitted online may be subject to fees set by the Department of Information Resources that are in addition to the administrative penalty assessed by the Commission.

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

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CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

22 TAC §537.45

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §537.45, Standard Contract Form TREC No. 38-7, Notice of Buyer's Termination of Contract, in Chapter 537, Professional Agreements and Standard Contracts.

Texas real estate license holders are generally required to use forms promulgated by TREC when negotiating contracts for the sale of real property. These forms are drafted and recommended for proposal by the Texas Real Estate Broker-Lawyer Committee, an advisory body consisting of six attorneys appointed by the President of the State Bar of Texas, six brokers appointed by TREC, and one public member appointed by the governor. The Texas Real Estate Broker-Lawyer Committee recommended revisions to Paragraph 2 of the Notice of Buyer's Termination of Contract to ensure that the buyer has delivered the lender's written statement to the seller in accordance with the recent changes to Paragraph 2A, Buyer Approval, of the Third Party Financing Addendum.

Abby Lee, Deputy General Counsel, has determined that for the first five-year period the proposed amendment is in effect, there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendment. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendment. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Lee also has determined that for each year of the first five years the section as proposed is in effect, the public benefits anticipated as a result of enforcing the section as proposed will be improved clarity and greater transparency for members of the public and license holders who use these contract forms.

For each year of the first five years the proposed amendment is in effect, the amendment will not:

create or eliminate a government program;

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

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

require an increase or decrease in fees paid to the agency;

create a new regulation;

expand, limit or repeal an existing regulation;

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

positively or adversely affect the state's economy.

Comments on the proposal may be submitted through the online comment submission form at https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules, to Abby Lee, Deputy General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendment is proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. The amendment is also adopted under Texas Occupations Code, §1101.155, which authorizes the Commission to adopt rules in the public's best interest that require license holders to use contract forms prepared by the Texas Real Estate Broker-Lawyer Committee and adopted by the Commission.

The statute affected by this amendment is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendment.

§537.45. Standard Contract Form TREC No. 38-8 [~~38-7~~], Notice of Buyer's Termination of Contract.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 38-8 [~~38-7~~] approved by the Commission in 2025 [~~2021~~] for mandatory use as a buyer's notice of termination of contract.

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

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Texas Real Estate Commission
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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 221. MEAT SAFETY ASSURANCE
SUBCHAPTER B. MEAT AND POULTRY INSPECTION

25 TAC §§221.11 - 221.16

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes amendments to §221.11, concerning Federal Regulations on Meat and Poultry Inspection; §221.12, concerning Meat and Poultry Inspection; §221.13, concerning Enforcement and Penalties; §221.14, concerning Custom Exempt Slaughter and Processing; Low-Volume Poultry or Rabbit Slaughter Operations; §221.15, concerning Inspection of Alternate Source Food Animals; and §221.16, concerning Fees.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement Senate Bill (S.B.) 691, 88th Legislature, Regular Session, 2023, that amended Subchapter A, Chapter 433, Texas Health and Safety Code by adding §433.0065, relating to an animal share exemption for certain meat and meat food products and providing for a civil penalty. The proposed amendments provide guidance regarding how producers may engage in the slaughtering, processing, labeling, and distribution of meat and meat food products produced for members of an animal share while remaining in compliance with state and federal laws and the regulatory requirements of 25 Texas Administrative Code (TAC) §221.14.

The proposed amendments also implement S.B. 664, 88th Legislature, Regular Session, 2023, that amended Subchapter D, Chapter 431, Texas Health and Safety Code, by adding §431.0805, that defines analogue and cell-cultured food products as distinguished from the definitions of "meat," "poultry," "meat food products," and "poultry food products." The proposed amendments update, correct, improve, and clarify the rule language and incorporate plain language where appropriate.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §221.11 includes a revision to the exemption listed for 9 Code of Federal Regulations (CFR) §303 and the removal of 9 CFR §355, and revises the DSHS Meat Safety website address.

The proposed amendment to §221.12 adds the definitions for "animal share," "meat," and "meat food product" as required by S.B. 691, 88th Legislature, Regular Session, 2023, and S.B. 664, 88th Legislature, Regular Session, 2023. This proposal also revises the definitions for "custom exempt operation," "custom processor," "custom slaughterer," "department," "federal regulations," "feral swine," "game animals," "grant of custom exemption," "heat-treated," "meat safety assurance section," "poultry," "poultry or rabbit exemption," and "slaughter" for clarity. Definitions for the terms "humane slaughter," "livestock producer," "official slaughter establishments premises," "poultry product," and "ritual cut" have been added. Revisions also add to the basic requirements to receive a grant from DSHS. Rules covering the humane treatment of livestock were moved from §221.14 to §221.12. Other minor revisions were made for clarity.

The proposed amendment to §221.13 includes additional examples of violations for severity levels I-V.

The proposed amendment to §221.14 includes combining rules required by both custom slaughter and custom processing establishments into one section for better clarity; consolidating and moving rules for the humane treatment of livestock from §221.14 to §221.12; revising temperature charts for the cooking of custom prepared meat and poultry products and renumbering those related figures, §221.14(c)(10)(B)(i) and §221.14(c)(10)(B)(ii); and updating the requirements for the custom slaughter and processing of co-owned livestock. The rule title is updated to include *animal share*, "Custom Exempt Slaughter and Processing; Animal Share and Low-Volume Poultry or Rabbit Slaughter Operations."

The proposed amendment to §221.15 includes the removal of subsection (e), Rabbits, and its reference to 9 CFR §354; subsection (f), Migratory water fowl, game birds, squab, and its reference to 9 CFR §362; and subsection (g), Certified products for dogs, cats, and other carnivora, and its reference to 9 CFR §355. Other minor revisions were made for clarity.

The proposed amendment to §221.16 updates language surrounding fees for clarity and incorporates plain language.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

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

(6) the proposed rules will expand existing regulations;

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

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

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

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

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas, do not impose a cost on regulated persons, and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Dr. Timothy Stevenson, Associate Commissioner, Consumer Protection Division, has determined that for each year of the first five years the rules are in effect, the public will benefit from the enhanced availability and safety of meat and meat food products.

Christy Havel Burton, Chief Financial Officer, has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because these rule amendments do not create any additional fees.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to HHSRulesCoordinationOffice@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 23R055" in the subject line.

STATUTORY AUTHORITY

The amendments are authorized by Texas Health and Safety Code Chapters 431 and 433, which direct the Executive Commissioner of HHSC to adopt rules to implement legislation; Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

The amendments implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapters 431, 433 and 1001.

§221.11. Federal Regulations on Meat and Poultry Inspection.

(a) The department adopts by reference the following federal regulations in the Code of Federal Regulations (CFR), as amended.[:]

(1) 9 CFR[,] Part 301, Terminology; Adulteration and Misbranding Standards;

(2) 9 CFR[,] Part 303, Exemptions, except §303.1(a)(2)(i) [~~§303.1(a) and (b)~~];

(3) 9 CFR[,] Part 304, Application for Inspection; Grant of Inspection;

(4) 9 CFR[,] Part 305, Official Numbers; Inauguration of Inspection; Withdrawal of Inspection; Reports of Violation;

(5) 9 CFR[,] Part 306, Assignment and Authorities of Program Employees;

(6) 9 CFR[,] Part 307, Facilities for Inspection;

(7) 9 CFR[,] Part 309, Ante-Mortem Inspection;

(8) 9 CFR[,] Part 310, Post-Mortem Inspection;

(9) 9 CFR[,] Part 311, Disposal of Diseased or Otherwise Adulterated Carcasses and Parts;

(10) 9 CFR[,] Part 312, Official Marks, Devices and Certificates;

(11) 9 CFR[,] Part 313, Humane Slaughter of Livestock;

(12) 9 CFR[,] Part 314, Handling and Disposal of Condemned or Other Inedible Products at Official Establishments;

(13) 9 CFR[,] Part 315, Rendering or Other Disposal of Carcasses and Parts Passed for Cooking;

(14) 9 CFR[,] Part 316, Marking Products and Their Containers;

(15) 9 CFR[,] Part 317, Labeling, Marking Devices, and Containers;

(16) 9 CFR[,] Part 318, Entry into Official Establishments; Reinspection and Preparation of Products;

(17) 9 CFR[,] Part 319, Definitions and Standards of Identity or Composition, with the [~~. The~~] following requirements applying, [~~shall apply~~] except in the case of restaurant menus and signs:[~~.~~]

(A) the [~~The~~] label of products prepared from bison meat must contain the words "bison meat," "North American bison meat," or "Native American bison meat"; and[~~."~~]

(B) the [~~The~~] label of products prepared from buffalo meat must contain the words "water buffalo meat," or "Asian buffalo meat";[~~."~~]

(18) 9 CFR[,] Part 320, Records, Registration, and Reports;

(19) 9 CFR[,] Part 321, Cooperation with States and Territories;

(20) 9 CFR[,] Part 322, Exports;

(21) 9 CFR[,] Part 325, Transportation;

(22) 9 CFR[,] Part 327, Imported Products;

(23) 9 CFR[,] Part 329, Detention; Seizure and Condemnation; Criminal Offenses;

(24) 9 CFR[,] Part 331, Special Provisions for Designated States and Territories; and for Designation of Establishments Which Endanger Public Health and for Such Designated Establishments;

(25) 9 CFR[,] Part 335, Rules of Practice Governing Proceedings Under [~~under~~] the Federal Meat Inspection Act;

(26) 9 CFR[,] Part 350, Special Services Relating to Meat and Other Products;

(27) 9 CFR[,] Part 352, Exotic Animals and Horses; Voluntary Inspection, except 9 CFR §352, Subpart B;

(28) 9 CFR[,] Part 354, Voluntary Inspection of Rabbits and Edible Products Thereof;

~~[(29) 9 CFR, Part 355, Certified Products for Dogs, Cats, and Other Carnivora; Inspection, Certification, and Identification as to Class, Quality, Quantity, and Condition;]~~

(29) [~~(30)~~] 9 CFR[,] Part 362, Voluntary Poultry Inspection Regulations;

(30) [~~(31)~~] 9 CFR[,] Part 381, Poultry Products Inspection Regulations, except §381.10(a)(3) through §381.10(c);

(31) [~~(32)~~] 9 CFR[,] Part 416, Sanitation;

(32) [~~(33)~~] 9 CFR[,] Part 417, Hazard Analysis and Critical Control Point [~~(HACCP)~~] Systems;

(33) [~~(34)~~] 9 CFR[,] Part 418, Recalls;

(34) [~~(35)~~] 9 CFR[,] Part 424, Preparation and Processing Operations;

(35) [~~(36)~~] 9 CFR[,] Part 430, Requirements for Specific Classes of Product;

(36) [~~(37)~~] 9 CFR[,] Part 441, Consumer Protection Standards: Raw Products;

(37) [~~(38)~~] 9 CFR[,] Part 442, Quantity of Contents Labeling and Procedures and Requirements for Accurate Weights; and

(38) [~~(39)~~] 9 CFR[,] Part 500, Rules of Practice.

(b) Copies of these regulations are available via the Internet at www.dshs.texas.gov/meat-safety [~~https://www.dshs.texas.gov/meat/laws-rules.aspx~~].

§221.12. Meat and Poultry Inspection.

(a) Introduction. The purpose of this subchapter is to protect the public health by establishing uniform rules to assure that meat and poultry products are clean, wholesome, and truthfully labeled.

(b) Definitions. The following words and terms, when used in this subchapter, [~~shall~~] have the following meanings, unless the context clearly indicates otherwise.

(1) Act--The Texas Meat and Poultry Inspection Act, Texas Health and Safety Code[,] Chapter 433.

(2) Adulterated--A carcass, part of a carcass, or a meat food product where:

(A) any part of it is the product of an animal that has died in a manner other than by slaughter;

(B) any part of it consists of a filthy, putrid, or decomposed substance or is for another reason unsound, unhealthy, unwholesome, or otherwise unfit for human food; or

(C) it contains, because of administration of any substance to a live animal or otherwise, an added poison or harmful substance that makes the carcass, part of the carcass, or meat food unfit for human food.

(3) Alternate source food animals--Animals slaughtered and processed for food that are amenable to inspection under the Act but are not amenable to inspection under the Federal Meat Inspection Act (21 United States Code (USC) [~~U.S.C.~~] §601 et seq.) or Federal Poultry Products Inspection Act (21 USC [~~U.S.C.~~] §451 et seq.).

(4) Animal share--An ownership interest, conveyed and documented before slaughter, in one or more identified livestock animals created by a contract between a livestock producer, who owns the livestock, and a prospective co-owner of the livestock.

(A) Animal shares are defined portions of one or more specifically identified livestock and do not apply to groups of livestock or herds.

(B) Purchase, acquisition, or ownership of animal shares is limited to an individual co-owner. Animal shares may not be purchased, acquired, or owned by groups, businesses, or organizations.

(C) A livestock producer may, but is not required to, own a share of the individual livestock animal at the time of slaughter.

(5) [~~(4)~~] Bison--An animal known by the scientific name Bovidae bison bison, commonly known as the North American prairie bison; or an animal known by the scientific name Bovidae bison athabascae, commonly known as the Canadian wood bison.

(6) [~~(5)~~] Bison meat--The meat or flesh of a bison.

(7) [~~(6)~~] Buffalo--An animal known by the scientific name Bovidae bubalus bubalus, commonly known as the Asian Indian buffalo, water buffalo, or caraboa; an animal known by the scientific name Bovidae syncerus caffer, commonly known as the African buffalo or the Cape buffalo; an animal known by the scientific name Bovidae anoa depressicornis, commonly known as the Celebes buffalo; or an animal known by the scientific name Bovidae anoa mindorenis, commonly known as the Philippine buffalo or Mindoro buffalo.

(8) [~~(7)~~] Buffalo meat--The carcass, part of the carcass, or meat food product made in whole or part of a buffalo.

(9) [~~(8)~~] Change in ownership--

(A) A change in the business organization operating the business that [~~which~~] changes the legal entity responsible for operation of the business; or

(B) any change in control of the business.

(10) [~~(9)~~] Commissioner--Commissioner of the Department of State Health Services. For the purposes of this subchapter, the term "Secretary," [~~Secretary,~~] when used in 9 Code of Federal Regulations (CFR), means [~~CFR, shall mean~~] commissioner.

(11) [~~(10)~~] Custom exempt operation--

(A) The slaughtering of livestock or the processing of an uninspected carcass or parts thereof for the owner of that livestock animal, carcass, or parts;[~~,~~] a member of the owner's household;[~~,~~] or a nonpaying guest or employee of the owner in accordance with Texas Health and Safety Code[~~,~~] §433.006; or

(B) the selling of livestock to be slaughtered and processed by the purchaser on premises owned or operated by the seller for the exclusive use of the purchaser;[~~,~~] a member of the owner's household;[~~,~~] or a nonpaying guest or employee of the owner in accordance with Texas Health and Safety Code[~~,~~] §433.006.

(12) [~~(11)~~] Custom processor--A person who prepares meat food products from uninspected livestock carcasses or parts thereof for the owner of those carcasses or parts for the exclusive use of the owner, a member of the owner's household, or a nonpaying guest or employee of the owner in accordance with Texas Health and Safety Code[~~,~~] §433.006.

(13) [~~(12)~~] Custom slaughterer--A person who slaughters livestock for a custom exempt operation [~~the owner of the livestock animal for the exclusive use of the owner of the livestock or sells livestock to be slaughtered by the purchaser on premises owned or operated by the seller, for the exclusive use of the purchaser of the livestock, a member of the purchaser's (owner's) household, or a nonpaying guest of the purchaser (owner)~~] in accordance with Texas Health and Safety Code[~~,~~] §433.006. Custom slaughter includes all activities related to slaughter, including restraining [~~of~~] livestock, cleaning or preparing any equipment used for slaughter such as tools and knives, and cleaning and preparing the slaughter facility.

(14) [~~(13)~~] Department--The Department of State Health Services. For the purposes of this subchapter, when using the federal regulations adopted by reference in §221.11 of this subchapter (relating to Federal Regulations on Meat and Poultry Inspection), the terms "United States Department of Agriculture" or "department" mean the Department of State Health Services [~~the term United States Department of Agriculture, when used in federal regulations adopted by reference by the department in §221.11 of this title (relating to Federal Regulations on Meat and Poultry Inspection), shall mean the department~~].

(15) Disfavored--Having a negative impact upon the determination to award a Grant of Custom Exemption, Grant of Inspection, or Grant of Voluntary Inspection.

(16) [~~(14)~~] Exotic animal--A member of a species of game not indigenous to this state, including axis deer, nilgai antelope, or other cloven hoofed ruminant animal.

(17) [~~(15)~~] Federal regulations--Chapter 9 of the Code of Federal Regulations (CFR) as [~~The regulations~~] adopted by reference [~~by the department~~] in §221.11 of this subchapter [~~title~~].

(18) [~~(16)~~] Feral swine--Nondomestic descendants of domestic swine that have either escaped or were released and subsequently developed survival skills necessary to thrive in the wild. Some feral swine are outcrossed with "Russian boar." Live feral [~~Feral~~] swine delivered to an establishment are subject to the same regulations as domestic swine.

(19) [~~(17)~~] Game animals--Wild animals [~~that are indigenous to this state~~], not amenable to the Act, for which the hunter must obtain a hunting license from the Texas Parks and Wildlife Department before hunting animals, such as white-tailed deer, mule deer, pronghorn antelope, and big horn sheep.

(20) [~~(18)~~] Grant of Custom Exemption--An authorization from the department to engage in a business of custom slaughtering or processing livestock for the owner of the livestock. This exemption is limited to [~~includes~~] the exclusive use for [~~of~~] the owner, a member of the owner's household, or a nonpaying guest or employee of the owner, in accordance with Texas Health and Safety Code[~~,~~] §433.006, provided that the following conditions are met:

(A) the establishment slaughters only sound, healthy livestock and conducts all processing and handling under sanitary standards and procedures resulting in meat products that are not adulterated;

(B) the product meets the marking and labeling requirements as specified in §221.14 of this subchapter [~~title~~] (relating to Custom Exempt Slaughter and Processing; Animal Share and Low-Volume Poultry or Rabbit Slaughter Operations); and

(C) the establishment maintains records as specified in §221.14 of this subchapter [~~title~~].

(21) [~~(19)~~] Grant of Inspection--An authorization issued by the department to engage in a business subject to inspection under the Act.

(22) [~~(20)~~] Grant of Voluntary Inspection--An authorization from the department to engage in a business subject to inspection of alternate source food animals under the Act.

(23) [~~(21)~~] Granted establishment--Any establishment with a Grant of Inspection, Grant of Voluntary Inspection, or Grant of Custom Exemption.

(24) [~~(22)~~] Heat-treated--Meat or poultry products that are offered for human consumption following [~~ready-to-eat or have the appearance of being ready-to-eat because they received~~] heat processing.

(25) Humane Slaughter--In the case of cattle, calves, horses, mules, sheep, swine, and other livestock, all animals are rendered insensible to pain by a single blow or gunshot or electrical, chemical, or other means that is rapid and effective, before being shackled, hoisted, thrown, cast, or cut.

(26) [~~(23)~~] Livestock--Cattle, sheep, swine, goats, horses, mules, other equines, poultry, domestic rabbits, exotic animals, or domesticated game birds.

(27) Livestock producer--A person actively engaged in livestock production or husbandry.

(28) [~~(24)~~] Low-volume livestock operation--For purposes of this subchapter, a low-volume livestock operation includes an establishment that processes fewer than 10,000 domestic rabbits or more than 1,000 but fewer than 10,000 poultry in a calendar year. The term[~~, but~~] does not include an establishment that processes 1,000 or fewer poultry raised by the operator of the establishment in a calendar year[~~,~~] or processes fewer than 500 domestic rabbits in a calendar year.

(29) Meat--Has the meaning assigned by 9 CFR §301.2. The term does not include an analogue product, or a cell-cultured product as defined in Texas Health and Safety Code §431.0805.

(30) Meat food product--Has the meaning assigned by 9 CFR §301.2. The term does not include an analogue product, or a cell-cultured product as defined in Texas Health and Safety Code §431.0805.

(31) [~~(25)~~] Meat Safety Assurance Section--The organization overseen by the state director, within the Department of State Health Services, responsible for meat safety in granted establishments and associated in-commerce products in Texas. For the purposes of this subchapter, the term "Food Safety and Inspection Service (FSIS)," [~~Food Safety and Inspection Service (FSIS),~~] when used in federal regulations adopted by reference by the department in §221.11 of this subchapter, means the [~~title, shall mean~~] Meat Safety Assurance Section.

(32) Official slaughter establishments premises--Locations where animals are held, including lots, pens, cages, and facilities associated with the holding and movement of livestock or poultry intended for slaughter. These facilities specifically include antemortem pens, suspect pens, alleyways, driveways, unloading areas, and adjoining pens that contain livestock intended for slaughter.

(33) [~~(26)~~] Person--Any individual, partnership, association, corporation, or unincorporated business organization.

(34) [~~(27)~~] Poultry--Any domesticated bird (chickens, turkeys, ducks, geese, guineas, ratites, or squabs, also termed young pigeons from one to about 30 days of age), whether live or dead. The term does not include an analogue product, or a cell-cultured product as defined in Texas Health and Safety Code §431.0805 [~~A live or dead domesticated bird~~].

(35) [~~(28)~~] Poultry or Rabbit Exemption--Registration with the department for a person to engage in a low-volume livestock operation of slaughtering and processing poultry, rabbits, or both. The person must raise the animals [~~of their own raising~~] on their own property and personally distribute [~~distributing~~] the carcasses and parts to retail consumers, restaurants, or other retail establishments, provided [~~that~~] the following conditions are met:

(A) the person slaughters [~~more than~~] 500 or more but fewer than 10,000 domestic rabbits or [~~and/or~~] more than 1,000 but fewer than 10,000 poultry in a calendar year[~~, January 1 through December 31 inclusive~~];

(B) the person does not buy or sell other poultry or rabbit products (except live chicks, baby rabbits, and [~~and/or~~] breeding stock);

(C) the person slaughters only sound, healthy poultry or rabbits and conducts all processes and handling under sanitary standards and procedures resulting in poultry or rabbit products that are not adulterated;

(D) the product meets the marking and labeling requirements as specified in §221.14(e)(4) [~~§221.14(e)(4)~~] of this subchapter [~~title~~]; and

(E) the poultry is not a ratite.

(36) Poultry product--Has the meaning assigned by 9 CFR §381.1(b). The term does not include an analogue product, or a cell-cultured product as defined in Texas Health and Safety Code §431.0805.

(37) [~~(29)~~] Ratite--Poultry such as ostrich, emus, or rhea.

(38) Responsibly connected person--An officer, partner, director, managerial or executive employee, holder or owner of 10 percent or more of the business's voting stock.

(39) Ritual cut--The simultaneous and instantaneous severance of the carotid arteries with a sharp instrument in accordance with the ritual requirements of the Jewish faith or any other religious faith that prescribes a method of slaughter whereby the animal suffers loss of consciousness by anemia of the brain.

(40) [~~(30)~~] Slaughter--Methods of [~~humane~~] death, for the purpose of food, under sanitary conditions.

(41) [~~(31)~~] State director--For the purposes of this subchapter, the term "administrator," [~~administrator,~~] when used in federal regulations adopted by reference by the department in §221.11 of this subchapter, means [~~title, shall mean~~] state director.

(c) Grant of Inspection, Grant of Voluntary Inspection, or Grant of Custom Exemption.

(1) Basic requirements.

(A) A person must [~~shall~~] not engage in a business subject to the Act unless that person has met the standards established by the Act, the federal regulations as adopted by the department, and this subchapter, and has obtained the appropriate Grant of Inspection, Grant of Voluntary Inspection, or Grant of Custom Exemption issued by the department.

(B) A person must [~~shall~~] not engage in custom operations unless that person has met the standards established by the Act, the federal regulations, and this subchapter, and has obtained a Grant of Custom Exemption issued by the department.

(C) A person must [~~shall~~] not engage in exempted poultry or rabbit slaughter and processing operations unless that person has met the standards established by the Act, the federal regulations, and this subchapter, and has registered with the department, if required.

(D) A person must [~~shall~~] not engage in alternate food source livestock slaughter and processing operations unless that person has met the standards established by the Act, the federal regulations, and this subchapter, and has obtained a Grant of Voluntary Inspection issued by the department. Hunter-killed exotic game animals processed exclusively for donation to a non-profit food bank, as defined by Texas Government Code §418.026(a), do not require inspection.

(E) The establishment must [~~shall~~] display the Grant of Inspection, Grant of Voluntary Inspection, and Grant of Custom Exemption in a prominent place at the physical business location, easily visible to the public.

(F) All regulated establishments operating as a livestock or animal dealer, by conducting on-premises livestock or poultry sales, must also comply with all regulatory requirements required as an animal or livestock seller, dealer, broker, or market.

(2) Application.

(A) To apply for a Grant of Inspection, Grant of Voluntary Inspection, or Grant of Custom Exemption, a person must [~~shall~~] complete department application forms, which can be obtained from the department's [~~Department of State Health Services,~~] Meat Safety Assurance Section.

(B) Upon submission of an application for a Grant of Inspection, Grant of Voluntary Inspection, or Grant of Custom Exemption, the applicant must prove that the establishment meets all regulatory requirements for the grant.

(C) The department must [~~shall~~] conduct an inspection to verify whether the establishment meets all regulatory requirements for the grant. Additionally, the department must ensure that the grant application contains all necessary information to issue a grant and determine if any responsibly connected persons are unfit to engage in any business requiring inspection or whose compliance history is subject to the application being disfavored as defined by this section. The department must [~~and shall~~] notify the applicant of the results in accordance with policy, after [~~of the inspection within 45 working days of~~] receiving a complete and accurate application and making the required determinations.

(i) If the establishment meets all regulatory requirements and no responsibly connected persons associated with the establishment are subject to the application being disfavored as defined by this section [~~on the date of inspection~~], the department will provide the applicant with the appropriate grant.

(ii) If the establishment does not meet all regulatory requirements [~~on the date of inspection~~], the department will provide the applicant with a listing of the regulatory requirements that the establishment failed to meet. In this case, the applicant may reapply when the applicant can [~~is ready to~~] support that the establishment meets all regulatory requirements for the grant.

(iii) If the establishment meets all regulatory requirements, the department may deny the application if one or more responsibly connected person(s) associated with the establishment is subject to the application being disfavored as defined by this section.

(3) Duration. The applicant who has complied with the standards in the Act, the federal regulations, and this subchapter will receive a Grant of Inspection, Grant of Voluntary Inspection, or Grant of Custom Exemption for an indefinite period subject to the denial, suspension, and revocation provisions in paragraph (6) of this subsection.

(4) Non-transferable. A Grant of Inspection, Grant of Voluntary Inspection, and Grant of Custom Exemption is not transferable to another person.

(5) Change of ownership. Any person operating a business under a Grant of Inspection, Grant of Voluntary Inspection, or Grant of Custom Exemption from the department must [~~shall~~] notify the department of any change in ownership of that business and[~~, in such event, shall~~] relinquish the current grant to the department. The new owner must apply [~~shall make application~~] for a new grant on forms provided by the department. This notification and new application must [~~shall~~] be approved [~~made~~] before the new ownership begins operations [~~ownership change~~].

(6) Denial, suspension, and revocation.

(A) The department may deny a Grant of Inspection, Grant of Voluntary Inspection, or Grant of Custom Exemption to any applicant who does not comply with the standards of the Act, the federal regulations, and this subchapter.

(B) The department will consider the compliance history of the establishment and any responsibly connected person(s) to determine whether to deny, revoke, or suspend a Grant of Inspection, Grant of Voluntary Inspection, or Grant of Custom Exemption. The department will review all compliance history records maintained according to the department's Records Retention Policy. A disfavored application may lead to denial, revocation, or suspension. An application indicating the following will be disfavored:

(i) an establishment or responsibly connected person(s) is unfit to engage in any business requiring inspection according to 9 CFR §500.6(a)(9); or

(ii) a connection with an establishment or responsibly connected person(s) whose compliance history includes revocation, surrendered grant while enforcement actions are pending, or default on a previous enforcement action or agreement with the department.

(C) [~~(B)~~] The department may suspend or revoke a Grant of Inspection, Grant of Voluntary Inspection, or Grant of Custom Exemption of any person who violates the standards of the Act, the federal regulations, [~~and~~] this subchapter, and engages in conduct described in §221.12(c)(6)(B) of this subsection.

(D) [~~(C)~~] The department may suspend a Grant of Inspection, Grant of Voluntary Inspection, or Grant of Custom Exemption if an establishment is inactive for a period in excess of 30 calendar days.

(E) [~~(D)~~] An establishment, where a grant has been suspended, must [~~shall~~] undergo reinspection before reinstatement of the grant.

(F) [~~(E)~~] A person whose grant has been denied, suspended, or revoked is entitled to an opportunity for a formal hearing in accordance with §§1.21, 1.23, 1.25, and 1.27 of this title (relating to Formal Hearing Procedures).[~~)~~]

(7) Meat and poultry establishments and related industries.

(A) For the purpose of conducting an inspection or performing any other inspection program duty, the department representatives must have access to the premises and to every part of an establishment that slaughters livestock or otherwise prepares or processes meat or poultry products subject to inspection[~~, at all times, day or night, whether the establishment is being operated~~]. The [~~numbered~~] official badge of a department representative is sufficient identification to allow [~~entitle~~] the representative [~~to~~] admittance to all parts of such an establishment and its premises at all times, day or night.

(B) At all reasonable hours, any person subject to record keeping requirements under the Act or this chapter (whether holding or not holding a Grant of Inspection or exemption therefrom)

must permit access to a department representative upon presentation of credentials. The department representative may[, ~~to enter the place of business to~~] examine the facilities and inventory. The department representative may also [~~and to~~] examine and copy [~~the~~] records specified in this chapter.

(C) All inspected establishments must enter into a work schedule agreement with the department. Work schedule agreements may be made for a maximum of 40 hours per week and do not include operations on weekends or official holidays. Work schedule agreements may be altered by the department due to inspector availability, other conditions inhibiting the ability of the department to provide inspection services, or to conserve resources, as necessary. Custom exempt establishments must communicate the intended hours of operation to the department at least five (5) business days before commencing operations to facilitate inspection. Mobile slaughter and mobile processing establishments, whether inspected or custom exempt, must communicate the intended location to the department at least five (5) business days before commencing operations to facilitate inspection. Deviation from these requirements, or the requirements set forth in 9 CFR §307.4, require prior written approval from the department.

(8) Disposition of livestock not eligible for entry into commerce.

(A) Livestock deemed ineligible for entry into commerce by the department may be slaughtered and processed under all applicable custom exemption rules and regulations if the department veterinarian determines such actions to be appropriate and that the livestock appear to be in such a condition that the resulting meat or meat food product may be fit for human consumption.

(B) All abnormal livestock, including livestock intended for slaughter and processing under custom exemption, must be presented for inspection at an establishment with a Grant of Inspection during hours of inspected operation.

(9) Requirements for the humane treatment of livestock, excluding poultry and domesticated game birds, at granted establishments.

(A) Livestock pens, driveways, ramps, gates, restraining devices, and all other facilities must be maintained in good repair and free from sharp or protruding objects that may cause injury or pain to the animals. Floors of livestock pens, driveways, ramps, restraining devices, and all other facilities must be constructed and maintained so as to provide good footing for livestock.

(B) A pen sufficient to protect livestock from the adverse climatic conditions of the locale is required at granted establishments that hold animals overnight or through the day.

(C) Animals must have access to water in all holding pens and, if held longer than 24 hours, access to feed. There must be sufficient room in the holding pen for animals held overnight to lie down. Disabled livestock must be separated from non-disabled livestock while being held in the establishments holding pens.

(D) Livestock must be humanely slaughtered in accordance with this section and 9 CFR §313, adopted by reference in §221.11 of this subchapter.

(i) Stunning instruments must be maintained in good repair and available for inspection by a department representative.

(ii) Inhumane treatment of animals is prohibited, and any observed inhumane treatment of animals is subject to regulatory control actions and enforcement actions.

(E) Establishments conducting ritual slaughter in accordance with 7 USC §1902(b).

(i) Establishments conducting ritual slaughter must have a completed document signed and dated by an appropriate religious authority, including the name, title, address, and other contact information of the appropriate religious authority. The document must describe and attest to the conduct of ritual slaughter at that establishment. This document must list, by name, the individuals authorized to perform ritual slaughter at that establishment. Individuals not specifically listed on the current document are not authorized to perform the ritual cut at the establishment unless an effective stunning procedure is utilized before the ritual cut. Any modification of the procedures, individuals authorized to perform ritual slaughter, or religious authority information requires completing an updated document. An individual listed on the current document may be assisted in the ritual slaughter by other establishment employees not listed on the document.

(ii) Establishments conducting ritual slaughter in accordance with 7 USC §1902(b) are exempt from the stunning requirements of this section and the requirements of 9 CFR §§313.2(f), 313.5, 313.15, 313.16, 313.30, and 313.50(c) pertaining to stunning methods provided the following.

(I) Animals are humanely restrained and adequately restrained to prevent harm to the animal throughout the slaughter process.

(II) The ritual cut severs both carotid arteries immediately and simultaneously in a single cut unless an effective stunning procedure is utilized before the ritual cut.

(III) Animals are fully unconscious before being shackled, hoisted, thrown, cast, or cut except for the ritual cut.

(10) Good Commercial Practices for Poultry. Poultry and domesticated game birds are to be slaughtered in a manner that ensures breathing has stopped before scalding, so birds do not drown. Slaughter must result in thorough bleeding of the poultry carcass. The slaughtering of poultry and domesticated game birds must comply with 9 CFR §381.90. Poultry and domesticated game bird carcasses showing evidence of having died from causes other than slaughter are considered adulterated and must be condemned. As required in 9 CFR §381.65(b), the department requires poultry and domesticated game birds be slaughtered in accordance with good commercial practices.

§221.13. Enforcement and Penalties.

(a) Administrative Penalties. The purpose of this section is to establish the criteria and procedures by which the commissioner will assess administrative penalties for violations relating to [~~the~~] provisions of the Act, these rules, [~~and~~] licenses, and orders issued pursuant to the Act or the rules.

(1) Determining the amount of the penalty. In determining the amount of the penalty, the commissioner must [~~shall~~] consider the criteria described in paragraphs (2) - (6) of this subsection.

(2) The seriousness of the violation.

(A) Violations must [~~shall~~] be categorized by one of the following severity levels.

(i) Severity Level I covers violations that are most significant and have a direct negative impact on, or represent a threat to, [~~the~~] public health and safety. Violations include: [~~and including, but not limited to, adulteration, misbranding, false representation, or false advertising that results in fraud.~~]

(I) adulteration;

(II) intentional and egregious inhumane treatment of animals;

(III) failure to remove known adulterated product from commerce; and

(IV) misbranding, false representation, or false advertising resulting in a danger to the public or improper monetary gain of over $25,000 by the violator.

(ii) Severity Level II covers violations that are very significant and [~~have~~] impact [~~on the~~] public health and safety. Violations include: [~~including, but not limited to, adulteration, misbranding, false representation, or false advertising, that results in fraud.~~]

(I) adulteration;

(II) repetitive egregious inhumane treatment of animals;

(III) slaughter of animals without a Grant of Inspection or Grant of Custom Exemption (when required by the department);

(IV) violation of a regulatory control action;

(V) bribery, coercion, or interference with inspection or attempted bribery, coercion, or interference with inspection; and

(VI) misbranding, false representation, or false advertising resulting in the entry of potentially harmful products into commerce or improper monetary gain of over $10,000 by the violator.

(iii) Severity Level III covers violations that are significant and which, if not corrected, could adversely impact public health and safety. Violations include: [~~threaten the public and have an adverse impact on the public health and safety, including, but not limited to, adulteration, misbranding, false representation, or false advertising that results in fraud.~~]

(I) adulteration;

(II) egregious or repetitive non-egregious inhumane treatment of animals;

(III) failure to remove known misbranded product from commerce;

(IV) misbranding, false representation, or false advertising resulting in public health risk or improper monetary gain of over $1,000 by the violator;

(V) producing product without a Grant of Inspection or Grant of Custom Exemption (when required by the department);

(VI) failing to correct significant deficiencies in Hazard Analysis and Critical Control Point plans, Sanitation Standard Operating Procedures; and

(VII) problems involving food contact surfaces.

(iv) Severity Level IV covers violations that are of more than minor significance, and if left uncorrected, would lead to more serious circumstances. Violations include:

(I) non-egregious inhumane treatment of animals;

(II) misbranding, false representation, or false advertising resulting in monetary gain of under $1,000 by the violator;

(III) failure to correct minor deficiencies in Hazard Analysis and Critical Control Point plans or Sanitation Standard Operating Procedures; and

(IV) problems involving non-food-contact surfaces.

(v) Severity Level V covers violations where minor noncompliant practices by a violator create some risk for production of adulterated product in the production environment. Violations include: [~~that are of minor safety or fraudulent significance.~~]

(I) failure by the establishment to correct minor noncompliant deficiencies in the production environment that do not involve product handling or product contact surfaces;

(II) failing to correct incidental noncompliance;

(III) general disrepair;

(IV) conditions that could potentially cause inhumane treatment of animals; and

(V) misbranding, false representation, or false advertising that does not result in public health risk or monetary gain by the violator.

(B) The severity of a violation must [~~shall~~] be increased if the violation involves deception or other indications of willfulness. In determining the severity of a violation, the department must take [~~there shall be taken~~] into account the economic benefit gained by a person through noncompliance.

(3) History of previous violations. The department may consider previous violations. Repetitive violations may be considered when determining the severity of a violation and may result in increased penalties within a severity level or elevation to a higher severity level. [~~The base penalty may be reduced or increased for past performance. Past performance involves the consideration of the following factors:~~]

[~~(A) how similar the previous violation was;~~]

[~~(B) how recent the previous violation was; and~~]

[~~(C) the number of previous violation(s) in regard to correction of the problem.~~]

(4) Demonstrated good faith. The department may consider demonstrated good faith. The base penalty may be reduced if good faith efforts to correct a violation have been made[~~,~~] or are being made. Good faith effort must [~~shall~~] be determined on a case-by-case [~~case by case~~] basis and be fully documented.

(5) Hazard to public [~~the~~] health and safety [~~of the public~~]. The department may consider the hazard to public [~~the~~] health and safety [~~of the public~~]. The base penalty must [~~shall~~] be increased when a direct hazard to public [~~the~~] health or [~~and/or to the~~] safety [~~of the public~~] is involved, with consideration to [~~. It shall be taken into account, but need not be limited to, the following factors~~]:

(A) whether any disease or injuries have occurred from the violation;

(B) whether any existing conditions contributed to a situation that could expose humans to a health hazard; or

(C) whether the consequences would be of an immediate or long-range [~~long range~~] hazard.

(6) Other matters. The commissioner may consider other matters as justice may require.

(7) Levels of penalties.

(A) The department [~~Department~~] will impose different levels of penalties for different severity level violations as follows: Figure: 25 TAC §221.13(a)(7)(A) (No change.)

(B) Each day a violation continues may be considered a separate violation.

(8) Assessment, payment, and refund procedures.

(A) The commissioner may assess an administrative penalty only after a person charged with a violation is given an opportunity for an administrative hearing under Texas [~~. The hearing shall be in accordance with the~~] Health and Safety Code[~~,~~] §433.095; Texas [~~the~~] Government Code[~~,~~] Chapter 2001; and the department's formal hearing procedures in Chapter 1 of this title (relating to Miscellaneous Provisions [~~Texas Board of Health~~]).

(B) Payment of an administrative penalty must [~~shall~~] be made under [~~in accordance with~~] the provision of Texas [~~the~~] Health and Safety Code[~~,~~] §433.096.

(C) Refund of an administrative penalty must be made under [~~shall be in accordance with~~] the provisions of Texas [~~the~~] Health and Safety Code[~~,~~] §433.097.

(b) Criminal Penalties.

(1) Interference with inspection.

(A) A person commits an offense if the person with criminal negligence interrupts, disrupts, impedes, or otherwise interferes with a livestock inspector while the inspector is performing a duty under the Act.

(B) An offense under this section is a Class B misdemeanor.

(C) It is a defense to prosecution under this section that the interruption, disruption, impediment, or interference alleged consisted of speech only.

(2) General.

(A) A person commits an offense if the person violates a provision of the Act or these rules for which these rules do not provide another criminal penalty.

(B) Except as provided by paragraph (2)(C) of this subsection, an offense under this section is punishable by a fine of not more than $1,000, imprisonment for not more than one year, or both.

(C) If an offense under this section involves intent to defraud, or [~~a~~] distribution or attempted distribution of an adulterated article[~~,~~] except adulteration described by Texas Health and Safety Code [~~(HSC),~~] §433.004(11), (12), or (13), the offense is punishable by a fine of not more than $10,000, imprisonment for not more than three years, or both.

(D) A person does not commit an offense under this section by receiving for transportation an article in violation of the Act if the receipt is in good faith and if the person furnishes, on request of a representative of the commissioner:

(i) the name and address of the person from whom the article is received; and

(ii) any document pertaining to the delivery of the article.

(E) This section does not require the commissioner to report for prosecution, or for institution of complaint or injunction proceedings, a minor violation of this chapter if the commissioner believes [~~that~~] the public interest will be adequately served by a suitable written warning notice.

(3) Injunction.

(A) If it appears [~~that~~] a person has violated or is violating the Act or a rule adopted under the Act, the commissioner may request the attorney general or the district attorney or county attorney in the jurisdiction where the violation is alleged to have occurred, is occurring, or may occur to institute a civil suit for:

(i) an order enjoining [~~injoining~~] the violation; or

(ii) a permanent or temporary injunction, a temporary restraining order, or other appropriate remedy, if the commissioner shows [~~that~~] the person has engaged in or is engaging in a violation.

(B) Venue for a suit brought under this section is in the county in which the violation occurred or in Travis County.

(C) The commissioner or the attorney general may recover reasonable expenses incurred in obtaining injunctive relief under this section, including investigation and court costs, reasonable attorney's fees, witness fees, and other expenses. The expenses recovered by the commissioner under this section may be used for the administration and enforcement of Texas Health and Safety Code [~~HSC,~~] Chapter 433. The expenses recovered by the attorney general may be used by the attorney general for any purpose.

(4) Emergency withdrawal of mark or suspension of inspection services [~~Withdrawal of Mark or Suspension of Inspection Services~~].

(A) The commissioner or the commissioner's designee may immediately withhold the mark of inspection or suspend or withdraw inspection services if:

(i) the commissioner or the commissioner's designee determines [~~that~~] a violation of the Act or these rules presents an imminent threat to public health and safety; or

(ii) a person affiliated with the processing establishment impedes an inspection under this chapter, including[~~, but not limited to,~~] assaulting, threatening to assault, intimidating, or interfering with a department employee.

(B) An affected person is entitled to a review of an action of the commissioner or the commissioner's designee under subparagraph (A) of this paragraph [~~subsection (a)~~] in the same manner that a refusal or withdrawal of inspection services may be reviewed under Texas Health and Safe Code [~~HSC,~~] §433.028.

(C) For purposes of this section only, the definition of "imminent threat" [~~imminent threat~~] to public health and safety includes[~~, but is not limited to~~]:

(i) the establishment produced and shipped adulterated or misbranded product as defined under Texas Health and Safety Code [~~HSC,~~] §433.004 and §433.005;

(ii) the establishment does not have or has an inadequate Hazard Analysis and Critical Control Point [~~a HACCP~~] plan as specified in 9 Code of Federal Regulations (CFR) §417.6 [~~CFR, §417.2~~];

(iii) the establishment does not have Sanitation Standard Operating Procedures as specified in 9 CFR §§416.11 - 416.16[~~, §416.11 and §416.12~~];

(iv) sanitary conditions are such that products in the establishment are or would be rendered adulterated under Texas Health and Safety Code [~~HSC,~~] §433.004; or

(v) the establishment violated the terms of a regulatory control action as specified in Texas Health and Safety Code [~~HSC,~~] §433.030, 9 CFR[~~,~~] §310.4, or 9 CFR[~~,~~] §416.6.

(D) This section in no way restricts or prohibits the department from taking action under Texas Health and Safety Code [~~HSC,~~] Chapter 431, Texas Health and Safety Code [~~HSC,~~] §433.008, the Federal Meat Inspection Act (21 United States Code (USC) [~~USC~~] 12), and the Poultry Products Inspection Act (21 USC 10) and the regulations adopted [~~thereunder~~] in §221.11 of this subchapter [~~title~~] (relating to Federal Regulations on Meat and Poultry Inspection).

§221.14. Custom Exempt Slaughter and Processing; Animal Share and Low-Volume Poultry or Rabbit Slaughter Operations.

(a) Custom Exempt Slaughter and Processing Operation Requirements. The requirements of this section apply to the custom exempt slaughter and custom exempt processing of uninspected livestock.

(1) Record keeping.

(A) Operators of facilities conducting custom exempt operations must keep records for a period of two years from the date of slaughter or processing.

(B) The records must be available to department representatives on request.

(C) Additional records that must be kept include records such as bills of sale, invoices, bills of lading, and receiving and shipping papers for transactions in which any livestock or carcass, meat, or meat food product is purchased, sold, shipped, received, transported, or otherwise handled by the custom slaughter establishment.

(D) If the custom exempt establishment also maintains a retail meat outlet, the records requirements in subparagraph (C) of this paragraph must be separately maintained.

(2) Containers used for meat food products, paper, or other materials in contact with meat food products.

(A) To avoid adulteration of product, containers must be lined with suitable material of good quality before packing.

(B) Containers and trucks or other means of conveyance in which any carcass or part is transported to the owner must be kept in a clean and sanitary condition.

(C) Paper or other materials used for covering or lining containers and the cargo space of trucks or other means of conveyance must be of a kind that does not tear during use but remains intact and does not disintegrate when moistened by the product.

(D) Boxes and any containers used as tote boxes must be clean and stored off the floor in a manner sufficient to prevent the creation of insanitary conditions and to ensure product is not adulterated.

(3) Tagging insanitary equipment, utensils, rooms, and carcasses.

(A) A department representative may attach a "Texas Rejected" tag to any equipment, utensil, room, or compartment at a custom exempt establishment that a department representative determines is insanitary and a health hazard. No equipment, utensil, room, or compartment, so tagged, may be used until untagged or released by a department representative. Such tags may not be removed by anyone other than a department representative.

(B) A department representative who determines a carcass or parts are adulterated, unfit for human food, is from an unhealthy or unsound animal, or could result in a health hazard, may attach a "Texas Retained" tag to the carcass and parts, document the reason for attaching the tag on a form specified by the department, and deliver the form to the operator of the custom exempt establishment. The owner of the carcass and parts must be notified by the plant operator and advised of the potential health risk. The custom exempt establishment must ensure the owner of the carcass and parts either authorizes the voluntary destruction and denaturing of the carcass and all parts or agrees to remove the carcass and parts from the custom exempt establishment. Under no circumstances may the carcass and parts be further processed at the establishment.

(4) Denaturing procedures. Carcasses, parts thereof, meat, and meat food products that are adulterated or not returned to the owner must be adequately denatured or decharacterized to preclude use as human food. Before the denaturing agents are applied, carcasses and carcass parts must be freely slashed or sectioned. The denaturing agent must be mixed with all of the carcasses or carcass parts to be denatured and must be applied in such quantity and manner that it cannot be removed by washing or soaking. A sufficient amount of the appropriate agent must be used to give the material a distinctive color, odor, or taste so that such material cannot be confused with an article of human food.

(b) [~~(a)~~] Custom Slaughter Requirements [~~slaughter requirements~~]. The requirements of this section [~~shall~~] apply to the custom slaughter of livestock by any person [~~of livestock~~], as defined in §221.12(b) of this subchapter [~~title~~] (relating to Meat and Poultry Inspection), delivered by or for the owner [~~thereof~~] for such slaughter, not for sale to the public, and for the exclusive use of the owner, a member of the owner's household, or a nonpaying guest or employee of the owner. The requirements of this section do not apply to hunter-killed [~~hunter killed~~] game animals, hunter-killed exotic animals, or hunter-killed feral swine. [~~as defined in §221.12(b) of this title. The requirements of this section do not apply to processing of hunter killed exotic animals, or hunter killed feral swine, as defined in §221.12(b) of this title, provided persons engaged in such processing do not utilize the same facilities to engage in the receipt, storage, processing, or distribution of other meat and/or poultry food products.~~]

(1) Animals for slaughter. Only healthy animals, exhibiting no abnormalities, may be accepted for custom slaughter at custom slaughter establishments. Unhealthy or unsound animals are those that exhibit any condition [~~that is~~] not normally expected [~~to be exhibited~~] in a healthy and sound member of that species.

(A) Examples of abnormal or unsound animals include animals that are not able to get up, or animals that have a missing or abnormal eye, swellings, rectal or vaginal prolapse, ocular or nasal discharge, a cough, or a limp.

(B) Animals that have an obviously recent break of the lower leg (below the stifle or elbow) and are able to walk and stand are not considered to be unsound or unhealthy if no other abnormal conditions are noted.

(2) Record keeping.

[~~(A) Operators of facilities conducting custom slaughter shall keep records for a period of two years, beginning on January 1 of the previous year plus the current year to date.~~]

[~~(B) The records shall be available to department representatives on request.~~]

[~~(C)~~] Custom slaughter records must [~~shall~~] contain the name, address, and telephone number of the owner of each animal presented, the date the animal was slaughtered, the species, and brief description of the livestock. If a custom processor accepts farm-slaughtered [~~farm slaughtered~~] animals for custom processing, records must [~~shall~~] contain a signed statement from the animal owner that the animal was healthy and exhibited no abnormalities, other than an obvi-

ously recent break to the lower leg (below the stifle or elbow), and was able to walk and stand at the time of slaughter.

[(D) Additional records that must be kept include records such as bills of sale, invoices, bills of lading, and receiving and shipping papers for transactions in which any livestock or carcass, meat or meat food product is purchased, sold, shipped, received, transported or otherwise handled by the custom slaughter establishment.]

[(E) If the custom slaughter establishment also maintains a retail meat outlet, separate records as listed in subparagraph (D) of this paragraph, shall be maintained for each type of business conducted at the establishment.]

(3) Sanitary methods. Custom slaughter establishments, including mobile operations, must [operations shall] be maintained in sanitary condition. Each custom slaughter establishment must [shall] comply with the requirements of 9 Code of Federal Regulations (CFR) [CFR,] Part 416, adopted under §221.11 of this subchapter [title] (relating to Federal Regulations on Meat and Poultry Inspection). Establishments that accept farm-slaughtered [farm slaughtered] livestock must complete and document cleaning and sanitization of all surfaces and equipment used in the processing of the farm-slaughtered [farm slaughtered] livestock before those surfaces and equipment may be used to process other products.

(4) Specified risk materials from cattle; handling and disposition. Each custom slaughter establishment must comply with the requirements of 9 CFR §310.22, adopted under §221.11 of this subchapter [Humane treatment of animals].

[(A) Livestock pens, driveways, and ramps shall be maintained in good repair and free from sharp or protruding objects which may cause injury or pain to the animals. Floors of livestock pens, ramps, and driveways shall be constructed and maintained so as to provide good footing for livestock.]

[(B) A pen sufficient to protect livestock from the adverse climatic conditions of the locale shall be required at those custom slaughter establishments that hold animals overnight or through the day.]

[(C) Animals shall have access to water in all holding pens and, if held longer than 24 hours, access to feed. There shall be sufficient room in the holding pen for animals held overnight to lie down.]

[(D) Livestock must be humanely slaughtered in accordance with this section and 9 CFR §313, Humane Slaughter of Livestock, adopted by reference in §221.11 of this title. The slaughtering of livestock by using captive bolt stunners, electrical stunners, and shooting with firearms, are designated as humane methods of stunning.]

[(i) The captive bolt stunners, electrical stunners, or delivery of a bullet or projectile shall be applied to the livestock in a manner so as to produce immediate unconsciousness in the animal before they are shackled, hoisted, thrown, cast, or cut. The animal shall be stunned in such a manner that they will be rendered unconscious with a minimum of excitement and discomfort.]

[(ii) The driving of animals to the stunning area shall be done with a minimum of excitement and discomfort to the animals. Delivery of calm animals to the stunning area is essential since accurate placement of stunning equipment is difficult on nervous or injured animals. Electrical equipment shall be minimally used with the lowest effective voltage to drive the animal to the stunning area. Pipes, sharp or pointed objects, and other items which would cause injury or unnecessary pain to the animal shall not be used to drive livestock.]

[(iii) Immediately after the stunning blow is delivered, the animals shall be in a state of complete unconsciousness and remain in this condition throughout shackling, sticking, and rapid exsanguination.]

[(iv) Stunning instruments must be maintained in good repair and available for inspection by a department representative.]

[(v) Inhumane treatment of animals is prohibited and any observed inhumane treatment of animals shall be subject to the tagging provisions of paragraph (6)(C) of this subsection in addition to possible enforcement action.]

[(E) Establishments conducting ritual slaughter in accordance with 7 U.S.C. §1902(b).]

[(i) Establishments conducting ritual slaughter must have a completed document, that is signed and dated by an appropriate authority attesting to the conduct of ritual slaughter at that establishment. This document must list, by name, the individuals authorized to perform ritual slaughter at that establishment.]

[(ii) Establishments conducting ritual slaughter in accordance with 7 U.S.C. §1902(b) are exempt from the stunning requirements of this section and the requirements of 9 CFR §313.2(f), §313.5, §313.15, §313.16, §313.30, and §313.50(c) pertaining to stunning methods provided animals are humanely restrained and adequately restrained to prevent harm to the animal throughout the slaughter process.]

(5) Custom exempt slaughter operators must adhere to the humane treatment of livestock as outlined in §221.12(c)(9) of this subchapter [Containers used for meat food products, paper, or other materials in contact with meat food products].

[(A) To avoid contamination of product, containers shall be lined with suitable material of good quality before packing.]

[(B) Containers and trucks, or other means of conveyance in which any carcass or part is transported to the owner shall be kept in a clean and sanitary condition.]

[(C) Paper or other materials used for covering or lining containers and the cargo space of trucks, or other means of conveyance shall be of a kind which does not tear during use but remains intact and does not disintegrate when moistened by the product.]

(6) Custom exempt slaughter operators must adhere to the humane treatment of poultry and domesticated game birds as outlined in §221.12(c)(10) of this subchapter [Tagging insanitary equipment, utensils, rooms, and carcasses].

[(A) A department representative may attach a "Texas Rejected" tag to any equipment, utensil, room, or compartment at a custom slaughter establishment that a department representative determines is insanitary and is a health hazard. No equipment, utensil, room, or compartment so tagged shall again be used until untagged or released by a department representative. Such tag shall not be removed by anyone other than a department representative.]

[(B) A department representative that determines a carcass is adulterated, unfit for human food, is from an unhealthy or unsound animal, or could result in a health hazard, may attach a "Texas Retained" tag to the carcass and document the reason for attaching the tag on a form specified by the department and deliver the form to the operator of the custom slaughter establishment. The owner of the carcass shall be notified by the plant operator and advised of the potential health risk. The custom slaughter establishment shall ensure that the owner of the carcass either authorizes the voluntary destruction and

denaturing of the carcass and all parts or agrees to remove the carcass from the custom slaughter establishment.]

(7) [(C)] Inhumane treatment of animals [that is] observed by a department representative will [shall] result in the attaching of a "Texas Rejected" tag to the deficient equipment, facility structure, or the stunning area causing the inhumane treatment. No equipment, area, or facility so tagged may [shall] be used until untagged or released by the department representative.

(8) [(7)] Marking and labeling of custom prepared products. Carcasses and parts therefrom that are prepared on a custom basis must [shall] be marked at the time of preparation with the term "Not for Sale" in letters at least 3/8 [three-eighths] inch in height, and must [shall] also be identified with the owner's name or a code that allows identification of the carcass or carcass part to its owner. Ink used for marking such products must be labeled for such purpose. Ink containing FD&C Violet No. 1 must [shall] not be used.

(9) [(8)] Requirements concerning procedures.

(A) Heads from animals slaughtered by gunshot to the head must [shall] not be used for food purposes. Such heads must [shall] be denatured in accordance with this section [paragraph (10) of this subsection] and placed into containers marked "INEDIBLE." Heads with gunshot wounds may be returned to the owner only after they have been freely slashed and adequately denatured to preclude [their] use for human food.

(B) Cattle paunches and hog stomachs intended for use in preparing [the preparation of] meat food products must [shall] be emptied of [their] contents immediately upon removal from the carcass and thoroughly cleaned on all surfaces and parts.

(C) Carcasses must [shall] not be adulterated, as defined in §221.12(b)(2) of this subchapter [title], when placed in coolers.

(10) [(9)] Requirements concerning ingredients. All ingredients and other articles used in the preparation of any carcass must [shall] be clean, sound, healthful, wholesome, and [will] not result in the adulteration of the carcass. A letter of guaranty from the manufacturer stating [that] the ingredient or article is safe when used in contact with food must [shall] be obtained by the custom slaughter establishment and made available upon request to the department representative.

[(10) Denaturing procedures. Carcasses, parts thereof, meat and meat food products that are adulterated or not returned to the owner shall be adequately denatured or decharacterized to preclude their use as human food. Before the denaturing agents are applied, carcasses and carcass parts shall be freely slashed or sectioned. The denaturing agent must be mixed with all of the carcasses or carcass parts to be denatured, and must be applied in such quantity and manner that it cannot be removed by washing or soaking. A sufficient amount of the appropriate agent shall be used to give the material a distinctive color, odor, or taste so that such material cannot be confused with an article of human food.]

(c) [(b)] Custom processing requirements. The requirements of this section [shall] apply to the custom processing by any person of uninspected livestock carcasses or parts, delivered by or for the owner thereof for such processing. These products are[,] not for sale to the public and are for the exclusive use of the owner, a member of the owner's household, or a nonpaying guest or employee of the owner. The requirements of this section do [shall] not apply to hunter-killed game animals, hunter-killed exotic animals, or hunter-killed feral swine. [processing hunter killed game animals, as defined in §221.12(b) of this title. The requirements of this section do not apply to processing of hunter killed exotic animals, or hunter killed feral swine, as defined in §221.12(b) of this title, provided persons engaged in such processing do not utilize the same facilities to engage in the receipt, storage, processing, or distribution of other meat and/or poultry food products.]

(1) Carcasses and parts for processing. No adulterated carcasses or parts as defined in §221.12(b)(2) of this subchapter may [title shall] be accepted for custom processing.

(2) Record keeping. Temperature monitoring records must be maintained by the custom processor for heat-treated or ready-to-eat products. These records must include the temperature attained and time held during heating and the time and temperatures during the cool down process.

[(A) Operators of facilities conducting custom processing shall keep records for a period of two years, beginning on January 1 of the previous year plus the current year to date.]

[(B) The records shall be available to the department representative on request.]

[(C) Custom processing records shall contain the name, address, and telephone number of the owner of each carcass or parts presented, the date the carcass or parts were delivered, the species and amount.]

[(D) Additional records such as bills of sale, invoices, bills of lading, and receiving and shipping papers for transactions in which any carcass, meat or meat food product is purchased, sold, shipped, received, transported or otherwise handled by the custom processor shall also be kept by the custom processor.]

[(E) If the custom processing establishment also maintains a retail meat outlet, separate records, as listed in subparagraph (D) of this paragraph, shall be maintained for each type of business conducted at the establishment.]

[(F) Temperature monitoring records shall be maintained by the custom processor, for heat treated or ready-to-eat products. These records shall include the temperature attained and time held during heating and the time and temperatures during the cool down process.]

(3) Sanitary methods. Custom processing establishments, including mobile operations, must [shall] be maintained in sanitary condition. Each custom processing establishment must [shall] comply with the requirements of 9 CFR[,] Part 416, adopted under §221.11 of this subchapter [title].

(4) Specified risk materials from cattle; handling and disposition. Each custom slaughter establishment must comply with the requirements of 9 CFR §310.22, adopted under §221.11 of this subchapter [Containers used for product; paper or other materials in contact with product].

[(A) To avoid contamination of product, containers shall be lined with suitable material of good quality before packing.]

[(B) Containers and trucks, or other means of conveyance in which any product is transported to the owner shall be kept in a clean and sanitary condition.]

[(C) Boxes and any containers used as tote boxes shall be clean and stored off the floor in a manner that does not interfere with good sanitation.]

[(5) Tagging insanitary equipment, utensils, rooms, and carcasses.]

[(A) A department representative may attach a "Texas Rejected" tag to any equipment, utensil, room, or compartment at a custom processing establishment that a department representative de-

termines is insanitary and is a health hazard. No equipment, utensil, room, or compartment so tagged shall again be used until untagged or released by a department representative. Such tag so attached shall not be removed by anyone other than a department representative.]

[(B) A department representative that determines a carcass is adulterated, unfit for human food, is from an unhealthy or unsound animal, or may be a health hazard, may attach a "Texas Retained" tag to the carcass and document the reason for attaching the tag on a form specified by the department and deliver the form to the operator of the establishment. The owner of the carcass shall be notified by the plant operator and advised of the potential health risk. The custom processor shall ensure that the owner of the carcass or parts either authorizes the voluntary destruction and denaturing of the carcass and all parts or agrees to remove the carcass from the custom processing establishment. Under no circumstances may the carcass be further processed at the establishment.]

(5) [(6)] Death by other means than slaughter. Carcasses, or parts thereof, derived from animals that have died through circumstances other than [otherwise than by] slaughter. This includes animals[,] such as roadkill or animals that have died by disease, trauma, or other accident. Such animals[,] may not enter[,] or be processed by a granted establishment.

(6) [(7)] Marking and labeling of custom prepared products.

(A) Products that are custom prepared must be packaged immediately after preparation and must be labeled with the term "Not For Sale" in lettering not less than 3/8 [three-eighths] inch in height. Such custom prepared products or [their] containers must [shall] also bear the owner's name and any additional labeling, such as product cut or description.

(B) Safe handling instructions must [shall] accompany every customer's raw or not fully cooked products. The information must [shall] be in lettering no smaller than 1/16 [one-sixteenth] of an inch in size and may be placed on each product package, placed on each tote box or bag containing packaged product, or given as a flyer to the customer with the product. The safe handling instructions must [shall] be placed immediately after the heading in subparagraph (A) of this paragraph and must [shall] include the following or similar statements.

(i) "Some food [meat and meat] products may contain bacteria that could cause illness if the product is mishandled or cooked improperly. For your protection, follow these safe handling instructions."

(ii) "Keep [Meat and poultry must be kept] refrigerated or frozen. Thaw in refrigerator or microwave." However, any portion of this statement [that is] in conflict with the product's specific handling instructions may be omitted ([,]e.g., some products may have instructions to cook without thawing). A graphic illustration of a refrigerator must [may] be displayed next to this statement.

(iii) "Keep raw [Raw] meat and poultry [must be kept] separate from other foods. Wash working surfaces (including cutting boards), utensils, and hands after touching raw meat or poultry." A graphic illustration of soapy hands under a faucet must [may] be displayed next to this statement.

(iv) "Cook thoroughly." ["Meat and poultry must be cooked thoroughly. Ground meat products should be cooked to an internal temperature of 160 degrees Fahrenheit or until the juices run clear. Other meat products should be cooked so that the external temperature reaches 160 degrees Fahrenheit."] A graphic illustration of a skillet must [may] be displayed next to this statement.

(v) "Keep hot foods hot [Hot foods must be kept hot]. Refrigerate leftovers immediately or discard." A graphic illustration of a thermometer must [may] be displayed next to the statement.

(7) [(8)] Requirements concerning procedures.

(A) Uninspected heads from custom slaughtered animals may not be sold or used in the preparation of meat food products unless prepared specifically for the owner of the animal for [his] personal use.

(B) Heads for use in the preparation of meat food products must [shall] be split and the bodies of the teeth, the turbinates and ethmoid bones, ear tubes, and horn butts removed, and the heads then thoroughly cleaned.

(C) Bones and parts of bones must [shall] be removed from product [which is] intended for chopping or grinding.

(D) Kidneys for use in the preparation of meat food products must [shall] first be freely sectioned and then thoroughly soaked and washed.

(E) Clotted blood must [shall] be removed from livestock hearts before they are used in the preparation of meat food products.

(F) Product must [shall] not be adulterated, as defined in §221.12(b)(2) of this subchapter, [title] when placed in coolers or freezers.

(G) Frozen product may be defrosted in water or thawed [pickle] in a manner [that is] not conducive to promoting bacterial growth or resulting in adulteration of the product.

(8) [(9)] Requirements concerning ingredients.

(A) All ingredients and other articles used in the preparation of any product must [shall] be clean, sound, healthful, wholesome, and not [otherwise such as to not] result in the adulteration of product. A letter of guaranty from the manufacturer stating [that] the ingredient or article is safe when used as an ingredient or in contact with food must [shall] be obtained by the custom processor and made available upon request to the department representative.

(B) Ingredients for use in any product may not contain any pesticide chemical or other residues in excess of levels permitted under the federal [Federal] Food, Drug, and Cosmetic Act.

(9) [(10)] Approval of substances for use.

(A) No substance may be used in the preparation of any product unless it is a Food and Drug Administration-approved [Administration approved] food additive.

(B) No product may [shall] contain any substance that [which] would render it adulterated.

(C) Nitrates must [shall] not be used in curing bacon.

(i) Nitrites in the form of sodium nitrite may be used at 120 parts per million (ppm) ingoing (or in the form of potassium nitrite at 148 ppm ingoing) maximum for injected, massaged, or immersion cured bacon; and 550 ppm of sodium ascorbate or sodium erythorbate (isoascorbate) for injected, massaged, or immersion cured bacon must [shall] be used.

(ii) Sodium or potassium nitrite may be used at 2 pounds to 100 gallons pickle at 10% pump level; 1 ounce to 100 pounds meat (dry cure).

(iii) Sodium ascorbate or sodium erythorbate (isoascorbate) may be used at 87.5 ounces to 100 gallons pickle at

10% pump level; 7/8 ounces to 100 pounds meat; or 10% solution to surfaces of cut meat.

(iv) Sodium nitrite must [~~shall~~] not exceed 200 ppm ingoing or an equivalent amount of potassium nitrite (246 ppm ingoing) in dry cured bacon based on the actual or estimated skin-free green weight of the bacon belly.

(D) When curing products other than bacon, nitrites, nitrates, or combination must [~~shall~~] not result in more than 200 ppm of nitrite in the finished product.

(i) Sodium or potassium nitrite may be used at 2 pounds to 100 gallons pickle at 10% pump level; 1 ounce to 100 pounds meat (dry cure); or 1/4 ounce to 100 pounds chopped meat or [~~and/or~~] meat byproduct.

(ii) Sodium or potassium nitrate may be used at 7 pounds to 100 gallons pickle; 3-1/2 ounces [~~3 1/2 ounce~~] to 100 pounds meat (dry cure); or 2-3/4 ounces [~~2 3/4 ounce~~] to 100 pounds chopped meat. (Nitrates may not be used in bacon.)

(10) [~~(11)~~] Prescribed treatment of heat-treated meat and poultry products.

(A) All forms of fresh meat and poultry, including fresh unsmoked sausage and pork such as bacon and jowls, are classified as products that are customarily well cooked in the home before being consumed. Therefore, the treatment of such products to destroy [~~for the destruction of~~] pathogens is not required.

(B) Meat and poultry products, which [~~that~~] are not customarily cooked or may not be cooked before consumption because they have the appearance of being fully cooked, must not contain pathogens.

(i) Heat-treated, [~~products and~~] dry, semi-dry, and fermented meat products [~~sausages, that are less than three inches in diameter,~~] are required to be heated to an internal temperature according to the following chart:
Figure: 25 TAC §221.14(c)(10)(B)(i)
[~~Figure: 25 TAC §221.14 (b)(11)(B)(i)~~]

(ii) Heat treated, [~~products and~~] dry, semi-dry, and fermented poultry products [~~sausages, that are more than three inches in diameter,~~] are required to be heated to an internal temperature according to the following chart:
Figure: 25 TAC §221.14(c)(10)(B)(ii)
[~~Figure 25 TAC §221.14 (b)(11)(B)(ii)~~]

(iii) Heat treated meat and poultry products that must be stored under refrigerated temperatures must be cooled quickly to prevent bacterial growth. During cooling, the product's maximum internal temperature must [~~should~~] not remain between 130 degrees Fahrenheit and 80 degrees Fahrenheit for more than 1-1/2 [~~1 1/2~~] hours nor between 80 degrees Fahrenheit and 40 degrees Fahrenheit for more than 5 hours. Custom processors may slowly cool cured products in accordance with Meat Safety Assurance (MSA) [~~Food Safety and Inspection Services (FSIS)~~] Directive 7111.1, Verification Procedures for Lethality and Stabilization [~~7110.3, Time/Temperature Guidelines for Cooling Heated Products~~], which may be viewed at www.dshs.texas.gov/meat-safety [~~www.fsis.usda.gov~~], or other substantiated support.

(iv) Custom processors not utilizing a heating step as described in clauses (i), (ii), and (iii) of this subparagraph must submit an alternate procedure, describing the method utilized in determining safety, to a department representative.

(v) Custom processors may produce heat-treated or ready-to-eat custom products, including chorizo, at temperatures other than those listed in clauses (i), (ii), and (iii) of this subparagraph when requested to do so by the owner of the product. The custom processor must obtain a signed statement from the owner of the product stating [~~that~~] the risks associated with eating under-cooked meat products are understood.

(C) When necessary to comply with the requirements of this section, [~~the~~] smokehouses, drying rooms, and other compartments used in the treatment of meat and poultry products to destroy pathogens must [~~shall~~] be suitably equipped with accurate automatic recording thermometers[,] by the operator of the custom processing establishment [~~with accurate automatic recording thermometers~~].

[~~(12) Denaturing procedures. Carcasses, parts thereof, meat and meat food products that are adulterated and/or not returned to the owner shall be adequately denatured or decharacterized to preclude their use as human food. Before the denaturing agents are applied, carcasses and carcass parts shall be freely slashed or sectioned. The denaturing agent must be mixed with all of the carcasses or carcass parts to be denatured, and must be applied in such quantity and manner that it cannot easily and readily be removed by washing or soaking. A sufficient amount of the appropriate agent shall be used to give the material a distinctive color, odor, or taste so that such material cannot be confused with an article of human food.~~]

(d) Animal Share Exemption Requirements. Livestock co-owned under an animal share program may be exempted from inspection under Texas Health and Safety Code §433.006 and are eligible to be custom slaughtered or custom processed under subsections (a) and (b) of this section. Livestock producers and custom exempt operators engaging in animal share programs must comply with the requirements of this subsection in addition to the requirements contained in subsections (a) and (b) of this section. Each animal share applies to one particular, identified livestock animal. A livestock producer may sell shares of more than one animal to a particular co-owner as long as those shares are collectively consistent with amounts for personal use. Each animal share is reflective of a defined percentage of the livestock animal on either a per animal basis or a percentage of portions, cuts, or products produced from the livestock animal. Livestock ownership must be documented and 100% of the animal must be designated before slaughter.

(1) Animals for slaughter.

(A) Animals presented for slaughter under an animal share must comply with all other requirements for animals slaughtered at the facility providing the slaughtering and processing services.

(B) Animals under an animal share must be slaughtered at the facility providing the slaughtering and processing services and may not be slaughtered on ungranted premises and be presented for custom processing only.

(C) The meat and meat food products are:

(i) prepared from livestock subject to an animal share and delivered to the establishment preparing the products by a co-owner of the livestock or the livestock producer boarding the livestock; and

(ii) following preparation, delivered directly to the co-owner or co-owners by either the custom exempt operator or the livestock producer.

(D) The custom operator or livestock producer that delivers the product to the co-owner or co-owners is responsible for maintaining the product in wholesome, sanitary conditions, including main-

taining the product under proper storage temperature and conditions until the product is delivered. If the livestock producer holds the product on behalf of the co-owner, the livestock producer must comply with all other regulatory requirements pertaining to the storage of such products.

(2) Recordkeeping.

(A) Custom exempt operators must:

(i) maintain records and make them available as required by §221.14 of this subchapter;

(ii) document the name, address, and telephone number of each co-owner of the animal share livestock animal presented. These documents must also include the date the livestock animal was delivered, the species, and amount defined as a percentage, based on either the entire animal or particular portions, cuts, or products, delivered to each co-owner;

(iii) maintain additional records, including bills of sale, invoices, bills of lading, and receiving and shipping papers for transactions in which any carcass, meat, or meat food product is purchased, sold, shipped, received, transported, or otherwise handled by the custom processor; and

(iv) provide to the livestock producer or co-owner, upon delivery of the meat or meat food products, written notice that conspicuously displays the warning that the department has not inspected the meat or meat food products.

(B) Livestock producers must:

(i) provide a bill of sale to the co-owner conveying an ownership interest in the animal;

(ii) complete a written agreement, which, at a minimum, includes:

(I) a provision authorizing the livestock producer to board the livestock and arrange preparation of the livestock as meat and meat food products for the co-owner; and

(II) a provision entitling the co-owner to a share of meat and meat food products derived from the livestock;

(iii) provide to the co-owner information describing the standards the livestock producer followed in maintaining livestock health and preparing the meat and meat food products derived from the livestock; and

(iv) provide to the co-owner, upon delivery of the meat or meat food products, written notice that conspicuously displays the warning that the department has not inspected the meat or meat food products.

(3) Marking and labeling of custom prepared animal share products.

(A) Animal share meat and meat food products must be marked and labeled under the requirements in subsections (b)(8) and (c)(6) of this section.

(B) On delivery of the meat or meat food products to the co-owner, the custom exempt operator must provide to the co-owner notice that the department has not inspected the meat or meat food products in:

(i) a separate written statement that conspicuously displays the warning; or

(ii) a warning statement conspicuously displayed on a label affixed to the meat or meat food product packaging.

(4) Enforcement. A person may not sell, donate, or commercially redistribute meat or meat food products produced under this section. A person who violates this section is liable for a civil penalty in the amount of $10,000 for each violation as provided by §221.13(a)(2)(A)(ii) of this subchapter.

(e) [~~(c)~~] Low-Volume Poultry or Rabbit Slaughter Operations Requirements [~~Low-volume poultry or rabbit slaughter operations requirements~~].

(1) Animals for slaughter. Adulterated [~~No adulterated~~] poultry or rabbits, as defined in §221.12(b)(2) of this subchapter, may not [~~title shall~~] be slaughtered for the purpose of selling the [~~its~~] carcass or parts for food. Only healthy poultry and rabbits, exhibiting no abnormalities, may be slaughtered for sale as food. Unhealthy or unsound poultry and rabbits are those that exhibit any condition [~~that is~~] not normally expected to be exhibited in a healthy and sound member of that species. Examples of abnormal or unsound animals include animals that are not able to get up, or animals that have a missing or abnormal eye, [~~any~~] swellings, rectal or vaginal prolapse, ocular or nasal discharge, a cough, or a limp.

(2) Record keeping.

(A) Operators of facilities conducting slaughter under a Poultry or Rabbit Exemption must [~~shall~~] keep records such as bills of sale, invoices, bills of lading, and receiving and shipping papers for transactions in which any livestock or carcass, meat, or meat food product is purchased, sold, shipped, received, transported, or otherwise handled for a period of two years, beginning on January 1 of the previous year plus the current year to date.

(B) The records must [~~shall~~] be available to department representatives on request.

(3) Sanitary methods. Low-volume poultry or rabbit slaughter operations must [~~shall~~] be maintained in sanitary condition.

(4) Marking and labeling of products. Carcasses and parts therefrom that are prepared under the Poultry or Rabbit Exemption must [~~shall~~] be packaged and the container must [~~shall~~] be marked with each of the following in letters at least 1/4 [~~one-quarter~~] inch in height, unless otherwise stated:

(A) the slaughterer's name and address and the term "Exempted P.L. 90-492" and the statement "Not Produced Under Inspection";[~~"~~]

(B) the common or usual name of the product, or [~~if any there be, and if there is none,~~] a truthful descriptive designation of the product;

(C) a special handling label such as, "Keep Refrigerated," "Keep Frozen," "Keep Refrigerated or Frozen," "Perishable - Keep Under Refrigeration," or any other similar statement that the establishment has received approval from the department to use; and

(D) safe handling instructions must [~~shall~~] be in lettering no smaller than 1/16 [~~one-sixteenth~~] of an inch in size and must [~~shall~~] be prominently placed with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.[~~:~~]

(i) Safe handling information. The safe handling information must [~~shall~~] be presented on the label under the heading "Safe Handling Instructions," which must [~~shall~~] be set in type size larger than the print size of the rationale statement and safe handling statement. The safe handling information must [~~shall~~] be set off by

a border and must [shall] be one color type printed on a single-color [single color] contrasting background whenever practical.

(ii) Rationale statement. The safe handling instructions must [shall] include the following rationale statement, "This product was prepared from meat or [and/or] poultry. Some food products may contain bacteria that could cause illness if the product is mishandled or cooked improperly. For your protection, follow these safe handling instructions." This statement must [shall] be placed immediately after the heading for safe handling instructions in clause (i) of this subparagraph and before the safe handling statement in clause (iii) of this subparagraph.

(iii) Safe handling statement. The safe handling instructions must [shall] include the following safe handling statements.[:]

(I) "Keep refrigerated or frozen. Thaw in refrigerator or microwave." [(]Any portion of this statement [that is] in conflict with the product's specific handling instructions may be omitted ([,]e.g., some products may have specific instructions to cook without thawing).[)] (]A graphic illustration of a refrigerator must [shall] be displayed next to the statement.[);]

(II) "Keep raw meat and poultry separate from other foods. Wash working surfaces (including cutting boards), utensils, and hands after touching raw meat or poultry." [(]A graphic illustration of soapy hands under a faucet must [shall] be displayed next to the statement.[);]

(III) "Cook thoroughly." [(]A graphic illustration of a skillet must [shall] be displayed next to the statement.[); and]

(IV) "Keep hot foods hot. Refrigerate leftovers immediately or discard." [(]A graphic illustration of a thermometer must [shall] be displayed next to the statement.[)]

§221.15. Inspection of Alternate Source Food Animals.

(a) Requirements. Specific requirements of this section are [shall be] in addition to those required by the rules adopted for inspection of livestock, under the Texas Meat and Poultry Inspection Act, and federal regulations as listed in §221.11 of this subchapter [title] (relating to Federal Regulations on Meat and Poultry Inspection).

(b) Fees. Fees are [shall be] assessed in one-half hour increments for inspection services, provided by a department inspector to a facility holding a grant of inspection, as specified in §221.16 of this subchapter [title] (relating to Fees). Failure of a grant holder to promptly pay invoices will result in cessation of overtime inspection services. Inspection time includes:

(1) the inspector's time in the field during a hunt;

(2) the inspector's time spent completing inspection records;

(3) the inspector's time spent waiting for any purpose to facilitate the processor;

(4) the inspector's time for travel between hunt sites; and

(5) the inspector's time for travel from the inspector's official duty location to the field site and return.

(c) Sanitary Dressing Procedures [dressing procedures]. The following are general guidelines of sanitary dressing applicable to all species of livestock slaughtered.

(1) The person performing slaughter operations must not permit any contamination of edible portions of the carcass with materials such as feces, urine, hair, ingesta, milk, bile, pathological tissues and exudates, or [and] other filth. All controls of slaughter and dressing procedures must be aimed at accomplishing this purpose.

(2) Slaughter operations must be conducted in a manner that precludes contamination, i.e., adequate separation of carcasses, parts, and viscera during dressing; routine cleaning and disinfection of certain equipment and hand tools; design and arrangement of equipment to prevent the contact of successive carcasses and parts; and appropriately located, functional lavatories and disinfection units.

(3) In the event [that] contamination does occur, it must be handled promptly and in a manner that ensures adequate protection to the remaining product. Contamination with feces, milk, pus, or pathological tissue or exudate must be promptly removed by trimming. Removal must be complete. Enough tissue must be removed so only clean meat remains. Scraping with the edge or back of a knife, wiping with a cloth or towel, or the use of a water spray are unacceptable procedures for removal of this type of contamination.

(d) Exotic Animals [animal].

(1) Sanitation. All slaughter operations are to be conducted in a way that precludes contamination. The following conditions, at [as] a minimum, must [shall] be met.

(A) The slaughter facility unit must [shall] be constructed of smooth and impervious material capable of being thoroughly cleaned and sanitized before commencing operations and must be so maintained.

(B) Potable [Only potable] water must [shall] be used in conjunction with exotic animal slaughter procedures. Water from private water wells must [shall] be tested for potability by an approved laboratory within six months before [prior to] use. Water from portable water tanks must [shall] be tested by an approved laboratory every six months to determine that potable water remains potable after being in the portable tanks. Results of such testing must [shall] be made available to the department inspector.

(C) Hot water at a temperature adequate to facilitate equipment and unit sanitization during pre-operational and operational sanitation procedures is required on the skinning and evisceration [skinning/evisceration] floor. A procedure utilizing chemical sanitization in lieu of hot water may be used.

(D) Mobile as well as fixed slaughter units must [shall] provide adequate measures to control flies, other insects, and dust.

(E) Inedible by-products must be handled in a manner that does not create an insanitary condition or adulteration and ensures inedibles are not diverted to human food. When containers are used to remove inedibles from the premises, such containers must [shall] be marked "INEDIBLE" in letters at least two inches high. An adequate amount of denaturant in accordance with 9 Code of Federal Regulations (CFR) [CFR] §314.3 must [will] be used on all products placed in the "INEDIBLE" containers.

(2) Ante-mortem procedures.

(A) The producer must certify by completing and signing form MSA-71, Microchip Certification and Drug Advisory For Alternate Food Animal Species, whether the animal or animals [animal(s)] have been identified with a microchip device.

(B) For mobile and field slaughter, once an animal has been shot, the animal will be exsanguinated as soon as possible in the field with a properly sanitized knife. The assigned inspector will examine and inspect each animal before its entry into the processing facility to ensure [assure that] the animals being harvested appear to have been healthy and were killed by the harvester.

(C) For field slaughter, environmental temperature may affect the time that may lapse before it is necessary to return to the mobile slaughter unit or processing facility for skinning and eviscerating. High environmental temperature may shorten the time lapse before dressing, as dressing must begin before the carcass becomes distended due to gas formation in the interstitial tissues or in the small intestine. The department inspector has the final decision in determining the actual time allowed between exsanguination and skinning; however, a 2-1/2 [~~two and one-half~~] hour time lapse may [~~shall~~] not be exceeded.

(3) Post-mortem procedures.

(A) The vehicle used for transporting the slaughtered exotic animals must [~~shall~~] be clean before use and must [~~shall~~] be cleaned as needed, during the operation.

(B) Dressing procedures are to begin at the slaughter unit or facility as soon as practical after slaughter.

(C) Heads from animals slaughtered by gunshot to the head must [~~shall~~] not be used for food purposes. Such heads must [~~shall~~] be denatured and placed into inedible containers.

(D) In the event [~~that~~] an animal is shot in an area other than the head, the resulting wound area and bruised areas must be trimmed of all contamination.

(E) The dressing of any animal whether it be the removal of a foot, head, or any part is strictly forbidden in any area other than inside the slaughter unit, regardless of the size of the animal. However, the removal of the antlers only is permitted before entering the slaughter facility.

(4) Dressing procedures.

(A) Persons butchering an animal must keep [~~their~~] hands as clean as possible. Adequate hand washing facilities must be readily available.

(B) Skinning operations must be conducted in a sanitary manner.

(C) As the pelt is removed, care must be taken to prevent contamination of the carcass by dirty hands, knife, or pelt.

(D) If a pelt puller is used in such a manner [~~that~~] the carcass is raised to a horizontal position, the carcasses of the female animals must be checked closely for urine leakage.

(E) Heads must remain with the carcass until inspection is completed. Nasal and oral cavities should be flushed before heads are placed on inspection tables.

(F) Overall washing of carcasses must [~~should~~] be accomplished before any openings are made for inspection or evisceration; however, any feces, ingesta, or milk must be trimmed before washing. The washer must [~~should~~] take care to prevent filling the rectum with water during washing operations.

(G) The knife or other instrument used to open the breast must be disinfected after each use.

(H) The bung is not to be dropped until washing is completed. After opening the pelvic area, the neck of the bladder and the dropped bung should be grasped firmly and held until they clear the body cavity.

(I) Evisceration must be accomplished in a manner that precludes contamination of the carcass with contents from the bladder or intestine; viscera are [~~is~~] to be placed in an inspection pan.

(J) If intestines are to be saved, contamination should be prevented by stripping or [~~and/or~~] tying between the large and small intestine before removing from the table and sending to the next station.

(5) Processing. Processing of carcasses must [~~shall~~] be conducted in a manner and location that complies with requirements for processing all livestock carcasses, including the provisions adopted under §221.11 of this subchapter [~~title~~].

[~~(e) Rabbits. See 9 CFR, Part 354, as adopted by §221.11 of this title.~~]

[~~(f) Migratory water fowl, game birds, squab. See 9 CFR, Part 362, as adopted by §221.11 of this title.~~]

[~~(g) Certified products for dogs, cats, and other carnivora. See 9 CFR, Part 355, as adopted by §221.11 of this title.~~]

§221.16. Fees.

Special fees for inspection services.

(1) Inspection time. Inspection time may include:

(A) the inspector's time for performing inspection services;

(B) the inspector's time for completing inspection records;

(C) the inspector's time for waiting for any purpose to facilitate the slaughterer or processor [~~slaughterer/processor~~] to begin [~~their~~] regulated activity; and

(D) the inspector's time for traveling to perform inspection services.

(2) Fees. Fees are [~~shall be~~] assessed in one-half hour increments for inspection services. Invoices are due upon receipt and become delinquent 30 calendar days from the date [~~which is printed~~] on the invoice. Inspection services will not be performed for any establishment having a delinquent account.

(3) Overtime and holiday rate. The overtime and holiday rate for inspection services is [~~shall be~~] $60 per hour, per department [~~program~~] employee.

(4) Rate. Rate for inspections not required by state or federal meat and poultry inspection laws. The rate for special inspections is [~~shall be~~] $60 per hour, per program employee.

(5) Overtime and special inspection services. Overtime and special inspection services are subject to the availability of inspectors.

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

Filed with the Office of the Secretary of State on November 8, 2024.

TRD-202405415
Cynthia Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: December 22, 2024
For further information, please call: (512) 834-6760

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 363. FINANCIAL ASSISTANCE PROGRAMS

SUBCHAPTER N. NEW WATER SUPPLY FOR TEXAS FUND

31 TAC §§363.1401 - 363.1408

The Texas Water Development Board (TWDB) proposes new rules in 31 Texas Administrative Code (TAC) Chapter 363 by adding new §§363.1401, 363.1402, 363.1403, 363.1404, 363.1405, 363.1406, 363.1407, and 363.1408.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED NEW RULES.

The 88th Texas Legislature enacted Senate Bill 28, amending Texas Water Code Chapter 15, Texas Water Assistance Program, to add a new subchapter creating the New Water Supply Fund for Texas. The new legislation directs the Board, by rule, to undertake to finance projects through the fund that will lead to seven million acre-feet of new water supplies by December 31, 2033.

SECTION BY SECTION DISCUSSION OF THE PROPOSED NEW RULES.

Subchapter N is added to 31 Texas Administrative Code Chapter 363

Section 363.1401. Scope

The proposed new section provides that the programs of financial assistance under Texas Water Code, Chapter 15, Subchapter C-1 will be governed by this subchapter and, unless in conflict with this subchapter, the provisions of 31 Texas Administrative Code 363 Subchapter A will be applied to the financial assistance and projects under this subchapter.

Section 363.1402. Definition of Terms

The proposed new section includes new definitions for terms commonly used in the Subchapter to provide clarity of the terms in the context used.

Section 363.1403. Use of Funds

The proposed new section provides the ways that the Board may or may not use the Fund.

Section 363.1404. Determination of Availability

The proposed new section provides the methods that the Board will obtain the amount within the Fund and how the Board will seek New Water Supply projects. Section 363.1405. Complete Application Requirements

The proposed new section provides what information must be included in a project application under the Fund. Section 363.1406. Consideration of Applications The proposed new section lists what the Board may consider when evaluating an application. Section 363.1407. Findings The proposed new section identifies what the Board must find when granting financial assistance for an application and the process for placing the application before the Board for approval.

Section 363.1408. Terms of Financial Assistance

The proposed new section provides what the Board must determine when granting financial assistance and limits the term length to up to 30 years.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS (Texas Government Code §2001.024(a)(4))

Ms. Rebecca Trevino, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed rulemaking. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration.

These rules are not expected to result in reductions in costs to either state or local governments. There is no change in costs for state or local governments because the rules will not change any substantive requirements of other entities. These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules.

Because these rules will not impose a cost on regulated persons, the requirement included in Texas Government Code, §2001.0045 to repeal a rule does not apply. Furthermore, the requirement in §2001.0045 does not apply because these rules are necessary to implement legislation.

The TWDB invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

PUBLIC BENEFITS AND COSTS (Texas Government Code §2001.024(a)(5))

Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking as it clarifies requirements for TWDB borrowers and is necessary to implement a new financial assistance program. Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the rules will not impose an economic cost on persons required to comply with the rule as participation in TWDB financial assistance programs is voluntary and the requirements set forth by the rules are imposed by statute.

ECONOMIC AND LOCAL EMPLOYMENT IMPACT STATEMENT (Texas Government Code §§2001.022, 2006.002); REGULATORY FLEXIBILITY ANALYSIS (Texas Government Code §2006.002)

The TWDB has determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The TWDB also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of enforcing this rulemaking. The TWDB also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to establish the procedures by which the TWDB will implement the New Water Supply for Texas Fund.

Even if the proposed rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather Texas Water Code §15.154. Therefore, this proposed rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The TWDB invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this proposed rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to establish the procedures by which the TWDB will implement the New Water Supply for Texas Fund. The proposed rule would substantially advance this stated purpose by providing the procedures and requirements associated with TWDB's implementation of the New Water Supply for Texas Fund.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). The TWDB is the agency that is directed to implement the New Water Supply for Texas Fund.

Nevertheless, the TWDB further evaluated this proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule establishes the procedures by which the TWDB will implement the Fund. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

GOVERNMENT GROWTH IMPACT STATEMENT (Texas Government Code §2001.0221)

The TWDB reviewed the proposed rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the proposed rule would be in effect, the proposed rule will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) expand, limit, or repeal an existing regulation; or (6) increase or decrease the number of individuals subject to the rule's applicability. The proposed rule will: (1) create new regulation, that regulation being 31 Texas Administrative Code 363 Subchapter N New Water Supply for Texas Fund; and (2) the proposed rule will positively affect the state's economy by providing a funding source for projects to identify and produce new water for the state's residents and economy.

SUBMISSION OF COMMENTS (Texas Government Code §2001.024(a)(7))

Written comments on the proposed rulemaking may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to rulescomments@twdb.texas.gov, or by fax to (512) 475-2053. Comments will be accepted until 5:00 p.m. of the 31st day following publication in the *Texas Register.* Include "Chapter 363" in the subject line of any comments submitted.

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The new rules are proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §15.154

This rulemaking affects Water Code, Chapter 15.

§363.1401. Scope of Subchapter N.

This subchapter shall govern the board's programs of financial assistance under Texas Water Code, Chapter 15, Subchapter C-1. Unless in conflict with the provisions of this subchapter, the provisions of Subchapter A of this chapter (relating to General Provisions) applies to projects under this subchapter.

§363.1402. Definition of Terms.

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

(1) Fund--The New Water Supply for Texas Fund.

(2) Brackish--Water above 1,000 milligrams per liter of total dissolved solids (TDS).

(3) New Water Supply--means only:

(A) Marine and Brackish water desalination projects;

(B) Produced water treatment projects, other than projects that are only for purposes of disposal of or supply of water related to oil and gas exploration;

(C) Aquifer storage and recovery projects;

(D) Water supply projects of any type, that result in the acquisition or delivery of water from states other than Texas to locations within Texas; and

(E) The development of infrastructure to transport water that is made available by a project listed in (1) - (4).

(4) Water Conservation--The reduction of water consumption, loss, and waste via improved efficiency, recycling, and reuse.

(5) Water Need--Has the meaning assigned by §357.10 of this Title.

(6) Water User Group-- Has the meaning assigned by §357.10 of this Title.

§363.1403. Use of Funds.

(a) The board may use the Fund for financial assistance to an eligible political subdivision for a New Water Supply project.

(b) The board may use the Fund to make transfers to eligible programs.

(c) The board reserves the right to limit the amount of financial assistance available to an individual entity.

(d) Financial assistance may not be used for expenses associated with the maintenance or operation of a New Water Supply project.

§363.1404. Determination of Availability.

(a) Periodically, or at the request of the board, the executive administrator will present to the board:

(1) a statement of the total money available to the Fund;

(2) a recommendation identifying the amount of money from the Fund that may be made available to eligible applicants for financial assistance, including any subsidies.

(b) The board may approve the final allocations of money from the Fund for different purposes;

(c) Upon the approval of the board, the executive administrator will publish notice requesting applications for projects, which will identify the timing for mandatory preapplication meetings, and must include:

(1) the funds available for New Water Supply projects;

(2) the types of projects for which applications are being solicited;

(3) eligibility criteria;

(4) structure of financial assistance;

(5) the method and criteria for evaluation and approval of applications by the board;

(6) any requirements to be applied to the use of financial assistance in addition to the requirements set forth in this chapter; and

(7) the date by which the application must be submitted to the executive administrator.

§363.1405. Complete Application Requirements.

(a) All applications must include:

(1) Evidence the applicant has conducted, with appropriate notice, a public hearing concerning the project;

(2) Information, sufficient for the board's consideration of the application, regarding the intended end users of the water supply, the needs of the area to be served by the project, the expected benefit of the project to the area, the relationship of the project to the water supply needs of this state overall, and the relationship of the project to the state water plan; and

(3) The total cost of the project, the total volume of annual water supply, the unit cost of the water supply, the reliability of the water supply, the timeline for development, and the potential impacts of the project, all of which must be developed and provided by the applicant as part of the application in accordance with all requirements of §357.34(e) of this Title (related to Identification and Evaluation of Potentially Feasible Water Management Strategies and Water Management Strategy Projects) and associated guidance.

(b) Applications may include letters of support from regional water planning groups, wholesale or retail water suppliers, customers, or any other member of the public that would be affected by the project.

§363.1406. Consideration of Applications.

When evaluating applications the board may consider:

(1) Whether the project is a recommended project in the most recently adopted state water plan;

(2) The sponsor of the project;

(3) The availability of money or revenue to the political subdivision from all sources for the ultimate repayment of the cost of the project, including all interest;

(4) The Water User Groups to be served by the project and the volume of water supply allocated to each;

(5) The identified Water Needs of the benefitting Water User Groups to be served by the project;

(6) The expected water supply benefit relative to the Water Needs associated with the Water User Group beneficiaries;

(7) The relationship of the project to the Water Needs of the state overall as defined by §357.10;.

(8) The relationship of the project to the state water plan; and

(9) Any information contained in the application.

§363.1407. Findings Required.

(a) The executive administrator must submit applications for financing under this subchapter to the board with comments concerning financial assistance. The application will be scheduled on the agenda for board consideration at the earliest practical date. The applicant and other interested parties known to the board must be notified of the time and place of such meeting.

(b) The board may grant the application only if the board finds that at the time the application for financial assistance was made:

(1) The public interest is served by state assistance for the project; and

(2) For an application for financial assistance for which repayment is expected, the money or revenue pledged by the political subdivision will be sufficient to meet all obligations assumed by the political subdivision during the term of the financial assistance.

§363.1408. Terms of Financial Assistance.

(a) The board must determine the amount and form of financial assistance and the amount and form of repayment.

(b) The board will determine the method of evidence of debt.

(c) Financial assistance from the Fund may provide for repayment terms of up to 30 years, in the board's discretion.

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

Filed with the Office of the Secretary of State on November 6, 2024.

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Ashley Harden
General Counsel
Texas Water Development Board
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For further information, please call: (512) 475-1673