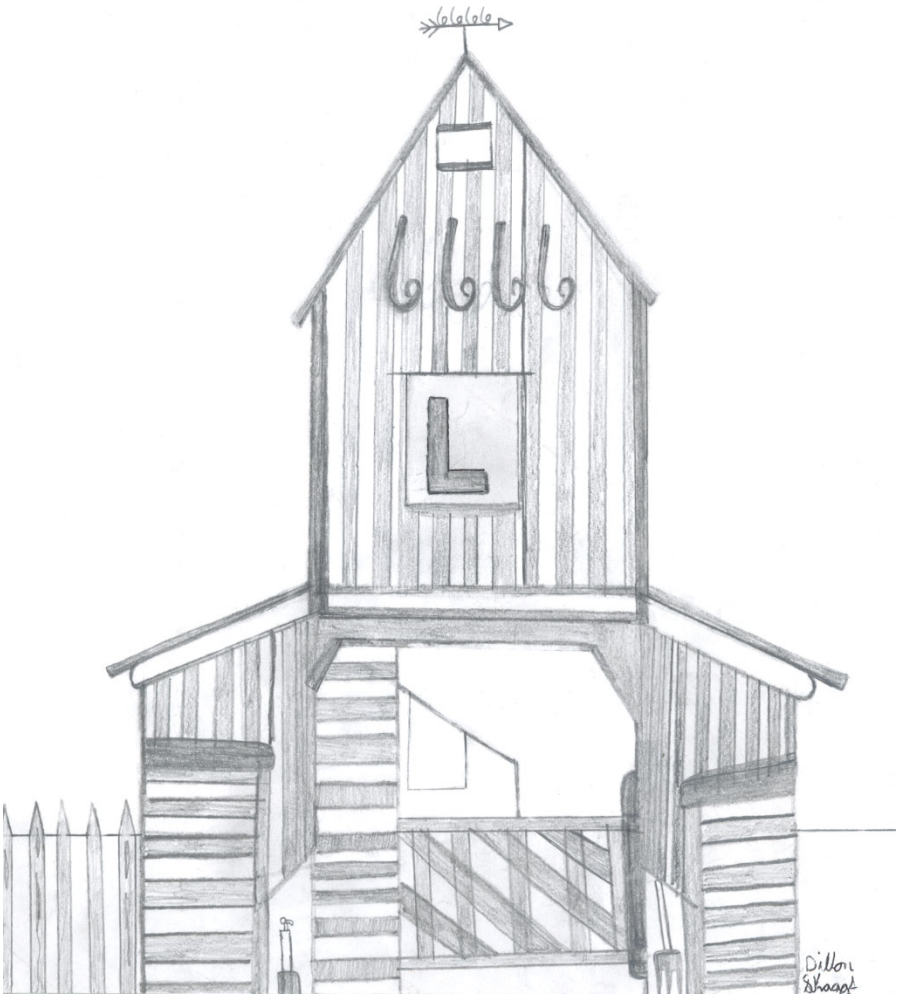
# TEXAS REGISTER

*Volume 44 Number 38* *September 20, 2019* *Pages 5193 - 5448*

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

***Texas Register,*** **(ISSN 0362-4781, USPS 12-0090),** is published weekly (52 times per year) for $340.00 ($502.00 for first class mail delivery) by Matthew Bender & Co., Inc., 3 Lear Jet Lane Suite 104, P O Box 1710, Latham, NY 12110.



The *Texas Register* is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Easton, MD and at additional mailing offices.

**POSTMASTER:** Send address changes to the *Texas Register,* 4810 Williamsburg Road, Unit 2, Hurlock, MD 21643.


a section of the
Office of the Secretary of State
P.O. Box 12887
Austin, TX 78711
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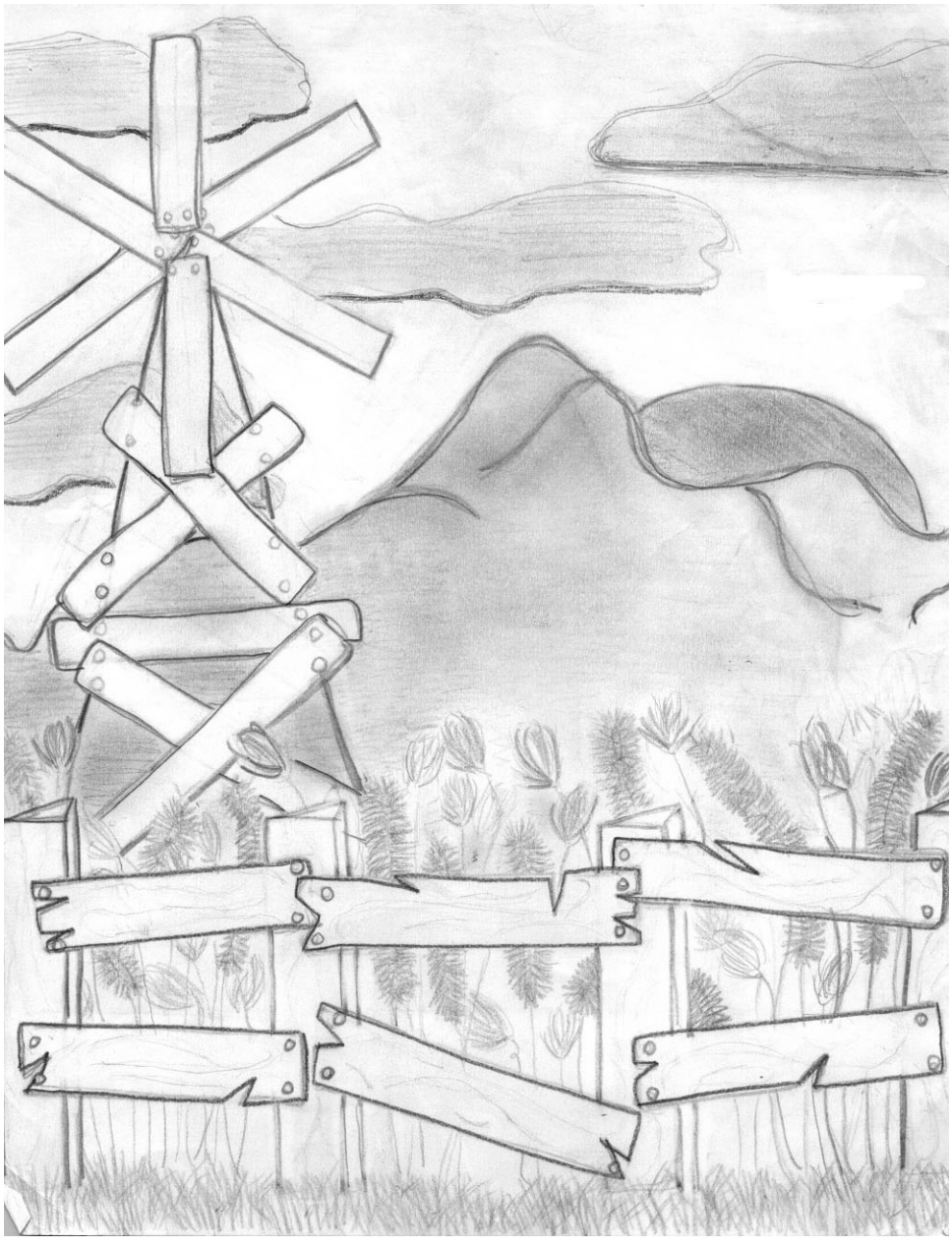


# THE ATTORNEY GENERAL

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

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

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

## Requests for Opinions

**RQ-0302-KP**

**Requestor:**

The Honorable Donna Campbell, M.D.

Chair, Committee on Veterans Affairs & Border Security

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Authorized methods of sale for a depreciation benefit optional membership program authorized under section 1304.003 of the Occupations Code (RQ-0302-KP)

**Briefs requested by October 4, 2019**

**RQ-0303-KP**

**Requestor:**

Mr. Mark Wolfe

Executive Director

Texas Historical Commission

Post Office Box 12276

Austin, Texas 78711-2276

Re: Whether a nonprofit organization leasing a publicly-owned property may qualify for and obtain the state tax credit for certified rehabilitation of certified historic structures on behalf of the public owner (RQ-0303-KP)

**Briefs requested by October 8, 2019**

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

TRD-201903219
Ryan L. Bangert
Deputy Attorney General for Legal Counsel
Office of the Attorney General
Filed: September 11, 2019

♦ ♦ ♦

## Opinions

**Opinion No. KP-0266**

Sherif Zaafran, M.D.

President

Texas Medical Board

Post Office Box 2018

Austin, Texas 78768-2018

Re: Regulatory authority over the administration of anesthesia when delegated by a physician to a nurse anesthetist (RQ-0278-KP)

**S U M M A R Y**

The practice of medicine includes the provision of anesthesia by a licensed physician. However, pursuant to subsection 301.002(2)(G) of the Occupations Code, when a certified registered nurse anesthetist administers anesthesia pursuant to a physician's delegation, such act falls within the scope of professional nursing.

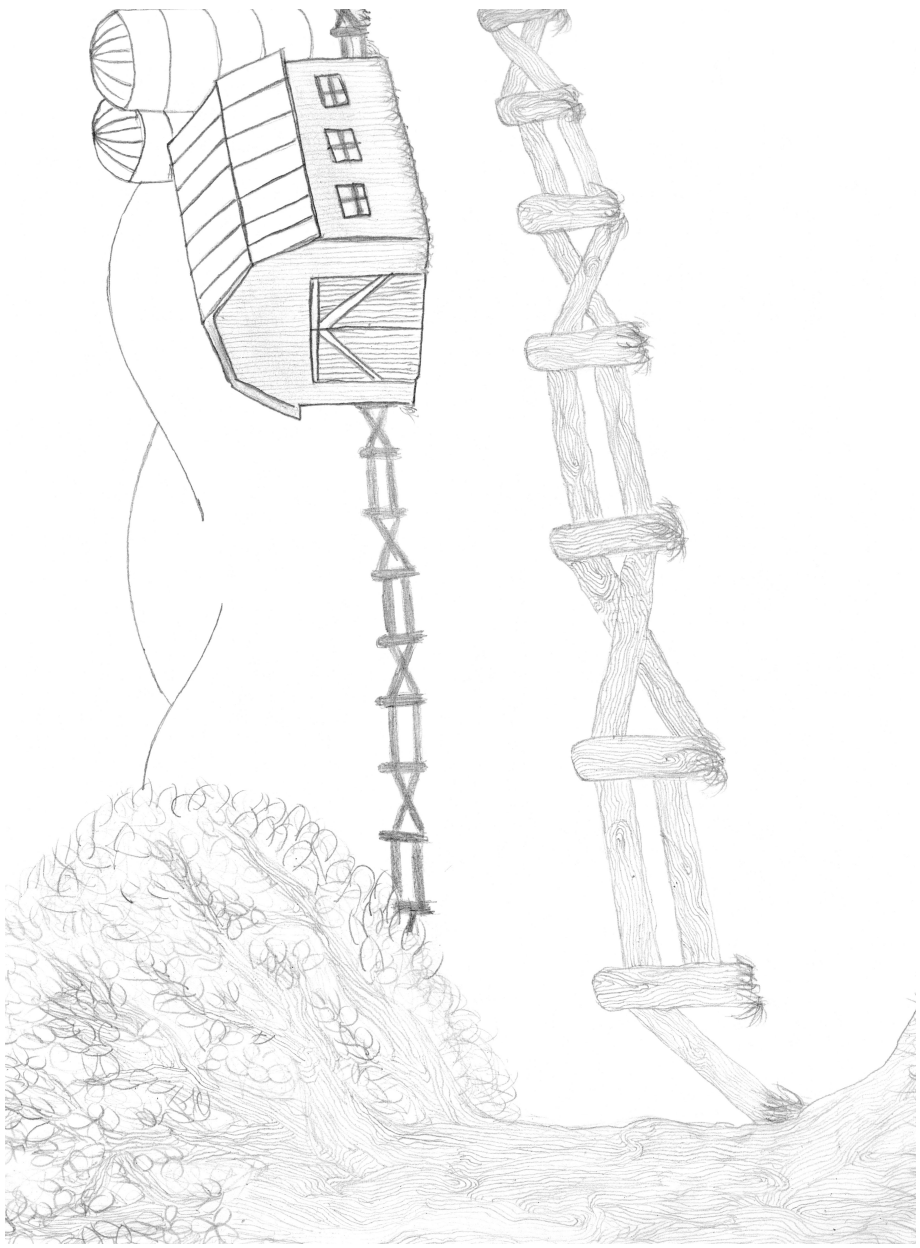
The Legislature authorized the Texas Medical Board to take disciplinary action against a physician who delegates professional medical acts to a person whom the physician knows or should know is unqualified to perform the acts. Thus, the Board possesses regulatory authority over a physician's decision to delegate the providing and administration of anesthesia to a certified registered nurse anesthetist.

A certified registered nurse anesthetist does not possess independent authority to administer anesthesia without delegation by a physician.

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

TRD-201903220
Ryan L. Bangert
Deputy Attorney General for Legal Counsel
Office of the Attorney General
Filed: September 11, 2019

♦ ♦ ♦



# EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

## TITLE 4. AGRICULTURE

## PART 1. TEXAS DEPARTMENT OF AGRICULTURE

### CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS
### SUBCHAPTER U. CITRUS CANKER QUARANTINE

**4 TAC §§19.400 - 19.408**

The Texas Department of Agriculture is renewing the effectiveness of new Title 4, Chapter 19, Subchapter U, Citrus Canker Quarantine, §§19.400 - 19.408, concerning citrus quarantines of noxious and invasive plans, which was adopted on an emergency basis. The text of the emergency rules was originally published in the May 24, 2019, issue of the *Texas Register* (44 TexReg 2557). The renewal will be effective for 60 days.

Filed with the Office of the Secretary of State on September 4, 2019.

TRD-201903090
Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
Original effective date: May 9, 2019
Expiration date: November 4, 2019
For further information, please call: (512) 463-4075

♦ ♦ ♦

Houston
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Amarillo
Pecos
El Paso
Texas

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 10. DEPARTMENT OF INFORMATION RESOURCES

### CHAPTER 213. ELECTRONIC AND INFORMATION RESOURCES

The Texas Department of Information Resources (department) proposes amendments to 1 TAC Chapter 213, §§213.1, 213.2, 213.10 - 213.21, and 213.30 - 213.41, concerning Electronic and Information Resources. The proposed changes include but are not limited to the addition of new definitions and the modification of some existing definitions in §213.1; amendment of accessibility standards to incorporate by reference existing federal law in §§213.10- 213.16 and §§213.30 - 213.36; requirements in §213.18 and §213.38 for commodity procurement contracts; and requirements in §213.21 and §213.41 regarding agency and institution of higher education accessibility policies and accessibility coordinator positions. In addition, the department proposes two new sections, §213.22 and §213.42, and the repeal of §213.14 and §213.34.

The U.S. Access Board's technical standards were fully adopted within the year preceding this proposal. The department has proposed amendments that will maintain conformity with federal standards by incorporating these standards by reference.

In addition, the department proposes correcting references to Texas Administrative Code and Texas Government Code in compliance with legal grammatical standards in §§213.2, 213.10 - 213.21 (for state agencies) and §§213.30 - 213.41 (for institutions of higher education) for clarity.

In §213.1 the department proposes to add the following definitions because of new or revised content in Chapter 213: "Completed Accessibility Conformance Report"; "Agency Head"; "Commercial off-the-shelf product"; "Electronic and information resources (EIR) Development Services"; "Hardware"; "Worldwide Web Consortium Web Content Accessibility Guidelines 2.0." DIR has also added a reference to all terms stated in Section 508 Appendices A and C.

The definitions of "Electronic and Information Resources (EIR)" and "Section 508" have been broadened for clarification; and the definition for "Exception" has been changed to include the phrase "agency head" rather than "Executive Director of an Agency." The department proposes deleting the definitions for "Information Technology", which is now included in the definition for "Electronic and Information Resources," and "TTY" as it is no longer applicable for new or revised content in Chapter 213.

The department further proposes an effective date of April 18, 2020, to permit agencies and institutions of higher education to become compliant with the proposed rules.

In §213.10, for state agencies, and §213.30, for institutions of higher education, the department proposes removing outdated federal standards from rule. The proposed language incorporates by reference the standards for software applications and operating systems articulated by federal law.

In §213.11, for state agencies, and §213.31, for institutions of higher education, the department proposes striking the standards for telecommunications products as under current federal standards, the telecommunications industry, rather than governmental entities, are subject to these requirements. The department proposes an amendment requiring contractual language obligating manufacturers of telecommunications equipment or providers of telecommunication services to assert compliance with federal law when such compliance is achievable.

In §213.12, for state agencies, and §213.32, for institutions of higher education, the department proposes removing outdated federal standards from rule. The proposed language incorporates by reference the standards for video and multimedia products articulated by federal law. The department further proposes new language requiring consideration of captioning and alternative forms of accommodation when such request is received by an entity.

In §213.13, for state agencies, and §213.33, for institutions of higher education, the department proposes amending the title from "Self Contained, Closed Products" to "Hardware." The proposed amendments remove outdated federal standards from rule. The proposed language incorporates by reference the standards for hardware articulated by federal law.

The department proposes the repeal of §213.14, for state agencies, and §213.34, for institutions of higher education, as these requirements are no longer imposed upon state agencies by the relevant federal statutes.

In §213.15, for state agencies, and §213.35, for institutions of higher education, the department proposes removing outdated federal standards from the rule. The department proposes clarifying language requiring compliance with this section only where EIR is noncompliant with other relevant sections as currently articulated by federal law.

In §213.16, for state agencies, and §213.36, for institutions of higher education, the department proposes renaming the rule for clarity. The department further proposes removing existing language regarding outdated federal standards. The proposed language incorporates by reference the standards for support documentation and services articulated by federal law.

In §213.17, for state agencies, and §213.37, for institutions of higher education, the department proposes adding language to clarify accessibility requirements for legacy EIR. The department proposes clarifying language for exceptions based on significant difficulty or expense and includes new language identifying the time frame in which an exception might be sought. Documentation required to approve an exception now includes evidence of consideration of alternative solutions.

In §213.18, for state agencies, and §213.38, for institutions of higher education, the department proposes requiring vendor provision of certain accessibility information during the procurement of the department's commodity procurement contracts, entity purchase off a department commodity procurement contract, or made directly by the entity. The proposed amendments further provide that completed accessibility conformance reports may be submitted in lieu of a VPAT. The proposed amendments also assert that EIR shall be considered noncompliant if these documents cannot be provided. The department amends the existing provision requiring accessibility testing for projects to require additional documentation of accessibility testing, planning, and execution criteria for the project. The proposed amendment applies to any EIR project that would meet MIRP criteria but lowers the monetary threshold to trigger this provision to $500,000.

In §213.19, for state agencies, and §213.39, for institutions of higher education, the department proposes eliminating the requirement that the department provide training regarding compliance with accessibility rules. The proposed rules also add a requirement that accessibility criteria shall be considered for inclusion in job descriptions where the position is responsible for EIR accessibility matters.

In §213.20, for state agencies, and §213.40, for institutions of higher education, the proposed rule expands the material gathered for the accessibility survey to include progress made towards compliance with accessibility rules.

In §213.21, for state agencies, and §213.41, for institutions of higher education, the department proposes requiring the EIR plan be agency approved and removes the requirement that it be published. The amendment further proposes that the EIR plan must include a information on how EIR will be maintained in compliance with accessibility rules. The department also proposes clarification regarding organizational placement of the EIR Accessibility Coordinator position to ensure effectiveness.

In §213.22, for state agencies, and §213.42, for institutions of higher education, the department proposes the establishment of a holdover provision to ensure that state agencies and institutions of higher education remain in compliance with the existing rule until the effective date of the proposed rule.

The changes to the chapter apply to state agencies and institutions of higher education. The assessment of the impact of the adopted changes on institutions of higher education was prepared in consultation with the Information Technology Council for Higher Education (ITCHE) in compliance with Texas Government Code §2054.121(c). ITCHE determined that there was no fiscal impact upon institutions of higher education as a result of the proposed changes.

Jeff Kline, State EIR Accessibility Program Director, has determined that during the first five-year period following the adoption of amendments to Chapter 213, there will be no fiscal impact on state agencies, institutions of higher education and local governments. The elimination of unnecessary rules and clarification of terms and definitions increases the effectiveness of the rules for agencies and institutions.

There is no impact on local government as a result of enforcing or administering the amended rule as proposed as they are not subject to the limits enacted by the Legislature. There is no economic impact on rural communities as a result of enforcing or administering the amended rule as proposed.

Pursuant to Government Code §2001.0221, the agency provides the following Governmental Growth Impact Statement for the proposed amendment. The agency has determined the following:

1. The proposed rule does not create or eliminate a government program.

2. Implementation of the proposed rule does not require the creation or elimination of employee positions.

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

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

5. The proposed rule does not create a new regulation.

6. The proposed rule does not repeal an existing regulation.

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

8. The proposed rule does not positively or adversely affect the state's economy.

Written comments on the proposed rules may be submitted to Christi Koenig Brisky, Assistant General Counsel, 300 West 15th Street, Suite 1300, Austin, Texas 78701, or to christi.brisky@dir.texas.gov. Comments will be accepted for 30 days after publication in the *Texas Register.*

## SUBCHAPTER A. DEFINITIONS

### 1 TAC §213.1, §213.2

The amendments are proposed under §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054; and §2054.453, Texas Government Code, which authorizes the department to adopt rules in compliance with federal standards and laws regarding the development, procurement, maintenance, and use of electronic information resources by state agencies to provide access to individuals with disabilities.

No other statute, article, or code is affected by this proposal.

*§213.1. Applicable Terms and Technologies for Electronic and Information Resources.*

The following words and terms, when used with this chapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) Completed Accessibility Conformance Report (ACR)--an accessibility report of an EIR item's compliance with Section 508 that is created using a VPAT template.

(2) [~~(1)~~] Accessible--Describes an electronic and information resource that can be used in a variety of ways and (the use of which) does not depend on a single sense or ability.

(3) Agency head--The top-most senior executive with operational accountability for an agency, department, commission, board,

office, council, authority, or other agency in the executive or judicial branch of state government that is created by the constitution or a statute of the state; or institutions of higher education as defined in Texas Education Code §61.003.

(4) [~~(2)~~] Alternate formats--Alternate formats usable by people with disabilities may include, but are not limited to, Braille, ASCII text, large print, recorded audio, and electronic formats that comply with this chapter.

(5) [~~(3)~~] Alternate methods--Different means of providing information, including product documentation, to people with disabilities. Alternate methods may include, but are not limited to, voice, fax, relay service, TTY, Internet posting, captioning, text-to-speech synthesis, and audio description.

(6) [~~(4)~~] Assistive technology--Any item, piece of equipment, or system, whether acquired commercially, modified, or customized, that is commonly used to increase, maintain, or improve functional capabilities of individuals with disabilities.

(7) Commercial off-the-shelf product--a software product that is available in the commercial marketplace prior to customization.

(8) [~~(5)~~] Department--The Department of Information Resources.

(9) [~~(6)~~] Electronic and information resources (EIR)--Includes information technology and any equipment or interconnected system or subsystem of equipment used to create, convert, duplicate, store, or deliver data or information. EIR includes telecommunications products (such as telephones), information kiosks and transaction machines, web sites, multimedia, and office equipment such as copiers and fax machines. The term does not include any equipment that contains embedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. For example, thermostats or temperature control devices, and medical equipment that contain information technology that is integral to its operation, are not information technology. If the embedded information technology has an externally available web or computer interface, that interface is considered EIR. Other terms such as, but not limited to, Information and Communications Technology (ICT), Information Technology (IT), Electronic Information Technology (EIT), etc. can be considered interchangeable terms with EIR for purposes of applicability or compliance with this chapter.

(10) Electronic and information resources (EIR) Development Services--Design, development, and / or programming services that developers provide to enterprises and software publishers.

(11) [~~(7)~~] Exception--A justified, documented non-compliance with one or more standards or specifications of Chapter 206 and/or Chapter 213 of this title, which has been approved by the agency head [~~Executive Director of an Agency~~] or the President or Chancellor of an Institution of Higher Education.

(12) [~~(8)~~] Exemption--A justified, documented non-compliance with one or more standards or specifications of Chapter 206 and/or Chapter 213 of this title, which has been approved by the department and which is applicable statewide.

[~~(9) Information technology--Any equipment or interconnected system or subsystem of equipment, that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. The term includes computers (including desktop and laptop computers), ancillary equipment, desktop software, client-server software, mainframe software, web application software and other types of software, firmware and similar procedures, services (including support services), and related resources.~~]

(13) Hardware. A tangible device, equipment, or physical component of ICT, such as telephones, computers, multifunction copy machines, and keyboards.

(14) [~~(10)~~] Major information resource project (MIRP)--Any information resources technology project that meets the criteria defined in Texas Government Code §2054.003(10).

(15) [~~(11)~~] Operable controls--A component of a product that requires physical contact for normal operation. Operable controls include, but are not limited to, mechanically operated controls, input and output trays, card slots, keyboards, and keypads.

(16) [~~(12)~~] Product--Electronic and information technology.

(17) [~~(13)~~] Section 508 Standards--The technical standards established by Section 508 of the Rehabilitation Act of 1973 as amended, 29 U.S.C. §794(d), 36 C.F.R. §1194.1, established by the federal Architectural and Transportation Barriers Compliance Board (the "Access Board") that apply to electronic and information technology developed, procured, maintained, or used by the federal government, including computer hardware and software, websites, phone systems, and copiers. The Section 508 standards were issued to implement Section 508 of the federal Rehabilitation Act of 1973, as amended, 29 U.S.C. 794(d)), which requires access for both members of the public and federal employees to such technologies when developed, procured, maintained, or used by federal agencies. [~~set forth in Title 36, Part 1194 of the Code of Federal Regulations established by the federal Architectural and Transportation Barriers Compliance Board (the "Access Board") that apply to electronic and information technology developed, procured, maintained, or used by the federal government, including computer hardware and software, websites, phone systems, and copiers. The Section 508 standards were issued to implement Section 508 of the federal Rehabilitation Act of 1973, as amended (29 U.S.C. 794d) which requires access for both members of the public and federal employees to such technologies when developed, procured, maintained, or used by federal agencies.~~]

(18) [~~(14)~~] Self Contained, Closed Products--Products that generally have embedded software and are commonly designed in such a fashion that a user cannot easily attach or install assistive technology. These products include, but are not limited to, information kiosks and information transaction machines, copiers, printers, calculators, fax machines, and other similar products.

(19) [~~(15)~~] Technical Accessibility Standards and Specifications--Accessibility standards and specifications for Texas agency and institution of higher education websites and EIR set forth in Chapter 206 and/or Chapter 213 of this title.

(20) [~~(16)~~] Telecommunications--The transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

(21) [~~(17)~~] Training/Technical Assistance--Training and technical assistance to comply with the accessibility standards.

[~~(18) TTY--An abbreviation for teletypewriter. Machinery or equipment that employs interactive text based communications through the transmission of coded signals across the telephone network. TTYs may include, for example, devices known as TDDs (telecommunication display devices or telecommunication devices for deaf per-~~

sons) or computers with special modems. TTYs are also called text telephones.]

(22) [(19)] Voluntary Product Accessibility Template (VPAT)--A vendor-supplied form for a commercial off-the-shelf Electronic and Information Resource used to document its compliance with technical accessibility standards and specifications. A link to the standardized VPAT form is available at the department's website.

(23) Worldwide Web Consortium Web Content Accessibility Guidelines 2.0--a referenceable, international technical standard containing 12 guidelines that are organized under 4 principles: perceivable, operable, understandable, and robust. For each guideline, there are testable success criteria, which are at three levels: A, AA, and AAA. Also known as ISO/IEC International Standard ISO/IEC 40500:2012.

(24) The terms referenced by Section 508 Appendices A and C shall have the meaning stated therein.

*§213.2. Institution of Higher Education.*

A university system or institution of higher education as defined by Texas Education Code §61.003[, Education Code].

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 September 9, 2019.

TRD-201903128
Amanda Crawford
Executive Director
Department of Information Resources
Earliest possible date of adoption: October 20, 2019
For further information, please call: (512) 475-4552

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## SUBCHAPTER B. ACCESSIBILITY STANDARDS FOR STATE AGENCIES

### 1 TAC §§213.10 - 213.13, 213.15 - 213.22

The amendments and new section are proposed under §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054; and §2054.453, Texas Government Code, which authorizes the department to adopt rules in compliance with federal standards and laws regarding the development, procurement, maintenance, and use of electronic information resources by state agencies to provide access to individuals with disabilities.

No other statute, article, or code is affected by this proposal.

*§213.10. Software Applications and Operating Systems.*

Effective April 18, 2020 [September 1, 2006], unless an exception is approved by the agency head [executive director of the state agency] or an exemption has been made for specific technologies pursuant to §213.17 of this chapter, all software applications and operating systems EIR developed, procured, or changed by a state agency shall comply with the standards described in this subchapter. Each state agency shall comply with the following standards referenced in Section 508 Appendix C [include in its accessibility policy the following standards/specifications]:

(1) Chapter 7, § 702.10 (WCAG 2.0 Level AA excluding Guideline 1.2 Time Based Media);

(2) Chapter 5, § 502 Interoperability with Assistive Technology;

(3) Chapter 5, § 503 Applications; and

(4) Chapter 5, § 504 Authoring Tools.

[(1) When software is designed to run on a system that has a keyboard, product functions shall be executable from a keyboard where the function itself or the result of performing a function can be discerned textually.]

[(2) Applications shall not disrupt or disable activated features of other products that are identified as accessibility features, where those features are developed and documented according to industry standards. Applications also shall not disrupt or disable activated features of any operating system that are identified as accessibility features where the application programming interface for those accessibility features has been documented by the manufacturer of the operating system and is available to the product developer.]

[(3) A well-defined on-screen indication of the current focus shall be provided that moves among interactive interface elements as the input focus changes. The focus shall be programmatically exposed so that assistive technology can track focus and focus changes.]

[(4) Sufficient information about a user interface element including the identity, operation and state of the element shall be available to assistive technology. When an image represents a program element, the information conveyed by the image must also be available in text.]

[(5) When bitmap images are used to identify controls, status indicators, or other programmatic elements, the meaning assigned to those images shall be consistent throughout an application's performance.]

[(6) Textual information shall be provided through operating system functions for displaying text. The minimum information that shall be made available is text content, text input caret location, and text attributes.]

[(7) Applications shall not override user selected contrast and color selections and other individual display attributes.]

[(8) When animation is displayed, the information shall be displayable in at least one non-animated presentation mode at the option of the user.]

[(9) Color coding shall not be used as the only means of conveying information, indicating an action, prompting a response, or distinguishing a visual element.]

[(10) When a product permits a user to adjust color and contrast settings, a variety of color selections capable of producing a range of contrast levels shall be provided.]

[(11) Software shall not use flashing or blinking text, objects, or other elements having a flash or blink frequency greater than 2 Hz and lower than 55 Hz.]

[(12) When electronic forms are used, the form shall allow people using assistive technology to access the information, field elements, and functionality required for completion and submission of the form, including all directions and cues.]

*§213.11. Telecommunications Products.*

Effective April 18, 2020, unless an exception is approved by the agency head or an exemption has been made for specific technologies pursuant to §213.17 of this chapter, when purchasing telecommunication equipment or services, a state agency shall contractually require the manufacturer of telecommunication equipment or provider of telecommu-

nication services to ensure that the equipment or services are in compliance with 47 U.S.C. § 255 and 36 C.F.R. § 1194.2, Appendix B., when such products are readily available or compliance is achievable. [Effective September 1, 2006, unless an exception is approved by the executive director of the state agency or an exemption has been made for specific technologies pursuant to §213.17 of this chapter, all EIR developed, procured, or changed by a state agency shall comply with the standards described in this subchapter. Each state agency shall include in its accessibility policy the following standards/specifications:]

[(1) Telecommunications products or systems which provide a function allowing voice communication and which do not themselves provide a TTY functionality shall provide a standard non-acoustic connection point for TTYs. Microphones shall be capable of being turned on and off to allow the user to intermix speech with TTY use.]

[(2) Telecommunications products which include voice communication functionality shall support all commonly used cross-manufacturer non-proprietary standard TTY signal protocols.]

[(3) Voice mail, auto-attendant, and interactive voice response telecommunications systems shall be usable by TTY users with their TTYs.]

[(4) Voice mail, messaging, auto-attendant, and interactive voice response telecommunications systems that require a response from a user within a time interval, shall give an alert when the time interval is about to run out, and shall provide sufficient time for the user to indicate more time is required.]

[(5) Where provided, caller identification and similar telecommunications functions shall also be available for users of TTYs, and for users who cannot see displays.]

[(6) For transmitted voice signals, telecommunications products shall provide a gain adjustable up to a minimum of 20 dB. For incremental volume control, at least one intermediate step of 12 dB of gain shall be provided.]

[(7) If the telecommunications product allows a user to adjust the receive volume, a function shall be provided to automatically reset the volume to the default level after every use.]

[(8) Where a telecommunications product delivers output by an audio transducer which is normally held up to the ear, a means for effective magnetic wireless coupling to hearing technologies shall be provided.]

[(9) Interference to hearing technologies (including hearing aids, cochlear implants, and assistive listening devices) shall be reduced to the lowest possible level that allows a user of hearing technologies to utilize the telecommunications product.]

[(10) Products that transmit or conduct information or communication, shall pass through cross-manufacturer, non-proprietary, industry-standard codes, translation protocols, formats or other information necessary to provide the information or communication in a usable format. Technologies which use encoding, signal compression, format transformation, or similar techniques shall not remove information needed for access or shall restore it upon delivery.]

[(11) Products which have mechanically operated controls or keys, shall comply with the following:]

[(A) Controls and keys shall be tactilely discernible without activating the controls or keys.]

[(B) Controls and keys shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist. The force required to activate controls and keys shall be 5 lbs. (22.2 N) maximum.]

[(C) If key repeat is supported, the delay before repeat shall be adjustable to at least 2 seconds. Key repeat rate shall be adjustable to 2 seconds per character.]

[(D) The status of all locking or toggle controls or keys shall be visually discernible, and discernible either through touch or sound.]

*§213.12. Video and Multimedia [Products].*

(a) Effective April 18, 2020 [September 1, 2006], unless an exception is approved by the agency head [executive director of the state agency] or an exemption has been made for specific technologies pursuant to 1 Texas Administrative Code §213.17 [of this chapter], all video and multimedia EIR developed, procured, or changed by a state agency shall comply with the standards described in this subchapter. Each state agency shall comply with the applicable standards referenced in Section 508 Appendix C. [include in its accessibility policy the following standards/specifications:]

[(1) Television tuners, including tuner cards for use in computers, shall be equipped with secondary audio program playback circuitry.]

[(2) Upon receiving a request for accommodation of a webcast of training/informational video productions which support the agency's mission, each state agency which receives such a request for accommodation shall provide an alternative form(s) of accommodation in accordance with §2054.456 and §2054.457, Texas Government Code.]

(b) Based on a request for accommodation of a webcast of a live/real time open meeting (Open Meetings Act, Texas Government Code, Chapter 551) or training and informational video productions which support the agency's mission, each state agency that receives such request shall consider captioning and alternative forms of accommodation for videos posted on state websites.

*§213.13. Hardware [Self Contained, Closed Products].*

(a) Effective April 18, 2020 [September 1, 2006], unless an exception is approved by the agency head [executive director of the state agency] or an exemption has been made for specific technologies pursuant to §213.17 of this chapter, all hardware EIR developed, procured, or changed by a state agency shall comply with the standards described in this subchapter. Each state agency shall comply with the following standards/specifications referenced in Section 508 Appendix C [include in its accessibility policy the following standards/specifications]:

(1) Chapter 4, § 401 General;

(2) Chapter 4, § 402 Closed Functionality;

(3) Chapter 4, § 403 Biometrics;

(4) Chapter 4, § 404 Preservation of Information Provided for Accessibility;

(5) Chapter 4, § 405 Privacy;

(6) Chapter 4, § 406 Standard Connections;

(7) Chapter 4, § 407 Operable Parts;

(8) Chapter 4, § 408 Display Screens;

(9) Chapter 4, § 409 Status Indicators;

(10) Chapter 4, § 410 Color Coding;

(11) Chapter 4, § 411 Audible Signals;

(12) Chapter 4, § 412 ICT with Two-Way Communication;

(13) Chapter 4, § 413 Closed Caption Processing Technologies;

(14) Chapter 4, § 414 Audio Description Processing Technologies; and

(15) Chapter 4, § 415 User Controls for Captions and Audio Descriptions.

[(1) Self contained products shall be usable by people with disabilities without requiring an end-user to attach assistive technology to the product. Personal headsets for private listening are not assistive technology.]

[(2) When a timed response is required, the user shall be alerted and given sufficient time to indicate more time is required.]

[(3) Where a product utilizes touchscreens or contact-sensitive controls, an input method shall be provided that complies with Telecommunications products in §213.11(11)(A) - (D) of this subchapter.]

[(4) When biometric forms of user identification or control are used, an alternative form of identification or activation, which does not require the user to possess particular biological characteristics, shall also be provided.]

[(5) When products provide auditory output, the audio signal shall be provided at a standard signal level through an industry standard connector that will allow for private listening. The product must provide the ability to interrupt, pause, and restart the audio at anytime.]

[(6) When products deliver voice output in a public area, incremental volume control shall be provided with output amplification up to a level of at least 65 dB. Where the ambient noise level of the environment is above 45 dB, a volume gain of at least 20 dB above the ambient level shall be user selectable. A function shall be provided to automatically reset the volume to the default level after every use.]

[(7) Color coding shall not be used as the only means of conveying information, indicating an action, prompting a response, or distinguishing a visual element.]

[(8) When a product permits a user to adjust color and contrast settings, a range of color selections capable of producing a variety of contrast levels shall be provided.]

[(9) Products shall be designed to avoid causing the screen to flicker with a frequency greater than 2 Hz and lower than 55 Hz.]

[(10) Products which are freestanding, non-portable, and intended to be used in one location and which have operable controls shall comply with the following:]

[(A) The position of any operable control shall be determined with respect to a vertical plane, which is 48 inches in length, centered on the operable control, and at the maximum protrusion of the product within the 48 inch length.]

[(B) Where any operable control is 10 inches or less behind the reference plane, the height shall be 54 inches maximum and 15 inches minimum above the floor.]

[(C) Where any operable control is more than 10 inches and not more than 24 inches behind the reference plane, the height shall be 46 inches maximum and 15 inches minimum above the floor.]

[(D) Operable controls shall not be more than 24 inches behind the reference plane.]

(b) When EIR hardware is located in maintenance or monitoring spaces, and where status indicators and operable parts are located in spaces that are frequented only by service personnel for maintenance, repair, or occasional monitoring of equipment, such status indicators and operable parts shall not be required to conform to §213.13 of this chapter.

*§213.15. Functional Performance Criteria.*

Effective April 18, 2020 [September 1, 2006], unless an exception is approved by the agency head [executive director of the state agency] or an exemption has been made for specific technologies pursuant to §213.17 of this chapter, all EIR developed, procured, or changed by a state agency shall comply with the standards described in this subchapter. To the extent that an EIR does not comply with the requirements of 1 Texas Administrative Code §§213.10 - 213.13 that are applicable to that EIR, the noncompliant features of that EIR shall conform to the standards referenced in Section 508 Appendix C, Chapter 3, § 302 Functional Performance Criteria. [Each state agency shall include in its accessibility policy the following standards/specifications:]

[(1) At least one mode of operation and information retrieval that does not require user vision shall be provided, or support for assistive technology used by people who are blind or visually impaired shall be provided.]

[(2) At least one mode of operation and information retrieval that does not require visual acuity greater than 20/70 shall be provided in audio and enlarged print output working together or independently, or support for assistive technology used by people who are visually impaired shall be provided.]

[(3) At least one mode of operation and information retrieval that does not require user hearing shall be provided, or support for assistive technology used by people who are deaf or hard of hearing shall be provided.]

[(4) Where audio information is important for the use of a product, at least one mode of operation and information retrieval shall be provided in an enhanced auditory fashion, or support for assistive hearing devices shall be provided.]

[(5) At least one mode of operation and information retrieval that does not require user speech shall be provided, or support for assistive technology used by people with disabilities shall be provided.]

[(6) At least one mode of operation and information retrieval that does not require fine motor control or simultaneous actions and that is operable with limited reach and strength shall be provided.]

*§213.16. Support [Information,] Documentation[,] and Services [Support].*

Effective April 18, 2020 [September 1, 2006], unless an exception is approved by the agency head [executive director of the state agency] or an exemption has been made for specific technologies pursuant to §213.17 of this chapter, all documentation and services that support the use of EIR developed, procured, or changed by a state agency shall comply with the standards described in this subchapter. Each state agency shall comply with the following standards referenced in Section 508 Appendix C, Chapter 6 [include in its accessibility policy the following standards/specifications]:

(1) Chapter 6, § 602 Support Documentation; and

(2) Chapter 6, § 603 Support.

[(1) Product support documentation provided to end-users shall be made available in alternate formats upon request, at no additional charge.]

[(2) End-users shall have access to a description of the accessibility and compatibility features of products in alternate formats or alternate methods upon request, at no additional charge.]

[(3) Support services for products shall accommodate the communication needs of end-users with disabilities.]

*§213.17. Compliance Exceptions and Exemptions.*

Effective April 18, 2020 [September 1, 2006], all EIR developed, procured, or changed by a state agency shall comply with the standards and specifications of Chapter 206 and/or Chapter 213 of this title, unless an exception is approved by the agency head [executive director of the agency,] or an exemption is granted by the department.

(1) Legacy EIR. Any component or portion of existing EIR that complies with an earlier standard issued pursuant to Chapter 206 or Chapter 213 of this title, and the user interface has not been altered on or after April 18, 2020, shall not be required to be modified to conform to this revised rule.

(2) [(1)] In its accessibility policy, an agency shall include standards and processes for handling exception requests for all EIR, including those subject to exceptions for a significant difficulty or expense contained in Texas Government Code §2054.460[, Texas Government Code].

(3) [(2)] Exceptions for a material [significant] difficulty or expense pertaining to significant barriers to users under Texas Government Code §2054.460[, Texas Government Code] must be approved in writing by the agency head for EIR that does not comply with the standards and specifications described in Chapter 206 and/or Chapter 213 of this title, pursuant to Texas Government Code §2054.460: [executive director of an agency for each EIR development or procurement, including outsourced development, which does not comply with the standards and specifications described in Chapter 206 and/or Chapter 213 of this title, pursuant to §2054.460., Texas Government Code].

(A) prior to the procurement, completion, use, or deployment;

(B) or at the point the barrier is identified if the vendor is unable to immediately remedy the failure to comply with Chapter 206 and/or Chapter 213 of this title.

(4) [(3)] An approved exception for a significant difficulty or expense under Texas Government Code §2054.460[, Texas Government Code] shall include the following:

(A) a date of expiration or duration of the exception;

(B) a plan for alternate means of access for persons with disabilities;

(C) justification for the exception including technical barriers, cost of remediation, fiscal impact for bringing the EIR into compliance, and other identified risks; and

(D) documentation of how the agency considered alternative solutions and all agency resources available to the program or program component for which the product is being developed, procured, maintained, or used. Examples may include, but are not limited to, agency budget, grants, and alternative vendor or product selections.

(5) [(4)] Agencies shall maintain records of approved exceptions in accordance with the agency's records retention schedule.

(6) [(5)] The department shall establish and maintain a list of electronic and information technology resources which are determined to be exempt from the standards and specifications of all or part of Chapter 206 and/or Chapter 213 of this title.

(7) [(6)] The list of exempt EIR will be posted under the Accessibility section of the department's website.

(8) [(7)] The following information shall be provided for each exemption listed:

(A) a date of expiration or duration of the exemption;

(B) a plan for alternate means of access for persons with disabilities;

(C) justification for the exemption including technical barriers, cost of remediation, fiscal impact for bringing the EIR into compliance, and other identified risks; and

(D) written approval of the department's executive director.

(9) [(8)] The department shall establish and publish a policy under the Accessibility section of its website which defines the procedures and standards used to determine which electronic or information resources are exempt from the standards and specifications described in Chapter 206 and/or Chapter 213 of this title.

*§213.18. Procurements.*

(a) The department, in establishing commodity procurement contracts, for which the solicitation is issued on or after April 18, 2020 [January 1, 2015], shall obtain and make available to state agencies accessibility information for products or services, where applicable, through one of the following methods [all that apply]:

[(1) accessibility information for products or services, where applicable, through one of the following methods:]

(1) [(A)] inclusion of or URLs to manufacturer pages of completed VPATs or ACRs for applicable Commercial Off the Shelf products or services submitted in vendor solicitation responses; [the URL to completed Voluntary Product Accessibility Templates (VPATs) or equivalent reporting templates;]

(2) [(B)] other documents/forms requested by the department in commodity procurement solicitations that provide credible evidence of the vendor's capability or ability to produce accessible EIR products and services. Such evidence may include, but is not limited to, a vendor's internal accessibility policy documents, contractual warranties for accessibility, accessibility testing documents, and examples of prior work results [accessible electronic documents that address the same accessibility criteria in substantively the same format as VPATs or equivalent reporting templates]; or

(3) [(C)] the URL to a web page which explains how to request completed ACRs or VPATs[, or equivalent reporting templates,] for any products under contract;

[(2) credible evidence of the vendor's capability or ability to produce accessible EIR products and services. Such evidence may include, but is not limited to, a vendor's internal accessibility policy documents, contractual warranties for accessibility, accessibility testing documents, and examples of prior work results.]

(b) For the procurement of EIR made directly by an agency or through the department's commodity procurement contracts for which the solicitation is issued on or after April 18, 2020 [January 1, 2015], the agency shall require a vendor to provide accessibility information for the purchased products or services, where applicable, through one of the following methods [all that apply]:

[(1) accessibility information for the purchased products or services, where applicable, through one of the following methods:]

(1) [(A)] inclusion of URLs to manufacturer pages of completed VPATS or accessibility conformance reports for applicable Commercial Off the Shelf products / or services; [the URL to completed VPATs or equivalent reporting templates;]

(2) [~~(B)~~] other documents / forms requested by the agency that provide credible evidence of the vendor's capability or ability to produce accessible EIR products and services. Such evidence may include, but is not limited to, a vendor's internal accessibility policy documents, contractual warranties for accessibility, accessibility testing documents, and examples of prior work results; or [~~an accessible electronic document that addresses the same accessibility criteria in substantially the same format as VPATs or equivalent reporting templates; or~~]

(3) [~~(C)~~] the URL to a web page which explains how to request completed ACRs or VPATs[~~, or equivalent reporting templates,~~] for any products under contract;

(4) If credible accessibility documentation cannot be provided, then EIR shall be considered noncompliant.

[~~(2) credible evidence of the vendor's capability or ability to produce accessible EIR products and services. Such evidence may include, but is not limited to, a vendor's internal accessibility policy documents, contractual warranties for accessibility, accessibility testing documents, and examples of prior work results.~~]

(c) An agency shall implement a procurement accessibility policy, and supporting business processes and contract terms, for making procurement decisions. An agency shall monitor the procurement processes and contracts for accessibility compliance.

(d) This subchapter applies to EIR developed, procured, or materially changed by an agency, or developed, procured, or materially changed by a contractor under a contract with an agency which requires the use of such product, or requires the use, to a significant extent, of such product in the performance of a service or the furnishing of a product.

(e) Unless an exception is approved by the agency head [~~the executive director of the state agency~~] pursuant to Texas Government Code §2054.460[~~, Texas Government Code,~~] and 1 Texas Administrative Code §213.17 [~~of this chapter,~~] or unless an exemption is approved by the department, pursuant to Texas Government Code §2054.460[~~, Texas Government Code,~~] and 1 Texas Administrative Code §213.17 [~~of this chapter~~], all EIR products developed, procured, or materially changed through a procured services contract, and all electronic and information resource services provided through hosted or managed services contracts, shall comply with the provisions of Chapter 206 and Chapter 213 of this title, as applicable.

(f) Nothing in this subchapter is intended to prevent the use of designs or technologies as alternatives to those prescribed in this subchapter provided they result in substantially equivalent or greater access to and use of a product for people with disabilities.

(g) Accessibility testing, planning, and execution criteria shall be documented for the project and accessibility testing shall be performed by a third-party testing resource or knowledgeable state agency staff member to validate compliance with 1 Texas Administrative Code §206.50 and this chapter for any EIR project whose developments costs exceed $500,000 and that:

(1) requires one year or longer to reach operations status;

(2) involves more than one state agency or institution of higher education; or

(3) substantially alters work methods of agency personnel or the delivery of services to clients.

[~~(g) For projects which meet the criteria of a major information resource project (MIRP), accessibility testing shall be documented by a knowledgeable agency staff member or third party testing resource to validate compliance with §206.50. of this title and this chapter.~~]

*§213.19. Accessibility Training, [~~and~~] Technical Assistance, and Job Descriptions.*

(a) The department shall provide [~~training,~~] training resources, and assistance regarding compliance with Chapter 206 and Chapter 213 of this title, pursuant to Texas Government Code §2054.452[~~, Texas Government Code~~].

(1) The department shall schedule on-going training events or seminars, focused on accessibility development, testing, procurement and/or awareness training.

(2) The department shall publish information regarding publicly available accessibility training opportunities and technical assistance.

(b) The executive director of each agency shall ensure appropriate staff receives training necessary to meet accessibility-related rules.

(c) Each state agency shall consider including accessibility criteria in job descriptions where the position is responsible for EIR accessibility matters.

*§213.20. Accessibility Survey and Reporting Requirements.*

(a) The department shall conduct an EIR accessibility survey regarding progress on and compliance with Chapter 206 and Chapter 213 of this title, pursuant to Texas Government Code §2054.464[~~, Texas Government Code~~].

(b) Each state agency shall be required to complete the accessibility survey within the prescribed deadline established by the department. Survey responses shall be supported by agency documentation.

*§213.21. EIR Accessibility Policy and Coordinator.*

(a) The department shall designate and maintain a person responsible for statewide accessibility initiatives.

(b) Pursuant to 1 Texas Administrative Code §206.54 [~~of this title~~], each state agency shall publish a current accessibility policy which includes the standards and specifications of this chapter.

(c) Each state agency's accessibility policy shall require an agency-approved [~~published~~] plan by which EIR will be brought into and maintained in compliance with the Technical Accessibility Standards and Specifications of this chapter. The plan will include a process for corrective actions to remediate non-compliant items.

(d) The agency head [~~of each state agency~~] shall designate an EIR Accessibility Coordinator who shall be organizationally placed to facilitate agency-wide progress in EIR Accessibility compliance and practices in support of [~~develop, support and maintain~~] their internal accessibility policy [~~agency-wide~~]. The state agency's designation must contain the individual's name and other information in the format prescribed by the department.

(e) A state agency shall inform the department within 30 days whenever the agency EIR Accessibility Coordinator position is vacant, or a new/replacement EIR Accessibility Coordinator is designated.

(f) An agency shall establish goals for making its EIR accessible, which includes progress measurements towards meeting those goals.

*§213.22. Holdover.*

All rules in this chapter shall remain in effect as previously adopted until the specified effective date of April 18, 2020.

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 September 9, 2019.

TRD-201903133
Amanda Crawford
Executive Director
Department of Information Resources
Earliest possible date of adoption: October 20, 2019
For further information, please call: (512) 475-4552

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**1 TAC §213.14**

The repeal is proposed under §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054; and §2054.453, Texas Government Code, which authorizes the department to adopt rules in compliance with federal standards and laws regarding the development, procurement, maintenance, and use of electronic information resources by state agencies to provide access to individuals with disabilities.

No other statute, article, or code is affected by this proposal.

*§213.14. Desktop and Portable Computers.*

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 September 9, 2019.

TRD-201903138
Amanda Crawford
Executive Director
Department of Information Resources
Earliest possible date of adoption: October 20, 2019
For further information, please call: (512) 475-4552

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## SUBCHAPTER C. ACCESSIBILITY STANDARDS FOR INSTITUTIONS OF HIGHER EDUCATION

**1 TAC §§213.30 - 213.33, 213.35 - 213.42**

The amendments and new section are proposed under §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054; and §2054.453, Texas Government Code, which authorizes the department to adopt rules in compliance with federal standards and laws regarding the development, procurement, maintenance, and use of electronic information resources by state agencies to provide access to individuals with disabilities.

No other statute, article, or code is affected by this proposal.

*§213.30. Software Applications and Operating Systems.*

Effective April 18, 2020 [~~September 1, 2006~~], unless an exception is approved by the president or chancellor of an institution of higher education or an exemption has been made for specific technologies pursuant to 1 Texas Administrative Code §213.37 [~~of this chapter.~~] all software applications and operating systems EIR developed, procured, or changed by an institution of higher education shall comply with the standards described in this subchapter. Each institution of higher education shall comply with the following standards referenced in Section 508 Appendix C [~~include in its accessibility policy the following standards/specifications~~]:

(1) Chapter 7, § 702.10 (WCAG 2.0 Level AA excluding Guideline 1.2 Time Based Media);

(2) Chapter 5, § 502 Interoperability with Assistive Technology;

(3) Chapter 5, § 503 Applications; and

(4) Chapter 5, § 504 Authoring Tools.

[~~(1) When software is designed to run on a system that has a keyboard, product functions shall be executable from a keyboard where the function itself or the result of performing a function can be discerned textually.~~]

[~~(2) Applications shall not disrupt or disable activated features of other products that are identified as accessibility features, where those features are developed and documented according to industry standards. Applications also shall not disrupt or disable activated features of any operating system that are identified as accessibility features where the application programming interface for those accessibility features has been documented by the manufacturer of the operating system and is available to the product developer.~~]

[~~(3) A well-defined on-screen indication of the current focus shall be provided that moves among interactive interface elements as the input focus changes. The focus shall be programmatically exposed so that assistive technology can track focus and focus changes.~~]

[~~(4) Sufficient information about a user interface element including the identity, operation and state of the element shall be available to assistive technology. When an image represents a program element, the information conveyed by the image must also be available in text.~~]

[~~(5) When bitmap images are used to identify controls, status indicators, or other programmatic elements, the meaning assigned to those images shall be consistent throughout an application's performance.~~]

[~~(6) Textual information shall be provided through operating system functions for displaying text. The minimum information that shall be made available is text content, text input caret location, and text attributes.~~]

[~~(7) Applications shall not override user selected contrast and color selections and other individual display attributes.~~]

[~~(8) When animation is displayed, the information shall be displayable in at least one non-animated presentation mode at the option of the user.~~]

[~~(9) Color coding shall not be used as the only means of conveying information, indicating an action, prompting a response, or distinguishing a visual element.~~]

[~~(10) When a product permits a user to adjust color and contrast settings, a variety of color selections capable of producing a range of contrast levels shall be provided.~~]

[~~(11) Software shall not use flashing or blinking text, objects, or other elements having a flash or blink frequency greater than 2 Hz and lower than 55 Hz.~~]

[(12) When electronic forms are used, the form shall allow people using assistive technology to access the information, field elements, and functionality required for completion and submission of the form, including all directions and cues.]

*§213.31. Telecommunications Products.*

Effective April 18, 2020, unless an exception is approved by the agency head or an exemption has been made for specific technologies pursuant to 1 Texas Administrative Code §213.37, when purchasing telecommunication equipment or services, a state agency shall contractually require the manufacturer of telecommunication equipment or provider of telecommunication services to ensure that the equipment or services are in compliance with 47 U.S.C. § 255 and 36 C.F.R. § 1194.2, Appendix B, when such products are readily available or compliance is achievable. [Effective September 1, 2006, unless an exception is approved by the president or chancellor of an institution of higher education or an exemption has been made for specific technologies pursuant to §213.36, all EIR developed, procured, or changed by an institution of higher education shall comply with the standards described in this subchapter. Each institution of higher education shall include in its accessibility policy the following standards/specifications:]

[(1) Telecommunications products or systems which provide a function allowing voice communication and which do not themselves provide a TTY functionality shall provide a standard non-acoustic connection point for TTYs. Microphones shall be capable of being turned on and off to allow the user to intermix speech with TTY use.]

[(2) Telecommunications products which include voice communication functionality shall support all commonly used cross-manufacturer non-proprietary standard TTY signal protocols.]

[(3) Voice mail, auto-attendant, and interactive voice response telecommunications systems shall be usable by TTY users with their TTYs.]

[(4) Voice mail, messaging, auto-attendant, and interactive voice response telecommunications systems that require a response from a user within a time interval, shall give an alert when the time interval is about to run out, and shall provide sufficient time for the user to indicate more time is required.]

[(5) Where provided, caller identification and similar telecommunications functions shall also be available for users of TTYs, and for users who cannot see displays.]

[(6) For transmitted voice signals, telecommunications products shall provide a gain adjustable up to a minimum of 20 dB. For incremental volume control, at least one intermediate step of 12 dB of gain shall be provided.]

[(7) If the telecommunications product allows a user to adjust the receive volume, a function shall be provided to automatically reset the volume to the default level after every use.]

[(8) Where a telecommunications product delivers output by an audio transducer which is normally held up to the ear, a means for effective magnetic wireless coupling to hearing technologies shall be provided.]

[(9) Interference to hearing technologies (including hearing aids, cochlear implants, and assistive listening devices) shall be reduced to the lowest possible level that allows a user of hearing technologies to utilize the telecommunications product.]

[(10) Products that transmit or conduct information or communication, shall pass through cross-manufacturer, non-proprietary, industry-standard codes, translation protocols, formats or other information necessary to provide the information or communication in a usable format. Technologies which use encoding, signal compression, format transformation, or similar techniques shall not remove information needed for access or shall restore it upon delivery.]

[(11) Products which have mechanically operated controls or keys, shall comply with the following:]

[(A) Controls and keys shall be tactilely discernible without activating the controls or keys.]

[(B) Controls and keys shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist. The force required to activate controls and keys shall be 5 lbs. (22.2 N) maximum.]

[(C) If key repeat is supported, the delay before repeat shall be adjustable to at least 2 seconds. Key repeat rate shall be adjustable to 2 seconds per character.]

[(D) The status of all locking or toggle controls or keys shall be visually discernible, and discernible either through touch or sound.]

*§213.32. Video and Multimedia [Products].*

(a) Effective April 18, 2020 [September 1, 2006], unless an exception is approved by the president or chancellor of an institution of higher education or an exemption has been made for specific technologies pursuant to 1 Texas Administrative Code §213.37 [of this chapter], all video and multimedia EIR developed, procured or changed by an institution of higher education shall comply with the standards described in this subchapter. Each institution of higher education shall comply with the standards referenced in Section 508 Appendix C. [include in its accessibility policy the following standards/specifications:]

[(1) Television tuners, including tuner cards for use in computers, shall be equipped with secondary audio program playback circuitry.]

[(2) Upon receiving a request for accommodation of a web cast of training/informational video productions which support the institution of higher education's mission, each institution of higher education which receives such a request for accommodation shall provide an alternative form(s) of accommodation in accordance with §2054.456 and §2054.457, Texas Government Code.]

(b) Based on a request for accommodation of a webcast of a live/real time open meeting (Open Meetings Act, Texas Government Code, Chapter 551) or training and informational video productions which support the institution's mission, each institution of higher education that receives such request shall consider captioning and alternative forms of accommodation for videos posted on state websites.

*§213.33. Hardware [Self Contained, Closed Products].*

(a) Effective April 18, 2020 [September 1, 2006], unless an exception is approved by the president or chancellor of an institution of higher education or an exemption has been made for specific technologies pursuant to §213.37 of this chapter, all hardware EIR developed, procured, or changed by an institution of higher education shall comply with the following standards referenced in US Section 508 Appendix C Chapter 4 [described in this subchapter. Each institution of higher education shall include in its accessibility policy the following standards/specifications:

(1) Chapter 4, § 401 General;

(2) Chapter 4, § 402 Closed Functionality;

(3) Chapter 4, § 403 Biometrics;

(4) Chapter 4, § 404 Preservation of Information Provided for Accessibility;

(5) Chapter 4, § 405 Privacy;

(6) Chapter 4, § 406 Standard Connections;

(7) Chapter 4, § 407 Operable Parts;

(8) Chapter 4, § 408 Display Screens;

(9) Chapter 4, § 409 Status Indicators;

(10) Chapter 4, § 410 Color Coding;

(11) Chapter 4, § 411 Audible Signals;

(12) Chapter 4, § 412 ICT with Two-Way Communication;

(13) Chapter 4, § 413 Closed Caption Processing Technologies;

(14) Chapter 4, § 414 Audio Description Processing Technologies; and

(15) Chapter 4, § 415 User Controls for Captions and Audio Descriptions.

[(1) Self contained products shall be usable by people with disabilities without requiring an end-user to attach assistive technology to the product. Personal headsets for private listening are not assistive technology.]

[(2) When a timed response is required, the user shall be alerted and given sufficient time to indicate more time is required.]

[(3) Where a product utilizes touch screens or contact-sensitive controls, an input method shall be provided that complies with Telecommunications products in §213.31(11)(A) - (D) of this subchapter.]

[(4) When biometric forms of user identification or control are used, an alternative form of identification or activation, which does not require the user to possess particular biological characteristics, shall also be provided.]

[(5) When products provide auditory output, the audio signal shall be provided at a standard signal level through an industry standard connector that will allow for private listening. The product must provide the ability to interrupt, pause, and restart the audio at anytime.]

[(6) When products deliver voice output in a public area, incremental volume control shall be provided with output amplification up to a level of at least 65 dB. Where the ambient noise level of the environment is above 45 dB, a volume gain of at least 20 dB above the ambient level shall be user selectable. A function shall be provided to automatically reset the volume to the default level after every use.]

[(7) Color coding shall not be used as the only means of conveying information, indicating an action, prompting a response, or distinguishing a visual element.]

[(8) When a product permits a user to adjust color and contrast settings, a range of color selections capable of producing a variety of contrast levels shall be provided.]

[(9) Products shall be designed to avoid causing the screen to flicker with a frequency greater than 2 Hz and lower than 55 Hz.]

[(10) Products which are freestanding, non-portable, and intended to be used in one location and which have operable controls shall comply with the following:]

[(A) The position of any operable control shall be determined with respect to a vertical plane, which is 48 inches in length, centered on the operable control, and at the maximum protrusion of the product within the 48 inch length.]

[(B) Where any operable control is 10 inches or less behind the reference plane, the height shall be 54 inches maximum and 15 inches minimum above the floor.]

[(C) Where any operable control is more than 10 inches and not more than 24 inches behind the reference plane, the height shall be 46 inches maximum and 15 inches minimum above the floor.]

[(D) Operable controls shall not be more than 24 inches behind the reference plane.]

(b) When EIR hardware is located in maintenance or monitoring spaces, and where status indicators and operable parts are located in spaces that are frequented only by service personnel for maintenance, repair, or occasional monitoring of equipment, such status indicators and operable parts shall not be required to conform to §213.33 of this chapter.

*§213.35. Functional Performance Criteria.*

Effective April 18, 2020 [September 1, 2006], unless an exception is approved by the president or chancellor of an institution of higher education or an exemption has been made for specific technologies pursuant to 1 Texas Administrative Code §213.37 [of this chapter], all EIR developed, procured, or changed by an institution of higher education shall comply with the standards described in this subchapter. To the extent that an EIR does not comply with the requirements of 1 Texas Administrative Code §§213.30 - 213.33 that are applicable to that EIR, the noncompliant features of that EIR shall conform to the standards referenced in Section 508 Appendix C, Chapter 3, § 302 Functional Performance Criteria. [Each institution of higher education shall include in its accessibility policy the following standards/specifications:]

[(1) At least one mode of operation and information retrieval that does not require user vision shall be provided, or support for assistive technology used by people who are blind or visually impaired shall be provided.]

[(2) At least one mode of operation and information retrieval that does not require visual acuity greater than 20/70 shall be provided in audio and enlarged print output working together or independently, or support for assistive technology used by people who are visually impaired shall be provided.]

[(3) At least one mode of operation and information retrieval that does not require user hearing shall be provided, or support for assistive technology used by people who are deaf or hard of hearing shall be provided.]

[(4) Where audio information is important for the use of a product, at least one mode of operation and information retrieval shall be provided in an enhanced auditory fashion, or support for assistive hearing devices shall be provided.]

[(5) At least one mode of operation and information retrieval that does not require user speech shall be provided, or support for assistive technology used by people with disabilities shall be provided.]

[(6) At least one mode of operation and information retrieval that does not require fine motor control or simultaneous actions and that is operable with limited reach and strength shall be provided.]

*§213.36. Support [Information,] Documentation[,] and Services [Support].*

Effective April 18, 2020 [September 1, 2006], unless an exception is approved by the president or chancellor of an institution of higher education or an exemption has been made for specific technologies pursuant to §213.37 of this chapter, all documentation and services that support the use of EIR developed, procured, or changed by an institution of higher education shall comply with the following standards

referenced in US Section 508 Appendix C, Chapter 6 [described in this subchapter. Each institution of higher education shall include in its accessibility policy the following standards/specifications]:

(1) Chapter 6, § 602 Support Documentation; and

(2) Chapter 6, § 603 Support Services.

[(1) Product support documentation provided to end-users shall be made available in alternate formats upon request, at no additional charge.]

[(2) End-users shall have access to a description of the accessibility and compatibility features of products in alternate formats or alternate methods upon request, at no additional charge.]

[(3) Support services for products shall accommodate the communication needs of end-users with disabilities.]

*§213.37. Compliance Exceptions and Exemptions.*

Effective April 18, 2020 [September 1, 2006], all EIR developed, procured, or changed by an institution of higher education shall comply with the standards and specifications of Chapter 206 and/or Chapter 213 of this title, unless an exception is approved by the president or chancellor of an institution of higher education[,] or an exemption is granted by the department.

(1) Legacy EIR. Any component or portion of existing EIR that complies with an earlier standard issued pursuant to Chapter 206 or Chapter 213 of this title, and the user interface has not been altered on or after April 18, 2020, shall not be required to be modified to conform to this revised rule.

(2) [(1)] In its accessibility policy, an institution of higher education shall include standards and processes for handling exception requests for all EIR, including those subject to exceptions for a significant difficulty or expense contained in Texas Government Code §2054.460[, Texas Government Code].

(3) [(2)] Exceptions for a material [significant] difficulty or expense pertaining to significant barriers to users under Texas Government Code §2054.460[,Texas Government Code] must be approved in writing by the president or chancellor of an institution of higher education for EIR that does not comply with the standards and specifications described in Chapter 206 and/or Chapter 213 of this title, pursuant to Texas Government Code § 2054.460: [for each EIR development or procurement, including outsourced development, which does not comply with the standards and specifications described in Chapter 206 and/or Chapter 213 of this title, pursuant to §2054.460, Texas Government Code.]

(A) prior to the procurement, completion, use, or deployment; or

(B) at the point the barrier is identified if the vendor is unable to immediately remedy the failure to comply with Chapter 206 and/or Chapter 213 of this title.

(4) [(3)] An approved exception for a significant difficulty or expense under Texas Government Code §2054.460[, Texas Government Code] shall include the following:

(A) a date of expiration or duration of the exception;

(B) a plan for alternate means of access for persons with disabilities;

(C) justification for the exception including technical barriers, cost of remediation, fiscal impact for bringing the EIR into compliance, and other identified risks; and

(D) documentation of how the institution of higher education considered alternative solutions and all institution resources available to the program or program component for which the product is being developed, procured, maintained, or used. Examples may include, but are not limited to, institution [agency] budget, grants, and alternative vendor or product selections.

(5) [(4)] Institutions of higher education shall maintain records of approved exceptions in accordance with that institution of higher education's records retention schedule.

(6) [(5)] The department shall establish and maintain a list of electronic and information technology resources which are determined to be exempt from the standards and specifications of all or part of Chapter 206 and/or Chapter 213 of this title.

(7) [(6)] The list of exempt EIR will be posted under the Accessibility section of the department's website.

(8) [(7)] The following information shall be provided for each exemption listed:

(A) a date of expiration or duration of the exemption;

(B) a plan for alternate means of access for persons with disabilities;

(C) justification for the exemption including technical barriers, cost of remediation, fiscal impact for bringing the EIR into compliance, and other identified risks; and

(D) written approval of the department's executive director.

(9) [(8)] The department shall establish and publish a policy under the Accessibility section of its website which defines the procedures and standards used to determine which electronic or information resources are exempt from the standards and specifications described in Chapter 206 and/or Chapter 213 of this title.

*§213.38. Procurements.*

(a) The department, in establishing commodity procurement contracts, for which the solicitation is issued on or after April 18, 2020 [January 1, 2015], shall obtain and make available to institutions of higher education accessibility information for products or services, where applicable, through one of the following methods: [all that apply:]

[(1) accessibility information for products or services, where applicable, through one of the following methods:]

(1) [(A)] inclusion of or URLs to manufacturer pages of completed VPATs or ACRs for applicable Commercial Off the Shelf products / or services submitted in vendor solicitation responses; [the URL to completed Voluntary Product Accessibility Templates (VPATs) or equivalent reporting templates;]

(2) [(B)] other documents / forms requested by the department in commodity procurement solicitations that provide credible evidence of the vendor's capability or ability to produce accessible EIR products and services. Such evidence may include, but is not limited to, a vendor's internal accessibility policy documents, contractual warranties for accessibility, accessibility testing documents, and examples of prior work results [accessible electronic documents that address the same accessibility criteria in substantively the same format as VPATs or equivalent reporting templates]; or

(3) [(C)] the URL to a web page which explains how to request completed ACRs or VPATs[, or equivalent reporting templates,] for any products under contract;

[(2) credible evidence of the vendor's capability or ability to produce accessible EIR products and services. Such evidence may include, but is not limited to, a vendor's internal accessibility policy documents, contractual warranties for accessibility, accessibility testing documents, and examples of prior work results.]

(b) For the procurement of EIR made directly by an institution of higher education or through the department's commodity procurement contracts for which the solicitation is issued on or after April 18, 2020 [January 1, 2015], the institution shall require a vendor to provide accessibility information for the purchased products or services, where applicable, through one of the following methods: [all that apply:]

[(1) accessibility information for the purchased products or services, where applicable, through one of the following methods:]

(1) [(A)] inclusion of or URLs to manufacturer pages of completed VPATs or accessibility conformance reports for applicable Commercial Off the Shelf products / or services [the URL to completed VPATs or equivalent reporting templates];

(2) [(B)]other documents / forms requested by the institution that provide credible evidence of the vendor's capability or ability to produce accessible EIR products and services. Such evidence may include, but is not limited to, a vendor's internal accessibility policy documents, contractual warranties for accessibility, accessibility testing documents, and examples of prior work results; [an accessible electronic document that addresses the same accessibility criteria in substantially the same format as VPATs or equivalent reporting templates; or]

(3) [(C)] The URL to a web page which explains how to request completed ACRs or VPATs [, or equivalent reporting templates,] for any product under contract; or

(4) If credible accessibility documentation cannot be provided, then EIR shall be considered noncompliant.

[(2) credible evidence of the vendor's capability or ability to produce accessible EIR products and services. Such evidence may include, but is not limited to, a vendor's internal accessibility policy documents, contractual warranties for accessibility, accessibility testing documents, and examples of prior work results.]

(c) An institution of higher education shall implement a procurement accessibility policy, and supporting business processes and contract terms, for making procurement decisions. The institution of higher education shall monitor the procurement processes and contracts for accessibility compliance.

(d) This subchapter applies to EIR developed, procured, or materially changed by an institution of higher education, or developed, procured, or materially changed by a contractor under a contract with an institution of higher education which requires the use of such product, or requires the use, to a significant extent, of such product in the performance of a service or the furnishing of a product.

(e) Unless an exception is approved by the president or chancellor of an institution of higher education pursuant to Texas Government Code §2054.460[, Texas Government Code,] and 1 Texas Administrative Code §213.37 [of this chapter,] or unless an exemption is approved by the department, pursuant to Texas Government Code §2054.460[, Texas Government Code] and 1 Texas Administrative Code §213.37 [of this chapter], all EIR products developed, procured or materially changed through a procured services contract, and all electronic and information resource services provided through hosted or managed services contracts, shall comply with the provisions of Chapter 206 and Chapter 213 of this title, as applicable.

(f) Nothing in this subchapter is intended to prevent the use of designs or technologies as alternatives to those prescribed in this subchapter provided they result in substantially equivalent or greater access to and use of a product for people with disabilities.

(g) Accessibility testing, planning, and execution criteria shall be documented for the project and accessibility testing shall be performed by a third-party testing resource or knowledgeable institution of higher education staff member to validate compliance with 1 Texas Administrative Code §206.70 and this chapter for any EIR project whose developments costs exceed $500,000 and that: [For projects which meet the following criteria, accessibility testing shall be documented by a knowledgeable institution of higher education staff member or third party testing resource to validate compliance with §206.70 of this title and this chapter any information resources technology project whose development costs exceed $1 million and that:]

(1) requires one year or longer to reach operations status;

(2) involves more than one institution of higher education or state agency; or

(3) substantially alters work methods of institution of higher education or agency personnel or the delivery of services to clients.

*§213.39. Accessibility Training, [and] Technical Assistance, and Job Descriptions.*

(a) The department shall provide [training,] training resources, and assistance regarding compliance with Chapter 206 and Chapter 213 of this title, pursuant to Texas Government Code §2054.452[, Texas Government Code].

(1) The department shall schedule on-going training events or seminars, focused on accessibility development, testing, procurement and/or awareness training.

(2) The department shall publish information regarding publicly available accessibility training opportunities and technical assistance.

(b) The president or chancellor of each institution of higher education shall ensure appropriate staff receives training necessary to meet accessibility-related rules.

(c) Each institution of higher education shall consider including accessibility criteria in job descriptions where EIR accessibility is applicable to that position.

*§213.40. Accessibility Survey and Reporting Requirements.*

(a) The department shall conduct an EIR accessibility survey regarding progress and compliance with Chapter 206 and Chapter 213 of this title, pursuant to Texas Government Code §2054.464[, Texas Government Code].

(b) Each institution of higher education shall be required to complete the accessibility survey within the prescribed deadline established by the department. Survey responses shall be supported by institution of higher education documentation.

*§213.41. EIR Accessibility Policy and Coordinator.*

(a) The department shall designate and maintain a person responsible for statewide accessibility initiatives.

(b) Pursuant to 1 Texas Administrative Code §206.74 [of this title,] each institution of higher education shall publish a current accessibility policy which includes the standards and specifications of this chapter.

(c) Each institution of higher education's accessibility policy shall require an institutionally- approved [a published] plan by which

EIR will be brought into and maintained in compliance with the Technical Accessibility Standards and Specifications of this chapter. The plan shall include a process for corrective actions to remediate non-compliant items.

(d) The head of each institution of higher education shall designate an EIR Accessibility Coordinator who shall be organizationally placed to facilitate institution-wide EIR accessibility compliance and practices in support of in support of their internal accessibility policy. [develop, support and maintain its accessibility policy institution-wide.] The institution's designation must contain the individual's name and other information in the format prescribed by the department.

(e) An institution of higher education shall inform the department within 30 days whenever the institution of higher education EIR Accessibility Coordinator position is vacant, or a new/replacement EIR Accessibility Coordinator is designated.

(f) An institution of higher education shall establish goals for making its EIR accessible, which includes progress measurements towards meeting those goals.

*§213.42. Holdover.*

All rules in this chapter shall remain in effect as previously adopted until the specified effective date of April 18, 2020.

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 September 9, 2019.

TRD-201903147
Amanda Crawford
Executive Director
Department of Information Resources
Earliest possible date of adoption: October 20, 2019
For further information, please call: (512) 475-4552

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**1 TAC §213.34**

The repeal is proposed under §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054; and §2054.453, Texas Government Code, which authorizes the department to adopt rules in compliance with federal standards and laws regarding the development, procurement, maintenance, and use of electronic information resources by state agencies to provide access to individuals with disabilities.

No other statute, article, or code is affected by this proposal.

*§213.34. Desktop and Portable Computers.*

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 September 9, 2019.

TRD-201903151
Amanda Crawford
Executive Director
Department of Information Resources
Earliest possible date of adoption: October 20, 2019
For further information, please call: (512) 475-4552

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# TITLE 4. AGRICULTURE

## PART 12. TEXAS A&M FOREST SERVICE

### CHAPTER 216. RURAL VOLUNTEER FIRE DEPARTMENT ASSISTANCE PROGRAM

**4 TAC §216.5, §216.6**

Texas A&M Forest Service (TFS) proposes an amendment to §216.5 and §216.6, concerning the Rural Volunteer Fire Department Assistance Program. The proposed amendment adds language to the award criteria and process in determining eligibility for grants, as passed in HB 3070.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT. Robby DeWitt, Associate Director for Finance and Administration has determined that for each of the first five-years the proposed amendments are in effect, there will not be a fiscal impact on state or local government as a result of enforcing or administering these amendments.

PUBLIC BENEFIT/COST NOTE. Mr. DeWitt has also determined that for the first five-year period the amended rules are in effect, the public benefit will be a more clearly defined process for providing grants to volunteer fire departments.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT. There are no anticipated economic costs to persons who are required to comply with the amendments to these rules, as proposed. There is no effect on local economy for the first five years that the proposed new section is in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022 and 2001.024(a)(6).

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. There will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these amendments and therefore no regulatory flexibility analysis or economic impact statement, as specified in Texas Government Code §2006.002, is required.

GOVERNMENT GROWTH IMPACT STATEMENT. For each year of the first five years the proposed amendments will be in effect, TFS has determined that these amendments: (1) will not create or eliminate a government program; (2) will not result in the addition or reduction of employees; (3) will not require an increase or decrease in future legislative appropriations; (4) will not lead to an increase or decrease in fees paid to a state agency; (5) will not create a new regulation; (6) will not repeal an existing regulation; and (7) will not result in an increase or decrease in the number of individuals subject to the rule. During the first five years that the amendments would be in effect, the proposed amendments will not positively or adversely affect the Texas economy.

PUBLIC COMMENTS: Comments on the proposed amendments may be submitted to Jason Keiningham, Office of the Associate Director, Forest Resource Protection Division, Texas A&M Forest Service, 200 Technology Way, Suite 1162, College Station, Texas 77845-3424, (979) 458-7341. Comments must be received no later than thirty days from the date of publication of this proposal.

STATUTORY AUTHORITY: The amendments are proposed pursuant to Texas Government Code, §614.102, which authorizes the agency director to adopt rules considered necessary for the administration of the program and Texas Government Code, §614.106, which mandates that the agency adopt rules to administer the program.

Texas Government Code, §§614.101, 614.102, 614.103, 614.104, 614.105 and 614.106 are affected by this proposal.

*§216.5. Award Criteria.*

The following criteria are used by the agency to determine eligibility for grant awards.

(1) TIFMAS Grants.

(A) When determining eligibility for a part-paid fire department, a part-time paid position is counted as one-half of a full-time paid position.

(B) Applications for assistance are rated based upon a standardized numeric system that considers the following factors: number of personnel, past participation in TIFMAS and ability to provide TIFMAS resources to state deployments.

(C) The agency may limit the maximum amount of grant funds a fire department can receive per year to ensure a wider distribution of the funds.

(2) VFD Assistance Grants.

(A) When determining eligibility for a part-paid fire department:[~~, a part-time paid position is counted as one-half of a full-time paid position.~~]

*(i)* A paid position includes any combination of paid fire, EMS, administrative and support staff employed by a fire department or other entity of local government to fulfill an emergency service or supporting function.

*(ii)* A part-time paid position is counted as one-half of a full-time paid position.

(B) Applications for assistance are rated based upon a standardized numeric system that considers the following factors: years in existence, size of the primary protection area, population of the primary protection area, distance to the nearest viable mutual aid department, age of the application and wildfire risk.

(C) The agency may award vehicle and equipment grants to eligible fire departments to assist in meeting matching requirements for federal grants. Applications for federal grant matching assistance are rated upon a standardized numeric system that considers the following factors: size of the department, annual budget and source of revenue and the amount the department would benefit from the grant.

(D) The agency may limit the maximum amount of grant funds a fire department can receive per year to ensure a wider distribution of the funds.

*§216.6. Award Process.*

The following procedures are used by the agency to award available grant funds.

(1) TIFMAS Grants.

(A) Available grant funding is allocated to each grant category annually by the agency.

(B) Training grants are funded upon receipt of complete applications until available funding is exhausted.

(C) Truck grants are handled as follows.

*(i)* Applications are assigned a numeric rating and sorted by region.

*(ii)* The agency holds periodic meetings throughout each fiscal year to approve grant awards. The date, time and location for each meeting are published on the agency's website at least two weeks prior to the meeting. The meetings are open to the public.

*(iii)* Grant awards are made to the top applications as sorted by region based upon the numeric ratings, subject to funding limitations.

*(iv)* Fire departments that have outstanding issues with the State of Texas or the agency will not be considered for new grant awards until the issues are resolved.

*(v)* The agency's approval of applications for award during a public meeting is preliminary, contingent upon a final review of each application for eligibility, errors, duplications and program compliance. Approvals are withdrawn in the event of an error or disqualifying condition. Following the final review, a grant award letter is sent to each approved grant recipient.

*(vi)* Grant awards have a specified termination date by which the recipient must complete its obligations and submit the necessary documentation to the agency for processing.

*(vii)* Applications not approved for funding are kept on file and considered during subsequent funding meetings.

*(viii)* The agency may award emergency grants to eligible fire departments that have suffered a catastrophic loss. A catastrophic loss is a sudden and unexpected event which seriously compromises the firefighting capability of an eligible fire department and which puts the local community at risk. Emergency grant awards are based on a department's application, agency assessment of impact and availability of program funds.

(D) Other equipment grants are handled as follows.

*(i)* Funds are divided by geographic region, based upon the number of fire departments per region, to establish target fund allocations. Allocations by region may be adjusted by the agency based on the applications received.

*(ii)* The agency holds periodic meetings throughout each fiscal year to approve grant awards. The date, time and location for each meeting are published on the agency's website at least two weeks prior to the meeting. The meetings are open to the public.

*(iii)* Grant awards are based upon the application ratings, the amounts requested, the date each application was received, the number and type of unfunded applications on file and the amount of funds available.

*(iv)* Fire departments that have outstanding issues with the State of Texas or the agency are not considered for new grant awards until the issues are resolved.

*(v)* The agency's approval of applications for award during a public meeting is preliminary, contingent upon a final review of each application for eligibility, errors, duplications and program compliance. Approvals are withdrawn in the event of an error or dis-

qualifying condition. Following the final review, a grant award letter is sent to each approved grant recipient.

*(vi)* Grant awards have a specified termination date by which the recipient must complete its obligations and submit the necessary documentation to the agency for processing.

*(vii)* Applications not approved for funding are kept on file and considered during subsequent funding meetings.

*(viii)* The agency may award emergency grants to eligible fire departments that have suffered a catastrophic loss. A catastrophic loss is a sudden and unexpected event which seriously compromises the firefighting capability of an eligible fire department and which puts the local community at risk. Emergency grant awards are based on a department's application, agency assessment of impact and availability of program funds.

(2) VFD Assistance Grants.

(A) Available grant funding is allocated to each grant category annually by the agency.

(B) Training grants are funded upon receipt of complete applications until available funding is exhausted.

(C) Equipment grants are handled as follows.

*(i)* Funds are divided by geographic region, based upon the number of fire departments per region, to establish target fund allocations. Allocations by region may be adjusted by the agency based on the applications received.

*(ii)* The agency holds periodic meetings throughout each fiscal year to approve grant awards. The date, time and location for each meeting are published on the agency's website at least two weeks prior to the meeting. The meetings are open to the public.

*(iii)* Grant awards are based upon the application ratings, the amounts requested, the dates the applications were received, the number and type of unfunded applications on file and the amount of funds available. Ratings shall take into consideration the frequency, size and severity of past wildfires in the department's jurisdiction; the potential for loss or damage to property resulting from future wildfires in the department's jurisdiction; and the department's need for emergency assistance under Texas Government Code §614.103(a-1).

*(iv)* Fire departments that have outstanding issues with the State of Texas or the agency are not considered for new grant awards until the issues are resolved.

*(v)* The agency's approval of applications for award during a public meeting is preliminary, contingent upon a final review of each application for eligibility, errors, duplications and program compliance. Approvals are withdrawn in the event of an error or disqualifying condition. Following the final review, a grant award letter is sent to each approved grant recipient.

*(vi)* Grant awards have a specified termination date by which the recipient must complete its obligations and submit the necessary documentation to the agency for processing.

*(vii)* Applications not approved for funding are kept on file and considered during subsequent funding meetings.

*(viii)* The agency may award emergency grants to eligible fire departments that have suffered a catastrophic loss. A catastrophic loss is a sudden and unexpected event which seriously compromises the firefighting capability of an eligible fire department and which puts the local community at risk. Emergency grant awards are based on a department's application, agency assessment of impact and availability of program funds.

*(ix)* The agency may award emergency grants to eligible fire departments whose equipment is damaged or lost in responding to a declared state of disaster under Texas Government Code §418.014 in an area subject to the declaration for:

*(I)* The replacement or repair of damaged or lost personal protective equipment or other firefighting equipment; and

*(II)* The purchase of a machine to clean personal protective equipment.

*(III)* Emergency grant awards are based on a department's application and availability of program funds.

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

Filed with the Office of the Secretary of State on September 6, 2019.

TRD-201903108
Robby DeWitt
Associate Director for Finance and Administration
Texas A&M Forest Service
Earliest possible date of adoption: October 20, 2019
For further information, please call: (979) 458-7341

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# TITLE 10. COMMUNITY DEVELOPMENT

## PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

### CHAPTER 1. ADMINISTRATION
### SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

**10 TAC §1.7**

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.7, Appeals Process. The purpose of the proposed repeal is to eliminate an outdated rule that warrants revision while adopting new updated rules 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.

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

1. The proposed repeal does not create or eliminate a government program. Related to the repeal, a simultaneous proposal is making a change to an existing activity, the procedures for the handling of Department appeals.

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

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

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

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

6. The proposed action will repeal existing regulations, but is associated with a simultaneous re-adoption making changes to an existing activity, the procedures for the handling of Department appeals.

7. The proposed repeal will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The proposed repeal will not negatively nor positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department has evaluated the proposed repeal and determined that the proposed repeal will not create an economic effect on small or micro-businesses or rural communities.

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

2. The rule relates to the Department's procedures for the handling of Department appeals. Other than a Subrecipient of the Department that may find itself desiring to pursue an appeal to the Department, no small or micro-businesses are subject to the rules. However, if a Subrecipient considers itself a small or micro-business, the rule changes provide greater clarity regarding the appeals process.

3. The Department has determined that because the rules apply primarily to Applicants and existing Subrecipients, 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 repeal does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the proposed repeal will be in effect there would be no economic effect on local employment because the rules relate only to processes that have already been in effect for existing Applicants and Subrecipients; therefore, no local employment impact statement is required to be prepared for the rules.

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 the rules pertain to all parties that wish to file an appeal throughout the state, regardless of location, there are no "probable" effects of the revised rules on particular geographic regions.

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

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

g. REQUEST FOR PUBLIC COMMENT. The public comment period will be held SEPTEMBER 20, 2019, to OCTOBER 21, 2019, to receive input on the proposed repealed section. Written comments may be mailed to the Texas Department of Housing and Community Affairs, Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or email to bboston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, OCTOBER 21, 2019.

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

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

*§1.7. Appeals Process.*

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

Filed with the Office of the Secretary of State on September 9, 2019.

TRD-201903118
Robert Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 20, 2019
For further information, please call: (512) 475-1762

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**10 TAC §1.7**

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.7, Appeals Process. The purpose of the proposed new rule is to update the rule; to clarify the admissibility of documentation not originally part of the application; and to clarify the timing of when an opportunity to appeal is triggered.

Tex. Gov't Code §2001.0045(b) does apply to the new rule, as no exceptions are applicable, however, there are no costs associated with this action that would have warranted a need to be offset.

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

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

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

1. The rule does not create or eliminate a government program, but relates to the corresponding repeal as this rulemaking is a simultaneous proposal making changes to an existing activity, the process for the submission of appeals to the Department.

2. The rule does not reduce work load such that any existing employee positions can be eliminated nor does it increase work load such that any new employee positions are required.

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

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

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

6. The rule will not expand, limit, or repeal an existing regulation.

7. The rule will neither increase nor decrease the number of individuals subject to the rule.

8. The rule will not negatively nor positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code Chapter 2306, Subchapter E.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable. There are no small or micro-businesses subject to the rule amendment for which the economic impact of the rule is projected to impact. There are no rural communities subject to the amendment for which the economic impact of the rule is projected to impact.

2. The rule relates to the Department's procedures for the handling of Department appeals. Other than a Subrecipient of the Department that may find itself desiring to pursue an appeal to the Department, no small or micro-businesses are subject to the rules. However, if a Subrecipient considers itself a small or micro-business, the rule changes provide greater clarity regarding the appeals process.

3. The Department has determined that because the rule applies primarily to Applicants and existing Subrecipients, there will be no economic effect on small or micro-businesses or rural communities.

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

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

The Department has evaluated the 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 new rule has no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

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 this rule relates to an appeals process that is applied statewide, the rule does not change issues affecting employment, there are no "probable" effects of the new rule on particular geographic regions.

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

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

g. REQUEST FOR PUBLIC COMMENT The public comment period will be held SEPTEMBER 20, 2019, to OCTOBER 21, 2019, to receive input on the proposed rule. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or email brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, OCTOBER 21, 2019.

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

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

*§1.7. Appeals Process.*

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

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

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

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

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

(4) Appealing Party--The Administrator, Affiliated Party, Applicant, Person, or Responsible Party as provided for in Chapter 2, Subchapter D, §2.401 of this title (relating to Debarment from Programs Administered by the Department) who files, intends to file, or has filed on their behalf, an Appeal before the Department.

(c) Persons Eligible to Appeal. An Appeal may be filed by any Administrator, Applicant, Person, or Responsible Party as provided for in Chapter 2, Subchapter D, §2.401 of this title, or Affiliated Party of the Administrator, Applicant, Person or Responsible Party who has filed an Application for funds or reservation with the Department, or has received funds or a reservation from the Department to administer.

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

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

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

(B) Disagreement with the termination of an application;

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

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

(E) Concern that the documents submitted were not processed by Department staff in accordance with the Application and program rules in effect; and/or

(F) A determination by the Board or the Executive Director that there is good cause for an Appeal because there are implicated interests to be protected by due process.

(2) Relating to issues that arise after the award or reservation determination by the Board, an Appealing Party may appeal if there is:

(A) Disagreement with a denial by the Department of a Contract, Commitment, Loan Agreement, or LURA amendment that was requested in writing; or

(B) A determination by the Board or the Executive Director that there is good cause for an Appeal because there are implicated interests to be protected by due process.

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

(4) Affiliated Party Appeals. An Affiliated Party has the ability to appeal only those decisions that directly impact the Affiliated Party, not the underlying agreements. An Affiliated Party may appeal a finding of failure to adequately perform under an Administrator's Contract, resulting in a "Debarment" or a similar action.

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

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

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

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

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

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

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

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

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

(2) In order to be placed on the agenda of the next scheduled meeting of the Department's Board, the Appeal must be received by the Department at least 14 days prior to the next scheduled Board meeting. Appeals requested under this section received after the fourteenth calendar day prior to the Board meeting will generally be scheduled at the next subsequent Board meeting. However, the Department reserves the right to place the Appeal on a Board meeting agenda if an Appeal that is timely filed under paragraph (1) of this subsection is received fewer than 14 calendar days prior to the next scheduled Board meeting. The Executive Director shall prepare Appeal materials for the Board's review based on the information provided.

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

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

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

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

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

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

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

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

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

The agency certifies that legal counsel has reviewed the 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 September 9, 2019.

TRD-201903119
Robert Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 20, 2019
For further information, please call: (512) 475-1762

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**10 TAC §1.10**

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.10, Public Comment Procedures. 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. Robert 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. Related to the repeal, a simultaneous proposal is making changes to the rule governing the public comment procedures at the Department's Board meetings.

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

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

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

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

6. The proposed repeal will repeal an existing regulation, but is associated with the simultaneous readoption making changes to the existing rule for the security of personal information.

7. The proposed repeal will not increase nor decrease the number of individuals subject to the rule's applicability.

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

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

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

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

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repealed sections would be elimination of an outdated rule while proposing a new

updated rule under separate action. There will not be economic costs to individuals required to comply with the repealed sections.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the proposed repeal is in effect, enforcing or administering the repealed sections 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 SEPTEMBER 20, 2019, to OCTOBER 21, 2019, to receive input on the proposed repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, OCTOBER 21, 2019.

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

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

*§1.10. Public Comment Procedures.*

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

Filed with the Office of the Secretary of State on September 9, 2019.

TRD-201903120
Robert Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 20, 2019
For further information, please call: (512) 475-1762

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**10 TAC §1.10**

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.10, Public Comment Procedures. The purpose of the proposed rule is to clarify when the registration form method of comment can be used. These forms had been intended to allow those present at a public meeting, but not wishing to actually speak, to have their comment noted. A person who is not present at a Board meeting but wishes to present comment on an agenda item has always been able to submit a written comment in accordance with the rule. However, because of lack of clarity in the rule on the purpose of the registration form, in several instances the forms are being submitted by a third party, on the day of the board meeting and often in large numbers, purporting to be the opinions of persons who are not present at the meeting. The rule is being amended to make clear when registration form method of comment will be accepted. Other changes being reflected in the new rule include clarifying that deference may be provided to reading written communications from elected officials; clarifying that no new materials may be provided to the Board when the item for consideration is part of a competitive award process; and making other minor administrative and technical revisions.

Tex. Gov't Code §2001.0045(b) does apply to the new rule, as no exceptions are applicable, however, there are no costs associated with this action that would have warranted a need to be offset.

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

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

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

1. The new rule does not create or eliminate a government program, but relates to the corresponding repeal as this rulemaking is a simultaneous proposal making changes to the rule governing the public comment process at meetings of the Department's Board of Directors.

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

3. The new rule changes do not require additional future legislative appropriations.

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

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

6. The rule will not limit, expand, or repeal an existing regulation but merely revises procedures within a rule.

7. The new rule does technically increase the number of individuals to whom this rule applies, as there are those who may have attempted to utilize the registration form of public comment while not being present at a meeting of the Board and will no longer be able to do so; this rule change will not permit the registration forms to be presented to the Board by persons not in attendance at the meeting.

8. The new rule will not negatively nor positively affect the state's economy.

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

The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code Chapter 2306, Subchapter E.

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

There are no small or micro-businesses subject to the rule for which the economic impact of the rule is projected to impact. There are no rural communities subject to the rule for which the economic impact of the rule is projected to impact.

The Department has determined that because this rule relates only to the public comment process used at meetings of the Department's Board, there will be no economic effect on small or micro-business or rural communities.

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

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because this rule relates only to the public comment process used at meetings of the Department's Board.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that the rule only relates to the public comment process used at meetings of the Department's Board, there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the proposed new rule will be a clearer rule for how public comment will be accepted at meetings of the Department's Board. There will be no expected economic cost to any individuals required to comply with the proposed new rule.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments as the implementation of this rule generates no fees, nor requires any cost.

g. REQUEST FOR PUBLIC COMMENT. The public comment period will be held SEPTEMBER 20, 2019, to OCTOBER 21, 2019, to receive input on the proposed new rule. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, OCTOBER 21, 2019.

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

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

*§1.10. Public Comment Procedures.*

(a) Purpose. The purpose of this section is to establish procedures for hearing public comment at Governing Board meetings open to the public held by the Texas Department of Housing and Community Affairs in accordance with §2306.032(f) and §2306.066(d) of the Tex. Gov't Code.

(b) Procedures for taking public comment.

(1) At each meeting open to the public the Governing Board (Board) shall provide opportunity for members of the public to make:

(A) General public comment after the Board has taken action on all posted agenda items on which it intends to take action, general public comment on matters of relevance to the Department's business, or requests that the Board place specific items on future agendas for consideration. It is the prerogative of the Board Chair to place reasonable limits on public comment. Handouts of printed materials are permitted only as provided for in paragraph (6) of this subsection; and

(B) Specific public comment on each posted agenda item after the presentation made by Department staff and motions made by the Board. For purposes of this rule, the Board may consider the staff's presentation to be staff's written presentation in the Board's meeting book posted on the Department's website, or additional printed materials only as provided for in paragraph (6) of this subsection.

(2) The opportunity for general public comment under paragraph (1)(A) of this subsection may not be used to advocate for or against any specific action relating to any posted item or for or against any pending application. The opportunity for any such testimony is to be limited to the appointed time when action on such matter is requested to be formally considered as a posted agenda item as described in paragraph (1)(B) of this subsection.

(3) At the time general or specific public comment is taken, speakers should be prepared to come promptly to the podium or other place designated for speakers. They may, if they wish, agree among themselves on an order in which they will speak, or this may be directed by the Board Chair. If a large number of speakers wish to testify, the Chair may, in his or her reasonable discretion, establish appropriate limits on the total amount of time to be devoted to testimony on any given item or items. As each individual speaker begins his or her testimony, they must state on the record their name and on whose behalf they are speaking, and sign in on a sheet provided by staff to indicate the correct spelling of their name and on whose behalf they are speaking.

(4) Individuals present at the meeting, who wish to register their position for or against a posted agenda item, but do not wish to speak, may do so by submitting a comment registration form with the secretary of the meeting, or another person designated by the Board Chair. The comment registration form, must state the commenter's name, whom they represent, the action item to which their comment relates, their position, and must be signed by the commenter. At the end of the public comment on the item the Board Chair will have registered positions for and against read into the record. It is the Board Chair's discretion to determine if similar comments submitted are aggregated and reported as a total number providing their position, as opposed to reading all names into the record.

(5) Additional limits on public comment.

(A) The Board Chair, in her/his sole discretion, may additionally limit the number and length of presentations of public comment, both general and specific, at any time during a meeting based on a consideration of:

*(i)* the number of persons wishing to give public comment;

*(ii)* the number of agenda items to be heard;

*(iii)* the time available for the meeting; and

*(iv)* the risk of losing a quorum of Board members.

(B) If the Board Chair limits presentations, she or he will not limit them in a manner that inappropriately favors a particular point of view.

(C) The Board Chair may, in her or his reasonable discretion, grant deference to elected officials and other persons who have traveled great distances. Deference to elected officials may include, but is not limited to reading letters from elected officials to the Board into the record.

(6) Presenting printed materials. An individual providing testimony to the Board may provide printed materials only if they are provided as outlined in subparagraphs (A) - (C) of this paragraph:

(A) In order to ensure that members of the Board and the public are given an opportunity to review any such materials, they must be provided to the Department staff not less than five business days prior to the meeting at which they are to be. This is to enable staff to post them on the Department's website not later than the third day before the date of the meeting, as provided for in Tex. Gov't Code §2306.032(c). They must be made available in Adobe Acrobat (pdf) electronic format;

(B) Department staff will post such materials to the Department's website no later than the third day before the meeting at which they are to be used;

(C) In exceptional circumstances the Board Chair may, in her/his sole discretion, and only after giving Board members an opportunity to object, allow materials to be provided at a meeting in hard copy format provided:

*(i)* they are delivered to staff prior to the start of the meeting so that staff may log in the materials and the Board Chair may review for acceptance under this subsection. Materials may not be handed directly by the public to a Board member on the dais;

*(ii)* they are not so voluminous as to cause inordinate delay while members of the Board and public review them;

*(iii)* they are provided in hard copy format to all members of the public in attendance;

*(iv)* they are also provided to staff in Adobe Acrobat (pdf) format for inclusion in the electronic records of Board materials available to the public via the Department's website; and

*(v)* if the materials involve large size photos, maps, charts, or other information to be displayed for the Board, an identical copy must be displayed to the public attendees.

(D) Persons seeking allowance of written materials under paragraph (6)(C) of this subsection should be aware that their proffered materials may be disallowed, and they should always be prepared to proceed with a verbal presentation within the time constraints for public speaking at Board meetings.

(E) If materials submitted relate to a competitive Application under any Department program, including Chapters 11 and 13 of this title (relating to Qualified Allocation Plan (QAP) and Multifamily Direct Loan Rule, respectively), such materials provided under either subparagraphs (A) or (C) of this paragraph may be prohibited from presentation to the Board under applicable rules or statute.

(c) To the extent that subsection (b) of this section, or the Board Chair, places limitations on the amount of time that a member of the public may address the Board, a member of the public who addresses the Board through a translator will be given at least twice the amount of time as a member of the public who does not require the assistance of a translator in order to ensure that non-English speakers receive the same opportunity to address the Board.

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

Filed with the Office of the Secretary of State on September 9, 2019.

TRD-201903121
Robert Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 20, 2019
For further information, please call: (512) 475-1762

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# CHAPTER 6. COMMUNITY AFFAIRS PROGRAMS

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of Chapter 6, Community Affairs Programs, including Subchapter A, General Provisions; Subchapter B, Community Services Block Grant; Subchapter C, Comprehensive Energy Assistance Program; and Subchapter D, Weatherization Assistance Program. The purpose of the proposed repeal is to eliminate outdated rules that warrant revision while adopting new updated rules 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.

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

1. The proposed repeal does not create or eliminate a government program. Related to the repeal, a simultaneous proposal is making a change to an existing activity, the administration of Community Affairs programs.

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

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

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

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

6. The proposed action will repeal existing regulations, but is associated with a simultaneous re-adoption making changes to an existing activity, of the rules governing the administration of Community Affairs programs.

7. The proposed repeal will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The proposed repeal will not negatively nor positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department has evaluated the proposed repeal

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

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

2. The rules relate to the Department's administration of all Community Affairs programs which include the Community Services Block Grant (CSBG), the Low Income Home Energy Assistance Program (LIHEAP) which can be further divided into the Comprehensive Energy Assistance Program and LIHEAP Weatherization Assistance Program (WAP), and the Department of Energy WAP (DOE WAP). Other than a Subrecipient of funds for any of these programs who may consider itself a small or micro-business, which would not generally be the case, no small or micro-businesses are subject to the rules. However, if a Subrecipient considers itself a small or micro-business, the rule changes provide greater clarity and streamline the crisis assistance activity.

3. The Department has determined that because the rules apply only to existing Subrecipients, 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 repeal does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

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

The Department has evaluated the rules as to their possible effects on local economies and has determined that for the first five years the proposed repeal will be in effect there would be no economic effect on local employment because the rules relate only to regulations which have already been in effect for existing Subrecipients; therefore, no local employment impact statement is required to be prepared for the rules.

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 the rules pertain to all Subrecipients throughout the state, regardless of location, there are no "probable" effects of the revised rules on particular geographic regions.

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

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

g. REQUEST FOR PUBLIC COMMENT. The public comment period will be held SEPTEMBER 20, 2019, to OCTOBER 21, 2019, to receive input on the proposed repealed chapter. Written comments may be mailed to the Texas Department of Housing and Community Affairs, Gavin Reid, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-3935; or email to gavin.reid@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, OCTOBER 21, 2019.

## SUBCHAPTER A. GENERAL PROVISIONS

### 10 TAC §§6.1 - 6.10

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

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

*§6.1. Purpose and Goals.*
*§6.2. Definitions.*
*§6.3. Subrecipient Contract.*
*§6.4. Income Determination.*
*§6.5. Documentation and Frequency of Determining Customer Eligibility.*
*§6.6. Subrecipient Contact Information and Required Notifications.*
*§6.7. Subrecipient Reporting Requirements.*
*§6.8. Potential Applicant/Applicant/Customer Denials and Appeal Rights.*
*§6.9. Training Funds for Conferences.*
*§6.10. Compliance Monitoring.*

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 September 9, 2019.

TRD-201903161
Robert Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 20, 2019
For further information, please call: (512) 475-1762

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## SUBCHAPTER B. COMMUNITY SERVICES BLOCK GRANT

### 10 TAC §§6.201 - 6.214

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

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

*§6.201. Background and Definitions.*
*§6.202. Purpose and Goals.*
*§6.203. Formula for Distribution of CSBG Funds.*
*§6.204. Use of Funds.*
*§6.205. Limitations on Use of Funds.*
*§6.206. CSBG Community Assessment, Community Action Plan, and Strategic Plan.*
*§6.207. Subrecipient Requirements.*
*§6.208. Designation and Re-designation of Eligible Entities in Unserved Areas.*
*§6.209. CSBG Requirements for Tripartite Board of Directors.*
*§6.210. Board Structure.*

*§6.211. Board Administrative Requirements.*
*§6.212. Board Size.*
*§6.213. Board Responsibility.*
*§6.214. Board Meeting 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 September 9, 2019.

TRD-201903162
Robert Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 20, 2019
For further information, please call: (512) 475-1762

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## SUBCHAPTER C. COMPREHENSIVE ENERGY ASSISTANCE PROGRAM

**10 TAC §§6.301 - 6.313**

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

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

*§6.301. Background and Definitions.*
*§6.302. Purpose and Goals.*
*§6.303. Distribution of CEAP Funds.*
*§6.304. Deobligation and Reobligation of CEAP Funds.*
*§6.305. Subrecipient Eligibility.*
*§6.306. Service Delivery Plan.*
*§6.307. Subrecipient Requirements for Customer Eligibility Criteria and Establishing Priority for Eligible Households.*
*§6.308. Allowable Subrecipient Administrative and Program Services Costs.*
*§6.309. Types of Assistance and Benefit Levels.*
*§6.310. Household Crisis Component.*
*§6.311. Utility Assistance Component.*
*§6.312. Payments to Subcontractors and Vendors.*
*§6.313. Outreach, Accessibility, and Coordination.*

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 September 9, 2019.

TRD-201903163
Robert Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 20, 2019
For further information, please call: (512) 475-1762

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## SUBCHAPTER D. WEATHERIZATION ASSISTANCE PROGRAM

**10 TAC §§6.401 - 6.417**

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

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

*§6.401. Background.*
*§6.402. Purpose and Goals.*
*§6.403. Definitions.*
*§6.404. Distribution of WAP Funds.*
*§6.405. Deobligation and Reobligation of Awarded Funds.*
*§6.406. Subrecipient Requirements for Establishing Priority for Eligible Households and Customer Eligibility Criteria.*
*§6.407. Program Requirements.*
*§6.408. Department of Energy Weatherization Requirements.*
*§6.409. LIHEAP Weatherization Requirements.*
*§6.410. Liability Insurance and Warranty Requirement.*
*§6.411 Customer Education.*
*§6.412. Mold-like Substances.*
*§6.413. Lead Safe Practices.*
*§6.414. Eligibility for Multifamily Dwelling Units.*
*§6.415. Health and Safety and Unit Deferral.*
*§6.416. Whole House Assessment.*
*§6.417. Blower Door Standards.*

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 September 9, 2019.

TRD-201903164
Robert Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 20, 2019
For further information, please call: (512) 475-1762

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## CHAPTER 6. COMMUNITY AFFAIRS PROGRAMS

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 6, Community Affairs Programs, including Subchapter A, General Provisions; Subchapter B, Community Services Block Grant; Subchapter C, Comprehensive Energy Assistance Program; and Subchapter D, Weatherization Assistance Program. The purpose of the proposed new chapter is to update the rules to provide greater clarity for Subrecipients while administering Community Affairs programs (i.e., CSBG, LIHEAP, and DOE WAP).

Tex. Gov't Code §2001.0045(b) does not apply to the rules proposed for action because it is exempt under §2001.0045(c)(4), which exempts rule changes necessary to receive a source of federal funds or to comply with federal law. This revision is being proposed to update, streamline, and make clearer the rules governing the administration of Community Affairs programs. The Department does not anticipate any costs associated with this proposed rule action. Compliance with the proposed rules is intended to ensure adherence to federal statute while operating federal grants.

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

1. The proposed rules do not create or eliminate a government program, but relate to the repeal as this is a simultaneous proposal making changes to an existing activity, the administration of Community Affairs programs.

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

3. The proposed rule changes do not require additional future legislative appropriations.

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

5. The proposed rules are not creating new regulations, except that they are replacing rules being repealed simultaneously to provide for revisions.

6. The proposed rules will not expand, limit, or repeal existing regulations.

7. The proposed rules will not increase nor decrease the number of individuals subject to the rules' applicability.

8. The proposed rules will not negatively nor 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 the proposed rules, has attempted to reduce any adverse economic effect on small or micro-businesses or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306, Subchapter E.

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

2. The rules relate to the Department's administration of all Community Affairs programs which include the Community Services Block Grant (CSBG), the Low Income Home Energy Assistance Program (LIHEAP) which can be further divided into the Comprehensive Energy Assistance Program and LIHEAP Weatherization Assistance Program (WAP), and the Department of Energy WAP (DOE WAP). Other than a Subrecipient of funds for any of these programs who may consider itself a small or micro-business, which would not generally be the case, no small or micro-businesses are subject to the rules. However, if a Subrecipient considers itself a small or micro-business, the rule changes provide greater clarity and streamline the crisis assistance activity.

3. The Department has determined that because the rules apply only to existing Subrecipients, 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 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 rules as to their possible effect on local economies and has determined that for the first five years the proposed rules will be in effect there would be no economic effect on local employment because the rules relate only to a process which has already been in effect for existing Subrecipients; therefore, no local employment impact statement is required to be prepared for the rules.

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 the rules pertain to all Subrecipients throughout the state, regardless of location, there are no "probable" effects of the new rules on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has also determined that, for each year of the first five years the new chapter is in effect, the public benefit anticipated as a result of the new chapter would be an updated, more streamlined, and clearer version of the rules governing Community Affairs programs. There will not be economic costs to individuals required to comply with the new chapter because the rules have already been in place through the rules found at the chapter being repealed.

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

g. REQUEST FOR PUBLIC COMMENT. The public comment period will be held SEPTEMBER 20, 2019, to OCTOBER 21, 2019, to receive input on the proposed new chapter. Written comments may be mailed to the Texas Department of Housing and Community Affairs, Gavin Reid, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-3935; or email to gavin.reid@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, OCTOBER 21, 2019.

## SUBCHAPTER A. GENERAL PROVISIONS

### 10 TAC §§6.1 - 6.10

STATUTORY AUTHORITY. The new chapter is 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.

*§6.1. Purpose and Goals.*

(a) The rules established herein are for CSBG, LIHEAP, and DOE-WAP. Additional program specific requirements are contained within each program subchapter and Chapters 1 and 2 of this title (relating to Administration and Enforcement, respectively).

(b) Programs administered by the Community Affairs (CA) Division of the Texas Department of Housing and Community Affairs

(the Department) support the Department's statutorily assigned mission.

(c) The Department accomplishes its mission chiefly by acting as a conduit for federal grant funds and other assistance for housing and community affairs programs. Ensuring program compliance with the state and federal laws that govern the CA programs is another important part of the Department's mission. Oversight and program mandates ensure state and federal resources are expended in an efficient and effective manner.

(d) In instances of a disaster, the Department may pursue waivers or explore flexibilities as addressed in HHS Information Memorandum (IM) 154 (and any other subsequent guidance or similar guidance for LIHEAP or DOE WAP) through HHS or DOE within the CA programs in order to serve low income Texans.

*§6.2. Definitions.*

(a) To ensure a clear understanding of the terminology used in the context of the CSBG, LIHEAP, and DOE-WAP programs of the Community Affairs Division, a list of terms and definitions has been compiled as a reference. Any capitalized terms not specifically defined in this section or any section referenced in this chapter shall have the meaning as defined in Chapter 2306 of the Tex. Gov't Code, Chapter 1 of this title (relating to Administration), Chapter 2 of this title (relating to Enforcement), or applicable federal regulations.

(b) The words and terms in this chapter shall have the meanings described in this subsection unless the context clearly indicates otherwise. Refer to Subchapters B, C, and D of this chapter for program specific definitions.

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

(2) Awarded Funds--The amount of funds or proportional share of funds committed by the Department's Board to a Subrecipient or service area.

(3) Categorical Eligible/Eligibility--A method where a Subrecipient must deem a Household to be eligible for LIHEAP or DOE benefits if that Household includes at least one member that receives assistance under specific federal programs as identified in §6.307 and §6.406 (relating to Subrecipient Requirements for Customer Eligibility Criteria and Establishing Priority for Eligible Households and Subrecipient Requirements for Establishing Priority for Eligible Households and Customer Eligibility Criteria, respectively), as applicable.

(4) Child--Household member not exceeding 18 years of age.

(5) Code of Federal Regulations (CFR)--The codification of the general and permanent rules and regulations of the federal government as adopted and published in the *Federal Register*.

(6) Community Action Agencies (CAAs)--Private Nonprofit Organizations and Public Organizations that carry out the Community Action Program, which was established by the 1964 Economic Opportunity Act to fight poverty by empowering the poor in the United States.

(7) Community Services Block Grant (CSBG)--An HHS-funded program which provides funding for CAAs and other Eligible Entities that seek to address poverty at the community level.

(8) Comprehensive Energy Assistance Program (CEAP)--A LIHEAP-funded program to assist low-income Households, in meeting their immediate home energy needs.

(9) Concern--A policy, practice or procedure that has not yet resulted in a Finding or Deficiency, but if not changed will or may result in a Finding or Deficiency.

(10) Contract--The executed written agreement between the Department and a Subrecipient performing an activity related to a program that describes performance requirements and responsibilities assigned by the document, for which the first day of the Contract Term is the point at which program funds may be considered by a Subrecipient for Expenditure, unless otherwise directed in writing by the Department.

(11) Contract System--A web-based data collection platform which allows Subrecipients of Community Services programs to sign and view Contracts and submit performance and financial reports online.

(12) Contract Term--The period of Expenditure under a Contract.

(13) Contracted Funds--The gross amount of funds Obligated by the Department to a Subrecipient as reflected in a Contract.

(14) Cost Reimbursement--A Contract sanction whereby reimbursement of costs incurred by the Subrecipient is made only after the Department has conducted such review as it deems appropriate, which may be complete or limited, such as on a sampling basis, and approved backup documentation provided by the Subrecipient to support such costs. Such a review and approval does not serve as a final approval and all uses of advanced funds remain subject to review in connection with future or pending reviews, monitoring, or audits.

(15) Declaration of Income Statement (DIS)--A Department-approved form used only when it is not possible for an applicant to obtain third party or firsthand verification of income.

(16) Deficiency--Consistent with the CSBG Act, a Deficiency exists when an Eligible Entity has failed to comply with the terms of an agreement or a State plan, or to meet a State requirement. The Department's determination of a Deficiency may be based on the Eligible Entity's failure to provide CSBG services, or to meet appropriate standards, goals, and other requirements established by the State, including performance objectives, or as provided for in §2.203(b) of this title (relating to Termination and Reduction of Funding for CSBG Eligible Entities). A Finding, Observation, or Concern that is not corrected, or is repeated, may become a Deficiency.

(17) Deobligate/Deobligation--The partial or full removal of Contracted Funds from a Subrecipient. Partial Deobligation is the removal of some portion of the full Contracted Funds from a Subrecipient, leaving some remaining balance of Contracted Funds to be administered by the Subrecipient. Full Deobligation is the removal of the full amount of Contracted Funds from a Subrecipient. This definition does not apply to CSBG non-Discretionary funds.

(18) Department of Energy (DOE)--Federal department that provides funding for a weatherization assistance program.

(19) Department of Health and Human Services (HHS)--Federal department that provides funding for CSBG and LIHEAP energy assistance and weatherization.

(20) Discretionary Funds--CSBG funds, excluding the 90% of the state's annual allocation that is designated for statewide allocation to CSBG Eligible Entities under §6.203 of this subchapter (relating to Formula for Distribution of CSBG Funds) and state administrative funds, maintained by the Department, at its discretion, for CSBG allowable uses as authorized by the CSBG Act.

(21) Dwelling Unit--A house, including a stationary mobile home, an apartment, a group of rooms, or a single room occupied as separate living quarters.

(22) Elderly Person--

(A) For CSBG, a person who is 55 years of age or older; and

(B) For CEAP and WAP, a person who is 60 years of age or older.

(23) Eligible Entity--Those local organizations in existence and designated by the federal and state government to administer programs created under the Federal Economic Opportunity Act of 1964. This includes CAAs, limited-purpose agencies, and units of local government. The CSBG Act defines an Eligible Entity as an organization that was an Eligible Entity on the day before the enactment of the Coats Human Services Reauthorization Act of 1998 (October 27, 1998), or is designated by the Governor to serve a given area of the state and that has a tripartite board or other mechanism specified by the state for local governance.

(24) Emergency--defined as:

(A) A natural disaster;

(B) A significant home energy supply shortage or disruption;

(C) Significant increase in the cost of home energy, as determined by the Secretary of HHS;

(D) A significant increase in home energy disconnections reported by a utility, a state regulatory agency, or another agency with necessary data;

(E) A significant increase in participation in a public benefit program such as the food stamp program carried out under the Food Stamp Act of 1977 (7 U.S.C. §§2011, et seq.), the national program to provide supplemental security income carried out under Title XVI of the Social Security Act (42 U.S.C. §§1381, et seq.) or the state temporary assistance for needy families program carried out under Part A of Title IV of the Social Security Act (42 U.S.C. §§601, et seq.), as determined by the head of the appropriate federal agency;

(F) A significant increase in unemployment, layoffs, or the number of Households with an individual applying for unemployment benefits, as determined by the Secretary of Labor; or

(G) An event meeting such criteria as the Secretary of HHS, at the discretion of the Secretary of HHS, may determine to be appropriate.

(25) Expenditure--Funds that have been accrued or remitted for purposes of the award.

(26) Families with Young Children--A Household that includes a Child age five or younger. For LIHEAP-WAP only, a Family with Young Children also includes a Household that has a pregnant woman.

(27) Federal Poverty Income Guidelines--The official poverty income guidelines as issued by HHS annually.

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

(29) High Energy Burden--A Household whose energy burden exceeds 11% of annual gross income (as defined by the applicable program), determined by dividing a Household's annual home energy costs by the Household's annual gross income.

(30) High Energy Consumption--A Household that is billed more than $1000 annually for related fuel costs for heating and cooling their Dwelling Unit.

(31) Household--An individual or group of individuals, excluding unborn children, who are living together as one economic unit. For DOE WAP this includes all persons living in the Dwelling Unit. For CSBG/LIHEAP it includes these persons customarily purchasing residential energy in common or making undesignated payments for energy. In CSBG/LIHEAP a live-in aide, or a Renter with a separate lease that includes a separate bill for utilities is not considered a Household member.

(32) Inverse Ratio of Population Density Factor--The number of square miles of a county divided by the number of poverty Households of that county.

(33) Low Income Household--defined as:

(A) For DOE WAP, a Household whose total combined annual income is at or below 200% of the Federal Poverty Income guidelines, or a Household who is Categorically Eligible;

(B) For CEAP and LIHEAP-WAP, a Household whose total combined annual income is at or below 150% of the Federal Poverty Income guidelines, or a Household who is Categorically Eligible; and

(C) For CSBG, a Household whose total combined annual income is at or below 125% of the Federal Poverty Income guidelines.

(34) Low Income Home Energy Assistance Program (LIHEAP)--An HHS-funded program which serves Low Income Households who seek assistance for their home energy bills and/or weatherization services.

(35) Means Tested Veterans Program--A program whereby applicants receive payments under §§1315, 1521, 1541, or 1542 of Title 38, United States Code, or under §306 of the Veterans' and Survivors' Pension Improvement Act of 1978. Benefit letters under 38 U.S.C. §§1315, 1541, and 1542 must include language indicating dependency and indemnity compensation. Benefit letters under 38 U.S.C. §1521 must indicate that it is for a veteran's pension, rather than for a service connected disability.

(36) Mixed Status Household--A Household that contains one or more members that are U.S. Citizens, U.S. Nationals, or Qualified Aliens, and one or more members that are Unqualified Aliens.

(37) Monthly Performance and Expenditure Report--Two separate but linked reports indicating a Subrecipient's or Eligible Entity's performance and financial information, due to the Department on or before the fifteenth day of each month of the Contract Term following the reporting month. If the fifteenth falls on a weekend or holiday, the reports must still be entered on or before the fifteenth. The data the

Department collects is subject to change based on changes required by DOE or HHS.

(38) Obligation--Funds become obligated upon approval of an award to Subrecipient by the Department's Governing Board, unless the Department does not receive sufficient funding from the cognizant federal entity.

(39) Observation--A notable policy, practice or procedure observed through the course of monitoring.

(40) Office of Management and Budget (OMB)--Office within the Executive Office of the President of the United States that oversees the performance of federal agencies and administers the federal budget.

(41) OMB Circulars--Instructions and information issued by OMB to Federal agencies that set forth principles and standards for determining costs for federal awards and establish consistency in the management of grants for federal funds. Uniform cost principles and administrative requirements for local governments and for nonprofit organizations, as well as audit standards for governmental organizations and other organizations expending federal funds are set forth in 2 CFR Part 200, unless different provisions are required by statute or approved by OMB.

(42) Outreach--The method used by a Subrecipient that attempts to identify customers who are in need of services, alerts these customers to service provisions and benefits, and helps them use the services that are available. Outreach is utilized to locate, contact and engage potential customers.

(43) Performance Statement--A document which identifies the services to be provided by a Subrecipient.

(44) Person with a Disability--Any individual who is:

(A) An individual described in 29 U.S.C. §701 or has a disability under 42 U.S.C. §§12131 - 12134;

(B) Disabled as defined in 42 U.S.C. 1382(a)(3)(A), 42 U.S.C. §423, or in 42 U.S.C. §15001;

(C) Receiving benefits under 38 U.S.C. Chapter 11 or 15; or

(D) An individual with a disability as defined in §1.202(4).

(45) Population Density--The number of persons residing within a given geographic area of the state.

(46) Private Nonprofit Organization--An organization described in §501(c) of the Internal Revenue Code (the Code) of 1986 and which is exempt from taxation under subtitle A of the Code and that is not a Public Organization.

(47) Production Schedule--The estimated monthly and quarterly performance targets and Expenditures for a Contract period. The Production schedule must be signed by the applicable approved signatory and approved by the Department in writing.

(48) Program Year--January 1 through December 31 of each calendar year for CSBG and LIHEAP; July 1 through June 30 of each calendar year for DOE WAP.

(49) Public Organization--A unit of government, as established by the Legislature of the State of Texas. Includes, but may not be limited to, cities, counties, and councils of governments.

(50) Qualified Alien--A person that is not a U.S. Citizen or a U.S. National and is described at 8 U.S.C. §1641(b) and (c).

(51) Referral--The documented process of providing information to a customer Household about an agency, program, or professional person that can provide the service(s) needed by the customer.

(52) Reobligation--The reallocation of Deobligated funds to other Subrecipients.

(53) Service Area--The geographical area where a Subrecipient must provide services under a Contract.

(54) Single Audit--The audit required by OMB, 2 CFR Part 200, Subpart F, or Tex. Gov't Code, Chapter 738, Uniform Grant and Contract Management, as reflected in an audit report.

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

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

(57) Subrecipient--An organization that receives federal funds passed through the Department to operate the CSBG, CEAP, DOE WAP and/or LIHEAP program(s).

(58) Supplemental Security Income (SSI)--A means tested program run by the Social Security Administration.

(59) System for Award Management (SAM)--Combined federal database that includes the Excluded Parties List System (EPLS).

(60) Systematic Alien Verification for Entitlements (SAVE)--Automated intergovernmental database that allows authorized users to verify the immigration status of applicants.

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

(62) Uniform Grant Management Standards (UGMS)--The standardized set of financial management procedures and definitions established by Tex. Gov't Code Chapter 783 to promote the efficient use of public funds by requiring consistency among grantor agencies in their dealings with grantees, and by ensuring accountability for the expenditure of public funds. State agencies are required to adhere to these standards when administering grants and other financial assistance agreements with cities, counties and other political subdivisions of the state. This includes all Public Organizations. In addition, Tex. Gov't Code Chapter 2105, subjects Subrecipients of federal block grants (as defined therein) to the Uniform Grant and Contract Management Standards.

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

(64) Unqualified Alien--A person that is not a U.S. Citizen, U.S. National, or a Qualified Alien.

(65) Vendor Agreement--An agreement between the Subrecipient and energy vendors that contains assurances regarding fair billing practices, delivery procedures, and pricing for business transactions involving LIHEAP beneficiaries.

(66) Vulnerable Populations--Elderly persons, Persons with a Disability, and Households with a Child at or below the age of five.

(67) Weatherization Assistance Program (WAP)--DOE and LIHEAP funded program designed to reduce the energy cost burden of Low Income Households through the installation of energy efficient weatherization materials and education in energy use.

*§6.3. Subrecipient Contract.*

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

(b) The governing body of the Subrecipient must pass a resolution authorizing its Executive Director or his/her designee to have signature authority to enter into contracts, sign amendments, and review and approve reports. All Contract actions including extensions, amendments or revisions must be ratified by the governing body at a subsequent regularly scheduled meeting no later than 120 calendar days from the Contract action. Minutes relating to this resolution must be on file at the Subrecipient level.

(c) Within 45 calendar days following the conclusion of a Contract issued by the Department, the Subrecipient shall provide a final expenditure and final performance report regarding funds expended under the terms of the Contract.

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

(e) Amendments and Extensions to Contracts.

(1) Except for quarterly amendments to non-Discretionary CSBG Contracts to add funds as they are received from HHS, and excluding amendments that move funds within budget categories but do not extend time or add funds, amendment and extension requests must be submitted in writing by the Subrecipient, and will not be granted if any of the following circumstances exist:

(A) If the award for the Contract was competitively awarded and the amendment would materially change the scope of Contract performance;

(B) If the Subrecipient is delinquent in the submission of their Single Audit or the Single Audit Certification form required by §1.403, (relating to Single Audit Requirements), in Chapter 1 of this title (relating to Administration);

(C) If the Subrecipient owes the Department disallowed amounts in excess of $1,000 and a Department-approved repayment plan is not in place or has been violated;

(D) For amendments adding funds (not applicable to amendments for extending time) if the Department has cited the Subrecipient for violations within §6.10 of this subchapter (related to Compliance Monitoring) and the corrective action period has expired without correction of the issue or a satisfactory plan for correction of the issue; or

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

(2) Within 30 calendar days of a Subrecipient's request for a Contract amendment or extension request the request will be processed or denied in writing. If denied, the applicable reason from this subsection or other applicable reason will be cited. The Subrecipient may appeal the decision to the Executive Director consistent with Chapter 1, §1.7, of this title, (relating to the Appeals Process).

*§6.4. Income Determination.*

(a) Eligibility for program assistance is determined under the Federal Poverty Income Guidelines and calculated as described herein (some forms of income may qualify the Household as Categorically Eligible for assistance in §6.2(b)(3), however Categorical Eligibility does not determine the level of benefit, which is determined through the Income Determination process).

(b) Income means cash receipts earned and/or received by all Household members 18 years of age and older before taxes during applicable tax year(s), but not the excluded income listed in paragraph (2) of this subsection. Income is to be based on the Gross Annual Income (defined as the total amount of non-excluded income earned annually before taxes or any deductions) for all Household members 18 years of age and older.

(c) Exceptions to the use of Gross Income are:

(1) From non-farm or farm self-employment net receipts must be used (i.e., receipts from a person's own business or from an owned or rented farm after deductions for business or farm expenses); and

(2) From gambling or lottery winnings net income must be used.

(d) If an income source is not excluded in this subsection, it must be included when determining income eligibility. Excluded Income:

(1) Capital gains;

(2) Any assets drawn down as withdrawals from a bank;

(3) Balance of funds in a checking or savings account;

(4) Any amounts in an "individual development account" as provided by the Assets for Independence Act, as amended in 2002 (Pub. L. 107-110, 42 U.S.C. 604(h)(4));

(5) Proceeds from the sale of property, a house, or a car;

(6) One-time payments from a welfare agency to a family or person who is in temporary financial difficulty;

(7) Tax refunds, Earned Income Tax Credit refunds;

(8) Jury duty compensation;

(9) Gifts, loans, and lump-sum inheritances;

(10) One-time insurance payments, or compensation for injury;

(11) Non-cash benefits, such as the employer-paid or union-paid portion of health insurance or other employee fringe benefits;

(12) Reimbursements (for mileage, gas, lodging, meals, etc.);

(13) Employee fringe benefits such as food or housing received in lieu of wages;

(14) The value of food and fuel produced and consumed on farms;

(15) The imputed value of rent from owner-occupied non-farm or farm housing;

(16) Federal non-cash benefit programs as Medicare, Medicaid, SNAP, WIC, and school lunches, and housing assistance (Medicare deduction from Social Security Administration benefits should not be counted as income);

(17) Combat zone pay to the military;

(18) College scholarships, Pell and other grant sources, assistantships, fellowships and work study, VA Education Benefits (GI Bill), Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu);

(19) Child support payments (amount paid by payor may not be deducted from income);

(20) Income of Household members under 18 years of age including payment to children under the age of 18 made payable to a person over the age of 18;

(21) Stipends from senior companion programs, such as Retired Senior Volunteer Program and Foster Grandparents Program;

(22) AmeriCorps Program payments, allowances, earnings, and in-kind aid;

(23) Depreciation for farm or business assets;

(24) Reverse mortgages;

(25) Payments for care of Foster Children;

(26) Payments or allowances made under the Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f));

(27) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602(c));

(28) Major disaster and emergency assistance received by individuals and families under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (93, as amended) and comparable disaster assistance provided by States, local governments, and disaster assistance organizations (42 U.S.C. 5155(d));

(29) Allowances, earnings, and payments to individuals participating in programs under the Workforce Innovation and Opportunity Act (29 U.S.C.3101));

(30) Payments received from programs funded under Title V of the Older Americans Act of 1965 (42 U.S.C. 3056(g));

(31) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858(q));

(32) Certain payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c));

(33) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459(e));

(34) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (94, §6);

(35) The first $2,000 of per capita shares received from judgment funds awarded by the National Indian Gaming Commission or the U.S. Claims Court, the interests of individual Indians in trust or restricted lands, and the first $2000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407 - 1408). This exclusion does not include proceeds of gaming operations regulated by the Commission;

(36) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund (101) or any other fund established pursuant to the settlement in In Re Agent Orange Liability Litigation, M.D.L. No. 381 (E.D.N.Y.);

(37) Payments received under the Maine Indian Claims Settlement Act of 1980 (96, 25 U.S.C. 1728);

(38) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (95);

(39) Any allowance paid under the provisions of 38 U.S.C. 1833(c) to children of Vietnam veterans born with spina bifida (38 U.S.C. 1802 - 05), children of women Vietnam veterans born with certain birth defects (38 U.S.C. 1811 - 16), and children of certain Korean service veterans born with spina bifida (38 U.S.C. 1821);

(40) Payments, funds, or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1990 (25 U.S.C. 1774f(b));

(41) Payments from any deferred U.S. Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts (42 U.S.C. §1437a(b)(4));

(42) A lump sum or a periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the case entitled Elouise Cobell et al. v. Ken Salazar et al., 816 F.Supp.2d 10 (Oct. 5, 2011 D.D.C.), for a period of one year from the time of receipt of that payment as provided in the Claims Resolution Act of 2010 (Pub. L. 111-291);

(43) Per capita payments made from the proceeds of Indian Tribal Trust Cases as described in PIH Notice 2013-30 "Exclusion from Income of Payments under Recent Tribal Trust Settlements" (25 U.S.C. 117b(a));

(44) Payments of up to $100,000 a year from an account established under the Achieving a Better Life Experience Act of 2014 or the ABLE Act of 2014 (P.L. 113-295) to a qualified beneficiary that are expended on qualified disability expenses; and

(45) Any other items which are excluded by virtue of federal or state legislation or by adopted federal regulations that have taken effect. The Department will, from time to time, provide on its website updated links to such federal or state exclusions. Notwithstanding such information, a Subrecipient may rely on any adopted federal or state exclusion on and after the date on which it took effect.

(e) The requirements for determining whether an applicant Household is eligible for assistance require the Subrecipient to annualize the Household income based on verifiable documentation of income, within 30 days of the application date.

(f) The Subrecipient must document all sources of income, including excluded income, for 30 days prior to the date of application, for all household members 18 years of age or older.

(g) Identify all income sources, not on the excluded list, for income calculation.

(1) The Subrecipient must calculate projected annual income by annualizing current income. Income that may not last for a full 12 months should be calculated assuming current circumstances will last a full 12 months, unless it can be documented that employment is less than 12 months/year and pay is not prorated over the entire 12 month period. For incomes not able to be annualized over a 12 month period, the income shall be calculated on the total annual earning period (e.g., for a teacher paid only nine months a year, the annual income should be the income earned during those nine months). In limited cases where income is not paid hourly, weekly, bi-weekly, semi-monthly nor monthly, the Subrecipient may contact the Department to determine an alternate calculation method in unique circumstances on a case-by-case basis.

(2) For all customers including those with categorical eligibility, the Subrecipient must collect verifiable documentation of Household income received in the 30 days prior to the date of application.

(3) Once all sources of income are known, Subrecipient must convert reported income to an annual figure. Convert periodic wages to annual income by multiplying:

(A) Hourly wages by the number of hours worked per year (2,080 hours for full-time employment with a 40-hour week and no overtime);

(B) Weekly wages by 52;

(C) Bi-weekly wages (paid every other week) by 26;

(D) Semi-monthly wages (paid twice each month) by 24; and

(E) Monthly wages by 12.

(F) One-time employment income should be added to the total after the income has been annualized.

(h) If a federal or state requirement provides an updated definition of income or method for calculating income, the Department will provide written notice to Subrecipients about the implementation date for the new requirements.

(i) If proof of income is unobtainable, the applicant must complete and sign a Declaration of Income Statement (DIS).

(j) For CSBG and LIHEAP, a live in aide or attendant is not considered part of the Household for purposes of determining Household income, but is considered for a benefit based on the size of the Household. Example 4(1): A Household applies for assistance. There are four people in the Household. One of the four people is a live-in aide. To determine if the Household is qualified, annualize the income of the other three Household members and compare it to the three person income limit. However, if the amount of benefit is based on Household size (such as benefit level based on the number of people in the Household), then this is a four person Household.

(k) A Subrecipient shall not discourage anyone from applying for assistance. Subrecipient shall provide all potential customers with an opportunity to apply for programs.

*§6.5. Documentation and Frequency of Determining Customer Eligibility.*

(a) For CEAP and CSBG, income must be verified annually, with a new application each Program Year.

(b) For WAP, income must be verified at the initial application. If the customer is on a wait-list for over 12 months since initial application, Household income must be updated within at least 12 months of the unit being initially inspected.

*§6.6. Subrecipient Contact Information and Required Notifications.*

(a) In accordance with §1.22 of this title (relating to Providing Contact Information to the Department), Subrecipient will notify the Department through the CA Contract System and provide contact information for key management staff (Executive Director, Chief Financial Officer, Program Director/Manager/Coordinator or any other person, regardless of title, generally performing such duties) vacancies and new hires within 30 days of such occurrence.

(b) For Eligible Entities, as vacancies exceed the 90 day threshold within the Eligible Entity's Board of Directors or for a Public Organization for the advisory board of directors, the Department will be notified of such vacancies and, if applicable, the sector the board member or advisory board member represented.

(c) Contact information for all members of the Board of Directors or advisory board of directors must be provided to the Department and shall include: each board member's name, the position they hold, their term, their mailing address (which must be different from the organization's mailing address), phone number (different from the organization's phone number), fax number (if applicable), and the direct e-mail address for the chair of the advisory board.

(d) The Department will rely solely on the contact information supplied by the Subrecipient in the Department's web-based Community Affairs Contract System. It is the Subrecipient's sole responsibility to ensure such information is current, accurate, and complete. Correspondence sent to the email or physical address shown in CA Contract System will be deemed delivered to the Subrecipient. Correspondence from the Department may be directly uploaded to the Subrecipient's CA contract account using a secure electronic document attachment system. Once uploaded, notification of the attachment will be sent electronically to the email address listed in the CA Contract System. The Department is not required to send a paper copy and if it does so it does as a voluntary and non-precedential courtesy only.

(e) Upon the hiring of a new program coordinator (e.g., the weatherization program coordinator) for an activity funded by non-discretionary CSBG, LIHEAP, or DOE-WAP the Subrecipient is required to contact the Department with written notification within 30 calendar days of the hiring, and to request training and technical assistance.

(f) Contact information for a primary and secondary contact are required to be provided to the Department and accurately maintained as it relates to the handling of disaster response and emergency services as provided for in §6.207(d).

*§6.7. Subrecipient Reporting Requirements.*

(a) Subrecipient must submit the Monthly Performance and Expenditure Report through the Community Affairs Contract System not later than the fifteenth day of each month following the reported month of the Contract Period. Reports are required even if a fund reimbursement or advance is not being requested. It is the responsibility of the Subrecipient to upload information into the Department's designated database.

(b) Subrecipient shall reconcile their expenditures with their performance on at least a monthly basis before seeking a request for funds for the following month. If the Subrecipient is unable to reconcile on a month-to-month basis, the Subrecipient must provide at the request of the Department, a written explanation for the variance and take appropriate measures to reconcile the subsequent month. It is the responsibility of a Subrecipient to demonstrate the compliant use of all funds provided during the Contract Term.

(c) If the Department has provided funds to a Subrecipient in excess of the amount of reported Expenditures in the ensuing month's report, no additional funds will be released until those excess funds have been expended. For example, in January a Subrecipient requests and is advanced $50,000. In February, if the Subrecipient reports $10,000 in Expenditures and an anticipated need for $30,000, no funds will be released.

(d) Subrecipient shall electronically submit to the Department, no later than 45 days after the end of the Subrecipient Contract Term, a final accounting of the Contract's expenditure or reimbursement utilizing the final Monthly Performance and Expenditure Report. If this or a later reconciliation results in funds owed to the Department, Subrecipient shall, within 10 calendar days, either send funds to the Department, or contact the Department to enter into a time-limited Department approved repayment plan.

(e) CSBG Annual Report and National Survey. Federal requirements mandate all states to participate in the preparation of an annual performance measurement report. To comply with the requirements of 42 U.S.C. §9917, all CSBG Eligible Entities and other organizations receiving CSBG funds are required to participate.

(f) The Subrecipient shall submit other reports, data, and information on the performance of the DOE and LIHEAP-WAP program activities as required by DOE pursuant to 10 CFR §440.25 or by the Department.

(g) Subrecipient shall submit other reports, data, and information on the performance of the federal program activities as required by the Department.

(h) A Subrecipient may refer a Contractor to the Department for Debarment consistent with §2.401 of this title, (relating to Debarment from Participation in Programs Administered by the Department).

*§6.8. Potential Applicant/Applicant/Customer Denials and Appeal Rights.*

(a) This section does not apply to entities that only receive Discretionary CSBG funds.

(b) Subrecipient shall establish a written procedure for the handling of denials of service when the denial involves an individual inquiring or applying for services/assistance whom is communicating or behaving in a threatening or abusive manner.

(c) Subrecipient shall establish a denial of service complaint procedure to address written complaints from program applicants/customers. At a minimum, the procedures described in paragraphs (1) - (8) of this subsection shall be included:

(1) Subrecipient shall provide a written denial of assistance notice to applicant within 10 calendar days of the determination. Such a determination is defined as a denial of assistance, but does not include a level of assistance lower than the possible program limits or a reduction in assistance, as long as such process is in accordance with the Subrecipient's written policy. This notification shall include written notice of the right of a hearing and specific reasons for the denial by program. The applicant wishing to appeal a decision must provide written notice to Subrecipient within 20 calendar days of receipt of the denial notice.

(2) A Subrecipient must establish an appeals committee composed of at least three persons. Subrecipient shall maintain documentation of appeals in their customer files.

(3) Subrecipient shall hold a private appeal hearing (unless otherwise required by law) by phone or in person in an accessible location within 10 business days after the Subrecipient received the appeal request from the applicant and must provide the applicant notice in writing of the time/location of the hearing at least seven calendar days before the appeal hearing.

(4) Subrecipient shall record the hearing.

(5) The hearing shall allow time for a statement by Subrecipient staff with knowledge of the case.

(6) The hearing shall allow the applicant at least equal time, if requested, to present relevant information contesting the decision.

(7) Subrecipient shall notify applicant of the decision in writing. The Subrecipient shall mail the notification by close of business on the third calendar day following the decision (three day turnaround).

(8) If the denial is solely based on income eligibility, the provisions described in paragraphs (2) - (7) of this subsection do not apply, but the applicant may request a recertification of income eligibility based on initial documentation provided at the time of the original application. The recertification will be an analysis of the initial calculation based on the documentation received with the initial application for services and will be performed by an individual other than the person who performed the initial determination. If the recertification upholds the denial based on income eligibility documents provided at the initial application, the applicant must be notified in writing.

(d) If the applicant is not satisfied with Subrecipient's decision, the applicant may further appeal the decision in writing to the Department within 10 calendar days of notification of an adverse decision.

(e) Applicants/customers who allege that the Subrecipient has denied all or part of a service or benefit in a manner that is unjust, violates discrimination laws, or without reasonable basis in law or fact, may request a contested hearing under Tex. Gov't Code, Chapter 2001.

(f) The hearing under subsection (d) of this section shall be conducted by the State Office of Administrative Hearings on behalf of the Department in the locality served by the Subrecipient, for which the procedures are further described in §1.13 of this title, (relating to Contested Case Hearing Procedures).

(g) If the applicant/customer appeals to the Department, the Subrecipient's funds that could be pledged to that Household should remain unencumbered until the Department completes its decision.

*§6.9. Training Funds for Conferences.*

The Department may provide financial assistance to Subrecipients for training and technical activities for state sponsored, federally sponsored, and other relevant workshops and conferences. Subrecipients may use program training funds to attend conferences provided the conference agenda includes topics directly related to administering the program. Costs to attend the conference must be prorated by program for the appropriate portion. Only staff billed to the specific program, directly or indirectly, may charge any training and travel costs to the program.

*§6.10. Compliance Monitoring.*

(a) Purpose and Overview.

(1) This section provides the procedures that will be followed for monitoring for compliance with the programs in 10 TAC Chapter 6.

(2) Any entity administering any or all of the programs detailed in 10 TAC Chapter 6 is a Subrecipient. A Subrecipient may also administer other programs, including programs administered by other state or federal agencies and privately funded programs. If the Subrecipient has contracts for other programs through the Department, including but not limited to the Emergency Solutions Grants, Ending Homelessness Fund, Homeless Housing and Services Program, HOME Partnerships Program, the Neighborhood Stabilization Program, or the State Housing Trust Fund, the Department may, but is not required to and does not commit to, coordinate monitoring of those programs with monitoring of Community Affairs Division funds under this subchapter.

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

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

(1) In general, a Subrecipient will be scheduled for monitoring based on state or federal monitoring requirements and/or a risk

assessment. Factors to be included in the risk assessment include but are not limited to: the number of Contracts administered by the Subrecipient, the amount of funds awarded and expended, the length of time since the last monitoring, findings identified during previous monitoring, issues identified through the submission or lack of submission of a single audit, complaints received by the Department, and reports of fraud, waste and/or abuse. The risk assessment will also be used to determine which Subrecipients will have an onsite review and which may have a desk review.

(2) The Department will provide a Subrecipient with written notice of any upcoming onsite or desk monitoring review, and such notice will be given to the Subrecipient and Subgrantee by email to the Subrecipient's chief executive officer at the email address most recently provided to the Department by the Subrecipient. In general, a 30 day notice will be provided. However, if a credible complaint of fraud or other egregious noncompliance is received the Department reserves the right to conduct unannounced monitoring visits. It is the responsibility of the Subrecipient to provide to the Department the current contact information for the organization and the Board in accordance with §6.6 of this chapter (relating to Subrecipient Contact Information and Required Notifications) and §1.22 of this title (relating to Providing Contact Information to the Department).

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

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

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

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

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

(E) Correspondence to or from any independent auditor;

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

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

(H) Applicable customer files with all required documentation;

(I) Applicable human resources records;

(J) Monitoring reports from other funding entities;

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

(L) Documentation to substantiate compliance with any other applicable Department contract provisions and state or federal requirements including, but not limited to UGMS, 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, Audit Requirements for Federal Awards, Lead Based Paint, the Personal Responsibility and Work Opportunity Act, and limited English proficiency requirements.

(c) Post Monitoring Procedures.

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

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

(3) Monitoring Close Out. Within 45 calendar days after the end of the corrective action period, a close out letter will be issued to the Subrecipient. If the Subrecipient supplies evidence establishing continual compliance that negates the finding of noncompliance, the issue of noncompliance will be rescinded. If the Subrecipient's timely response satisfies all findings and concerns noted in the monitoring letter, the issue of noncompliance will be noted as corrected. In some circumstances, the Subrecipient may be unable to secure documentation to correct a finding. In those instances, if there are mitigating circumstances, the Department may note the finding is not corrected but close the issue with no further action required. If the Subrecipient's response does not correct all findings noted, the close out letter will identify the documentation that must be submitted to correct the issue.

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

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

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

(C) A Subrecipient may request Alternative Dispute Resolution (ADR). Subrecipient should send a proposal to the Department's Dispute Resolution Coordinator to initiate ADR pursuant to §1.17 of this title (relating to Alternative Dispute Resolution).

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

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 September 9, 2019.

TRD-201903165
Robert Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 20, 2019
For further information, please call: (512) 475-1762

## SUBCHAPTER B. COMMUNITY SERVICES BLOCK GRANT

### 10 TAC §§6.201 - 6.214

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

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

*§6.201. Background and Definitions.*

(a) In addition to this subchapter, except where noted, the rules established in Subchapter A of this chapter (relating to General Provisions) and Chapters 1 and 2 (relating to Administration and Enforcement, respectively) of this title apply to the CSBG Program. The CSBG Act was amended by the "Community Services Block Grant Amendments of 1994" and the Coats Human Services Reauthorization Act of 1998. The Secretary is authorized to establish a community services block grant program and make grants available through the program to states to ameliorate the causes of poverty in communities within the states. Although Eligible Entities receive an allocation of CSBG funds, the CSBG program is not an entitlement program for eligible customers.

(b) The Texas Legislature designates the Department as the lead agency for the administration of the CSBG program pursuant to Tex. Gov't Code, §2306.092. CSBG funds are made available to Eligible Entities to carry out the purposes of the CSBG program.

(c) Except as otherwise noted herein all references in this subchapter to an Eligible Entity's board means both the governing board of the Private Nonprofit or the advisory board of the Public Organization.

(d) Definitions.

(1) Community Action Plan (CAP)--A plan required by the CSBG Act which describes the local Eligible Entity service delivery system, how coordination will be developed to fill identified gaps in services, how funds will be coordinated with other public and private resources, and how the local entity will use the funds to support innovative community and neighborhood based initiatives related to the grant.

(2) CSBG Act--The CSBG Act is a law passed by Congress authorizing the Community Services Block Grant. The CSBG Act was amended by the Community Services Block Grant Amendments of 1994 and the Coats Human Services Reauthorization Act of 1998 under 42 U.S.C. §§9901, et seq. The CSBG Act authorized establishing a community services block grant program to make grants available through the program to states to ameliorate the causes of poverty in communities within the states.

(3) Direct Customer Support--includes salaries and fringe benefits of case management staff as well as direct benefits provided to customers.

(4) National Performance Indicator (NPI)--A federally defined measure of performance within the Department's Community Affairs Contract System for measuring performance and results of Subrecipients of funds.

(5) Needs Assessment--An assessment of community needs in the areas to be served with CSBG funds.

(6) Quality Improvement Plan (QIP)--A plan developed by a CSBG Eligible Entity to correct Deficiencies identified by the Department as further described in §2.203 and §2.204 of this title (Termination and Reduction of Funding for CSBG Eligible Entities and Contents of a Quality Improvement Plan, respectively).

(7) Results Oriented Management and Accountability (ROMA)--ROMA provides a framework for continuous growth and improvement among Eligible Entities. ROMA implementation is a federal requirement for receiving federal CSBG funds, outlined in HHS IM 152.

(8) Strategic Plan--A planning document which takes into consideration the needs of the targeted community and identifies an organization's vision and mission; its strengths, weaknesses, opportunities, and threats; external and internal factors impacting the organization; and utilizes this information to set goals, objectives, strategies, and measure to meet over an identified period of time.

(9) Transitioned Out of Poverty (TOP)--a Household who was CSBG eligible and as a result of the delivery of CSBG-supported case management services attains an annual income in excess of 125% of the poverty guidelines for 90 calendar days.

(e) Use of certain terminology. In these rules and in the Department's administration of its programs, including the CSBG program, certain terminology is used that may not always align completely with the terminology employed in the CSBG Act. The term "monitoring" is used interchangeably with the CSBG Act term "review" as used in 42 U.S.C. §9915 of the CSBG Act. Similarly, the terms "findings," "concerns," and "violations" are used interchangeably with the term "deficiencies as used in 42 U.S.C. §9915 of the CSBG Act although, in a given context, they may be assigned more specific, different, or more nuanced meanings, as appropriate.

*§6.202. Purpose and Goals.*

The Department passes through CSBG funds to Public Organizations and Private Nonprofits that are to comply with the purposes of the CSBG Act.

*§6.203. Formula for Distribution of CSBG Funds.*

(a) The CSBG Act requires that no less than 90% of the state's annual allocation be allocated to Eligible Entities. The Department currently utilizes a multi-factor fund distribution formula to equitably provide CSBG funds throughout the state to the CSBG Eligible Entities. The formula is subject to adjustment from time to time when amended as part of the CSBG State Plan.

(b) The distribution formula incorporates the most current U.S. Census Bureau Decennial Census and data from the American Community Survey for information on persons not to exceed 125% of poverty. The formula is applied as follows:

(1) Each Eligible Entity receives a $50,000 base award;

(2) Then, the factors of poverty population, weighted at 98% and inverse population density, weighted at 2%, are applied to the state's allocation required to be distributed among Eligible Entities;

(3) If the base combined with the calculation resulting from the weighted factors in subparagraph (2) do not reach a minimum floor of $150,000, then a minimum floor of $150,000 is reserved for each of those CSBG eligible entities, resulting in a proportional reduction in other funds available for formula-based distribution;

(4) Then, the formula is re-applied to the balance of the 90% funds for distributing the remaining funds to the remaining CSBG eligible entities.

(c) Following the use of the decennial Census data, then on a biennial basis, the Department will use the most recent American Community Survey five year estimate data that is available. To the extent that there are significant reductions in CSBG funds received by the Department, the Department may revise the CSBG distribution formula through a rulemaking process.

(d) In years where permitted by the federal government, an Eligible Entity that does not obligate more than 20% of its base allocation in a Program Year (excluding any additional funds that may be distributed by the Department) by the end of the first quarter of the year following the allocation year for two consecutive years will have funding recaptured consistent with 42 U.S.C. §9907(a)(3). This recapture of funds does not trigger the procedures or protections of HHS IM 116. The Subrecipient of the funds will be provided a Contract for the average percentage of funds that they expended over the last two years. The Eligible Entity will be provided an opportunity to redistribute the funds through a competitive request for proposals to a Private Nonprofit Organization, located within the community served by the Eligible Entity. If the Eligible Entity selects this option it will be responsible for monitoring the Private Nonprofit Organization selected. If the Subrecipient does not provide them to an eligible Private Nonprofit Organization, located within the community served by the Subrecipient, the Department in accordance with HHS IM 42 shall redistribute the funds to another Eligible Entity to be used in accordance with the CSBG and Department rules.

(e) Five percent of the Department's annual allocation of CSBG funds may be expended on activities listed in 42 U.S.C. §9907(b)(A) - (H) and further described in the annual plan or by Board approval. The Department may also opt to distribute unexpended funds described in subsection (f) of this section for these activities.

(f) Up to 5% of the State's annual allocation of CSBG funds will be used for the Department's administrative purposes consistent with state and federal law.

*§6.204. Use of Funds.*

CSBG funds are contractually obligated to Eligible Entities, and accessed through the Department's web-based Community Affairs Contract System. Prior to executing a Contract for CSBG funds, the Department will verify that neither the entity, nor any member of the Eligible Entity's Board is federally debarred or excluded. Unless modified by Contract, the annual allocation has a beginning date of January 1 and an end date of December 31, regardless of the Eligible Entity's fiscal year. Eligible Entities may use the funds for administrative support and/or for direct services such as: education, employment, housing, health care, nutrition, transportation, linkages with other service providers, youth programs, emergency services, i.e., utilities, rent, food, Shelter, clothing, etc.

*§6.205. Limitations on Use of Funds.*

(a) Construction of Facilities. CSBG funds may not be used for the purchase, construction or improvement of land, or facilities as described in (42 U.S.C. §9918(a)).

(b) The CSBG Act prohibits the use of funds for partisan or nonpartisan political activity; any political activity associated with a candidate, contending faction, or group in an election for public or party office; transportation to the polls or similar assistance with an election; or voter registration activity (for example, contacting a congressional office to advocate for a change to any law is a prohibited activity).

(c) Utility and rent deposit refunds from vendors must be reimbursed to the Subrecipient and not the customer. Refunds must be treated as program income, and returned to the Department within 10 calendar days of receipt.

*§6.206. CSBG Community Assessment, Community Action Plan, and Strategic Plan.*

(a) In accordance with the CSBG Act, each Eligible Entity must submit a Community Action Plan on an annual basis. The Community Action Plan is required to be submitted to the Department by a date directed by the Department, for approval prior to execution of a Contract.

(b) Consistent with organizational standards relating to Data Analysis and Performance, the Eligible Entity must present to its governing board for review or action, at least every 12 months, an analysis of the agency's outcomes and any operational or strategic program adjustments and improvements identified as necessary; and the organization must submit its annual CSBG Information Survey data report which reflects customer demographics and organization-wide outcomes.

(c) Every three years each Eligible Entity shall complete a Community Assessment (may also be called "Community Needs Assessment" or CNA), upon which the annual CAP will be based. Guidance on the content and requirements of the Community Assessment will be released by the Department. Information related to the Community Assessment shall be submitted to the Department on or before a date specified by the Department in the previous year's Contract. The Community Assessment will require, among other things, that the top five needs of the Service Area are identified.

(d) Services to Poverty Population. An Eligible Entity administering services to customers in one or more counties in its CSBG Service Area shall ensure that such services are rendered reasonably and in an equitable manner to ensure fairness among all potential applicants eligible for services. Services rendered must reflect the poverty population ratios in the Service Area and services should be distributed based on the proportionate representation of the poverty population within a county. A variance of greater than plus or minus 20% may constitute a Deficiency. An Eligible Entity administering services to customers in one or more counties shall demonstrate marketing and outreach efforts to make available direct services to a reasonable percentage of the county's eligible population based on the most recent census or American Community Survey data, as directed by the Department. Services should also be distributed based on the proportionate representation of the poverty population within a county. Other CSBG-funded organizations shall ensure that services are rendered in accordance with requirements of the CSBG Contract.

(e) The CAP shall be derived from the Community Assessment and at a minimum include a budget, a description of the delivery of case management services, in accordance with the National Performance Indicators, and include a Performance Statement that describes the services, programs, activities, and planned outcomes to be delivered by the organization.

(f) The CAP must take into consideration the outcomes expected by previous CAPs. If past outcomes were not achieved as reported in the CA Contract System, or outcomes exceed the targeted goals, the Subrecipient must assess the reasons for the variance in outcomes, determine what will be done differently if continuing to include those outcome goals, and identify how any of issues or obstacles will be mitigated or addressed. An effective CAP should be constantly monitored and adjusted to optimize achievement of results consistent with CSBG Act goals.

(g) The Community Assessment and the CAP both require Department approval; those that do not meet the Department's requirements as articulated in these rules, in federal guidance, or in Subrecipient's Contract will be required to be revised until they meet the Department's satisfaction.

(h) If circumstances warrant amendments to the Community Assessment or the CAP, a Subrecipient must provide a written request to the Department identifying the specific requested change(s) to the document with a justification for each change. The Department will approve or deny amendment requests in writing.

(i) Hearing. In conjunction with the submission of the CAP, the Eligible Entity must annually submit to the Department a certification from its board that a public hearing was posted, and conducted on the proposed use of that year's funds.

(j) At least every five years, each Eligible Entity shall develop a Strategic Plan using the full ROMA cycle or a comparable system. The Strategic Plan shall meet the requirements of CSBG Organizational Standards (specifically Organization Standards 4.3, 6.1 through 6.5, and 9.3) and meet the requirements in the Department's Strategic Plan guidance. The Strategic Plan shall be submitted to the Department on or before a date specified by the Department in the Contract.

(k) Each CSBG Subrecipient must develop a Performance Statement which identifies the services, programs, and activities to be administered by that organization.

*§6.207. Subrecipient Requirements.*

(a) An Eligible Entity shall submit information regarding the planned use of funds as part of the CAP as described in §6.206 of this subchapter (relating to CSBG Community Assessment, Community Action Plan, and Strategic Plan).

(b) HHS issues terms and conditions for receipt of funds under the CSBG. Subrecipient will comply with the requirements of the terms and conditions of the CSBG award.

(c) CSBG Eligible Entities, and other CSBG organizations where applicable, are required to coordinate CSBG funds and form partnerships and other linkages with other public and private resources and coordinate and establish linkages between governmental and other social service programs to assure the effective delivery of services and avoid duplication of services.

(d) CSBG Eligible Entities will provide, on an emergency basis, the provision of supplies and services, nutritious foods, and related services as may be necessary to counteract the conditions of starvation and malnutrition among low-income individuals. The nutritional needs may be met through a referral source that has resources available to meet the immediate needs.

(e) CSBG Eligible Entities and other CSBG organizations are required to coordinate for the provision of employment and training activities through local workforce investment systems under the Workforce Innovation and Opportunity Act, as applicable.

(f) CSBG Eligible Entities are required to inform custodial parents in single-parent families that participate in programs, activities, or services about the resources available through the Texas Attorney General's Office with respect to the collection of child support payments and refer eligible parents to the Texas Attorney General's Office of Child Support Services Division.

(g) Documentation of Services. Subrecipient must maintain a record of referrals and services provided.

(h) Intake Form. To fulfill the requirements of 42 U.S.C. §9917, CSBG Subrecipient must complete and maintain an intake form that screens for income, assesses customer needs, and captures the demographic and household characteristic data required for the Monthly Performance and Expenditure Report, referenced in Subchapter A of this chapter (relating to General Provisions), for all Households receiving a community action service. CSBG Subrecipients must complete and maintain a manual or electronic intake form for all customers for each program year.

(i) Case Management.

(1) An Eligible Entity is required to provide integrated case management services. Subrecipient is required to identify and set goals for Households they serve through the case management process. Subrecipient is required to evaluate and assess the effect its case management system has on the short-term (less than three months) and long-term (greater than three months) impact on customers, such as enabling the customer to move from poverty to self-sufficiency, to maintain stability. CSBG funds may be used for short term case management to meet immediate needs. In addition, CSBG funds may be used to provide long-term case management to persons working to transition out of poverty and achieve self-sufficiency.

(2) An Eligible Entity must have and maintain documentation of case management services provided.

(3) An Eligible Entity is assigned a minimum TOP goal by the Department. Eligible Entities must provide ongoing case management services for these TOP Households. The case management services must include the components described in subparagraphs (A) - (L) of this paragraph. Subrecipients must also provide case management clients with a Customer Satisfaction Survey, described in subparagraph (M) of this paragraph, for the client to complete anonymously. At least annually, Subrecipients must evaluate the effectiveness of their case management services, as described in subparagraph (N) of this paragraph. The forms or systems utilized for each component may be manual or electronic forms provided by the Department or manual or electronic forms created by the Eligible Entity that at minimum contain the same information as the Department-issued form, which include the same components as those described in subparagraphs (A) - (L) of this paragraph.

(A) Self-Sufficiency Customer Questionnaire to assess a customer's status in the areas of employment, job skills, education, income, housing, food, utilities, child care, child and family development, transportation, healthcare, and health insurance;

(B) Self-Sufficiency Outcomes Matrix to assess the customer's status in the self-sufficiency domains noted in subparagraph (A) of this paragraph;

(C) Case Management Screening Questions to assess the customer's willingness to participate in case management services on an ongoing basis;

(D) For customers who are willing to engage in long term case management services, a Case Management Agreement between Subrecipient and customer;

(E) Release of Information Form;

(F) Case Management Service Plan to document planned goals agreed upon by the case manager and customer along with steps and timeline to achieve goals;

(G) Case management follow-up, which provides a system to document customer progress at completing steps and achieving goals. Case management follow-up should occur, at a minimum, every 30 days, either through a meeting, phone call or email. In person meetings should occur, at a minimum, once a quarter;

(H) A record of referral resources and documentation of the results;

(I) A system to document services received and to collect and report NPI data;

(J) A system to document case closure for persons that have exited case management;

(K) A system to document income for persons that have maintained an income level above 125% of the Federal Poverty Income Guidelines for 90 days;

(L) A system to document and notify customers of termination of case management services;

(M) Customer Satisfaction Survey; and

(N) On an annual basis, an Eligible Entity should determine the effectiveness of its case management services and identify strategies for improvement, including identification of reasons for customer terminations and strategies to limit their occurrence.

(j) Effective January 1, 2016, Eligible Entities shall meet the CSBG Organizational Standards as issued by HHS IM 138 (as revised), except that where the word bylaws is used the Department has modified the standards to read Certificate of Formation/Articles of Incorporation and bylaws; also, Eligible Entities must follow the requirements in UGMS including the State of Texas Single Audit Circular. Failure to meet the CSBG Organizational Standards as described in this subsection may result in HHS IM 116 proceedings as described in Chapter 2 of this title (relating to Enforcement).

*§6.208. Designation and Re-designation of Eligible Entities in Unserved Areas.*

If any geographic area of the state ceases to be served by an Eligible Entity, the requirements of 42 U.S.C. §9909 will be followed.

*§6.209. CSBG Requirements for Tripartite Board of Directors.*

(a) General Board Requirements:

(1) The Coats Human Services Reauthorization Act (Public Law 105-285) addresses the CSBG program and requires that Eligible Entities administer the CSBG program through a tripartite board. The Act requires that governing boards or a governing body be involved in the development, planning, implementation, and evaluation of the programs serving the low-income sector.

(2) Federal requirements for establishing a tripartite board require board oversight responsibilities for public entities, which differ from requirements for private organizations. Where differences occur between private and public organizations, requirements for each entity have been noted in related sections of the rule.

(b) Each CSBG Eligible Entity shall comply with the provisions of this rule and if necessary, the Eligible Entity's by-laws/Certificate of Formation/Articles of Incorporation shall be amended to reflect compliance with these requirements.

*§6.210. Board Structure.*

(a) Eligible Entities that are Private Nonprofit Organizations shall administer the CSBG program through a tripartite board that fully participates in the development, planning, implementation, and evaluation of the program to serve low-income communities. Records must be retained for all seated board members in relation to their elections to the board for the longer of the board member's term on the Board, or the federal record retention period. Some of the members of the board shall be selected by the Private Nonprofit Organization, and others through a democratic process; the board shall be composed so as to assure that the requirements of the CSBG Act are followed and are composed as:

(1) One-third of the members of the board shall be elected public officials, holding office on the date of the selection, or their representatives. In the event that there are not enough elected public officials reasonably available and willing to serve on the board, the entity may select appointive public officials to serve on the board. The public officials selected to serve on the board may each choose one permanent representative or designate an alternate to serve on the board. Appointive public officials or their representatives or alternates may be counted in meeting the 1/3 requirement.

(2) Not fewer than 1/3 of the members are persons chosen in accordance with the Eligible Entity's Board-approved written democratic selection procedures adequate to assure that these members are representative of low-income individuals and families in the neighborhood served; and each representative of low-income individuals and families selected to represent a specific neighborhood within a community resides in the neighborhood represented by the member.

(3) The remainder are members of business, industry, labor, religious, law enforcement, education, or other major groups and interests in the community served.

(b) For a Public Organization that is an Eligible Entity, the entity shall administer the CSBG grant through an advisory board that fully participates in the development, planning, implementation and evaluation of programs that serve low-income communities or through another mechanism specified by the state and that satisfies the requirements of a tripartite board in subsection (a) of this section. The advisory board is the only alternative mechanism for administration the Department has specified.

(c) An Eligible Entity administering the Head Start Program must comply with the Head Start Act (42 U.S.C. §9837) that requires the governing body membership to comply with the requirements of §642(c)(1) of the Head Start Act.

(d) Residence Requirement. Board members must follow any residency requirements outlined in 42 U.S. Code §9910, or federal regulations made pursuant to that section. Low income representatives must reside in the CSBG Service Area.

(e) Selection.

(1) Public Officials:

(A) Elected public officials or appointed public officials, selected to serve on the board, shall have either general governmental responsibilities or responsibilities which require them to deal with poverty-related issues; and

(B) Permanent Representatives and Alternates. The public officials selected to serve on the board may each choose one permanent representative or designate an alternate to serve on the board.

*(i)* Permanent Representatives. The representative need not be a public official but shall have full authority to act for the public official at meetings of the board. Permanent representatives may hold an officer position on the board. If a permanent representative is not chosen, then an alternate may be designated by the public official

selected to serve on the board. Alternates may not hold an officer position on the board.

*(ii)* Alternate Representatives. If the Private Nonprofit Entity or Public Organization advisory board chooses to allow alternates, the alternates for low-income representatives shall be elected at the same time and in the same manner as the board representative is elected to serve on the board. Alternates for representatives of private sector organizations may be designated to serve on the board and should be selected at the same time the board representative is selected. In the event that the board member or alternate ceases to be a member of the organization represented, he/she shall no longer be eligible to serve on the board. Alternates may not hold an officer position on the board.

(2) Low-Income Representatives:

(A) The CSBG Act and its amendments require representation of low-income individuals on boards. The CSBG statute requires that not fewer than one-third of the members shall be representatives of low-income individuals and families and that they shall be chosen in accordance with democratic selection procedures adequate to assure that these members are representative of low-income individuals and families in the neighborhoods served; and that each representative of low-income individuals and families selected to represent a specific neighborhood within a community resides in the neighborhood represented by the member.

(B) Board members representing low-income individuals and families must be selected in accordance with a democratic procedure. This procedure, as detailed in subparagraph (D) of this paragraph, may be either directly through election, public forum, or, if not possible, through a similar democratic process such as election to a position of responsibility in another significant service or community organization such as a school PTA, a faith-based organization leadership group; or an advisory board/governing council to another low-income service provider; For a Private Nonprofit Entity the democratic selection process must be detailed in the agency's Certificate of Formation/Articles of Incorporation or Bylaws, but the method detailed in the Bylaws (if so described) must not be inconsistent with any method of selection of Board members outlined in the Certificate of Formation/Articles of Incorporation; failure to comply could result in a default procedure that does not meet the CSBG requirements and potentially jeopardizes the Eligible Entity status of the organization as detailed in §6.213 of this subchapter (relating to Board Responsibility). For a Public Organization the democratic procedure must be written in the advisory board's procedures, and approved at a board meeting.

(C) Every effort should be made by the Private Nonprofit Entity or Public Organization to assure that low-income representatives are truly representative of current residents of the CSBG Service Area, including racial and ethnic composition, as determined by periodic selection or reselection by the community. "Current" should be defined by the recent or annual demographic changes as documented in the needs/Community Assessment. This does not preclude extended service of low-income community representatives on boards, but it does suggest that continued board participation of longer term members be revalidated and kept current through some form of democratic process.

(D) The procedure used to select the low-income representative must be documented to demonstrate that a democratic selection process was used. Among the selection processes that may be utilized, either alone or in combination, are:

*(i)* selection and elections, either within neighborhoods or within the community as a whole; at a meeting or conference, to which all neighborhood residents, and especially those who are poor, are openly invited;

*(ii)* selection of representatives to a community-wide board by members of neighborhood or sub-area boards who are themselves selected by neighborhood or area residents;

*(iii)* selection, on a small area basis (such as a city block); or

*(iv)* selection of representatives by existing organizations whose membership is predominately composed of poor persons.

(E) A Public Organization must not adopt a democratic selection process that requires all of the low-income representatives to reside in the political boundaries of the Public Organization, or that excludes all residents not in the political boundaries of the Public Organization from all participation in the democratic selection of all of the low-income representatives.

(3) Representatives of Private Groups and Interests:

(A) The Private Nonprofit or Public Organization shall select the remainder of persons to represent the private sector on the board or it may select private sector organizations from which representatives of the private sector organization would be chosen to serve on the board; and

(B) The individuals and/or organizations representing the private sector should be selected in such a manner as to assure that the board will benefit from broad community involvement. The board composition for the private sector shall draw from officials or members of business, industry, labor, religious, law enforcement, education, school districts, representatives of education districts and other major groups and interests in the community served.

(f) An Eligible Entity must have written procedures under which a low-income individual, community organization, religious organization, or representative of such may petition for adequate representation on the board of the Eligible Entity. Such petitions must be heard at a subsequent board meeting not more than 120 days after receiving the petition.

(g) Improperly Constituted Board. If the Department determines that a board of an Eligible Entity is improperly constituted, the Department shall prescribe the necessary remedial action, a timeline for implementation, and possible sanctions as described in §2.202 of this title (relating to Sanctions and Contract Closeout).

*§6.211. Board Administrative Requirements.*

(a) Compensation. Board members are not entitled to compensation for their service on the board. Reimbursement of reasonable and necessary expenses incurred by a board member in carrying out his/her duties is allowed.

(b) Conflict of Interest. No board member may participate in the selection, award, or administration of a Subcontract supported by CSBG funds if the board member has the following financial or personal interests in the entity or person selected to perform a subcontract:

(1) The board member;

(2) Any member of his/her family related within three degrees of consanguinity, adoption, or by marriage;

(3) The board member's partner or Household member; or

(4) Any entity or person which employs or is about to employ any of the individuals described in paragraphs (1) - (3) of this subsection.

(c) No employee of the local CSBG Subrecipient or of the Department may serve on the board.

(d) A seated board member is permitted to be appointed to serve as an interim Executive Director for up to 180 days so long as the Department is so notified, the board member did not participate in the vote that designated them as the interim Executive Director, the board member does not vote during the period for which they serve as the interim Executive Director, and the member is not considered a member for purposes of quorum. In such cases, the board member seat is not considered vacated, and is available for that board member to return.

*§6.212. Board Size.*

(a) Board Service Limitations for Private Nonprofit Entities and Public Organizations. The Eligible Entity may establish term limits and/or procedures for the removal of board members.

(b) Vacancies/Removal of Board Members.

(1) Vacancies. In no event shall the board allow 25% or more of either the public, private, or low-income sector board positions to remain vacant for more than 90 days. An Eligible Entity shall report the number of board vacancies by sector in its Monthly Performance and Expenditure Report. Compliance with the CSBG Act requirements for board membership is a condition for Eligible Entities to receive CSBG funding. There is no provision for a waiver or exception to these requirements.

(2) Removal of Board Members/Private Nonprofit Entities. Public officials or their representatives, may be removed from the board either by the board or by the entity that appointed them to serve on the board. Other members of the board may be removed by the board or pursuant to any procedure provided in the private nonprofit's Certificate of Formation/Articles of Incorporation or bylaws.

(3) Removal of Board Members/Public Organizations. Public officials or their representatives may be removed from the advisory board by the Public Organization, or by the advisory board if the board is so empowered by the Public Organization. The advisory board may petition the Public Organization to remove an advisory board member. All other board members may be removed by the advisory board.

(4) In order to meet the 1/3 requirement for the Public Official representation detailed in §6.210 of this rule (relating to Board Structure), board size shall be a number divisible by three.

*§6.213. Board Responsibility.*

(a) Tripartite boards have a fiduciary responsibility for the overall operation of the Eligible Entity. Members are expected to carry out their duties as any reasonably prudent person would do.

(b) At a minimum, board members are expected to:

(1) Maintain regular attendance of board and committee meetings;

(2) Develop thorough familiarity with core agency information as appropriate, such as the agency's bylaws, Certificate of Formation/Articles of Incorporation, sources of funding, agency goals and programs, federal and state CSBG statutes;

(3) Exercise careful review of materials provided to the board;

(4) Make decisions based on sufficient information;

(5) Ensure that proper fiscal systems and controls, as well as a legal compliance system, are in place;

(6) Maintain knowledge of all major actions taken by the agency; and

(7) Receive regular reports that include:

(A) Review and approval of all funding requests (including budgets);

(B) Review of reports on the organization's financial situation;

(C) Regular reports on the progress of goals specified in the Performance Statement or program proposal;

(D) Regular reports addressing the rate of expenditures as compared to those projected in the budget;

(E) Updated modifications to policies and procedures concerning employee's and fiscal operations;

(F) Updated information on community conditions that affect the programs and services of the organization; and

(G) Reports on any monitoring correspondence transmitted by the Department.

(c) Individuals that agree to participate on a tripartite governing board, accept the responsibility to assure that the agency they represent continues to:

(1) Assess and respond to the causes and conditions of poverty in their community;

(2) Achieve anticipated family and community outcomes; and

(3) Remains administratively and fiscally sound.

(4) Excessive absenteeism of board members compromises the mission and intent of the program.

*§6.214. Board Meeting Requirements.*

(a) A Board of an Eligible Entity must meet and have a quorum at least once per calendar quarter, and at a minimum five times per year and, must give each Board member a notice of meeting five calendar days in advance of the meeting.

(b) Tex. Gov't Code, Chapter 551, Texas Open Meetings Act, addresses specific requirements regarding meetings and meeting notices. Tex. Gov't Code, §551.001(3)(J), includes in the definition of a governmental body a nonprofit corporation that is eligible to receive funds under the federal CSBG program, and that is authorized by the state to serve a geographic area of the state. Thus, all Eligible Entities must follow the requirements of the Texas Open Meetings Act. As set forth in that law, there is the potential for individual criminal liability for violations.

(c) Tex. Gov't Code, §551.005 requires elected or appointed officials to receive training in Texas Open Government laws. The Department requires that all board members or advisory board members receive training in Texas Open Government laws, according to the requirements of §551.005.

(d) A copy of the attendance roster for all Board trainings shall be maintained at the Subrecipient level.

(e) The minimum number of members required to meet quorum is three unless the Subrecipient's Certification of Formation/Articles of Incorporation, Bylaws, or the Texas Open Meetings Act requires a greater number.

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 September 9, 2019.

TRD-201903166
Robert Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 20, 2019
For further information, please call: (512) 475-1762

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## SUBCHAPTER C. COMPREHENSIVE ENERGY ASSISTANCE PROGRAM

### 10 TAC §§6.301 - 6.313

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

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

*§6.301. Background and Definitions.*

(a) The Comprehensive Energy Assistance Program (CEAP) is funded through the Low Income Home Energy Assistance Act of 1981 (Title XXVI of the Omnibus Budget Reconciliation Act of 1981, Public Law 97-35, as amended). LIHEAP has been in existence since 1982. LIHEAP is a federally funded block grant program that is implemented to serve Low Income Households who seek assistance for their home energy bills. LIHEAP is not an entitlement program, and there are not sufficient funds to serve all eligible customers or to provide the maximum benefit for which a customer may qualify.

(b) Definitions.

(1) Crisis Assistance--A type of CEAP assistance limited to Households who meet the requirements related to Extreme Weather Conditions, Life Threatening Crisis, or a Disaster.

(2) Customer Obligations--Funds become obligated upon a Subrecipient's pledge of payment to a specific Household toward a service or form of assistance and it being recorded in Subrecipient's client tracking software.

(3) Disaster--An event declared by the President of the United States or the Governor of the State of Texas.

(4) Extreme Weather Conditions--For winter months (December, January, and February), extreme cold weather conditions exist when the temperature has been at least two degrees below the lowest winter month's temperature or below 32 degrees, for at least three days during the client's billing cycle. For summer months (June, July, August, and September), extreme hot weather conditions exist when the temperature is at least two degrees above the highest summer month's temperature for at least three days during the client's billing cycle. Extreme Weather Conditions will be based on either data for "1981-2010 Normals" temperatures recorded by National Centers for Environmental Information of the National Oceanic and Atmospheric Administration (NOAA) and available at https://www.ncdc.noaa.gov/cdo-web/datatools/normals, or on data determined by the Subrecipient, and approved by the Department in writing. Subrecipient must maintain documentation of local temperatures and reflect their standard for Extreme Weather Conditions in its Service Delivery Plan.

(5) Life Threatening Crisis--A Life Threatening Crisis exists when the life of at least one person in the applicant Household who is a U.S. Citizen, U.S. National, or a Qualified Alien would likely be endangered if utility assistance or heating and cooling assistance is not provided due to a Household member who needs electricity for life-sustaining equipment or whose medical professional has prescribed that the person with a medical condition requires that the ambient air temperature be maintained at a certain temperature. Examples of life-sustaining equipment include, but are not limited to, kidney dialysis machines, oxygen concentrators, and cardiac monitors. Documentation must not be requested about the medical condition of the applicant, but the applicant must state that such a device is required in the Dwelling Unit to sustain life.

(6) Low on Fuel--A reference to propane tanks which are below 20% supply (according to customer).

(7) Natural Disaster--A Disaster that is primarily not of man-made origins.

(8) Vendor Refund--A sum of money refunded by a utility company or supplier due to a credit on the account or due to a deposit. See §6.312 of this subchapter (relating to Payments to Subcontractors and Vendors) for more information.

*§6.302. Purpose and Goals.*

The purpose of CEAP is to assist low-income Households, particularly those with the lowest incomes, and High Energy Consumption Households to meet their immediate home energy needs. The LIHEAP Statute requires priority be given to those with the highest home energy needs, meaning Low Income Households with High Energy Consumption, a High Energy Burden and/or the presence of Vulnerable Population in the Household. CEAP services include: energy education, needs assessment, budget counseling (as it pertains to energy needs), utility payment assistance, repair of existing heating and cooling units, and crisis-related purchase of portable heating and cooling units.

*§6.303. Distribution of CEAP Funds.*

(a) The Department distributes funds to Subrecipients by an allocation formula.

(b) The formula allocates funds based on the number of low income Households in a service area and takes into account the special needs of individual service areas. The need for energy assistance in an area is addressed through a weather factor (based on heating and cooling degree days). The extra expense in delivering services in sparsely populated areas is addressed by an inverse population density factor. The lack of additional services available in very poor counties is addressed by a county median income factor. Finally, the Elderly are given priority by giving greater weight to this population. The five factors used in the formula are calculated as:

(1) County Non-Elderly Poverty Household Factor (weight of 40%)--Defined by the Department as the number of Non-Elderly Poverty Households in the county divided by the number of Non-Elderly Poverty Households in the State;

(2) County Elderly Poverty Household Factor (weight of 40%)--Defined by the Department as the number of Elderly Poverty Households in the county divided by the number of Elderly Poverty Households in the State; and

(3) County Inverse Household Population Density Factor (weight of 5%)--Defined by the Department as:

(A) The number of square miles of the county divided by the number of Poverty Households of the county (equals the Inverse Poverty Household Population Density of the county); and

(B) Inverse Poverty Household Population Density of the county divided by the sum of Inverse Household Densities.

(4) County Median Income Variance Factor (weight of 5%)--Defined by the Department as:

(A) State Median Income minus the County Median Income (equals county variance); and

(B) County Variance divided by sum of the State County Variances.

(5) County Weather Factor (weight of 10%)--Defined by the Department as:

(A) County heating degree days plus the county cooling degree days, multiplied by the poverty Households, divided by the sum of county heating degree days and county cooling degree days of counties (equals County Weather); and

(B) County Weather divided by the total sum of the State County Weather.

(c) All demographic factors are based on the most recent decennial U.S. Census for which Census Bureau published information is available.

(d) The total sum of paragraphs (1) - (5) of this subsection multiplied by total funds allocation equals the county's allocation of funds. The sum of the county allocations within each Subrecipient service area equals the Subrecipient's total allocation of funds.

(e) The Department may, in the future, undertake to reprocure the entities that comprise the network of CEAP providers, in which case this allocation formula will be reassessed and, if material changes are needed, amended by rulemaking.

*§6.304. Deobligation and Reobligation of CEAP Funds.*

(a) The Department may Deobligate funds from all budget categories from Subrecipients whose combined Expenditures and Customer Obligations are less than 30% as of the April 15 Monthly Performance and Expenditure Report. Subrecipient may avoid Deobligation at this point if one of the following has occurred:

(1) On or before the first business day in April, the Subrecipient has submitted a written request for an exception due to extenuating circumstances with a plan to improve Expenditures and Customer Obligations. The request and plan must be approved by the Department in writing; or

(2) On or before the first business day in April, the Subrecipient has submitted a written request for training and/or technical assistance. Once such assistance has been delivered, as determined by the Department, the Subrecipient must submit a clear specific plan, as outlined by the Department, for improving Expenditures and Customer Obligations, and that plan must be approved by the Department in writing.

(b) The Department may Deobligate funds from all budget categories from Subrecipients whose combined Expenditures and Customer Obligations are less than 50% as of the June 15 Monthly Performance and Expenditure Report, unless on or before the first business day in June the Subrecipient submits a written request for an exception due to extenuating circumstances with a plan to improve Expenditures and Customer Obligations. The request and plan must be approved by the Department in writing.

(c) Funds Deobligated under this section, or additional funds should they become available, will be reobligated proportionally by the formula described in §6.303 of this subchapter (relating to Distribution of CEAP Funds), or if six months or less remain for the Department to expend the funds another method approved by the Department's Board amongst all Subrecipients that did not have any funds Deobligated to ensure full utilization of funds.

(d) A Subrecipient which has had funds Deobligated under subsection (a) or (b) of this section that fully Expends the reduced amount of its Contract by January 31 of the following year as reported in the Monthly Performance and Expenditure Report due February 15, will have access to the full amount of the following Program Year CEAP allocation. A Subrecipient which has had funds Deobligated under subsection (a) or (b) of this section that fails to fully expend the reduced amount of its Contract will automatically have the following Program Year CEAP allocation Deobligated by the lesser of 24.99%, or the proportional amount that had been Deobligated from the prior year Contract.

(e) The cumulative balance of the funds made available through subsection (d) of this section will be allocated proportionally by the formula described in §6.303 of this subchapter to the Subrecipients not having funds reduced under that subsection.

(f) In no event will involuntary Deobligations that occur through subsection (a) or (b) of this section exceed 24.99% of the Subrecipient's Program Year CEAP Contracted Funds, without an opportunity for a hearing as required by Tex. Gov't Code, Chapter 2105.

(g) Failure by the Subrecipient to fully Expend a prior year Contract by the Monthly Performance and Expenditure Report due April 15th of the subsequent year for two consecutive original Contract Terms is good cause for nonrenewal of a Contract.

*§6.305. Subrecipient Eligibility.*

(a) The Department administers the program through the existing Subrecipients that have demonstrated that they are operating the program in accordance with their Contract, the Economic Opportunity Act of 1964, the Low-Income Home Energy Assistance Act of 1981, as amended (42 U.S.C. §§8621, et seq.), and the Department rules. If a Subrecipient is successfully administering the program, the Department may offer to renew the Contract.

(b) If the Department determines that a Subrecipient is not administering the program satisfactorily, the Subrecipient will be notified of such a Finding as provided for in §6.10 of this chapter (relating to Compliance Monitoring), and required to take corrective actions to remedy the problem. If Subrecipient fails to correct the Finding, in order to ensure continuity of services, the Department may reassign up to 24.99% of the funds for the service area to one or more other existing Subrecipients.

(c) If the Subrecipient does not complete the corrective action within the required timeframe, the Department may conduct a solicitation for selection of an interim Subrecipient. The affected Subrecipient may request a hearing in accordance with the Tex. Gov't Code, §2105.204.

(d) If it is necessary to designate a new Subrecipient to administer CEAP, the Department shall give special consideration to Subrecipients receiving funds under LIHEAP or DOE WAP, in accordance with Assurance 6 of the Low Income Home Energy Assistance Act of 1981.

*§6.306. Service Delivery Plan.*

Prior to any Expenditure of funds, Subrecipient is required to submit on an annual basis a Department formatted Service Delivery Plan (SDP), which includes information on how they plan to implement CEAP in their service area. The Department will notify CEAP Subrecipients when the SDP template and the annual updated forms are posted on the Department's website. The SDP must establish a Subrecipient's priority rating sheet and priority Households; the alternate billing method; how customer education is being addressed; how the Subrecipient is determining the number of payments to be made and which types of

Households are qualified for a given number of payments; and the local standard to be used for Extreme Weather Conditions.

*§6.307. Subrecipient Requirements for Customer Eligibility Criteria, Provision of Services, and Establishing Priority for Eligible Households.*

(a) The customer income eligibility level is at or below 150% of the federal poverty level in effect at the time the customer makes an application for services.

(b) Categorical Eligibility for CEAP benefits exists when at least one person in the Household receives assistance from:

(1) SSI payments from the Social Security Administration; or

(2) Means Tested Veterans Program payments. See paragraph (35) of §6.2 of this chapter (relating to Definitions).

(c) A complete application is required for all Households. Subrecipient shall determine customer income using the definition of income and process described in §6.4 of this chapter (relating to Income Determination). Household income documentation must be collected by the Subrecipient for the purposes of determining the Household's benefit level.

(d) Social security numbers are not required for applicants.

(e) Subrecipient must establish a written procedure to serve Households that have a Vulnerable Population Household member, Households with High Energy Burden, and Households with High Energy Consumption. High Energy Burden shall be the highest rated item in sliding scale priority determinations. The Subrecipient must maintain documentation of the use of the criteria.

(f) A Dwelling Unit cannot be served if the meter is utilized by another Household that is not a part of the application for assistance. In instances where separate structures share a meter and the applicant is otherwise eligible for assistance, Subrecipient must provide services if:

(1) The members of the separate structures that share a meter meet the definition of a Household per §6.2 of this chapter (relating to Definitions);

(2) The members of the separate structures that share a meter submit one application as one Household; and

(3) All persons and applicable income from each structure are counted when determining eligibility.

(g) United States Citizen, United States National, or Qualified Alien. Except for items described in 10 TAC §6.310(c)(2),(4), (5) and (7) (relating to Crisis Assistance Component), Unqualified Aliens are not eligible to receive CEAP benefits. Mixed Status Households shall not be denied CEAP assistance based solely on the presence of a non-qualified member, except if the member is the sole member of the Household. A Public Organization must verify U.S. Citizen, U.S. National, or Qualified Alien status of all household members using SAVE.

(h) Subrecipient must begin providing utility assistance services to customers upon receipt of Contract and throughout the Contract Term unless Subrecipient has expended its entire Contract.

*§6.308. Allowable Subrecipient Administrative and Program Services Costs.*

(a) Funds available for Subrecipient administrative activities will be calculated by the Department as a percentage of direct services Expenditures. Administrative costs shall not exceed the maximum percentage of total direct services Expenditures, as indicated in the Contract. All other administrative costs, exclusive of administrative costs for program services, must be paid with nonfederal funds. Allowable administrative costs for administrative activities includes costs for general administration and coordination of CEAP, and all indirect (or overhead) costs, and activities as described in paragraphs (1) - (7) of this subsection:

(1) Salaries;

(2) Fringe benefits;

(3) Non-training travel;

(4) Equipment;

(5) Supplies;

(6) Audit (limited to percentage of the contract expenditures, excluding training/travel costs as indicated in the Contract); and

(7) Office space (limited to percentage of the contract expenditures, excluding training/travel costs as indicated in the Contract).

(b) Program Services costs shall not exceed the maximum percentage of total direct services Expenditures, as indicated in the Contract. Program Services costs are allowable when associated with providing customer direct services. Program services costs may include outreach activities and expenditures on the information technology and computerization needed for tracking or monitoring required by CEAP, and activities as described in paragraphs (1) - (9) of this subsection:

(1) Direct administrative cost associated with providing the customer direct service;

(2) Salaries and benefits cost for staff providing program services;

(3) Supplies;

(4) Equipment;

(5) Travel;

(6) Postage;

(7) Utilities;

(8) Rental of office space; and

(9) Staff time to provide energy conservation education, needs assessments, and referrals.

*§6.309. Types of Assistance and Benefit Levels.*

(a) Allowable CEAP Expenditures include customer education, utility payment assistance, repair of existing heating and cooling units, and crisis-related purchase of portable heating and cooling units.

(b) Total maximum possible annual Household benefit (all allowable benefits combined) shall not exceed $5,900 during a Program Year.

(c) Benefit determinations are based on the Household's income (even if the Household is Categorically Eligible), the Household size, Vulnerable Populations in the Household, plus other priority status, whether a Household has one or more Unqualified Aliens for which calculation adjustments must be made as described in paragraphs (1) and (2) of this subsection, and the availability of funds.

(1) Count income for all Household members 18 years of age and older, including Unqualified Aliens; and

(2) Adjust the Household size for determining eligibility and benefit assistance level to exclude all Unqualified Aliens.

(d) For purposes of determining Categorical Eligibility or Vulnerable Populations (i.e. priority status), the Household is not considered to satisfy the definition of having Categorical Eligibility or Vul-

nerable Population if the only individual(s) in the Household with that Categorical Eligibility or Vulnerable Population status are Unqualified Aliens. For purposes of reporting, all individuals in the Households should be reported.

(e) Benefit determinations for the Utility Payment Assistance Component and the Crisis Assistance Component cannot exceed the sliding scale described in paragraphs (1) - (3) of this subsection:

(1) Households with Incomes of 0 to 50% of Federal Poverty Guidelines may receive an amount not to exceed $1,200 per Component;

(2) Households with Incomes of 51% to 75% of Federal Poverty Guidelines may receive an amount not to exceed $1,100 per Component; and

(3) Households with Incomes of 76% to at or below 150% of Federal Poverty Guidelines may receive an amount not to exceed $1,000 per Component.

(f) Service and Repair of existing heating and cooling units. Households may receive up to $3,500 for service and repair of existing heating and cooling units when the Household has an inoperable heating or cooling system based on requirements in §6.310 (relating to Crisis Assistance Component) for Non-Vulnerable Population Households and §6.311 (relating to Utility Assistance Component) for Vulnerable Population Households.

(g) Assistance with service and repair or purchase of portable air conditioning/evaporative coolers and heating units cannot exceed $3,500. Refer to §6.310(c)(9) of this subchapter for requirements relating to service and repair or purchase of portable air conditioning/evaporative coolers and heating units.

(h) Subrecipient shall provide only the types of assistance described in paragraphs (1) - (9) of this subsection with funds from CEAP. Energy bills already paid may not be reimbursed by the program. Funds from CEAP shall not be used to weatherize dwelling units, for medicine, food, transportation assistance (e.g., vehicle fuel), income assistance, or to pay for penalties or fines assessed to customers.

(1) Payment to vendors and suppliers of fuel/utilities, goods, and other services, such as past due or current bills related to the procurement of energy for heating and cooling needs of the residence, not to include security lights and other items unrelated to energy assistance as follows:

(A) Subrecipient may make utility payments on behalf of Households based on the previous 12 month's home energy consumption history, including allowances for cost inflation. If a 12 month's home energy consumption history is unavailable, Subrecipient may base payments on current Program Year's bill or utilize a Department-approved alternative method. Subrecipient will note such exceptions in customer files. Benefit amounts exceeding the actual bill shall be treated as a credit for the customer with the utility company.

(B) Vulnerable Population Households can receive benefits to cover up to the eight highest remaining bills within the Program Year, and up to two utility disconnection notice payments as long as the cost does not exceed the maximum annual benefit. The first bill payment may cover two separate fuel sources.

(C) Non-Vulnerable Population Households can receive benefits to cover up to the six highest remaining bills within the Program Year as long as the cost does not exceed the maximum annual benefit. The first bill payment may cover two separate fuel sources.

(2) Payment to vendors may only include one energy bill payment per month except in the case of subparagraphs 1(B) and 1(C) of this subsection;

(3) Needs assessment and energy conservation tips, coordination of resources, and referrals to other programs;

(4) Payment of water, wastewater and solid waste charges are not an allowable LIHEAP expense even in cases where those charges are an inseparable part of a utility bill. Whenever possible, Subrecipient shall negotiate with the utility providers to pay only the "home energy" (heating and cooling) portion of the bill or utilize other funds to pay for the water related charges;

(5) Payment of reconnection fees in line with the registered tariff filed with the Public Utility Commission and/or Texas Railroad Commission. Payment cannot exceed that stated tariff cost. Subrecipient shall negotiate to reduce the costs to cover the actual labor and material and to ensure that the utility does not assess a penalty for delinquency in payments;

(6) Payment of security deposits only when state law requires such a payment, or if the Public Utility Commission or Texas Railroad Commission has listed such a payment as an approved cost, and where required by law, tariff, regulation, or a deferred payment agreement includes such a payment. Subrecipient shall not pay such security deposits that the energy provider will eventually return to the customer;

(7) While rates and repair charges may vary from vendor to vendor, Subrecipient shall negotiate for the lowest possible payment. Prior to making any payments to an energy vendor a Subrecipient shall have a signed vendor agreement on file from the energy vendor receiving direct CEAP payments from the Subrecipient;

(8) Subrecipient may make payments to landlords on behalf of eligible renters who pay their utility and/or fuel bills indirectly. Subrecipient shall notify each participating Household of the amount of assistance paid on its behalf. Subrecipient shall document this notification. Subrecipient shall maintain proof of utility or fuel bill payment. Subrecipient shall ensure that amount of assistance paid on behalf of customer is deducted from customer's rent; and

(9) In lieu of deposit required by an energy vendor, Subrecipient may make advance payments. The Department does not allow CEAP Expenditures to pay deposits, except as noted in paragraph (6) of this subsection. Advance payments may not exceed an estimated two months' billings.

*§6.310. Crisis Assistance Component.*

(a) Crisis Assistance can be provided to persons who have already lost service or are in immediate danger of losing service only under one of the conditions listed in paragraphs (1) to (3) of this subsection, and shall not exceed the caps as defined in §6.309 (relating to Types of Assistance and Benefit Levels):

(1) Extreme Weather Conditions, as defined in §6.301 of this subchapter (relating to Background and Definitions), with assistance provided within 48 hours;

(2) Disaster, as defined in §6.301 of this subchapter, with assistance provided within 48 hours; or

(3) Life Threatening Crisis, as defined in §6.301 of this subchapter, with assistance provided within 18 hours.

(b) In order to resolve the crisis, Subrecipient shall ensure that for customers assisted through Crisis Assistance services are provided within the timeframes as described in (a) of this section. The time limit commences upon completion of the application process. The applica-

tion process is considered complete when an agency representative accepts an application and completes the eligibility process. Subrecipient must maintain written documentation in customer files showing crises resolved within the appropriate timeframe. The Department may disallow improperly documented Expenditures.

(c) Low Income Households as defined in §6.2 of this chapter (relating to Definitions) may be eligible for any one or more of the types of assistance listed in paragraphs (1) to (11) of this subsection:

(1) Payment of utilities or fuel bills and utility bill deposits necessary to retain heating or cooling.

(2) Temporary Shelter in the limited instances that supply of power to the Dwelling Unit is disrupted causing a temporary evacuation.

(3) Emergency deliveries of fuel up to 250 gallons per crisis per Household, at the prevailing price. This benefit may include coverage for tank pressure testing.

(4) Cost to temporary Shelter or house individuals in hotel, apartments or other living situations in which homes have been destroyed or damaged when health and safety is endangered by loss of access to heating and cooling.

(5) Costs for transportation (i.e., cars, shuttles, buses) to move the individuals away from the crisis area to Shelters when health and safety is endangered by loss of access to heating and cooling.

(6) Utility reconnection costs.

(7) Blankets, as tangible benefits to keep individuals warm.

(8) For Non-Vulnerable Populations meeting the conditions described in subsection (a) of this section, service and repair of existing heating and cooling units when the Household has an inoperable heating or cooling system. If a component(s) of the heating or cooling system cannot be repaired using parts, the Subrecipient can replace the component(s) in order to repair the heating or cooling system.

(9) When a Household meets the definition of Life Threatening Crisis, purchase of portable heating and/or cooling units is allowable. Units must be Energy Star®. In cases where the type of unit is not Energy Star®, or if Energy Star® units are not available due to supply shortages, Subrecipient may purchase the highest rated unit available. Purchase of more than two portable heating and/or cooling units, which require performance of electrical work for proper installation, requires prior written approval from the Department.

(10) Purchase of fans. The number, type, size and cost of these items may not exceed the minimum needed to resolve the crisis.

(11) If necessary, the purchase of a generator is allowable when a Household meets the definition of Life Threatening Crisis.

(d) The 18 and 48-hour timeframes do not apply in the case of a Natural Disaster.

(e) Benefit Level for Crisis Assistance:

(1) Crisis Assistance for one Household cannot exceed the maximum allowable benefit level in one Program Year as defined in §6.309 of this subchapter (relating to Types of Assistance and Benefit Levels). If a Household's Crisis Assistance needs exceed that maximum allowable benefit, Subrecipient may pay up to the Crisis Assistance limit only if the remaining amount of Household need can be paid from other funds. If the Household's crisis requires more than the Household limit to resolve and no other funds are available, the crisis exceeds the scope of this component.

(2) Payments may not exceed Household's actual utility bill.

(3) Payments may not exceed the Maximum Household allowable assistance benefit level.

(4) Service and repair or purchase of heating or cooling, or heating and cooling units for up to $3,500 will not be counted towards the total maximum Household allowable assistance under the utility assistance and crisis components.

(5) Temporary Shelter not to exceed the annual Households benefit limit for the duration of the contract period.

*§6.311. Utility Assistance Component.*

(a) A Subrecipient may use home energy payments to assist Low Income Households to reduce their home energy costs. Subrecipient shall combine home energy payments with energy conservation tips, participation by utilities, and coordination with other services in order to assist low income Households to reduce their home energy needs.

(b) Subrecipient must make payments directly to vendors and/or landlords on behalf of eligible Households.

(c) For Vulnerable Population Households, service and repair of existing heating and cooling units is allowed when the Household has an inoperable heating or cooling system. If a component(s) of the heating or cooling system cannot be repaired using parts, the Subrecipient can replace the component(s) in order to repair the heating or cooling system. The cost shall not exceed $3,500 and will not be counted towards the total maximum per Household allowable under the Utility Assistance Component. Subrecipients may leverage this type of assistance with LIHEAP and/or DOE Weatherization.

*§6.312. Payments to Subcontractors and Vendors.*

(a) A bi-annual Vendor Agreement is required to be implemented by the Subrecipient and shall contain assurances as to fair billing practices, delivery procedures, and pricing procedures for business transactions involving CEAP beneficiaries. The Subrecipient must use the Department's current Vendor Agreement template, found on the CEAP Program Guidance page of the Department's website. These agreements are subject to monitoring procedures performed by the Department staff.

(b) Subrecipient shall maintain proof of payment to Subcontractors and vendors as required by Chapter 1, Subchapter D, of this part (relating to Uniform Guidance for Recipients of Federal and State Funds).

(c) Subrecipient shall notify each participating Household of the amount of assistance to be paid on its behalf. Subrecipient shall document this notification.

(d) Subrecipients shall use the Vendor Payment method for CEAP components. Subrecipient shall not make cash payments directly to eligible Household for any of the CEAP components.

(e) Payments to Vendors for which a valid Vendor Agreement is not in place may be subject to disallowed costs unless prior written approval is obtained from the Department.

(f) A Vendor Refund is program income and must be reimbursed to the Subrecipient, and not the customer. When a Vendor Refund is issued, Subrecipient shall determine which TDHCA Contract the payment(s) was charged to, the Household associated to the payment, and if the Contract remains open.

(1) If the Contract remains open, Subrecipient must enter the amount into the Contract System in the appropriate budget line item

into the adjustment column in the next monthly report, and make the appropriate note in the system. This will credit back the Vendor Refund for the Subrecipient to expend on eligible expenses.

(2) If the Contract is closed, Subrecipient must return the Vendor Refund to the Department within ten calendar days of receipt. The payment must contain the Contract number and appropriate budget line item associated with the refund.

*§6.313. Outreach, Accessibility, and Coordination.*

(a) The Department may continue to develop interagency collaborations with other low-income program offices and energy providers to perform outreach to targeted groups.

(b) Subrecipient shall conduct outreach activities. Outreach activities may include:

(1) Providing information through home visits, site visits, group meetings, or by telephone for disabled low-income persons;

(2) Distributing posters/flyers and other informational materials at local and county social service agencies, offices of aging, Social Security offices, etc.;

(3) Providing information on the program and eligibility criteria in articles in local newspapers or broadcast media announcements;

(4) Coordinating with other low-income services to provide CEAP information in conjunction with other programs;

(5) Providing information on one-to-one basis for applicants in need of translation or interpretation assistance;

(6) Providing CEAP applications, forms, and energy education materials in English and Spanish (and other appropriate language(s));

(7) Working with energy vendors in identifying potential applicants;

(8) Assisting applicants to gather needed documentation; and

(9) Mailing information and applications.

(c) Subrecipient shall handle Reasonable Accommodation requests, in accordance with 10 TAC §1.204 of this title (relating to Reasonable Accommodations).

(d) Subrecipient shall coordinate with other social service agencies through cooperative agreements to provide services to customer Households. Cooperative agreements must clarify procedures, roles, and responsibilities of all involved entities.

(e) Subrecipient shall coordinate with other energy related programs. Specifically, Subrecipient shall make documented referrals to the local WAP Subrecipient.

(f) Subrecipient shall coordinate with local energy vendors to arrange for arrearage reduction, reasonably reduced payment schedules, or cost reductions.

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 September 9, 2019.

TRD-201903167

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Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 20, 2019
For further information, please call: (512) 475-1762

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## SUBCHAPTER D. WEATHERIZATION ASSISTANCE PROGRAM

### 10 TAC §§6.401 - 6.417

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

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

*§6.401. Background.*

The Weatherization Assistance Program was established by the Energy Conservation in Existing Buildings Act of 1976, as amended 42 U.S.C. §§6851, et seq. The Department funds the Weatherization Programs through the Department of Energy Weatherization Assistance Program (DOE-WAP) which is funded through the U.S. Department of Energy Weatherization Assistance Program for Low Income Persons grant and the Low Income Home Energy Assistance Program Weatherization Assistance Program (LIHEAP-WAP) which is funded through the U.S. Department of Health and Human Services' Low-Income Home Energy Assistance Program (LIHEAP) grant.

*§6.402. Purpose and Goals.*

(a) DOE-WAP and LIHEAP-WAP offers awards to Private Nonprofit Organizations, and Public Organizations with targeted beneficiaries being Households with low incomes, with priority given to Vulnerable Populations, High Energy Burden, and Households with High Energy Consumption. In addition to meeting the income-eligibility criteria, the weatherization measures to be installed must meet specific energy-savings goals. Neither of these programs are entitlement programs and there are not sufficient funds to serve all customers that may be eligible.

(b) The programs fund the installation of weatherization materials and provide energy conservation education. The programs help control energy costs to ensure a healthy and safe living environment.

(c) Organizations administering a Department-funded weatherization program must administer both the DOE-WAP and the LIHEAP-WAP. Organizations that have one Weatherization program removed will have both program removed. If it is necessary to designate a new Subrecipient to administer WAP, the Department shall give special consideration to Subrecipients receiving funds under LIHEAP or DOE WAP, in accordance with Assurance 6 of the Low Income Home Energy Assistance Act of 1981.

(d) The Department shall administer and implement the DOE-WAP program in accordance with DOE rules (10 CFR Part 440), except that Categorical Eligibility will follow the eligibility reflected in the LIHEAP plan. The Department shall administer and implement the LIHEAP-WAP program in accordance with a combination of LIHEAP statute (42 U.S.C. §§6861, et seq.) and DOE rules. LIHEAP Weatherization measures may be leveraged with DOE Weatherization measures in which case all DOE rules and requirements as described in this title and in the Contract will apply.

*§6.403. Definitions.*

(a) Department of Housing and Urban Development (HUD)--Federal department that provides funding for certain housing and community development activities.

(b) Electric Base-Load Measure (EBL)--Weatherization measures which address the energy efficiency and energy usage of lighting and appliances.

(c) Energy Audit--The energy audit software and procedures used to determine the cost effectiveness of Weatherization measures to be installed in a Dwelling Unit. The Energy Audit shall be used for any Dwelling Unit weatherized utilizing DOE funds.

(d) Energy Repairs--Weatherization-related repairs necessary to protect or complete regular Weatherization energy efficiency measures.

(e) Multifamily Dwelling Unit--A structure containing more than one Dwelling Unit.

(f) Priority List--For LIHEAP-WAP only, a list developed by the Department, as may be updated from time to time, included in the Contract, and which provides the prescribed method to be used by Subrecipients when addressing weatherization measures.

(g) Rental Unit--A Dwelling Unit occupied by a person who pays rent for the use of the Dwelling Unit.

(h) Renter--A person who pays rent for the use of the Dwelling Unit.

(i) Reweatherization--Consistent with 10 CFR §440.18(e)(2), if a Dwelling Unit has been damaged by fire, flood, or act of God and repair of the damage to Weatherization materials is not paid for by insurance; or if a Dwelling Unit was partially weatherized under a federal program during the period September 30, 1975, through September 30, 1994, the Dwelling Unit may receive further financial assistance for Reweatherization.

(j) Shelter--a Dwelling Unit or Units whose principal purpose is to house on a temporary basis individuals who may or may not be related to one another and who are not living in nursing homes, prisons, or similar institutional care facilities.

(k) Significant Energy Savings--A Savings to Investment Ratio (SIR) of 1.0 or greater.

(l) Single Family Dwelling Unit--A structure containing no more than one Dwelling Unit.

(m) Weatherization Assistance Program Policy Advisory Council (WAP PAC)--The WAP PAC was established by the Department in accordance with 10 CFR §440.17 to provide advisory services in regards to the DOE WAP program.

(n) Weatherization Material--The material listed in Appendix A of 10 CFR Part 440.

(o) Weatherization--A program conducted to reduce heating and cooling demand of Dwelling Units that are energy inefficient.

*§6.404. Distribution of WAP Funds.*

(a) Except for the reobligation of deobligated funds, the Department distributes funds to Subrecipients by an allocation formula.

(b) The allocation formula allocates funds based on the number of Low Income Households in a service area and takes into account certain special needs of individual service areas, as set forth in this subsection. The need for energy assistance in an area is addressed through a weather factor (based on heating and cooling degree days). The extra expense in delivering services in sparsely populated areas is addressed by an inverse Population Density factor. The lack of additional services available in very poor counties is addressed by a county median income factor. Finally, the Elderly are given priority by giving greater weight to this population. The five factors used in the formula are calculated as follows:

(1) County Non-Elderly Poverty Household Factor--The number of Non-Elderly Poverty Households in the County divided by the number of Non-Elderly Poverty Households in the State;

(2) County Elderly Poverty Household Factor--The number of Elderly Poverty Households in the county divided by the number of Elderly Poverty Households in the State;

(3) County Inverse Household Population Density Factor--

(A) The number of square miles of the county divided by the number of Households of the county (equals the inverse Household population density of the county); and

(B) Inverse Household Population density of the county divided by the sum of inverse Household densities.

(4) County Median Income Variance Factor--

(A) State median income minus the county median income (equals county variance); and

(B) County variance divided by sum of the State county variances;

(5) County Weather Factor--

(A) County heating degree days plus the county cooling degree days, multiplied by the poverty Households, divided by the sum of county heating and cooling degree days of counties (equals County Weather); and

(B) County Weather divided by the total sum of the State County Weather.

(c) The five factors carry the following weights in the allocation formula: number of Non-Elderly Poverty Households (40%), number of poverty Households with at least one member who is 60 years of age or older (40%), Household density as an inverse ratio (5%), the median income of the county (5%), and a weather factor based on heating degree days and cooling degree days (10%). All demographic factors are based on the most current decennial U.S. Census. The formula is as follows:

(1) County Non-Elderly Poverty Household Factor (0.40) plus;

(2) County Elderly Poverty Household Factor (0.40) plus;

(3) County Inverse Household Population Density Factor (0.05) plus;

(4) County Median Income Variance Factor (0.05) plus;

(5) County Weather Factor (0.10);

(6) Total sum of paragraphs (1) - (5) of this subsection is multiplied by the total funds allocation to generate the county's allocation of funds.

(7) The sum of the county allocation within each Subrecipient service area equals the Subrecipient's total allocation of funds.

(d) In the event that a Subrecipient who has been awarded LIHEAP-WAP funds elects to voluntarily transfer some portion of their LIHEAP-WAP funds to the LIHEAP CEAP activity, a request to do so must be submitted prior to August 1 of the first year of the federal LIHEAP award period. The amount of funds being voluntarily transferred will be returned to the Department and redistributed among

LIHEAP CEAP providers to ensure appropriate coverage among counties. This may mean the LIHEAP funds are awarded to that same Subrecipient having made the request, but alternatively could mean that the funds may be awarded to one or more other CEAP Subrecipients providing CEAP services in the counties for which the WAP funds were transferred. The Department will distribute the funds proportionally to the affected counties and CEAP Subrecipients in the service area using the allocation formula in §6.303 of this title (relating to Distribution of CEAP Funds).

(e) To the extent federal funding awarded to Texas is limited from one of the two WAP funding sources, possible allocations of funds to Subrecipients may be made in varying proportions from each source to maximize efficient program administration.

(f) The Department may, in the future, undertake to reprocure the entities that comprise the network of Weatherization providers, in which case this allocation formula will be reassessed and, if material changes are needed, amended by rulemaking.

*§6.405. Deobligation and Reobligation of Awarded Funds.*

(a) A Subrecipient that does not expend more than 20% of its Program Year formula allocation (excluding any additional funds that may be distributed by the Department and any funds voluntarily transferred to LIHEAP CEAP) by the end of the first quarter of the Contract Term following the Program Year for two consecutive years will have funding recaptured. A Subrecipient's Contract will be amended to reflect the average percentage of funds that expended over the last two years. LIHEAP-WAP funding recapture will be consistent with Tex. Gov't Code, Chapter 2105.

(b) The cumulative balance of the funds made available in subsection (a) of this section will be allocated proportionally by formula to Subrecipients that expended 90% of the prior year's Contract, excluding adjustments made in subsection (a) of this section, by the end of the original Contract Term.

(c) At any time that a Subrecipient believes they may be at risk of meeting one of the criteria noted in subsection (n) of this section relating to criteria for Deobligation of funds, notification must be provided to the Department unless excepted under subsection (o) of this section.

(d) A written "Notification of Possible Deobligation" will be sent to the Executive Director of the Subrecipient by the Department as soon as the Department identifies that a criterion listed in subsection (n) of this section is at risk of not being met. Written notice will be sent electronically and/or by mail. The notice will include an explanation of the criteria met. A copy of the written notice will be sent to the Board of Directors or other governing body of the Subrecipient by the Department at least 10 calendar days after the notice to the Executive Director has been released. A Notification will not be sent, and the steps in this section not triggered, if an Amendment increasing funds by at least 20% has been provided to the Subrecipient in the prior 90 calendar days.

(e) Within 15 calendar days of the date of the "Notification of Possible Deobligation" referenced in subsection (d) of this section, a Mitigation Action Plan must be submitted to the Department by the Subrecipient in the format prescribed by the Department unless excepted under subsection (o) of this section.

(f) A Mitigation Action Plan is not limited to but must include:

(1) Explanation of why the identified criteria under this section occurred setting out all fully relevant facts.

(2) Explanation of how the criteria will be immediately, permanently, and adequately mitigated such that funds are expended during the Contract Period. For example, if production or expenditures appear insufficient to complete the Contract timely, the explanation would need to address how production or expenditures will be increased in the short- and long-term to restore projected full Expenditure and timely execution of the contract.

(3) If applicable because of failure to produce Unit Production or Expenditure targets under the existing Production Schedule, a detailed narrative of how the Production Schedule will be adjusted, going forward, to assure achievement of sufficient, achievable Unit Production and Expenditures to ensure timely and compliant full utilization of all funds.

(4) An explanation of how the other criteria under this section will be mitigated. For example, if Unit Production criteria for a time period were not met, then the explanation will need to include how the other criteria will not be triggered.

(5) If relating to a Unit Production or Expenditure criteria, a description of activities currently being undertaken including an accurate description of the number of units in progress, broken down by number of units in each of these categories: units that have been qualified, audited, assessed, contracted, inspected, and invoiced and as reflected in an updated Production Schedule.

(6) Provide any request for a reduction in Contracted Funds, reasons for the request, desired Contracted Funds amount, and revised Production Schedule reflecting the reduced Contracted Funds.

(g) At any time after sending a Notification of Deobligation, the Department or a third-party assigned by the Department may monitor, conduct onsite visits, perform other assessments, or engage in any other oversight of the Subrecipient that is determined appropriate by the Department under the facts and circumstances.

(h) The Department or a third-party assigned by the Department will review the Mitigation Action Plan, and where applicable, assess the Subrecipient's ability to meet the revised Production Schedule or remedy other Concern.

(i) After the Department's receipt of the Mitigation Action Plan, the Department will provide the Subrecipient a written Corrective Action Notice which may include one or more of the criteria identified in this section (relating to deobligation and other mitigating actions) or other acceptable solutions or remedies.

(j) The Subrecipient has seven calendar days from the date of the Corrective Action Notice to appeal the Corrective Action Notice to the Executive Director. Appeals may include:

(1) A request to retain the full Fund Award if Partial Deobligation was indicated;

(2) A request for only partial Deobligation of the full Contracted Fund if full Deobligation was indicated in the Corrective Action Notice; or

(3) Request for other lawful action consistent with the timely and full completion of the Contract and Production Schedule for all Contracted Funds.

(k) In the event that an appeal of a staff decision under this section is submitted to the Executive Director, the Executive Director may grant extensions or forbearance of targets included in the Production Schedule, may provide for continued operation of a Contract, may authorize Deobligation, or may take other lawful action that is designed to ensure the timely and full completion of the Contract for all Contracted Funds.

(l) In the event an appeal is not submitted within seven calendar days from the date of the Corrective Action Notice, the Corrective Action Notice will automatically become final without need of any further action or notice by the Department, and the Department will amend/terminate the Contract with the Subrecipient to effectuate the Corrective Action Notice.

(m) In the event the Executive Director denies an appeal of a staff decision under this section, the Subrecipient may appeal that decision in accordance with §1.7(f) of this title (relating to the Process for Filing an Appeal of the Executive Director's Decision to the Board).

(n) Any one or more of the criteria noted in this subsection will prompt the Deobligation process under this rule. If the criteria are met, then notification and ensuing processes discussed elsewhere in this subchapter will apply.

(1) Subrecipient fails to provide the Department with a Production Schedule for its current Contract within 30 calendar days of receipt of the draft Contract. The Production Schedule must be signed by the Subrecipient's Executive Director/Chief Executive Officer, and approved by the Department in writing;

(2) By the third program reporting deadline, Subrecipient must report at least one unit weatherized for each Weatherization Contract;

(3) By the fifth program reporting deadline, less than 25% of total expected unit production has occurred based on the Production Schedule, or less than 20% of total Awarded Funds have been expended;

(4) By the seventh program reporting deadline, less than 50% of total expected unit production has occurred based on the Production Schedule, or less than 50% of total Awarded Funds have been expended; or

(5) The Subrecipient fails to submit a required monthly report explaining any variances between the Production Schedule and actual results on Production Schedule criteria.

(o) Notification of Deobligation will not be required to be sent to a Subrecipient, and a Mitigation Action Plan will not be required to be provided to the Department, if any one or more of the following exceptions are satisfied:

(1) The total cumulative unit production for the Subrecipient, based on the monthly report as reported in the Community Affairs Contract System, is at least 75% of the total cumulative number of units to be completed as of the end of the month according to the Subrecipient's forecast unit production within the Production Schedule for the time period applicable (i.e. cumulative through the month for which reporting has been made).

(2) The total cumulative expenditures for the Subrecipient, based on the monthly report as reported in the Community Affairs Contract System, is at least 75% of the total cumulative estimated expenditures to be expended as of the end of the month according to the Subrecipient's forecast expenditures within the Production Schedule for the time period applicable (i.e., cumulative through the month for which reporting has been made).

(3) The Subrecipient's monthly reports as reported in the Community Affairs Contract System, for the prior two months, as required under the Contract, reflects unit production that is 80% or more of the expected unit production amount to be completed as of the end of the month according to the Subrecipient's forecast unit production within the Production Schedule.

(p) A Subrecipient that has funds Deobligated under this section but that fully expends the reduced amount of its Contract, will have access to the full amount of the following Program Year WAP allocation. A Subrecipient which has had funds Deobligated under this section that fails to fully expend the reduced amount of its Contract will automatically have its following Program Year WAP allocation Deobligated by the lesser of 24.99% or the proportional amount that had been Deobligated in the prior year.

(q) Funds deobligated under this section, funds voluntarily relinquished, or additional funds should they become available, will be reobligated proportionally by the formula described in §6.404 of this subchapter (relating to Distribution of WAP Funds) or other method approved by the Department's Board amongst all Subrecipients that did not have any funds Deobligated during this evaluation period to ensure full utilization of funds within a limited timeframe including possible allocation of WAP funds to Subrecipients in varying populations from each funding source (DOE and LIHEAP), based on availability of the source.

*§6.406. Subrecipient Requirements for Establishing Priority for Eligible Households and Customer Eligibility Criteria.*

(a) Subrecipient shall establish eligibility and priority criteria to increase the energy efficiency of dwellings owned or occupied by Low Income persons who are particularly vulnerable such as the Elderly, Persons with Disabilities, Families with Young Children, Households with High Energy Burden, and Households with High Energy Consumption.

(b) Subrecipient shall determine applicant income eligibility in compliance with §6.4 of this chapter (relating to Income Determination).

(c) Categorical Eligibility for DOE-WAP benefits exist when at least one person in the Household receives assistance payments under Title IV or XVI of the Social Security Act at any time during the 12-month period preceding the determination of eligibility. Categorical Eligibility for LIHEAP-WAP benefits are the same as those specified for CEAP benefits described in §6.307(b) of this chapter (relating to Subrecipient Requirements for Customer Eligibility Criteria, Provision of Services, and Establishing Priority for Eligible Households).

(d) Social Security numbers are not required for applicants.

(e) U.S. Citizen, U.S. National or Qualified Alien. Unqualified Aliens are not eligible to receive WAP benefits. Mixed Status Households shall not be denied WAP assistance based solely on the presence of a non-qualified member, except if the member is the sole member of the Household. A Public Organization must verify U.S. Citizen, U.S. National, or Qualified Alien status of all Household members using SAVE. Assistance shall be determined as follows:

(1) Count income for all Household members eighteen years of age and older, including Unqualified Aliens; and

(2) Adjust the Household size for determining eligibility and benefit assistance level to exclude all Unqualified Aliens.

(f) For purposes of determining Categorical Eligibility or Vulnerable Populations (e.g. priority status) the Household is not considered to satisfy the definition of having Categorical Eligibility or Vulnerable Population if the only individual(s) in the Household with Categorical Eligibility or Vulnerable Population status is an Unqualified Alien. For purposes of reporting, all individuals in the Household should be reported.

*§6.407. Program Requirements.*

(a) Each Dwelling Unit weatherized requires completion of a written whole house assessment. Subrecipient must perform the whole

house assessment then let that assessment guide whether the Dwelling Unit is best served through DOE funds using the audit, through LIHEAP-WAP funds using the priority list, or a combination of DOE and LIHEAP funds.

(b) Any Dwelling Unit that is weatherized using DOE funds must use the State of Texas approved Energy Audit as a guide for installed measures. A Subrecipient combining DOE funds with LIHEAP-WAP funds on an individual Dwelling Unit or building may not mix the use of the Energy Audit and the Priority List.

(c) Any Dwelling Unit that is weatherized using LIHEAP only must be completed using the Priority List as a guide for installed measures. Failure to complete a written whole house assessment as indicated in §6.416 of this subchapter (relating to Whole House Assessment) prior to Weatherization may lead to unit failure during quality control inspection.

(d) If a Subrecipient's Weatherization work does not consistently meet DOE Standard Work Specifications Weatherization standards, the Department may proceed with the removal of the programs from the Subrecipient.

*§6.408. Department of Energy Weatherization Requirements.*

(a) In addition to cost principles and administrative requirements listed in §1.402 in Chapter 1 of this part (relating to Cost Principles and Administrative Requirements), Subrecipients administering DOE programs must also adhere to 10 CFR Part 440, 10 CFR Part 600, and the applicable International Residential Code (IRC).

(b) WAP Policy Advisory Council. In accordance with Tex. Gov't Code, §2110.005 and 10 CFR §440.17, the Department shall establish the Weatherization Assistance Program Policy Advisory Council (WAP PAC), with which it will consult prior to the submission of the annual plan and award of funds to DOE.

(c) Adjusted Average Expenditure Per Dwelling Unit. Expenditures of financial assistance provided under DOE-WAP funding for the Weatherization services for labor, weatherization materials, and program support shall not exceed the DOE adjusted average expenditure limit for the current Program Year per Dwelling Unit as provided by DOE, and as cited in the Contract, without special agreement via an approved waiver from the Department.

(d) Electric Base Load Measures. DOE has approved the inclusion of selected Electric Base Load (EBL) measures as part of the Weatherization of eligible residential units. Refrigerators must be metered for a minimum of two hours when calculating the EBL and SIR.

(e) Subrecipients may not enter into vehicle lease agreements with WAP funds.

(f) Energy Audit Procedures.

(1) SIR for the Energy Audit procedures will determine the installation of allowable Weatherization measures. The Weatherization measures must result in energy cost savings over the lifetime of the measure(s), discounted to present value, that equal or exceed the cost of materials, and installation. An Energy Audit may consist of Incidental Repairs, Energy-Saving Measures (starting with Duct Sealing and Infiltration Reduction), and Health and Safety Measures. All Energy-Saving Measures must rank with an SIR of one or greater. The total Cumulative SIR, prior to Health and Safety measures, must be a one or greater in order to weatherize the dwelling unit.

(2) The Energy Audit has not been approved for multifamily buildings containing 25 or more units. Subrecipients that propose weatherizing a building containing 25 or more units must receive approval from the Department prior to beginning any Weatherization activity.

(3) Energy Auditors must use the established R-values for existing measures provided in the International Energy Conservation Code (IECC when entering data into the Energy Audit. Subrecipient must follow minimum requirements set in the applicable IRC or jurisdictions authorized by state law to adopt later editions.

(4) Subrecipients utilizing the Energy Audit must enter into the audit all materials and labor measures proposed to be installed.

*§6.409. LIHEAP Weatherization Requirements.*

(a) Allowable Expenditure per Dwelling Unit. Expenditures of financial assistance provided under LIHEAP-WAP funding for the weatherization services for labor, Weatherization materials, and program support shall not exceed the allowable figure as set forth in the current Contract, without prior written approval from the Department. The cumulative cost per unit (materials, labor and program support), shall not exceed the maximum allowable by the end of the Contract Term.

(b) Allowable Activities. Subrecipient is limited to Weatherization measures as detailed in the Priority List Exhibit to the Weatherization Contract. Measures must be addressed according to the instructions in the Exhibit.

(c) Outreach and Accessibility.

(1) Subrecipient shall conduct outreach activities, which may include but are not limited to:

(A) Providing information through home visits, site visits, group meetings, or by telephone for disabled low-income persons;

(B) Distributing posters/flyers and other informational materials at local and county social service agencies, offices of aging, social security offices, etc.;

(C) Providing information on the program and eligibility criteria in articles in local newspapers or broadcast media announcements;

(D) Coordinating with other low-income services to provide LIHEAP information in conjunction with other programs;

(E) Providing information on one-to-one basis for applicants in need of translation or interpretation assistance;

(F) Providing LIHEAP applications, forms, and energy education materials in English and Spanish (and other appropriate language);

(G) Working with energy vendors in identifying potential applicants;

(H) Assisting applicants to gather needed documentation; and

(I) Mailing information and applications.

(d) LIHEAP Subrecipient Eligibility.

(1) The Department administers the program through the existing Subrecipients that have demonstrated that they are operating the program in accordance with their Contract, the Economic Opportunity Act of 1964, the Low-Income Home Energy Assistance Act of 1981, as amended (42 U.S.C. §§8621, et seq.), and the Department rules. If a Subrecipient is successfully administering the program, the Department may offer to renew the Contract.

(2) If the Department determines that a Subrecipient is not administering the program satisfactorily, the Subrecipient will be required to take corrective actions to remedy the problem within the timeframe referenced in the issued monitoring report, unless it is a case of customer health or safety. If Subrecipient fails to correct the Deficiency

or Finding, in order to ensure continuity of services, the Department may take an action in accordance with §1.411(f) of this title, (relating to Nonrenewal or Reduction of Block Grant Funds to a Specific Subrecipient).

*§6.410. Liability Insurance and Warranty Requirement.*

Subrecipient Weatherization work shall be covered by general liability insurance for an amount not less than combined total of materials, labor, support and health and safety. The Department strongly recommends Pollution Occurrence Insurance to be part of or an addendum to Subrecipient's general liability insurance coverage. Subrecipient must ensure that each Subcontractor performing Weatherization activities maintain adequate insurance coverage for all units to be weatherized. Weatherization contractors must provide a one-year warranty on their work for parts and labor; the period for the warranty coverage shall begin at the completion of installation. If Subrecipient relinquishes its Weatherization program, Weatherization work completed within 12 months of the date of surrender of the program, must be covered by general liability insurance or contractor warranty. Public Organizations that have self insurance complying with Tex. Gov't Code Chapter 2259 covering weatherization work, may, but are not required to, purchase additional coverage.

*§6.411. Customer Education.*

Subrecipient shall provide customer education to each WAP customer on energy conservation practices. Subrecipient shall provide education to identify energy waste, manage Household energy use, and strategies to promote energy savings. Subrecipient is encouraged to use oral, written, and visual educational materials.

*§6.412. Mold-like Substances.*

(a) If the Subrecipient's energy auditor discovers the presence of mold-like substances that the Weatherization Subcontractor cannot adequately address, then the Dwelling Unit shall be referred to the Texas Department of Licensing and Regulation or its successor agency.

(b) The Subrecipient shall provide the applicant written notification that their home cannot, at this time, be weatherized and why. Subrecipient shall also inform the applicant in writing that they should contact the Texas Department of Licensing and Regulation, or successor agency, to report the presence of mold-like substances. The applicant should be advised that when the issue is resolved they may reapply for Weatherization. Should the applicant reapply for Weatherization, the Subrecipient must obtain written documentation of resolution of the issue from the applicant prior to proceeding with any Weatherization work.

(c) If the energy auditor determines that the mold-like substance is treatable and covers less than the 25 contiguous square feet limit allowed to be addressed by the Texas Department of Licensing and Regulation's, or successor agency's guidelines, the Subrecipient shall notify the applicant of the existence of the mold-like substance and potential health hazards, the proposed action to eliminate the mold-like substance, that no guarantee is offered that the mold-like substance will be eliminated, and that the mold-like substance may return. The energy auditor must obtain written approval from the applicant to proceed with the Weatherization work, and maintain the documentation in the customer file.

(d) Subrecipient shall be responsible for providing mold training to their employees and Weatherization Subcontractors.

*§6.413. Lead Safe Practices.*

Subrecipient are required to document that its Weatherization staff as well as all Subcontractors follow the Environmental Protection Agency's Renovation, Repair and Painting Program (RRP) Final Rule, 40 CFR Part 745 and HUD's Lead Based Housing Rule, 24 CFR Part 35, as applicable.

*§6.414. Eligibility for Multifamily Dwelling Units and Shelters.*

(a) Multifamily building and Shelter weatherization is not considered a federal public benefit and the activity is exempt from the requirements of §6.406(e) and (f) of this subchapter (relating to Subrecipient Requirements for Establishing Priority for Eligible Households and Customer Eligibility Criteria).

(b) A Subrecipient may weatherize a building containing Rental Units if not less than 66% (50% for duplexes and four-unit buildings) of the Dwelling Units in the building are occupied by low income Households, or will become occupied by Low-income Households within 180 days under a Federal, State, or local government program for rehabilitating the building or making similar improvements to the building.

(c) In order to weatherize large multifamily buildings containing twenty-five or more Dwelling Units or those with shared central heating (e.g., boilers) and/or shared cooling plants (e.g., cooling towers that use water as the coolant) regardless of the number of Dwelling Units, Subrecipient shall submit in writing to the Department a request for approval along with evidence which clearly shows that an investment of funds would result in Significant Energy Savings because of upgrades to equipment, energy systems, common space, or the building shell. When necessary, the Department will seek approval from DOE. Approvals from the Department in writing must be received prior to the installation of any Weatherization measures in this type of structure.

(d) In order to weatherize Shelters, Subrecipient shall submit a written request for approval from the Department. Written approval from the Department must be received prior to the installation of any Weatherization measures. Income determination is not required to be done for residents of Shelters.

(e) If roof repair is to be considered as an eligible repair cost under the Weatherization process, the expenses must be shared equally by all eligible Dwelling Units weatherized under the same roof. If multiple storied buildings are weatherized, eligible ground floor units must be allocated a portion of the roof cost as well as the eligible top floor units. All Weatherization measures installed in multifamily units must meet the standards set in 10 CFR §440.18(d)(9) and (15), and Appendix A-Standards for Weatherization Materials.

(f) Subrecipient shall establish a multifamily master file for each multifamily project in addition to the applicable Dwelling Unit recordkeeping requirements found in the Contract. The multifamily master file must include, at a minimum, the forms listed in paragraphs (1) - (6) of this subsection: (Forms available on the Department's website.)

(1) Multifamily Project Preparation Checklist;

(2) Multifamily Project Completion Checklist;

(3) Landlord Permission to Perform Assessment and Inspections for Rental Units;

(4) Landlord Agreement;

(5) Landlord Financial Participation Form; and

(6) Multifamily Project Building Data Checklist.

(g) Subrecipient shall contact the Department for record keeping guidance if it wishes to weatherize a Shelter.

(h) For DOE WAP, if a public housing or assisted multi-family building has gone through the HUD Property Certification Procedure outlined in DOE Weatherization Program Notice 17-4 or is identified

by the HUD and included on a list identified in Weatherization Program Notice 17-4 as having already gone through the HUD Property Certification Procedure, that building meets income eligibility without the need for further evaluation or verification by Subrecipient. A public housing or assisted housing building that does not appear on the list using HUD records may still qualify for the WAP. Income eligibility can be made on an individual basis by the Subrecipient based on information supplied by property owners and the Households in accordance with subsection (b) of this section.

(i) For any Dwelling Unit that is weatherized using funding provided under DOE WAP, all Weatherization measures installed must be entered into an approved Energy Audit. Weatherization measures installed shall begin with repair items, then continue with those measures having the greatest SIR and proceed in descending order to the measures with the smallest SIR or until the maximum allowable per Dwelling Unit expenditures are achieved, and finishing with Health and Safety measures.

*§6.415. Health and Safety and Unit Deferral.*

(a) Health and Safety expenditures with DOE WAP may not exceed 15% of total expenditures for Materials, Labor, Program Support, and Health and Safety at the end of the Contract Term. Health and Safety expenditures with LIHEAP-WAP may not exceed 20% of total expenditures for Materials, Labor, Program Support, and Health and Safety at the end of the Contract Term.

(b) Subrecipient shall provide Weatherization services with the primary goal of energy efficiency. The Department considers establishing a healthy and safe home environment to be important to ensuring that energy savings result from Weatherization work.

(c) Subrecipient must test for high carbon monoxide (CO) levels and bring CO levels to acceptable levels before Weatherization work can start. The Department has defined maximum acceptable CO readings in its Standard Work Specifications.

(d) A Dwelling Unit shall not be weatherized when there is a potentially harmful situation that may adversely affect the occupants or the Subrecipient's Weatherization crew and staff, or when a Dwelling Unit is found to have structural concerns that render the Dwelling Unit unable to benefit from Weatherization. The Subrecipient must declare their intent to defer Weatherization on an eligible unit on the assessment form. The assessment form should include the customer's name and address, dates of the assessment, and the date on which the customer was informed of the issue in writing. The written notice to the customer must include a clear description of the problem, conditions under which Weatherization could continue, the responsibility of all parties involved, and any rights or options the customer has. A copy of the notice must be given to the customer, and a signed copy placed in the customer application file. Only after the issue has been corrected to the satisfaction of the Subrecipient shall Weatherization work begin.

(e) If structural concerns or health and safety issues identified (which would be exacerbated by any Weatherization work performed) on an individual Dwelling Unit cannot be abated within program rules or within the allowable WAP limits, the Dwelling Unit exceeds the scope of this program.

*§6.416. Whole House Assessment.*

(a) Subrecipient must conduct a whole house assessment on all eligible Dwelling Units. Whole house assessments must be used to determine whether the Priority List or an Energy Audit is most appropriate for the unit. Whole house assessments must include, but are not limited to the items described in paragraphs (1) - (15) of this subsection:

(1) Wall--Condition, type, orientation, and existing R-values;

(2) Windows--Condition, type material, glazing type, leakiness, and solar screens;

(3) Doors--Condition, type;

(4) Attic--Type, condition, existing R-values, and ventilation;

(5) Foundation--Condition, existing R-values, and floor height above ground level;

(6) Heating System--For all systems: unit type, fuel source (primary or secondary), thermostat, and output; for combustion systems only: vented or unvented efficiency, CO-levels, complete fuel gas analysis, gas leaks, and combustion venting;

(7) Cooling System--Unit type, condition, area cooled, size in BTU rating, Seasonal Energy Efficiency Rating (SEER) or Energy Efficiency Rating (EER), manufacture date, and thermostat;

(8) Duct System--Condition, existing insulation level, evaluation of registers, duct infiltration, return air register size, and condition of plenum joints;

(9) Water Heater--For all water heaters: condition, fuel type, energy factor, recovery efficiency, input and output ratings, size, existing insulation levels, existing pipe insulation; for combustion water heaters only: carbon monoxide levels, draft test, complete fuel gas analysis;

(10) Refrigerator--Condition, manufacturer, manufacture date and make, model, and consumption reading (minutes and meter reading); customer refusal must be documented;

(11) Lighting System--Quantity, watts, and estimated hours used per day;

(12) Water Savers--Number of showerheads, estimated gallons per minute and estimated minutes used per day;

(13) Health and Safety--For all units: smoke detectors, wiring, minimum air exchange, moisture problems, lead paint present, asbestos siding present, condition of chimney, plumbing problems, mold; for units with combustion appliances: unvented space heaters, carbon monoxide levels on all combustion appliances, carbon monoxide detectors;

(14) Air Infiltration--To be determined from Blower Door testing; areas requiring air sealing will be noted; and

(15) Repairs--Measures needed to preserve or protect installed Weatherization measures may include lumber, shingles, flashing, siding, masonry supplies, minor window repair, gutters, downspouts, paint, stains, sealants, and underpinning.

(b) If using the Energy Audit, all allowable Weatherization measures needed must be entered. Measures will be performed in order of highest SIR to lowest depending on funds available. If using the Priority List, included Weatherization measures must be addressed according to the instructions in the Exhibit to the Weatherization Contract.

*§6.417. Blower Door Standards.*

Subrecipient is required to use the blower door/duct blower data form adopted by the Department and available on the Department's website (http://www.tdhca.state.tx.us/community-affairs/wap/index.htm).

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 September 9, 2019.

TRD-201903168
Robert Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 20, 2019
For further information, please call: (512) 475-1762

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# CHAPTER 11. QUALIFIED ALLOCATION PLAN (QAP)

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 11, Qualified Allocation Plan (QAP). 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. Robert 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. Related to the repeal, a simultaneous proposal is making changes to an existing activity, concerning the allocation of Low Income Housing Tax Credits (LIHTC).

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

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

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

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

6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, concerning the allocation of LIHTC.

7. The proposed repeal will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The proposed repeal will not negatively nor positively affect this state's economy.

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

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

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043.

The proposed repeal does not contemplate nor authorize a takings by the Department; therefore, no Takings Impact Assessment is required.

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

The Department has evaluated the 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 also determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repealed section would be an updated and more germane rule for administering the allocation of LIHTC. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4).

Mr. Wilkinson has determined that for each year of the first five years the 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.

g. REQUEST FOR PUBLIC COMMENT. The public comment period will be held SEPTEMBER 20, 2019, to OCTOBER 11, 2019, to receive stakeholder comment on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Patrick Russell, QAP Public Comment, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-1895, attn: Patrick Russell, QAP Public Comments, or by email to htc.public-comment@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time OCTOBER 11, 2019.

## SUBCHAPTER A. PRE-APPLICATION, DEFINITIONS, THRESHOLD REQUIREMENTS AND COMPETITIVE SCORING

### 10 TAC §§11.1 - 11.10

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

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

*§11.1. General.*

*§11.2. Program Calendar for Housing Tax Credits.*

*§11.3. Housing De-Concentration Factors.*

*§11.4. Tax Credit Request and Award Limits.*

*§11.5. Competitive HTC Set-Asides. (§2306.111(d)).*

*§11.6. Competitive HTC Allocation Process.*

*§11.7. Tie Breaker Factors.*

*§11.8. Pre-Application Requirements (Competitive HTC Only).*

*§11.9. Competitive HTC Selection Criteria.*

*§11.10. Third Party Request for Administrative Deficiency for Competitive HTC Applications.*

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 September 9, 2019.

TRD-201903176
Robert Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 20, 2019
For further information, please call: (512) 475-3929

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## SUBCHAPTER B. SITE AND DEVELOPMENT REQUIREMENTS AND RESTRICTIONS

### 10 TAC §11.101

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

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

*§11.101. Site and Development Requirements and Restrictions.*

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 September 9, 2019.

TRD-201903177
Robert Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 20, 2019
For further information, please call: (512) 475-3929

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## SUBCHAPTER C. APPLICATION SUBMISSION REQUIREMENTS, INELIGIBILITY CRITERIA, BOARD DECISIONS AND WAIVER OF RULES

### 10 TAC §§11.201 - 11.207

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

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

*§11.201. Procedural Requirements for Application Submission.*

*§11.202. Ineligible Applicants and Applications.*

*§11.203. Public Notifications (§2306.6705(9)).*

*§11.204. Required Documentation for Application Submission.*

*§11.205. Required Third Party Reports.*

*§11.206. Board Decisions (§§2306.6725(c);2306.6731; and 42(m)(1)(A)(iv)).*

*§11.207. Waiver of Rules.*

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

Filed with the Office of the Secretary of State on September 9, 2019.

TRD-201903178
Robert Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 20, 2019
For further information, please call: (512) 475-3929

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## SUBCHAPTER D. UNDERWRITING AND LOAN POLICY

### 10 TAC §§11.301 - 11.306

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

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

*§11.301. General Provisions.*

*§11.302. Underwriting Rules and Guidelines.*

*§11.303. Market Analysis Rules and Guidelines.*

*§11.304. Appraisal Rules and Guidelines.*

*§11.305. Environmental Site Assessment Rules and Guidelines.*

*§11.306. Property Condition Assessment Guidelines.*

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 September 9, 2019.

TRD-201903179
Robert Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 20, 2019
For further information, please call: (512) 475-3929

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## SUBCHAPTER E. FEE SCHEDULE, APPEALS, AND OTHER PROVISIONS

### 10 TAC §§11.901 - 11.904

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

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

*§11.901. Fee Schedule.*

*§11.902. Appeals Process.*

*§11.903. Adherence to Obligations.*

*§11.904. Alternative Dispute Resolution (ADR) Policy.*

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 September 9, 2019.

TRD-201903180
Robert Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 20, 2019
For further information, please call: (512) 475-3929

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## CHAPTER 11. QUALIFIED ALLOCATION PLAN (QAP)

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 11, Qualified Allocation Plan (QAP) Subchapter A Pre-application, Definitions, Threshold Requirements and Competitive Scoring, §§11.1-11.10; Subchapter B Site and Development Requirements and Restrictions, §§11.101; Subchapter C Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules, §§11.201-11.207; Subchapter D Underwriting and Loan Policy, §§11.301-11.306; Subchapter E Fee Schedule, Appeals, and other Provisions, §§11.901-11.904. The purpose of the proposed new sections are to provide compliance with Tex. Gov't Code §2306.67022 and to update the rule to: implement statutory changes to Tex. Gov't Code Chapter 2306 that have direct effects on the QAP; clarify how Applications will be treated in the Deficiency Process and Appeals Process; clarify and amend the definition of Supportive Housing; update the Program Calendar; apply policies that encourage the dispersion of HTC awards; specify when Applicants must select the Applications they wish to proceed with if they are eligible for awards in excess of $3 million; clarify when instances of *Force Majeure* pertaining to rainfall, material shortages, and labor shortages will be approved; revise how Supportive Housing gains additional points through competitive scoring; add additional Underserved Area scoring items; amend the Residents with Special Housing Needs scoring item; add proximity to jobs as a new scoring item that is mutually exclusive with proximity to the urban core; amend the readiness to proceed in disaster impacted counties scoring item to look back three years so that Applications in Hurricane Harvey counties are still eligible for these points; add additional scoring items under Extended Affordability; revise the requirements for Applications seeking points under Historic Preservation; require certain notifications be made to Residents in Developments where that Development falls within the 100 year floodplain; update provisions to Neighborhood Risk Factors and mitigation allowed for those factors; add to Ineligible Developments any Development located in the attendance zone of a school rated F in 2019 and Improvement Required in 2018 by the Texas Education Agency, unless that Development will be Elderly, Supportive Housing, or is a Development encumbered by a TDHCA Land Use Restriction Agreement; revise timelines associated with Tax-Exempt Bond Developments; specify provisions for termination for Applications seeking Tax-Exempt Bond or Direct Loan funds; rename the Property Condition Assessment requirements as Scope and Cost Review requirements, and to clarify what those requirements are; and revise certain Developer Fee provisions.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action for two reasons: 1) the state's adoption of the QAP is necessary to comply with IRC §42; and 2) the state's adoption of the QAP is necessary to comply with Tex. Gov't Code §2306.67022. The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

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

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

1. The proposed rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to an existing activity, concerning the allocation of Low Income Housing Tax Credits (LIHTC).

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

3. The proposed rule changes do not require additional future legislative appropriations.

4. The proposed rule changes will not result in an increase in fees paid to the Department, but may, result in a decrease in fees paid to the Department. The proposed rule suggests a one-time adjustment to the Commitment and Determination Fee amounts from 4% to 2%.

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

6. The proposed rule will not limit or repeal an existing regulation, but can be considered to "expand" the existing regulations on this activity because the proposed rule has added new scoring options and has sought to clarify Application requirements.

Some "expansions" are offset by corresponding "contractions" in the rules, compared to the 2019 QAP. Notably, the Department has sought to remove superfluous language wherever possible and to consolidate rules into just one section.

These additions, removals, and revisions to the QAP are necessary to ensure compliance with IRC §42 and Tex. Gov't Code §2306.67022.

7. The proposed rule will not increase nor decrease the number of individuals subject to the rule's applicability; and

8. The proposed rule will not negatively affect the state's economy, and may be considered to have a positive effect on the state's economy because changes at 10 TAC §11.9(c)(7), Proximity to Job Areas, may help to encourage the Development of affordable multifamily housing in robust markets with strong and growing economies.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this proposed rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.67022. Some stakeholders have reported that their average cost of filing an Application is between $50,000 and $60,000, which may vary depending on the specific type of Application, location of the Development Site, and other non-state of Texas funding sources utilized. The proposed rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules.

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

2. There are approximately 100 to 150 small or micro-businesses subject to the proposed rule for which the economic impact of the rule may range from $480 to many thousands of dollars, just to submit an Application for Competitive or non-Competitive HTCs. The Department bases this estimate on the potential number of Applicants and their related parties who may submit applications to TDHCA for LIHTC. The fee for submitting an Application for LIHTC is $30 per unit, and all Applicants are required to propose constructing, at a minimum, 16 Units. While, in theory, there is no limit to the number of Units that could be proposed in a single Application, practically speaking, the Department sees few proposed Developments larger than 350 Units, which, by way of example, would carry a fee schedule of $10,500. These Application Fee costs are not inclusive of external costs required by the basic business necessities underlying any real estate transaction, from placing earnest money on land, conducting an Environmental Site Assessment, conducting a market study, potentially retaining counsel, hiring an architect and an engineer to construct basic site designs and elevations, and paying any other related, third-party fees for securing the necessary financing to construct multifamily housing. Nor does this estimate include fees from the Department for Applications that successfully attain an award.

There are 1,296 rural communities potentially subject to the proposed rule for which the economic impact of the rule is projected to be $0. The proposed rule places no financial burdens on rural communities, as the costs associated with submitting an Application are born entirely by private parties. If anything, a rural community securing a LIHTC Development will experience an economic benefit, not least among which is the potential increased property tax revenue from a large multifamily Development.

3. The Department has determined that because there are rural tax credit awardees, this program helps promote construction activities and long term tax base in rural areas of Texas. Aside from the fees and costs associated with submitting an Application, there is a probable positive economic effect on small or micro-businesses or rural communities that receive LIHTC awards and successfully use those awards to construct multifamily housing, although the specific impact is not able to be quantified in advance.

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

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the proposed rule may provide a possible positive economic effect on local employment in association with this rule since LIHTC Developments often involve a total input of, typically at a minimum, $5 million in capital, but often an input of $10 million - $30 million. Such a capital investment has concrete direct, indirect, and induced effects on the local and regional economies. However, because the exact location of where program funds and development are directed is not determined in rule, there is no way to determine during rulemaking where the positive effects may occur. Furthermore, while the Department knows that any and all impacts are positive, that impact is not able to be quantified for any given community until a proposed Development is actually awarded LIHTC, given the unique characteristics of each proposed multifamily Development and region in which it is being developed.

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 significant construction activity is associated with any LIHTC Development and that each apartment community significantly increases the property value of the land being developed, there are no probable negative effects of the new rule on particular geographic regions. If anything, positive effects will ensue in those communities where developers receive LIHTC awards.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be an updated and more germane rule for administering the allocation of LIHTC. There is no change to the economic cost to any individuals required to comply with the new sections because the same processes described by the rule have already been in place through the rule found at this section being repealed. The average cost of filing an application remains between $50,000 and $60,000, which may vary depending on the specific type of application, location of the development site, and other non-state of Texas funding sources utilized. The proposed rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules. The proposed rules will result in a slightly lower cost of participating in an HTC Application for 2020 only as the Department has made a temporary one-time reduction in the Commitment and Determination Notice fees.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new sections are in effect, enforcing or administering the new sections do not have any foreseeable implications related to costs or revenues of the state or local governments because the same processes described by the rule have already been in place through the rule found at this sections being repealed. If anything, Departmental revenues may increase due to a comparatively higher volume of Applications, which slightly increases the amount of fees TDHCA receives.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held SEPTEMBER 20, 2019, to OCTOBER 11, 2019 to receive stakeholder comment on the new proposed sections. Written comments may be submitted to the Texas

Department of Housing and Community Affairs, Attn: Patrick Russell, QAP Public Comment, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-1895, attn: Patrick Russell, QAP Public Comments, or by email to htc.public-comment@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time OCTOBER 11, 2019.

## SUBCHAPTER A. PRE-APPLICATION, DEFINITIONS, THRESHOLD REQUIREMENTS AND COMPETITIVE SCORING

### 10 TAC §§11.1 - 11.10

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

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

*§11.1. General.*

(a) Authority. This chapter applies to the awarding and allocation by the Texas Department of Housing and Community Affairs (the Department) of Competitive and non-Competitive Housing Tax Credits. The federal laws providing for the awarding and allocation of Housing Tax Credits require states to adopt a qualified allocation plan. Pursuant to Tex. Gov't Code, Chapter 2306, Subchapter DD, the Department is assigned responsibility for this activity. As required by Internal Revenue Code (the Code), §42(m)(1), the Department has developed this Qualified Allocation Plan (QAP) and it has been duly approved to establish the procedures and requirements relating to an award and allocation of Housing Tax Credits. All requirements herein and all those applicable to a Housing Tax Credit Development or an Application under Chapter 10 of this title (relating to Post Award and Asset Management Requirements, Compliance Monitoring, and Incomes and Rents rules) collectively constitute the QAP required by Tex. Gov't Code §2306.67022. Unless otherwise specified, certain provisions in sections §11.1 - §11.4 also apply to non-Competitive Housing Tax Credits. Subchapters B - E of this chapter also apply to non-Competitive Housing Tax Credits and Multifamily Direct Loans. Applicants are required to certify, among other things, that they have familiarized themselves with the rules that govern that specific program including, but not limited to, Chapter 1 of this title (relating to Administration), Chapter 2 of this title (relating to Enforcement), Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules), Chapter 13 of this title (relating to Multifamily Direct Loan Rule), and other Department rules. This subchapter does not apply to operating assistance programs or funds unless incorporated by reference in whole or in part in a Notice of Funding Availability (NOFA) or rules for such a program except to the extent that Developments receiving such assistance and otherwise subject to this chapter remain subject to this chapter.

(b) Due Diligence and Applicant Responsibility. Department staff may, from time to time, make available for use by Applicants information and informal guidance in the form of reports and responses to specific questions. The Department encourages communication with staff in order to clarify any issues that may not be fully addressed in the QAP, or may be unclear when applied to specific facts. However, while these resources are offered to help Applicants prepare and submit accurate information, Applicants should also appreciate that this type of guidance is limited by its nature, and that staff will apply the rules of the QAP to each specific situation as it is presented in the submitted Application. The Multifamily Programs Procedures Manual is not a rule and is provided as good faith guidance and assistance, but in all respects the statutes and rules governing the Low Income Housing Tax Credit program supersede these guidelines and are controlling. Moreover, after the time that an issue is initially presented and guidance is provided, additional information may be identified and/or the issue itself may continue to develop based upon additional research and guidance. Thus, until confirmed through final action of the Board, staff guidance must be considered merely as an aid and an Applicant continues to assume full responsibility for any actions Applicant takes regarding an Application. In addition, although the Department may compile data from outside sources in order to assist Applicants in the Application process, it remains the sole responsibility of the Applicant to perform independently the necessary due diligence to research, confirm, and verify any data, opinions, interpretations, or other information upon which an Applicant bases an Application or includes in any submittal in connection with an Application.

(c) Competitive Nature of Program. Applying for Competitive Housing Tax Credits is a technical process that must be followed completely and correctly. Any person who desires to request any reasonable accommodation for any aspect of this process is directed to §1.1 of this title (relating to Reasonable Accommodation Requests to the Department). As a result of the highly competitive nature of applying for Housing Tax Credits, an Applicant should proceed on the assumption that deadlines are fixed and firm as further provided for in subsection (f) of this section.

(d) Definitions. The capitalized terms or phrases used herein are defined below. Any capitalized terms not specifically mentioned in this section or any section referenced in this document shall have the meaning as defined in Tex. Gov't Code Chapter 2306, Internal Revenue Code (the Code) §42, the HOME Final Rule, and other federal or Department rules, as applicable. Defined terms, when not capitalized, are to be read in context and construed according to common usage.

(1) Adaptive Reuse--The change-in-use of an existing building not, at the time of Application, being used, in whole or in part, for residential purposes (e.g., school, warehouse, office, hospital, hotel, etc.), into a building which will be used, in whole or in part, for residential purposes. Adaptive Reuse requires that at least 75% of the original building remains at completion of the proposed Development. Ancillary non-residential buildings, such as a clubhouse, leasing office and/or amenity center may be newly constructed outside the walls of the existing building or as detached buildings on the Development Site. Adaptive Reuse Developments will be considered as New Construction.

(2) Administrative Deficiency--Information requested by Department staff that staff requires to clarify or explain one or more inconsistencies; to provide non-material missing information in the original Application or pre-application; or to assist staff in evaluating the Application or pre-application that, in the Department staff's reasonable judgment, may be cured by supplemental information or explanation which will not necessitate a substantial reassessment or re-evaluation of the Application or pre-application. Administrative Deficiencies may be issued at any time while the Application or pre-application or Contract is under consideration by the Department, including at any time while reviewing performance under a Contract, processing documentation for a Commitment of Funds, closing of a loan, processing of a disbursement request, closing out of a Contract, or resolving of any issues related to compliance. A matter may begin as an Administrative Deficiency but later be determined to have constituted a Material Deficiency. If an Applicant claims points for a scoring item, but provides supporting documentation that would support fewer points for that item, staff would treat this as an inconsistency and issue an Administrative Deficiency which will result in a correction of the claimed points to align with the provided supporting documentation. If the supporting documentation is not provided for claimed points, the item would be assigned no points.

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

(4) Affordability Period--The Affordability Period commences as specified in the Land Use Restriction Agreement (LURA) or federal regulation, or commences on the first day of the Compliance Period as defined by the Code §42(i)(1), and continues through the appropriate program's affordability requirements or termination of the LURA, whichever is earlier. The term of the Affordability Period shall be imposed by the LURA or other deed restriction, and in some circumstances may be terminated upon foreclosure or deed in lieu of foreclosure. The Department reserves the right to extend the Affordability Period for Developments that fail to meet program requirements. During the Affordability Period, the Department shall monitor to ensure compliance with programmatic rules as applicable, regulations, and Application representations.

(5) Applicable Percentage--The percentage used to determine the amount of the Housing Tax Credit for any Development, as defined more fully in Code, §42(b).

(A) For purposes of the Application, the Applicable Percentage will be projected at:

*(i)* nine percent for 70% present value credits, pursuant to Code, §42(b); or

*(ii)* fifteen basis points over the current Applicable Percentage for 30% present value credits, unless fixed by Congress, pursuant to Code, §42(b) for the month in which the Application is submitted to the Department.

(B) For purposes of making a credit recommendation at any other time, the Applicable Percentage will be based on:

*(i)* the percentage indicated in the Agreement and Election Statement, if executed; or

*(ii)* the percentage as calculated in subparagraph (A) of this paragraph if the Agreement and Election Statement has not been executed and no buildings have been placed in service.

(6) Applicant--Means any Person or a group of Persons and any Affiliates of those Persons who file an Application with the Department requesting funding or a tax credit allocation subject to the requirements of this chapter or 10 TAC Chapters 12 or 13 (relating to Multifamily Housing Revenue Bond Rules and Multifamily Direct Loan Rule, respectively) and who have undertaken or may contemplate the later formation of one or more business entities, such as a limited partnership, that is to be engaged in the ownership of a Development.

(7) Application Acceptance Period--That period of time during which Applications may be submitted to the Department. For Tax-Exempt Bond Developments it is the date the Application is submitted to the Department.

(8) Award Letter and Loan Term Sheet--A document that may be issued to an awardee of a Direct Loan before the issuance of a Commitment and/or Contract which preliminarily sets forth the terms and conditions under which the Direct Loan will be made available. An Award Letter and Loan Term Sheet will typically be contingent on the awardee satisfying certain requirements prior to executing a Commitment and/or Contract.

(9) Bank Trustee--A federally insured bank with the ability to exercise trust powers in the State of Texas.

(10) Bedroom--A portion of a Unit which is no less than 100 square feet; has no width or length less than eight feet; is self contained with a door (or the Unit contains a second level sleeping area of 100 square feet or more); has at least one window that provides exterior access; and has at least one closet that is not less than two feet deep and three feet wide and high enough to accommodate five feet of hanging space. A den, study or other similar space that could reasonably function as a Bedroom and meets this definition is considered a Bedroom.

(11) Breakeven Occupancy--The occupancy level at which rental income plus secondary income is equal to all operating expenses, including replacement reserves and taxes, and mandatory debt service requirements for a Development.

(12) Building Costs--Cost of the materials and labor for the vertical construction or rehabilitation of buildings and amenity structures.

(13) Carryover Allocation--An allocation of current year tax credit authority by the Department pursuant to the provisions of the Code, §42(h)(1)(C) and U.S. Treasury Regulations, §1.42-6.

(14) Carryover Allocation Agreement--A document issued by the Department, and executed by the Development Owner, pursuant to §10.402(f) of this title (relating to Carryover for Competitive Housing Tax Credits Only and Tax Exempt Bond Developments).

(15) Cash Flow--The funds available from operations after all expenses and debt service required to be paid have been considered.

(16) Certificate of Reservation or Traditional Carryforward Designation--The notice given by the Texas Bond Review Board (TBRB) to an issuer reserving a specific amount of the private activity bond state ceiling for a specific Development.

(17) Code--The Internal Revenue Code of 1986, as amended from time to time, together with any applicable regulations, rules, rulings, revenue procedures, information statements or other official pronouncements issued thereunder by the U.S. Department of the Treasury or the Internal Revenue Service (IRS).

(18) Code of Federal Regulations (CFR)--The codification of the general and permanent rules and regulations of the federal government as adopted and published in the Federal Register.

(19) Commitment (also referred to as Contract)--A legally binding written contract, setting forth the terms and conditions under which housing tax credits, loans, grants, or other sources of funds or financial assistance from the Department will be made available.

(20) Commitment of Funds--Occurs after the Development is approved by the Board and once a Commitment or Award Letter and Loan Term Sheet is executed between the Department and Development Owner. For Direct Loan Programs, this process is distinct from "Committing to a specific local project" as defined in 24 CFR Part 92 and Part 93, which may occur when the activity is set up in the disbursement and information system established by HUD, known as the Integrated Disbursement and Information System (IDIS). The Department's Commitment of Funds may not align with commitments made by other financing parties.

(21) Committee--See Executive Award and Review Advisory Committee.

(22) Common Area--Enclosed space outside of Net Rentable Area, whether conditioned or unconditioned, to include such area contained in: property management offices, resident service offices, 24-hour front desk office, clubrooms, lounges, community kitchens, community restrooms, exercise rooms, laundry rooms, mailbox areas, food pantry, meeting rooms, libraries, computer labs,

classrooms, break rooms, flex space programmed for resident use, interior corridors, common porches and patios, and interior courtyards. Common Area does not include individualized garages, maintenance areas, equipment rooms, or storage.

(23) Comparable Unit--A Unit, when compared to the subject Unit, is similar in net rentable square footage, number of Bedrooms, number of bathrooms, overall condition, location (with respect to the subject Property based on proximity to employment centers, amenities, services and travel patterns), age, Unit amenities, utility structure, and common amenities.

(24) Competitive Housing Tax Credits (HTC)--Tax credits available from the State Housing Credit Ceiling.

(25) Compliance Period--With respect to a building financed, in part with proceeds of Housing Tax Credits, the period of 15 taxable years, beginning with the first taxable year of the credit period pursuant to Code, §42(i)(1).

(26) Continuously Occupied--The same household has resided in the Unit for at least 12 months.

(27) Contract--See Commitment.

(28) Contract Rent--Net rent based upon current and executed rental assistance contract(s), typically with a federal, state or local governmental agency.

(29) Contractor--See General Contractor.

(30) Control (including the terms "Controlling," "Controlled by," and/or "under common Control with")--The power, ability, or authority, acting alone or in concert with others, directly or indirectly, to manage, direct, superintend, restrict, regulate, govern, administer, or oversee. As used herein "acting in concert" involves more than merely serving as a single member of a multi-member body. A member of a multi-member body is not acting in concert and therefore does not exercise control in that role, but may have other roles, such as executive officer positions, which involve actual or apparent authority to exercise control. Controlling entities of a partnership include the general partners, may include special limited partners when applicable, but not investor limited partners or special limited partners who do not possess other factors or attributes that give them Control. Controlling individuals and entities are set forth in subparagraphs (A) - (E) of this paragraph. Multiple Persons may be deemed to have Control simultaneously.

(A) For for-profit corporations, any officer authorized by the board of directors, regardless of title, to act on behalf of the corporation, including but not limited to the president, vice president, secretary, treasurer, and all other executive officers, and each stock holder having a 50% or more interest in the corporation, and any individual who has Control with respect to such stockholder;

(B) For nonprofit corporations or governmental instrumentalities (such as housing authorities), any officer authorized by the board, regardless of title, to act on behalf of the corporation, including but not limited to the president, vice president, secretary, treasurer, and all other executive officers, the Audit committee chair, the Board chair, and anyone identified as the executive director or equivalent;

(C) For trusts, all beneficiaries that have the legal ability to Control the trust who are not just financial beneficiaries;

(D) For limited liability companies, all managers, managing members, members having a 50% or more interest in the limited liability company, any individual Controlling such members, or any officer authorized to act on behalf of the limited liability company; or

(E) For partnerships, Principals include all General Partners, and Principals with ownership interest and special limited partners with ownership interest who also possess factors or attributes that give them Control.

(31) Debt Coverage Ratio (DCR)--Sometimes referred to as the "Debt Coverage" or "Debt Service Coverage." Calculated as Net Operating Income for any period divided by scheduled debt service required to be paid during the same period, and as described in §11.302(d)(4) of this chapter.

(32) Deferred Developer Fee--The portion of the Developer Fee used as a source of funds to finance the development and construction of the Property, and as described in §11.302(i)(2) of this chapter.

(33) Deobligated Funds--The funds released by the Development Owner or recovered by the Department canceling a Contract or award involving some or all of a contractual financial obligation between the Department and a Development Owner or Applicant.

(34) Determination Notice--A notice issued by the Department to the Development Owner of a Tax-Exempt Bond Development which specifies the Department's preliminary determination as to the amount of tax credits that the Development may be eligible to claim pursuant to the Code, §42(m)(1)(D).

(35) Developer--Any Person entering into a contractual relationship with the Owner to provide Developer Services with respect to the Development and receiving the right to earn a fee for such services and any other Person receiving any portion of a Developer Fee, whether by subcontract or otherwise, except if the Person is acting as a consultant with no Control. The Developer may or may not be a Related Party or Principal of the Owner.

(36) Developer Fee--Compensation in amounts defined in §11.302(e)(7) of this chapter (relating to Total Housing Development Costs, Developer Fee in the Underwriting Rules and Guidelines) paid by the Owner to the Developer for Developer Services inclusive of compensation to a Development Consultant(s), Development Team member or any subcontractor that performs Developer Services or provides guaranties on behalf of the Owner will be characterized as Developer Fee. A person who is entitled to a Developer Fee assumes the risk that it may not be paid if the anticipated sources of repayment prove insufficient.

(37) Developer Services--A scope of work relating to the duties, activities and responsibilities for pre-development, development, design coordination, and construction oversight of the Property generally including but not limited to:

(A) Site selection and purchase or lease contract negotiation;

(B) Identifying and negotiating sources of construction and permanent financing, including financing provided by the Department;

(C) Coordination and administration of activities, including the filing of applications to secure such financing;

(D) Coordination and administration of governmental permits, and approvals required for construction and operation;

(E) Selection and coordination of development consultants including architect(s), engineer(s), third-party report providers, attorneys, and other design or feasibility consultants;

(F) Selection and coordination of the General Contractor and construction contract(s);

(G) Construction oversight;

(H) Other consultative services to and for the Owner;

(I) Guaranties, financial or credit support if a Related Party or Affiliate; and

(J) Any other customary and similar activities determined by the Department to be Developer Services.

(38) Development--A residential rental housing project that consists of one or more buildings under common ownership and financed under a common plan which has applied for Department funds. This includes a proposed qualified low income housing project, as defined by Code, §42(g), that consists of one or more buildings containing multiple Units owned that is financed under a common plan, and that is owned by the same Person for federal tax purposes and may consist of multiple buildings that are located on scattered sites and contain only rent restricted Units. (§2306.6702(a)(6))

(39) Development Consultant or Consultant--Any Person who provides professional or consulting services relating to the filing of an Application, or post award documents as required by the program.

(40) Development Owner (also referred to as "Owner")--Any Person, General Partner, or Affiliate of a Person who owns or proposes a Development or expects to acquire Control of a Development under a purchase contract or ground lease approved by the Department and is responsible for performing under the allocation and/or Commitment with the Department. (§2306.6702(a)(7))

(41) Development Site--The area or, if more than one tract (which may be deemed by the Internal Revenue Service and/or the Department to be a scattered site), areas on which the Development is proposed and to be encumbered by a LURA.

(42) Development Team--All Persons and Affiliates thereof that play a role in the development, construction, rehabilitation, management and/or continuing operation of the subject Development, including any Development Consultant and Guarantor.

(43) Direct Loan--Funds provided through the HOME Program, Neighborhood Stabilization Program, National Housing Trust Fund, Tax Credit Assistance Program Repayment Funds (TCAP RF) or State Housing Trust Fund or other program available through the Department for multifamily development. The terms and conditions for Direct Loans will be determined by provisions in Chapter 13 of this title (relating to Multifamily Direct Loan Rule) and the NOFA under which they are awarded, the Contract, or the loan documents. The tax-exempt bond program is specifically excluded.

(44) Economically Distressed Area--An area that is in a census tract that has a median household income that is 75% or less of the statewide median household income and in a municipality or, if not within a municipality, in a county that has been awarded funds under the Economically Distressed Areas Program administered by the Texas Water Development Board. Notwithstanding all other requirements, for funds awarded to another type of political subdivision (e.g., a water district), the Development Site must be within the jurisdiction of the political subdivision.

(45) Effective Gross Income (EGI)--As provided for in §11.302(d)(1)(D) of this chapter. The sum total of all sources of anticipated or actual income for a rental Development, less vacancy and collection loss, leasing concessions, and rental income from employee-occupied units that is not anticipated to be charged or collected.

(46) Efficiency Unit--A Unit without a separately enclosed Bedroom.

(47) Elderly Development--A Development that either meets the requirements of the Housing for Older Persons Act (HOPA) under the Fair Housing Act, or a Development that receives federal funding that has a requirement for a preference or limitation for elderly persons or households, but must accept qualified households with children.

(48) Eligible Hard Costs--Hard Costs includable in Eligible Basis for the purposes of determining a Housing Credit Allocation.

(49) Environmental Site Assessment (ESA)--An environmental report that conforms to the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E 1527) and conducted in accordance with §11.305 of this chapter (relating to Environmental Site Assessment Rules and Guidelines) as it relates to a specific Development.

(50) Executive Award and Review Advisory Committee (EARAC also referred to as the Committee). The Department committee required by Tex. Gov't Code §2306.1112.

(51) Existing Residential Development--Any Development Site which contains existing residential Units at any time as of the beginning of the Application Acceptance Period.

(52) Extended Use Period--With respect to an HTC building, the period beginning on the first day of the Compliance Period and ending the later of:

(A) The date specified in the LURA; or

(B) The date which is 15 years after the close of the Compliance Period.

(53) First Lien Lender--A lender whose lien has first priority as a matter of law or by operation of a subordination agreement or other intercreditor agreement.

(54) General Contractor (including "Contractor")--One who contracts to perform the construction or rehabilitation of an entire Development, rather than a portion of the work. The General Contractor hires subcontractors, such as plumbing contractors, electrical contractors, etc., coordinates all work, and is responsible for payment to the subcontractors. A prime subcontractor will also be treated as a General Contractor, and any fees payable to the prime subcontractor will be treated as fees to the General Contractor, in the scenarios described in subparagraphs (A) or (B) of this paragraph:

(A) Any subcontractor, material supplier, or equipment lessor receiving more than 50% of the contract sum in the construction contract will be deemed a prime subcontractor; or

(B) If more than 75% of the contract sum in the construction contract is subcontracted to three or fewer subcontractors, material suppliers, and equipment lessors, such parties will be deemed prime subcontractors.

(55) General Partner--Any person or entity identified as a general partner in a certificate of formation for the partnership or is later admitted to an existing partnership as a general partner that is the Development Owner and that Controls the partnership. Where a limited liability corporation is the legal structure employed rather than a limited partnership, the manager or managing member of that limited liability corporation is deemed, for the purposes of these rules, to be the functional equivalent of a general partner.

(56) Governing Body--The elected or appointed body of public or tribal officials, responsible for the enactment, implementation, and enforcement of local rules and the implementation and enforcement of applicable laws for its respective jurisdiction.

(57) Governmental Entity--Includes federal, state or local agencies, departments, boards, bureaus, commissions, authorities, and political subdivisions, special districts, tribal governments and other similar entities.

(58) Gross Capture Rate--Calculated as the Relevant Supply divided by the Gross Demand, and as described in §11.302(i)(1) of this chapter.

(59) Gross Demand--The sum of Potential Demand from the Primary Market Area (PMA) and demand from other sources, as described in §11.303(d)(9)(E)(ii) of this chapter.

(60) Gross Program Rent--Maximum rent limits based upon the tables promulgated by the Department's division responsible for compliance, which are developed by program and by county or Metropolitan Statistical Area (MSA) or Primary Metropolitan Statistical Area (PMSA) or national non-metro area.

(61) Guarantor--Any Person that provides, or is anticipated to provide, a guaranty for all or a portion of the equity or debt financing for the Development.

(62) HTC Development (also referred to as "HTC Property")--A Development subject to an active LURA for Housing Tax Credits allocated by the Department.

(63) HTC Property--See HTC Development.

(64) Hard Costs--The sum total of Building Costs, Site Work costs, Off-Site Construction costs and contingency.

(65) Historically Underutilized Businesses (HUB)--An entity that is certified as such under and in accordance with Tex. Gov't Code, Chapter 2161.

(66) Housing Contract System (HCS)--The electronic information system established by the Department for tracking, funding, and reporting Department Contracts and Developments. The HCS is primarily used for Direct Loan Programs administered by the Department.

(67) Housing Credit Allocation--An allocation of Housing Tax Credits by the Department to a Development Owner as provided for in Code.

(68) Housing Credit Allocation Amount--With respect to a Development or a building within a Development, the amount of Housing Tax Credits the Department determines to be necessary for the financial feasibility of the Development and its viability as a Development throughout the Affordability Period and which the Board allocates to the Development.

(69) Initial Affordability Period--The Compliance Period or such longer period as shall have been elected by the Owner as the minimum period for which Units in the Development shall be retained for low-income tenants and rent restricted, as set forth in the LURA.

(70) Integrated Disbursement and Information System (IDIS)--The electronic grants management information system established by HUD to be used for tracking and reporting HOME funding and progress and which may be used for other sources of funds as established by HUD.

(71) Land Use Restriction Agreement (LURA)--An agreement, regardless of its title, between the Department and the Development Owner which is a binding covenant upon the Development Owner and successors in interest, that, when recorded, encumbers the Development with respect to the requirements of the programs for which it receives funds. (§2306.6702)

(72) Low-Income Unit--A Unit that is intended to be restricted for occupancy by an income eligible household, as defined by the Department utilizing its published income limits.

(73) Managing General Partner--A general partner of a partnership (or, as provided for in the definition of General Partner in this subsection, its functional equivalent) that is vested with the authority to take actions that are binding on behalf of the partnership and the other partners. The term Managing General Partner can also refer to a manager or managing member of a limited liability company where so designated to bind the limited liability company and its members under its Agreement or any other person that has such powers in fact, regardless of their organizational title.

(74) Market Analysis--Sometimes referred to as "Market Study." An evaluation of the economic conditions of supply, demand and rental rates conducted in accordance with §11.303 of this chapter (relating to Market Analysis Rules and Guidelines) as it relates to a specific Development.

(75) Market Analyst--A real estate appraiser or other professional satisfying the qualifications in §11.303(c) of this chapter, and familiar with the subject property's market area who prepares a Market Analysis.

(76) Market Rent--The achievable rent at the subject Property for a Unit without rent and income restrictions determined by the Market Analyst or Underwriter after adjustments are made to actual rents on Comparable Units to account for differences in net rentable square footage, functionality, overall condition, location (with respect to the subject Property based on proximity to primary employment centers, amenities, services and travel patterns), age, Unit amenities, utility structure, and Common Area amenities. The achievable rent conclusion must also consider the proportion of market Units to total Units proposed in the subject Property.

(77) Market Study--See Market Analysis.

(78) Material Deficiency--Any deficiency in a pre-application or an Application or other documentation that exceeds the scope of an Administrative Deficiency. Inability to provide documentation that existed prior to submission of an Application to substantiate claimed points or meet threshold requirements is material and may result in denial of the requested points or a termination in the case of threshold items. It is possible that multiple deficiencies that could individually be characterized as Administrative Deficiencies, when taken as a whole would create a need for substantial re-review of the Application and as such would be characterized as constituting a Material Deficiency.

(79) Multifamily Programs Procedures Manual--The manual produced and amended from time to time by the Department which reiterates and implements the rules and provides guidance for the filing of multifamily related documents.

(80) Net Operating Income (NOI)--The income remaining after all operating expenses, including replacement reserves and taxes have been paid, as provided for in §11.302(d)(3) of this chapter.

(81) Net Program Rent--Calculated as Gross Program Rent less Utility Allowance.

(82) Net Rentable Area (NRA)--The Unit space that is available exclusively to the tenant and is heated and cooled by a mechanical HVAC system. NRA is measured to the outside of the studs of a Unit or to the middle of walls in common with other Units. If the construction does not use studs, NRA is measured to the outside of the material to which the drywall is affixed. Remote Storage of no more than 25 square feet per Unit may be included in NRA. For Developments using Multifamily Direct Loan funds the Remote Storage

may only be included in NRA if the storage area shares a wall with the residential living space. NRA does not include common hallways, stairwells, elevator shafts, janitor closets, electrical closets, balconies, porches, patios, or other areas not actually available to the tenants for their furnishings, nor does NRA include the enclosing walls of such areas.

(83) Non-HTC Development--Sometimes referred to as Non-HTC Property. Any Development not utilizing Housing Tax Credits or Exchange funds.

(84) Notice of Funding Availability (NOFA)--A notice issued by the Department that announces funding availability, usually on a competitive basis, for multifamily rental programs requiring Application submission from potential Applicants.

(85) Off-Site Construction--Improvements up to the Development Site such as the cost of roads, water, sewer, and other utilities to provide access to and service the Site.

(86) Office of Rural Affairs--An office established within the Texas Department of Agriculture; formerly the Texas Department of Rural Affairs.

(87) One Year Period (1YP)--The period commencing on the date on which the Department and the Owner agree to the Qualified Contract price in writing and continuing for 12 calendar months.

(88) Owner--See Development Owner.

(89) Person--Without limitation, any natural person, corporation, partnership, limited partnership, joint venture, limited liability company, trust, estate, association, cooperative, government, political subdivision, agency or instrumentality or other organization or entity of any nature whatsoever, and shall include any group of Persons acting in concert toward a common goal, including the individual members of the group.

(90) Person or Persons with Disabilities--With respect to an individual, means that such person has:

(A) A physical or mental impairment that substantially limits one or more major life activities of such individual;

(B) A record of such an impairment; or

(C) Is regarded as having such an impairment, to include persons with severe mental illness and persons with substance abuse disorders.

(91) Physical Needs Assessment--See Scope and Cost Review.

(92) Place--An area defined as such by the United States Census Bureau, which, in general, includes an incorporated city, town, or village, as well as unincorporated areas known as Census Designated Places. Any part of a Census Designated Place that, at the time of Application, is within the boundaries of an incorporated city, town or village will be considered as part of the incorporated area. The Department may provide a list of Places for reference.

(93) Post Award Activities Manual--The manual produced and amended from time to time by the Department which explains the post award requirements and provides guidance for the filing of such documentation.

(94) Potential Demand--The number of income-eligible, age-, size-, and tenure-appropriate target households in the designated market area at the proposed placement in service date.

(95) Preservation--Activities that extend the Affordability Period for rent-restricted Developments that are at risk of losing low-income use restrictions or subsidies.

(96) Primary Market--Sometimes referred to as "Primary Market Area." The area defined by the Market Analyst as described in §11.303 of this chapter from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.

(97) Primary Market Area (PMA)--See Primary Market.

(98) Principal--Persons that will be capable of exercising Control pursuant to §11.1(d) of this chapter (relating to the definition of Control) over a partnership, corporation, limited liability company, trust, or any other private entity.

(99) Pro Forma Rent--For a restricted Unit, the lesser of the Net Program Rent or the Market Rent. For an unrestricted Unit, the Market Rent. Contract Rents, if applicable, will be used as the Pro Forma Rent.

(100) Property--The real estate and all improvements thereon which are the subject of the Application (including all items of personal property affixed or related thereto), whether currently existing or proposed to be built or rehabilitated thereon in connection with the Application.

(101) Qualified Contract (QC)--A bona fide contract to acquire the non-low-income portion of the building for fair market value and the low-income portion of the building for an amount not less than the Applicable Fraction (specified in the LURA) of the calculation as defined within §42(h)(6)(F) of the Code.

(102) Qualified Contract Price (QC Price)--Calculated purchase price of the Development as defined within Code, §42(h)(6)(F) and as further delineated in §10.408 of this title (relating to Qualified Contract Requirements).

(103) Qualified Contract Request (Request)--A request containing all information and items required by the Department relating to a Qualified Contract.

(104) Qualified Entity--Any entity permitted under Code, §42(i)(7)(A) and any entity controlled by such a qualified entity.

(105) Qualified Nonprofit Development--A Development which meets the requirements of Code, §42(h)(5), includes the required involvement of a Qualified Nonprofit Organization, and is seeking Competitive Housing Tax Credits.

(106) Qualified Nonprofit Organization--An organization that meets the requirements of Code §42(h)(5)(C) for all purposes, and for an allocation in the nonprofit set-aside or subsequent transfer of the property, when applicable, meets the requirements of Tex. Gov't Code §2306.6706, and §2306.6729, and Code, §42(h)(5), including having a Controlling interest in the Development.

(107) Reconstruction--The demolition of one or more residential buildings in an Existing Residential Development and the construction of Units on the same or another Development Site. At least one Unit must be reconstructed in order to qualify as Reconstruction. The total number of Units to be reconstructed will be determined by program requirements. Developments using Multifamily Direct Loan funds are required to follow the applicable federal requirements.

(108) Rehabilitation--The improvement or modification of an Existing Residential Development through alteration, incidental addition or enhancement. The term includes the demolition of an Existing Residential Development and the Reconstruction of any Development Units on the Development Site, but does not include Adaptive Reuse.

(§2306.004(26-a)) More specifically, Rehabilitation is the repair, refurbishment and/or replacement of existing mechanical and/or structural components, fixtures and finishes. Rehabilitation will correct deferred maintenance, reduce functional obsolescence to the extent possible and may include the addition of energy efficient components and appliances, life and safety systems; site and resident amenities; and other quality of life improvements typical of new residential Developments.

(109) Relevant Supply--The supply of Comparable Units in proposed and Unstabilized Developments targeting the same population including:

(A) The proposed subject Units;

(B) Comparable Units in another proposed Development within the PMA in an Application submitted prior to the subject, based on the Department's evaluation process described in §11.201(6) of this chapter (relating to Procedural Requirements for Application Submission) that may not yet have been presented to the Board for consideration of approval; and

(C) Comparable Units in previously approved but Unstabilized Developments in the PMA.

(110) Report--See Underwriting Report.

(111) Request--See Qualified Contract Request.

(112) Reserve Account--An individual account:

(A) Created to fund any necessary repairs or other needs for a Development; and

(B) Maintained by a First Lien Lender or Bank Trustee.

(113) Right of First Refusal (ROFR)--An Agreement to provide a series of priority rights to negotiate for the purchase of a Property by a Qualified Entity or a Qualified Nonprofit Organization at a negotiated price at or above the minimum purchase price as defined in Code §42(i)(7) or as established in accordance with an applicable LURA.

(114) Rural Area--

(A) A Place that is located:

*(i)* outside the boundaries of a primary metropolitan statistical area or a metropolitan statistical area;

*(ii)* within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area, if the statistical area has a population of 25,000 or less and does not share a boundary with an Urban Area; or

*(iii)* within the boundaries of a local political subdivision that is outside the boundaries of an Urban Area.

(B) For areas not meeting the definition of a Place, the designation as a Rural Area or Urban Area is assigned in accordance with §11.204(5)(A) of this chapter (relating to Required Documentation for Application Submission) or as requested in accordance with §11.204(5)(B).

(115) Scope and Cost Review (SCR)--Sometimes referred to as "Physical Needs Assessment," "Project Capital Needs Assessment," or "Property Condition Report." The SCR provides an evaluation of the physical condition of an existing Property to evaluate the immediate cost to rehabilitate and to determine costs of future capital improvements to maintain the Property. The SCR must be prepared in accordance with §11.306 of this chapter (relating to Scope and Cost Review Guidelines), as it relates to a specific Development.

(116) Scoring Notice--Notification provided to an Applicant of the score for their Application after Staff review. More than one Scoring Notice may be issued for an Application.

(117) Single Room Occupancy (SRO)--An Efficiency Unit that meets all the requirements of a Unit except that it may, but is not required, to be rented on a month to month basis to facilitate Transitional Housing. Buildings with SRO Units have extensive living areas in common and are required to be Supportive Housing and include the provision for substantial supports from the Development Owner or its agent on site.

(118) Site Control--Ownership or a current contract or series of contracts that meets the requirements of §11.204(10) of this chapter, that is legally enforceable giving the Applicant the ability, not subject to any legal defense by the Owner or anyone else, to develop and operate a Property and subject it to a LURA reflecting the requirements of any awards of assistance it may receive from the Department.

(119) Site Work--Materials and labor for the horizontal construction generally including excavation, grading, paving, underground utilities, and site amenities.

(120) State Housing Credit Ceiling--The aggregate amount of Housing Credit Allocations that may be made by the Department during any calendar year, as determined from time to time by the Department in accordance with applicable federal law, including Code, §42(h)(3)(C), and Treasury Regulation §1.42-14.

(121) Sub-Market--An area defined by the Underwriter based on general overall market segmentation promulgated by market data tracking and reporting services from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.

(122) Supportive Housing--A residential rental Development and Target Population meeting the requirements of subparagraphs (A) - (E) of this paragraph.

(A) Be intended for and targeting occupancy for households in need of specialized and specific non-medical services in order to maintain housing or transition into independent living;

(B) Be owned and operated by an Applicant or General Partner that must:

*(i)* have supportive services provided by the Applicant, an Affiliate of the Applicant, or a Third Party provider if the service provider is able to demonstrate a record of providing substantive services similar to those proposed in the Application in residential settings for at least three years prior to the beginning of the Application Acceptance Period, or Application Submission Date for Multifamily Direct Loan Applications;

*(ii)* secure sufficient funds necessary to maintain the Supportive Housing Development's operations throughout the entire Affordability Period; and

*(iii)* provide evidence of a history of fundraising activities reasonably deemed to be sufficient to address any unanticipated operating losses; and

*(iv)* provide a fully executed guaranty agreement whereby the Applicant or its Affiliate assume financial responsibility of any outstanding operating deficits, as they arise, and throughout the entire Affordability Period.

(C) Where supportive services are tailored for members of a household with specific needs, such as:

*(i)* homeless or persons at-risk of homelessness;

*(ii)* persons with physical, intellectual, and/or developmental disabilities;

*(iii)* youth aging out of foster care;

*(iv)* persons eligible to receive primarily non-medical home or community-based services;

*(v)* persons transitioning out of institutionalized care;

*(vi)* persons unable to secure permanent housing elsewhere due to specific, non-medical, or other high barriers to access and maintain housing;

*(vii)* Persons with Special Housing Needs including households where one or more individuals have alcohol and/or drug addictions, Violence Against Women Act Protections (domestic violence, dating violence, sexual assault, and stalking), HIV/AIDS, or is a veteran with a disability; or

*(viii)* other target populations that are served by a federal or state housing program in need of the type and frequency of supportive services characterized herein, as represented in the Application and determined by the Department on a case-by-case basis.

(D) Supportive services must meet the minimum requirements provided in clauses (i) - (iv) of this subparagraph:

*(i)* regularly and frequently offered to all residents;

*(ii)* easily accessible and offered at times that residents are able to use them;

*(iii)* must include readily available resident services and/or service coordination that either aid in addressing debilitating conditions, or assist residents in securing the skills, assets, and connections needed for independent living; and

*(iv)* a resident may not be required to access supportive services in order to qualify for or maintain tenancy in a rent restricted Unit that the household otherwise qualifies for; and,

(E) Supportive Housing Developments must meet the criteria of either clause (i) or (ii) of this subparagraph:

*(i)* not financed, except for construction financing, with any debt containing foreclosure provisions or debt that contains must-pay repayment provisions (including cash-flow debt). Permanent foreclosable, must-pay debt is permissible if sourced by federal funds, but the Development will not be exempted from Subchapter D of this chapter (relating to Underwriting and Loan Policy). In addition, permanent foreclosable, cash-flow debt provided by an Affiliate is permissible if originally sourced from charitable contributions or pass-through local government non-federal funds. Any amendment to an Application or Underwriting Report resulting in the addition of debt prohibited under this definition will result in the revocation of IRS Form(s) 8609, and may not be made for Developments that have Direct Loans after a LURA is executed, except as a part of an approved Asset Management Division work out arrangement; or

*(ii)* financed with debt that meets feasibility requirements under Subchapter D of this chapter without exemptions and must also be supported by project-based rental or operating subsidies for all Units for the entire affordability period, and meet all of the criteria in subclauses (I) - (VIII) of this clause:

*(I)* The Application includes documentation of how resident feedback has been incorporated into design of the proposed Development;

*(II)* The Development is located less than 1/2 mile from regularly-scheduled public transportation, including evenings and weekends;

*(III)* At least 10% of the Units in the proposed Development meet the 2010 ADA standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" 79 Federal Register 29671 for persons with mobility impairments;

*(IV)* Multiple systems will be in place for residents to provide feedback to Development staff;

*(V)* A resident is or will be a member of the Development Owner or service provider board of directors;

*(VI)* The Development's Tenant Selection Criteria will include a clear description of any credit, criminal conviction, or prior eviction history that may disqualify a potential resident. The disqualification cannot be a total prohibition, unless such a prohibition is required by federal statute or regulation (i.e. the Development must have an appeal process for non federally required criteria);

*(VII)* The Development will have a comprehensive written eviction prevention policy that includes an appeal process; and

*(VIII)* The Development will have a comprehensive written services plan that describes the available services, identifying whether they are provided directly or through referral linkages, by whom, and in what location and during what days and hours. A copy of the services plan will be readily accessible to residents.

(123) TDHCA Operating Database--Sometimes referred to as "TDHCA Database." A consolidation of recent actual income and operating expense information collected through the Department's Annual Owner Financial Certification process, as required and described in Chapter 10, Subchapter F of this title (relating to Compliance Monitoring), and published on the Department's web site (www.tdhca.state.tx.us).

(124) Target Population--The designation of types of housing populations shall include Elderly Developments, and those that are Supportive Housing. All others will be considered to serve general populations without regard to any subpopulations, although the Application may request that any other populations required for targeting, preference, or limitation by a federal or state fund source are identified.

(125) Tax-Exempt Bond Development--A Development requesting or having been awarded Housing Tax Credits and which receives a portion of its financing from the proceeds of Tax-Exempt Bonds which are subject to the state volume cap as described in Code §42(h)(4), such that the Development does not receive an allocation of tax credit authority from the State Housing Credit Ceiling.

(126) Tax-Exempt Bond Process Manual--The manual produced and amended from time to time by the Department which explains the process and provides guidance for the filing of a Housing Tax Credit Application utilizing Tax-Exempt Bonds.

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

(A) An Applicant, General Partner, Developer, or General Contractor;

(B) An Affiliate to the Applicant, General Partner, Developer, or General Contractor;

(C) Anyone receiving any portion of the administration, contractor, or Developer Fee from the Development; or

(D) In Control with respect to the Development Owner.

(128) Total Housing Development Cost--The sum total of the acquisition cost, Hard Costs, soft costs, Developer Fee and General Contractor fee incurred or to be incurred through lease-up by the Development Owner in the acquisition, construction, rehabilitation, and financing of the Development.

(129) Transitional Housing--A Supportive Housing Development funded with HOME, NSP, or TCAP_RF, and not layered with Housing Tax Credits that includes living Units with more limited individual kitchen facilities and is:

(A) Used exclusively to facilitate the transition of homeless individuals and those at-risk of becoming homeless, to independent living within 24 months; and

(B) Is owned by a Development Owner that includes a Governmental Entity or a nonprofit which provides temporary housing and supportive services to assist such individuals in, among other things, locating and retaining permanent housing. The limited kitchen facilities in individual Units must be appropriately augmented by suitable, accessible shared or common kitchen facilities.

(130) U.S. Department of Agriculture (USDA)--Texas Rural Development Office ( TRDO) serving the State of Texas.

(131) U.S. Department of Housing and Urban Development (HUD)-regulated Building--A building for which the rents and utility allowances of the building are reviewed by HUD.

(132) Underwriter--The author(s) of the Underwriting Report.

(133) Underwriting Report--Sometimes referred to as the Report. A decision making tool prepared by the Department's Real Estate Analysis Division that contains a synopsis of the proposed Development and that reconciles the Application information, including its financials and market analysis, with the underwriter's analysis. The Report allows the Department and Board to determine whether the Development will be financially feasible as required by Code §42(m), or other federal or state regulations.

(134) Uniform Multifamily Application Templates--The collection of sample resolutions and form letters, produced by the Department, as may be required under this chapter or Chapters 12 and 13 of this title (relating to Multifamily Housing Bond Rules and Multifamily Direct Loan Rule, respectively) that may be used, (but are not required to be used), to satisfy the requirements of the applicable rule.

(135) Uniform Physical Condition Standards (UPCS)--As developed by the Real Estate Assessment Center of HUD.

(136) Unit--Any residential rental Unit in a Development consisting of an accommodation, including a single room used as an accommodation on a non-transient basis, that contains complete physical facilities and fixtures for living, sleeping, eating, cooking and sanitation.

(137) Unit Type--Units will be considered different Unit Types if there is any variation in the number of Bedrooms, full bathrooms or a square footage difference equal to or more than 120 square feet. A powder room is the equivalent of a half-bathroom, but does not by itself constitute a change in Unit Type.

(138) Unstabilized Development--A Development with Comparable Units that has been approved for funding by the Department's Board of Directors or is currently under construction or has not maintained a 90% occupancy level for at least 90 days following construction completion. A development may be deemed stabilized by the Underwriter based on factors relating to a development's lease-up velocity, Sub-Market rents, Sub-Market occupancy trends and other information available to the Underwriter. The Market Analyst may not consider such development stabilized in the Market Study.

(139) Urban Area--A Place that is located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area other than a Place described by subparagraph (A) within the definition of Rural Area in this subsection. For areas not meeting the definition of a Place, the designation as a Rural Area or Urban Area is assigned in accordance with §11.204(5) of this chapter.

(140) Utility Allowance--The estimate of tenant-paid utilities made in accordance with Treasury Regulation, §1.42-10 and §10.614 of this title (relating to Utility Allowances).

(141) Work Out Development--A financially distressed Development for which the Owner and/or a primary financing participant is seeking a change in the terms of Department funding or program restrictions.

(e) Data. Where this chapter requires the use of American Community Survey or Housing & Urban Development data, the Department shall use the most current data available as of October 1, 2019, unless specifically otherwise provided in federal or state law or in the rules. All American Community Survey data must be 5-year estimates, unless otherwise specified. The availability of more current data shall be disregarded. Where other data sources are specifically required, such as Neighborhoodscout, the data available after October 1, but before Pre-Application Final Delivery Date, will be permissible. The NeighborhoodScout report submitted in the Application must include the report date.

(f) Deadlines. Where a specific date or deadline is identified in this chapter, the information or documentation subject to the deadline must be received by the Department on or before 5:00 p.m. Austin local time on the day of the deadline. If the deadline falls on a weekend or holiday, the deadline is 5:00 p.m. Austin local time on the next day which is not a weekend or holiday and on which the Department is open for general operation. Unless otherwise noted or provided in statute, deadlines are based on calendar days. Deadlines, with respect to both date and time, cannot be waived except where authorized and for truly extraordinary circumstances, such as the occurrence of a significant natural disaster that could not have been anticipated and makes timely adherence impossible. Applicants should further ensure that all required documents are included, legible, properly organized, and tabbed, and that materials in required formats involving digital media are complete and fully readable. Applicants are strongly encouraged to submit the required items well in advance of established deadlines.

(g) Documentation to Substantiate Items and Representations in an Application. In order to ensure the appropriate level of transparency in this highly competitive program, Applications and all correspondence and other information relating to each Application are posted on the Department's website and updated on a regular basis. Applicants must use the Application form posted online to provide appropriate support for each item substantiating a claim or representation, such as claims for points, qualification for set-asides, meeting of threshold requirements, or timely requesting a waiver or determination. Any Application that staff identifies as having insufficient support information will be directed to cure the matter via the Deficiency process. Applicants are reminded that this process may not be used to increase a scoring item's points or to change any aspect of the proposed Development, financing structure, or other element of the Application. Although a responsive narrative will be created after Application submission, all facts and materials to substantiate any item in response to

such an Administrative Deficiency must have been clearly established at the time of submission of the Application.

(h) Board Standards for Review. Some issues may require or benefit from board review. The Board is not constrained to a particular standard, and while its actions on one matter are not binding as to how it will address another matter, the Board does seek to promote consistency with its policies, including the policies set forth in this chapter.

(i) Public Information Requests. Pursuant to Tex. Gov't Code §2306.6717, any pre-application and any full Application, including all supporting documents and exhibits, must be made available to the public, in their entirety, on the Department's website. The filing of a pre-application or Application with the Department shall be deemed as consent to the release of any and all information contained therein, including supporting documents and exhibits. As part of its certifications, the Applicant shall certify that the authors of the reports and other information and documents submitted with the Application have given their consent to the Applicant to submit all reports and other information and documents to the Department, and for the Department to publish anything submitted with the Application on its website and use such information and documents for authorized purposes.

(j) Responsibilities of Municipalities and Counties. In considering resolutions regarding housing de-concentration issues, threshold requirements, or scoring criteria, municipalities and counties should consult their own staff and legal counsel as to whether their handling of actions regarding such resolution(s) are consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any Fair Housing Activity Statement-Texas (FHAST) form on file, any current Analysis of Impediments to Fair Housing Choice, any current Assessment of Fair Housing, or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds, such as HOME or CDBG funds.

(k) Request for Staff Determinations. Where the requirements of this chapter do not readily align with the activities proposed in an Application, an Applicant may request and Department staff may provide a determination to an Applicant explaining how staff will review an Application in relation to the applicable rules. In no instance will staff provide a determination regarding a scoring item. Any such request must be received by the Department prior to submission of the pre-application (if applicable to the program) or Application (if no pre-application was submitted). Staff may, in its sole discretion, provide the request to the Board for it to make the determination. Staff's determination may take into account the articulated purpose of or policies addressed by a particular rule or requirement, materiality of elements, substantive elements of the development plan that relate to a term or definition, a common usage of the particular term, or other issues relevant to a rule or requirement. All such requests and determinations will be conveyed in writing. If the determination is finalized after submission of the pre-application or Application, the Department may allow corrections to the pre-application or the Application that are directly related to the issues in the determination. It is an Applicant's sole responsibility to request a determination and an Applicant may not rely on any determination for another Application regardless of similarities in a particular fact pattern. For any Application that does not request and subsequently receive a determination, the definitions and applicable rules will be applied as used and defined herein. An Applicant may appeal a determination for their Application, using the Appeal Process provided for in §11.902 of this chapter, if the determination provides for a treatment that relies on factors other than the explicit definition. A Board determination may not be appealed. A staff or Executive Director determination not timely appealed cannot be further appealed or challenged. Any part of an Application that received a Staff Determination prior to Application submission may not be appealed after submission.

*§11.2. Program Calendar for Housing Tax Credits.*

(a) Competitive HTC Deadlines. Non-statutory deadlines specifically listed in the Program Calendar may be extended by the Department for a period of not more than 5 business days provided that the Applicant has, in writing, requested an extension prior to the date of the original deadline and has established to the reasonable satisfaction of the Department that there is good cause for the extension.

(b) Tax-Exempt Bond and Direct Loan Development Dates and Deadlines. This section reflects key dates for all multifamily development programs except for the Competitive Housing Tax Credit Program. Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Non-statutory deadlines specifically listed in this section may be extended by the Department for a period of not more than five business days provided; however, that the Applicant requests an extension prior to the date of the original deadline. Other deadlines may be found in 10 TAC Chapters 12 and 13 or a NOFA.

(1) Full Application Delivery Date. The deadline by which the Application must be received by the Department. For Direct Loan Applications, such deadline will generally be defined in the applicable NOFA and for Tax-Exempt Bond Developments, such deadlines are more fully explained in §11.201(2) of this chapter (relating to Procedural Requirements for Application Submission).

(2) Notice to Submit Lottery Application Delivery Date. No later than December 6, 2019, Applicants that receive an advance notice regarding a Certificate of Reservation shall submit a notice to the Department, in the form prescribed by the Department.

(3) Applications Associated with Lottery Delivery Date. No later than December 13, 2019, Applicants that participated in the Texas Bond Review Board Lottery must submit the complete tax credit Application, including all required Third Party Reports, to the Department.

(4) Administrative Deficiency Response Deadline. Such deadline shall be five business days after the date on the deficiency notice without incurring a penalty fee pursuant to §11.901 of this chapter (relating to Fee Schedule), unless extended as provided for in 10 TAC §11.201(7) related to the Deficiency Process.

(5) Third Party Report Delivery Date (Environmental Site Assessment (ESA), Scope and Cost Review (SCR), Appraisal (if applicable), Market Analysis and the Site Design and Development Feasibility Report). For Direct Loan Applications, the Third Party reports meeting specific requirements described in §11.205 of this chapter must be submitted with the Application in order for it to be considered a complete Application, unless the Application is made in conjunction with an Application for Housing Tax Credits or Tax-Exempt Bond, in which case the Delivery Date for those programs will apply. For Tax-Exempt Bond Developments, the Third Party Reports must be received by the Department pursuant to §11.201(2) of this chapter.

(6) Resolutions Delivery Date. Resolutions required for Tax-Exempt Bond Developments must be received by the Department no later than 14 calendar days before the Board meeting at which consideration of the award will occur. If the Direct Loan Application is made in conjunction with an Application for Housing Tax Credits, or Tax-Exempt Bond Developments, the Resolution Delivery Date for those programs will apply to the Direct Loan Application.

(7) Challenges to Neighborhood Organization Opposition Delivery Date. Challenges must be received by the Department no later

than 45 calendar days prior to the Board meeting at which consideration of the award will occur.

*§11.3. Housing De-Concentration Factors.*

(a) Rules reciting statutory limitations are provided as a convenient reference only, and to the extent there is any deviation from the provisions of statute, the statutory language is controlling.

(b) Two Mile Same Year Rule (Competitive HTC Only).

(1) As required by Tex. Gov't Code §2306.6711(f), staff will not recommend for award, and the Board will not make an award to an Application that proposes a Development Site located in a county with a population that exceeds one million, if the proposed Development Site is also located less than two linear miles from the proposed Development Site of another Application within said county that is awarded in the same calendar year. If two or more Applications are submitted that would violate §2306.6711(f), the lower scoring Application will not be reviewed unless the higher scoring Application is terminated or withdrawn.

(2) This subsection does not apply if an Application is located in an area that, within the past five years, meets the requirements of Tex. Gov't Code §2306.6711(f-1), which excludes any municipality with a population of two million or more where a federal disaster has been declared by the Full Application Delivery Date as identified in §11.2(a) of this chapter, and the governing body of the municipality containing the Development has by vote specifically authorized the allocation of housing tax credits for the Development in a resolution submitted by the Full Application Delivery Date as identified in §11.2(a) of this chapter, and the municipality is authorized to administer disaster recovery funds as a subgrant recipient, for the disaster identified in the federal disaster declaration.

(c) Twice the State Average Per Capita (Competitive and Tax-Exempt Bond Only). As provided for in Tex. Gov't Code §2306.6703(a)(4), if a proposed Development is located in a municipality, or if located completely outside a municipality, a county, that has more than twice the state average of units per capita supported by Housing Tax Credits or private activity bonds at the time the Application Acceptance Period Begins (or for Tax-Exempt Bond Developments, Applications submitted after the Application Acceptance Period Begins), then the Applicant must obtain prior approval of the Development from the Governing Body of the appropriate municipality or county containing the Development. Such approval must include a resolution adopted by the Governing Body of the municipality or county, as applicable, setting forth a written statement of support, specifically citing Tex. Gov't Code §2306.6703(a)(4) in the text of the actual adopted resolution, and authorizing an allocation of Housing Tax Credits for the Development. An acceptable, but not required, form of resolution may be obtained in the Uniform Multifamily Application Templates. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2(a) of this chapter (relating to Competitive HTC Deadlines Program Calendar) or Resolutions Delivery Date in §11.2(b) of this chapter (relating to Tax-Exempt Bond and Multifamily Loan Development Dates and Deadlines), as applicable.

(d) One Mile Three Year Rule. (Competitive and Tax-Exempt Bond Only). (§2306.6703(a)(3))

(1) An Application that proposes the New Construction or Adaptive Reuse of a Development that is located one linear mile or less (measured between closest boundaries by a straight line on a map) from another development that meets all of the criteria in subparagraphs (A) - (C) of this paragraph shall be considered ineligible.

(A) A Development serves the same Target Population as the proposed Development, regardless of whether the Development serves general, Elderly, or Supportive Housing; and

(B) A Development has received an allocation of Housing Tax Credits or private activity bonds for any New Construction at any time during the three-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments the three-year period preceding the date the Certificate of Reservation is issued); and

(C) The Development in subparagraph B has not been withdrawn or terminated from the Housing Tax Credit Program.

(2) Paragraph (1) of this subsection does not apply to a proposed Development:

(A) That is using federal HOPE VI (or successor program) funds received through HUD;

(B) That is using locally approved funds received from a public improvement district or a tax increment financing district;

(C) That is using funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §§12701 et seq.);

(D) That is using funds provided to the state and participating jurisdictions under the Housing and Community Development Act of 1974 (42 U.S.C. §§5301 et seq.);

(E) That is located in a county with a population of less than one million;

(F) That is located outside of a metropolitan statistical area; or

(G) That the Governing Body of the appropriate municipality or county where the Development is to be located has by vote specifically allowed the construction of a new Development located within one linear mile or less from a Development described under paragraph (1)(A) of this subsection. An acceptable, but not required, form of resolution may be obtained in the Uniform Multifamily Application Templates. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2(a) of this chapter, regarding Competitive HTC Deadlines, or Resolutions Delivery Date in §11.2(b) of this chapter, regarding Tax-Exempt Bond and Direct Loan Development Dates and Deadlines, as applicable.

(3) Where a specific source of funding is referenced in paragraph (2)(A) - (D) of this subsection, a commitment or resolution documenting a commitment of the funds must be provided in the Application.

(e) Limitations on Developments in Certain Census Tracts. An Application that proposes the New Construction or Adaptive Reuse of a Development proposed to be located in a census tract that has more than 20% Housing Tax Credit Units per total households as established by the 5-year American Community Survey shall be considered ineligible unless the Governing Body of the appropriate municipality or county containing the Development has, by vote, specifically allowed the Development and submits to the Department a resolution stating the proposed Development is consistent with the jurisdiction's obligation to affirmatively further fair housing. Rehabilitation Developments are not required to obtain such resolution. The resolution must be submitted by the Full Application Delivery Date as identified in §11.2(a) of this chapter, regarding Competitive HTC Deadlines, or Resolutions Delivery Date in §11.2(b) of this chapter, regarding Tax-Exempt Bond and Direct Loan Development Dates and Deadlines, as applicable.

(f) Additional Phase. An Application proposing an additional phase of an existing tax credit Development that is under common or Affiliate ownership, or Control serving the same Target Population or Applications proposing Developments that are adjacent to an existing tax credit Development that is under common Affiliate ownership or Control serving the same Target Population, shall be considered ineligible unless the other Developments or phase(s) of the Development have been completed and have maintained occupancy of at least 90% for a minimum six month period as reflected in the submitted rent roll. If the Additional Phase is proposed by any Principal of the existing tax credit Development, the Developer Fee included in Eligible Basis for the Additional Phase may not exceed 15%, regardless of the number of Units. If the Application proposes the Rehabilitation or replacement of existing federally-assisted affordable housing Units or federally-assisted affordable housing Units demolished on the same site within two years of the beginning of the Application Acceptance Period, this provision does not apply.

(g) Proximity of Development Sites. (Competitive HTC Only) In a county with a population that is less than one million, if two or more HTC Applications, regardless of the Applicant(s), are proposing Developments serving the same Target Population on sites separated by 1,000 feet or less, the lower scoring Application(s), including consideration of tie-breakers, will be considered ineligible and will not be reviewed unless the higher scoring Application is terminated or withdrawn.

(h) One Award per Census Tract Limitation (Competitive HTC Only). If two or more Competitive HTC Applications are proposing Developments in the same census tract in an urban subregion, the lower scoring Application(s), including consideration of tie breakers, will be considered ineligible and will not be reviewed unless the higher scoring Application is terminated or withdrawn. This subsection does not apply to Applications submitted under the USDA Set-Aside (10 TAC §11.5(2)) or the At-Risk Set-Aside (10 TAC §11.5(3)).

*§11.4. Tax Credit Request and Award Limits.*

(a) Credit Amount (Competitive HTC Only). (§2306.6711(b)) The Board may not award or allocate to an Applicant, Developer, Affiliate, or Guarantor (unless the Guarantor is also the General Contractor or provides the guaranty only during the construction period, and is not a Principal of the Applicant, Developer or Affiliate of the Development Owner) Housing Tax Credits in an aggregate amount greater than $3 million in a single Application Round. Prior to posting the agenda for the last Board meeting in June, an Applicant that has Applications pending for more than $3 million in credit may notify staff in writing or by email of the Application(s) they will not pursue in order to bring their request within the $3 million cap. Any other Applications they do not wish to pursue will remain on the waiting list if not otherwise terminated. If the Applicant has not made this self-selection by this date, staff will first select the Application(s) that will enable the Department to comply with the state and federal non-profit set-asides, and will then select the highest scoring Application, including consideration of tie-breakers if there are tied scores. The Application(s) that does not meet Department criteria will not be reviewed unless the Applicant withdraws an Application that is eligible for an award and has been reviewed. All entities that are under common Control are Affiliates. For purposes of determining the $3 million limitation, a Person is not deemed to be an Applicant, Developer, Affiliate, or Guarantor solely because it:

(1) Raises or provides equity;

(2) Provides "qualified commercial financing";

(3) Is a Qualified Nonprofit Organization or other not-for-profit entity that is providing solely loan funds, grant funds or social services; or

(4) Receives fees as a consultant or advisor that do not exceed $200,000.

(b) Maximum Request Limit (Competitive HTC Only). For any given Development, an Applicant may not request more than 150% of the credit amount available in the subregion based on estimates released by the Department on December 1, or $1,500,000, whichever is less, or $2,000,000 for Applications under the At-Risk Set-Aside. In addition, for Elderly Developments in a Uniform State Service Region containing a county with a population that exceeds one million, the request may not exceed the final amount published on the Department's website after the annual release of the Internal Revenue Service notice regarding the credit ceiling. For all Applications, the Department will consider the amount in the funding request of the pre-application and Application to be the amount of Housing Tax Credits requested and will reduce the Applicant's request to the maximum allowable under this subsection through the underwriting process. Regardless of the credit amount requested or any subsequent changes to the request made by staff, the Board may not award to any individual Development more than $2 million in a single Application Round. (§2306.6711(b))

(c) Increase in Eligible Basis (30% Boost). Applications will be evaluated for an increase of up to but not to exceed 30% in Eligible Basis provided they meet the criteria identified in paragraphs (1) - (3) of this subsection, or if required under Code, §42. Staff will recommend no increase or a partial increase in Eligible Basis if it is determined it would cause the Development to be over sourced, as evaluated by the Real Estate Analysis division, in which case a credit amount necessary to fill the gap in financing will be recommended. In no instance will the boost exceed more than the amount of credits required to create the HTC rent-restricted Units, as determined by the Real Estate Analysis division of TDHCA. The criteria in paragraph (3) of this subsection are not applicable to Tax-Exempt Bond Developments.

(1) The Development is located in a Qualified Census Tract (QCT) (as determined by the Secretary of HUD) that has less than 20% Housing Tax Credit Units per total households in the tract as established by the U.S. Census Bureau for the 5-year American Community Survey. New Construction or Adaptive Reuse Developments located in a QCT that has in excess of 20% Housing Tax Credit Units per total households in the tract are not eligible to qualify for a 30% increase in Eligible Basis, which would otherwise be available for the Development Site pursuant to §42(d)(5) of the Code, unless the Application includes a resolution stating that the Governing Body of the appropriate municipality or county containing the Development has by vote specifically allowed the construction of the new Development and referencing this rule. Rehabilitation Developments located in a QCT with 20% or greater Housing Tax Credit Units per total households are eligible to qualify for the boost and are not required to obtain such a resolution from the Governing Body. For Tax-Exempt Bond Developments, as a general rule and unless federal guidance states otherwise, a QCT designation would have to coincide with the program year the Certificate of Reservation is issued in order for the Department to apply the 30% boost in its underwriting evaluation. An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2(a) of this chapter, regarding Competitive HTC Deadlines, or Resolutions Delivery Date in §11.2(b) of this chapter, regarding Tax-Exempt Bond and Direct Loan Development Dates and Deadlines, as applicable. Applicants must submit a copy of the census map that includes the 11-digit

census tract number and clearly shows that the proposed Development is located within a QCT; OR

(2) The Development is located in a Small Area Difficult Development Area (SADDA) (based on Small Area Fair Market Rents (FMRs) as determined by the Secretary of HUD) that has high construction, land and utility costs relative to the AMGI. For Tax-Exempt Bond Developments, as a general rule, a SADDA designation would have to coincide with the program year in which the Certificate of Reservation is issued in order for the Department to apply the 30% boost in its underwriting evaluation. Applicants must submit a copy of the SADDA map that clearly shows the proposed Development is located within the boundaries of a SADDA; OR

(3) For Competitive Housing Tax Credits, Development meets one of the criteria described in subparagraphs (A) - (F) of this paragraph pursuant to Code, §42(d)(5)(B)(v):

(A) The Development is located in a Rural Area;

(B) The Development is entirely Supportive Housing and is in accordance with 10 TAC §11.1(d)(122)(E) related to the definition of Supportive Housing;

(C) The Development meets the criteria for the Opportunity Index as defined in §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria);

(D) The Applicant elects to restrict 10% of the proposed low income Units for households at or below 30% of AMGI. These Units may not be used to meet any scoring criteria, or used to meet any Multifamily Direct Loan program requirement;

(E) The Development is in an area covered by a concerted revitalization plan, is not an Elderly Development, and is not located in a QCT. A Development will be considered to be in an area covered by a concerted revitalization plan if it is eligible for and elects points under §11.9(d)(7) of this chapter; or

(F) The Development is located in a Qualified Opportunity Zone designated under the Bipartisan Budget Act of 2018 (H.R. 1892).

*§11.5. Competitive HTC Set-Asides. (§2306.111(d))*

This section identifies the statutorily-mandated Set-asides which the Department is required to administer. An Applicant may elect to compete in each of the Set-asides for which the proposed Development qualifies. In order to be eligible to compete in the Set-aside, the Application must meet the requirements of the Set-aside as of the Full Application Delivery Date. Election to compete in a Set-aside does not constitute eligibility to compete in the Set-aside, and Applicants who are ultimately deemed not to qualify to compete in the Set-aside will be considered not to be participating in the Set-aside for purposes of qualifying for points under §11.9(e)(3) of this chapter (related to pre-application Participation). Commitments of Competitive HTCs issued by the Board in the current program year will be applied to each Set-aside, Rural regional allocation, Urban regional allocation, and/or USDA Set-aside for the current Application round as appropriate.

(1) Nonprofit Set-Aside. (§2306.6729 and §2306.6706(b)) At least 10% of the State Housing Credit Ceiling for each calendar year shall be allocated to Qualified Nonprofit Developments which meet the requirements of Code, §42(h)(5) and Tex. Gov't Code §2306.6729 and §2306.6706(b). Qualified Nonprofit Organizations must have the controlling interest in the Development Owner applying for this Set-aside (i.e., greater than 50% ownership in the General Partner). If the Application is filed on behalf of a limited partnership, the Qualified Nonprofit Organization must be the Managing General Partner. If the Application is filed on behalf of a limited liability company, the Qualified Nonprofit Organization must be the controlling Managing Member. Additionally, for Qualified Nonprofit Development in the Nonprofit Set-aside the nonprofit entity or its nonprofit Affiliate or subsidiary must be the Developer or a co-Developer as evidenced in the development agreement. An Applicant that meets the requirements to be in the Qualified Nonprofit Set-aside is deemed to be applying under that Set-aside unless their Application specifically includes an affirmative election to not be treated under that Set-aside and a certification that they do not expect to receive a benefit in the allocation of tax credits as a result of being affiliated with a nonprofit. The Department reserves the right to request a change in this election and/or not recommend credits for those unwilling to change elections if insufficient Applications in the Nonprofit Set-Aside are received. Applicants may not use different organizations to satisfy the state and federal requirements of the Set-aside.

(2) USDA Set-Aside. (§2306.111(d-2)) At least 5% of the State Housing Credit Ceiling for each calendar year shall be allocated to Rural Developments which are financed through USDA. If an Application in this Set-aside involves Rehabilitation it will be attributed to and come from the At-Risk Development Set-aside; if an Application in this set-aside involves New Construction it will be attributed to and come from the applicable Uniform State Service Region and will compete within the applicable subregion unless the Application is receiving USDA Section 514 funding. Applications must also meet all requirements of Tex. Gov't Code §2306.111(d-2).

(A) Eligibility of Certain Developments to Participate in the USDA or Rural Set-asides. (§2306.111(d-4)) A proposed or Existing Residential Development that, before September 1, 2013, has been awarded or has received federal financial assistance provided under Section 514, 515, or 516 of the Housing Act of 1949 (42 U.S.C. Section 1484, 1485, or 1486) may be attributed to and come from the At-Risk Development Set-aside or the Uniform State Service Region in which the Development is located, regardless of whether the Development is located in a Rural Area.

(B) All Applications that are eligible to participate under the USDA Set-aside will be considered Rural for all scoring items under this chapter. If a Property receiving USDA financing is unable to participate under the USDA Set-aside and it is located in an Urban subregion, it will be scored as Urban.

(3) At-Risk Set-Aside. (§2306.6714; §2306.6702)

(A) At least 15% of the State Housing Credit Ceiling for each calendar year will be allocated under the At-Risk Development Set-aside and will be deducted from the State Housing Credit Ceiling prior to the application of the regional allocation formula required under §11.6 of this chapter (relating to Competitive HTC Allocation Process). Through this Set-aside, the Department, to the extent possible, shall allocate credits to Applications involving the preservation of Developments identified as At-Risk Developments. (§2306.6714) Up to 5% of the State Housing Credit Ceiling associated with this Set-aside may be given priority to Rehabilitation Developments under the USDA Set-aside.

(B) An At-Risk Development qualifying under Tex. Gov't Code §2306.6702(a)(5)(A) must meet the following requirements:

*(i)* Pursuant to Tex. Gov't Code §2306.6702(a)(5)(A)(i), a Development must have received the benefit of a subsidy in the form of a qualified below-market interest rate loan, interest rate reduction, rental subsidy, Section 8 housing assistance payment, rental supplement payment, rental assistance payment, or equity incentive from any of the programs provided in subclauses (I) to (VIII) of this clause. Applications participating in the At-Risk Set-Aside must include evidence of the qualifying subsidy.

*(I)* Sections 221(d)(3) and (5), National Housing Act (12 U.S.C. Section 1715l);

*(II)* Section 236, National Housing Act (12 U.S.C. Section 1715z-1);

*(III)* Section 202, Housing Act of 1959 (1 2 U.S.C. Section 1701q);

*(IV)* Section 101, Housing and Urban Development Act of 1965 (12 U.S.C. Section 1701s);

*(V)* The Section 8 Additional Assistance Program for housing developments with HUD-Insured and HUD-Held Mortgages administered by the United States Department of Housing and Urban Development as specified by 24 C.F.R. Part 886, Subpart A;

*(VI)* The Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects administered by the United States Department of Housing and Urban Development as specified by 24 C.F.R. Part 886, Subpart C;

*(VII)* Sections 514, 515, and 516, Housing Act of 1949 (42 U.S.C. Sections 1484, 1485, and 1486); or

*(VIII)* Section 42, Internal Revenue Code of 1986.

*(ii)* Any stipulation to maintain affordability in the contract granting the subsidy or any HUD-insured or HUD-held mortgage as described in §2306.6702(a)(5)(A)(ii)(a) will be considered to be nearing expiration or nearing the end of its term if the contract expiration will occur or the term will end within two years of July 31 of the year the Application is submitted. Developments with HUD-insured or HUD-held mortgages qualifying as At-Risk under §2306.6702(a)(5)(A)(ii)(b) will be considered eligible if the HUD-insured or HUD-held mortgage is eligible for prepayment .

*(iii)* Developments with existing Department LI-HTC LURAs must have completed all applicable Right of First Refusal procedures prior to the pre-application Final Delivery Date.

(C) An At-Risk Development qualifying under Tex. Gov't Code §2306.6702(a)(5)(B) must meet one of the requirements under clause (i) or (ii) or (iii) of this subparagraph:

*(i)* Units to be Rehabilitated or Reconstructed must be owned by a public housing authority or a public facility corporation created by a public housing authority under Chapter 303, Local Government Code and received assistance under §9, United States Housing Act of 1937 (42 U.S.C. section 1437g); or

*(ii)* Units to be Rehabilitated or Reconstructed must have been proposed to be disposed of or demolished, or already disposed or demolished, by a public housing authority or public facility corporation created by a public housing authority under Chapter 303, Local Government Code and received assistance under §9, United States Housing Act of 1937 (42 U.S.C. section 1437g) in the two-year period preceding the Application for housing tax credits; or

*(iii)* To the extent that an Application is eligible under Tex. Gov't Code §2306.6702(a)(5)(B)(iii), the Development must receive assistance through the Rental Assistance Demonstration (RAD) program administered by the United States Department of Housing and Urban Development (HUD). Applications must include evidence that RAD participation is included in the applicable public housing plan that was most recently approved by HUD, and evidence (in the form of a Commitment to enter into a Housing Assistance Payment (CHAP)) that HUD has approved the Units proposed for Rehabilitation or Reconstruction for participation in the RAD program; and

*(iv)* Notwithstanding any other provision of law, an At-Risk Development described by Tex. Gov't Code §2306.6702(a)(5)(B) that was previously allocated housing tax credits set aside under Subsection (a) does not lose eligibility for those credits if the portion of Units reserved for public housing as a condition of eligibility for the credits under Tex. Gov't Code §2306.6714 (a-1)(2) are later converted under RAD.

(D) An Application for a Development that includes the demolition of the existing Units which have received the financial benefit described in Tex. Gov't Code §2306.6702(a)(5)(i) will not qualify as an At-Risk Development unless the redevelopment will include at least a portion of the same site. Alternatively, pursuant to Tex. Gov't Code §2306.6702(a)(5)(B), an Applicant may propose relocation of the existing Units in an otherwise qualifying At-Risk Development if:

*(i)* the affordability restrictions and any At-Risk eligible subsidies are approved to be transferred with the units proposed for Rehabilitation or Reconstruction prior to the tax credit Carryover deadline;

*(ii)* the Applicant seeking tax credits must propose the same number of restricted Units (the Applicant may, however, add market rate Units); and

*(iii)* the new Development Site must either qualify for points on the Opportunity Index under §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria); OR

*(iv)* the local Governing Body of the applicable municipality or county (if completely outside of a municipality) in which that Development is located must submit a resolution confirming that the proposed Development is supported by the municipality or county in order to carry out a previously adopted plan that meets the requirements of §11.9(d)(7). Development Sites that cross jurisdictional boundaries must provide such resolutions from both local governing bodies.

(E) If Developments at risk of losing affordability from the financial benefits available to the Development are able to retain, renew, or replace the existing financial benefits and affordability they must do so unless regulatory barriers necessitate elimination of all or a portion of that benefit for the Development.

*(i)* evidence of the legal requirements that will unambiguously cause the loss of affordability and that this will occur within the two calendar years of July 31 of the year the Application is submitted, and must be included with the application.

*(ii)* for Developments qualifying under Tex. Gov't Code §2306.6702(a)(5)(B), only a portion of the subsidy must be retained for the proposed Development, but no less than 25% of the proposed Units must be public housing units supported by public housing operating subsidy. (§2306.6714(a-1). If less than 100% of the public housing benefits are transferred to the proposed Development, an explanation of the disposition of the remaining public housing benefits must be included in the Application, as well as a copy of the HUD-approved plan for demolition and disposition.

(F) Nearing expiration on a requirement to maintain affordability includes Developments eligible to request a Qualified Contract under Code, §42. Evidence must be provided in the form of a copy of the recorded LURA, the first year's IRS Forms 8609 for all buildings showing Part II of the form completed and, if applicable, documentation from the original application regarding the Right of First Refusal. The Application must also include evidence that any applicable Right of First Refusal procedures have been completed prior to the pre-application Final Delivery Date.

(G) An amendment to any aspect of the existing tax credit property sought to enable the Development to qualify as an At-Risk Development, that is submitted to the Department after the Application has been filed and is under review will not be accepted.

*§11.6. Competitive HTC Allocation Process.*

This section identifies the general allocation process and the methodology by which awards are made.

(1) Regional Allocation Formula. The Department shall initially make available in each Rural Area and Urban Area of each Uniform State Service Region (subregion) Housing Tax Credits in an amount not less than $600,000 in each Rural and Urban subregion, consistent with the Regional Allocation Formula developed in compliance with Tex. Gov't Code §2306.1115. As authorized by Tex. Gov't Code §2306.111(d-3), the Department will reserve $600,000 in housing tax credits for Applications in rural areas in each uniform state service region. The process of awarding the funds made available within each subregion shall follow the process described in this section. Where a particular situation that is not contemplated and addressed explicitly by the process described herein, Department staff shall formulate a recommendation for the Board's consideration based on the objectives of the regional allocation formula together with other policies and purposes set out in Tex. Gov't Code, Chapter 2306 and the Department shall provide the public the opportunity to comment on and propose alternatives to such a recommendation. In general, such a recommendation shall not involve broad reductions in the funding request amounts solely to accommodate regional allocation and shall not involve rearranging the competitive ranking of Applications within a particular subregion or set-aside except as described herein. If the Department determines that an allocation recommendation would cause a violation of the $3 million credit limit per Applicant, the Department will make its recommendation based on the criteria described in §11.4(a) of this chapter. The Department will publish on its website on or before December 1, 2019, initial estimates of Regional Allocation Formula percentages and limits of credits available, and the calculations periodically, if those calculations change, until the credits are fully allocated.

(2) Credits Returned and National Pool Allocated After January 1. For any credits returned after January 1 and eligible for reallocation (not including credit returned and reallocated under force majeure provisions), the Department shall first return the credits to the subregion or set-aside from which the original allocation was made. The credits will be treated in a manner consistent with the allocation process described in this section and may ultimately flow from the subregion and be awarded in the collapse process to an Application in another region, subregion or set-aside. For any credit received from the "national pool" after the initial approval of awards in late July, the credits will be added to any remaining credits and awarded to the next Application on the waiting list for the state collapse, if sufficient credits are available to meet the requirements of the Application as may be amended after underwriting review.

(3) Award Recommendation Methodology. (§2306.6710(a) - (f); §2306.111) The Department will assign, as described herein, Developments for review by the program and underwriting divisions. In general, Applications reviews will be conducted in the order described in subparagraphs (A) - (F) of this paragraph based upon the Applicant self-score and an initial program review. The procedure identified in subparagraphs (A) - (F) of this paragraph will also be used in making recommendations to the Board.

(A) USDA Set-Aside Application Selection (Step 1). The first set of reviews will be those Applications with the highest scores in the USDA Set-Aside until the minimum requirements stated in §11.5(2) of this chapter (relating to Competitive HTC Set-Asides. (§2306.111(d)) are attained. The minimum requirement may be exceeded in order to award the full credit request or underwritten amount of the last Application selected to meet the USDA Set-Aside requirement.

(B) At-Risk Set-Aside Application Selection (Step 2). The second set of reviews will be those Applications with the highest scores in the At-Risk Set-Aside statewide until the minimum requirements stated in §11.5(3) of this chapter (relating to At-Risk Set-Aside) are attained. This may require the minimum requirement to be exceeded to award the full credit request or underwritten amount of the last Application selected to meet the At-Risk Set-Aside requirement. This step may leave less than originally anticipated in the 26 subregions to award under the remaining steps.

(C) Initial Application Selection in Each Subregion (Step 3). The highest scoring Applications within each of the 26 subregions will then be selected provided there are sufficient funds within the subregion to fully award the Application. Applications electing the At-Risk or USDA Set-Asides will not be eligible to receive an award from funds made generally available within each of the subregions.

*(i)* In Uniform State Service Regions containing a county with a population that exceeds one million, the Board may not allocate more than the maximum percentage of credits available for Elderly Developments, unless there are no other qualified Applications in the subregion. The Department will, for each such Urban subregion, calculate the maximum percentage in accordance with Tex. Gov't Code §2306.6711(h), and will publish such percentages on its website.

*(ii)* In accordance with Tex. Gov't Code, §2306.6711(g), in Uniform State Service Regions containing a county with a population that exceeds 1.7 million, the Board shall allocate competitive tax credits to the highest scoring development, if any, that is part of a concerted revitalization plan that meets the requirements of §11.9(d)(7) (except for §11.9(d)(7)(A)(ii)(III) and §11.9(d)(7)(B)(iii)), is located in an urban subregion, and is within the boundaries of a municipality with a population that exceeds 500,000.

(D) Rural Collapse (Step 4). If there are any tax credits set-aside for Developments in a Rural Area in a specific Uniform State Service Region (Rural subregion) that remain after award under subparagraph (C) of this paragraph, those tax credits shall be combined into one "pool" and then be made available in any other Rural Area in the state to the Application in the most underserved Rural subregion as compared to the subregion's allocation. This rural redistribution will continue until all of the tax credits in the "pool" are allocated to Rural Applications and at least 20% of the funds available to the State are allocated to Applications in Rural Areas. (§2306.111(d)(3)) In the event that more than one subregion is underserved by the same percentage, the priorities described in clauses (i) - (ii) of this subparagraph will be used to select the next most underserved subregion:

*(i)* the subregion with no recommended At-Risk Applications from the same Application Round; and

*(ii)* the subregion that was the most underserved during the Application Round during the year immediately preceding the current Application Round.

(E) Statewide Collapse (Step 5). Any credits remaining after the Rural Collapse, including those in any subregion in the State, will be combined into one "pool." The funds will be used to award the highest scoring Application (not selected or eliminated in a prior step) in the most underserved subregion in the State compared to the amount originally made available in each subregion. In Uniform State Service Regions containing a county with a population that exceeds one million, the Board may not allocate more than the maximum percentage of credits available as calculated through the Re-

gional Allocation Formula (RAF) for Elderly Developments within an urban subregion of that service region. Therefore, certain Applications for Elderly Developments may be excluded from receiving an award from the collapse. The Department will, for each such Urban subregion, calculate the maximum percentage in accordance with Tex. Gov't Code §2306.6711(h) and will publish such percentages on its website. This process will continue until the funds remaining are insufficient to award the next highest scoring Application that is not rendered ineligible through application of the elderly cap in the next most underserved subregion. At least seven calendar days prior to the July Board meeting of the Department at which final awards of credits are authorized, the Department will post on its website the most current 2020 State of Texas Competitive Housing Tax Credit Ceiling Accounting Summary which includes the Regional Allocation Formula percentages including the maximum funding request/award limits, the Elderly Development maximum percentages and limits of credits available, and the methodology used for the determination of the award determinations within the State Collapse. In the event that more than one subregion is underserved by the same degree, the priorities described in clauses (i) and (ii) of this subparagraph will be used to select the next most underserved subregion:

*(i)* the subregion with no recommended At-Risk Applications from the same Application Round; and

*(ii)* the subregion that was the most underserved during the Application Round during the year immediately preceding the current Application Round.

(F) Contingent Qualified Nonprofit Set-aside Step (Step 6). If an insufficient number of Applications participating in the Nonprofit Set-Aside are selected after implementing the criteria described in subparagraphs (A) - (E) of this paragraph to meet the requirements of the 10% Nonprofit Set-Aside, action must be taken to modify the criteria described in subparagraphs (A) - (E) of this paragraph to ensure the Set-aside requirements are met. Therefore, the criteria described in subparagraphs (C) - (E) of this paragraph will be repeated after selection of the highest scoring Application(s) under the Nonprofit Set-aside statewide are selected to meet the minimum requirements of the Nonprofit Set-Aside. This step may cause some lower scoring Applications in a subregion to be selected instead of a higher scoring Application not participating in the Nonprofit Set-aside.

(4) Waiting List. The Applications that do not receive an award by July 31 and remain active and eligible will be recommended for placement on the waiting list. The waiting list is not static. The allocation process will be used in determining the next Application to award. If credits are returned through any process, those credits will first be made available in the set-aside or subregion from which they were originally awarded. The first Application on the waiting list is in part contingent on the nature of the credits that became available for award. The Department shall hold all credit available after the late-July awards until September 30 in order to collect credit that may become available when tax credit Commitments are submitted. Credit confirmed to be available, as of September 30, may be awarded to Applications on the waiting list unless insufficient credits are available to fund the next Application on the waiting list. For credit returned after September 30, awards from the waiting list will be made when the remaining balance is sufficient to award the next Application as may be amended on the waiting list based on the date(s) of returned credit. Notwithstanding the foregoing, if decisions related to any returns or rescissions of tax credits are under appeal or are otherwise contested, the Department may delay awards until resolution of such issues. The Department will evaluate all waiting list awards for compliance with requested Set-asides. This may cause some lower scoring Applications to be selected instead of a higher scoring Application. Where sufficient credit becomes available to award an Application on the waiting list later in the calendar year, staff may allow flexibility in meeting the Carryover Allocation submission deadline and/or changes to the Application as necessary to ensure to the extent possible so that available resources are allocated by December 31. (§2306.6710(a) - (f); §2306.111)

(5) Credit Returns Resulting from Force Majeure Events. In the event that the Department receives a return of Competitive HTCs during the current program year from an Application that received a Competitive Housing Tax Credit award during any of the preceding three years, such returned credit will, if the Board determines that all of the requirements of this paragraph are met to its satisfaction, be allocated separately from the current year's tax credit allocation, and not be subject to the requirements of paragraph (2) of this section. The Board determination must indicate the year of the Multifamily Rules to be applied to the Development. The Department's Governing Board may impose a deadline that is earlier than the Placed in Service Deadline and may impose conditions that were not placed on the original allocation. Requests to allocate returned credit separately where all of the requirements of this paragraph have not been met or requests for waivers of any part of this paragraph will not be considered. For purposes of this paragraph, credits returned after September 30 of the preceding program year may be considered to have been returned on January 1 of the current year in accordance with the treatment described in §(b)(2)(C)(iii) of Treasury Regulation 1.42-14. The Board may approve the execution of a current program year Carryover Agreement regarding the returned credits with the Development Owner that returned such credits only if:

(A) The credits were returned as a result of "Force Majeure" events that occurred before issuance of Forms 8609. Force Majeure events are the following sudden and unforeseen circumstances outside the control of the Development Owner: acts of God such as fire, tornado, flooding, significant and unusual rainfall or subfreezing temperatures, or loss of access to necessary water or utilities as a direct result of significant weather events; explosion; vandalism; orders or acts of military authority; unrelated party litigation; changes in law, rules, or regulations; national emergency or insurrection; riot; acts of terrorism; supplier failures; or materials or labor shortages. If a Force Majeure event is also a presidentially declared disaster, the Department may treat the matter under the applicable federal provisions. Force Majeure events must make construction activity impossible or materially impede its progress;

(B) Acts or events caused by the negligent or willful act or omission of the Development Owner, Affiliate or a Related Party shall under no circumstance be considered to be caused by Force Majeure. In order for rainfall, material shortages, or labor shortages to constitute Force Majeure, the Development Owner must clearly explain and document how such events could not have been reasonably foreseen and mitigated through appropriate planning and risk management. Staff may use Construction Status reports for the subject or other Developments in conducting their review and forming a recommendation to the Board.

(C) A Development Owner claiming Force Majeure must provide evidence of the type of event, as described in subparagraph (A) of this paragraph, when the event occurred, and that the loss was a direct result of the event;

(D) The Development Owner must prove that reasonable steps were taken to minimize or mitigate any delay or damages, that the Development Owner substantially fulfilled all obligations not impeded by the event, including timely closing of all financing and start of construction, that the Development and Development Owner was properly insured and that the Department was timely notified of

the likelihood or actual occurrence of an event described in subparagraph (A) of this paragraph;

(E) The event prevents the Development Owner from meeting the placement in service requirements of the original allocation;

(F) The requested current year Carryover Agreement allocates the same amount of credit as that which was returned; and

(G) The Department's Real Estate Analysis Division determines that the Development continues to be financially viable in accordance with the Department's underwriting rules after taking into account any insurance proceeds related to the event.

*§11.7. Tie Breaker Factors.*

In the event there are Competitive HTC Applications that receive the same number of points in any given set-aside category, rural regional allocation or urban regional allocation, or rural or statewide collapse, the Department will utilize the factors in this section, in the order they are presented, to determine which Development will receive preference in consideration for an award. For the purposes of this section, all measurements will include ingress/egress requirements and any easements regardless of how they will be held. The tie breaker factors are not intended to specifically address a tie between equally underserved subregions in the rural or statewide collapse.

(1) Applications proposed to be located in a census tract with a poverty rate below the average poverty rate for all awarded Competitive HTC Applications from the past three years (with Region 11 adding an additional 15% to that value and Region 13 adding an additional 5% to that value). The poverty rate for each census tract will come from the most recent American Community Survey data. If a tie still persists, then the Development in the census tract with the highest percentage of statewide rent burden for renter households at or below 80% Area Median Family Income (AMFI), as determined by the U.S. Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy (CHAS) dataset and as reflected in the Department's current Site Demographic Characteristics Report.

(2) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development that serves the same Target Population and that was awarded less than 15 years ago according to the Department's property inventory tab of the Site Demographic Characteristics Report. Developments awarded Housing Tax Credits but do not yet have a Land Use Restriction Agreement in place will be considered Housing Tax Credit assisted Developments for purposes of this paragraph according to the property inventory included in the HTC Site Demographic Characteristics Report. The linear measurement will be performed from closest boundary to closest boundary of the Site presented at Pre-Application, if a pre-application is submitted, or the Site presented at full Application, whichever is closest.

*§11.8. Pre-Application Requirements (Competitive HTC Only).*

(a) General Submission Requirements. The pre-application process allows Applicants interested in pursuing an Application to assess potential competition across the 13 state service regions, subregions and set-asides. Based on an understanding of the potential competition they can make a more informed decision about whether they wish to proceed to prepare and submit an Application. A complete pre-application is a pre-application that meets all of the Department's criteria, as outlined in subsections (a) and (b) of this section.

(1) The pre-application must be submitted using the URL provided by the Department, as outlined in the Multifamily Programs Procedures Manual, along with the required pre-application fee as described in §11.901 of this chapter (relating to Fee Schedule), not later than the pre-application Final Delivery Date as identified in §11.2(a) of this chapter (relating to Competitive HTC Deadlines Program Calendar). If the pre-application and corresponding fee is not submitted on or before this deadline the Applicant will be deemed to have not made a pre-application.

(2) Only one pre-application may be submitted by an Applicant for each Development Site and for each Site Control document.

(3) Department review at this stage is limited, and not all issues of eligibility and threshold are reviewed or addressed at pre-application. Acceptance by staff of a pre-application does not ensure that an Applicant satisfies all Application eligibility, threshold or documentation requirements. While the pre-application is more limited in scope than the Application, pre-applications are subject to the same limitations, restrictions, or causes for disqualification or termination as Applications, and pre-applications will thus be subject to the same consequences for violation, including but not limited to loss of points and termination of the pre-application.

(4) The pre-application becomes part of the full Application if the full Application claims pre-application points.

(5) Regardless of whether a Full Application is submitted, a pre-application may not be withdrawn after the Full Application Delivery Date described in 10 TAC §11.2(a) relating to Competitive HTC Deadlines Program Calendar.

(b) Pre-Application Threshold Criteria. Pursuant to Tex. Gov't Code §2306.6704(c) pre-applications will be terminated unless they meet the threshold criteria described in subsection (a) of this section and paragraphs (1) and (2) of this subsection:

(1) Submission of the Competitive HTC pre-application in the form prescribed by the Department which identifies at a minimum:

(A) Site Control meeting the requirements of §11.204(10) of this title (relating to Required Documentation for Application Submission). For purposes of meeting this specific requirement related to pre-application threshold criteria, proof of consideration and any documentation required for identity of interest transactions is not required at the time of pre-application submission but will be required at the time of full application submission;

(B) Funding request;

(C) Target Population;

(D) Requested set-asides (At-Risk, USDA, Nonprofit, and/or Rural);

(E) Total Number of Units proposed;

(F) Census tract number in which the Development Site is located, and a map of that census tract with an outline of the proposed Development Site;

(G) Expected score for each of the scoring items identified in the pre-application materials;

(H) Proposed name of ownership entity; and

(I) Disclosure of the following Neighborhood Risk Factors under §11.101(a)(3):

*(i)* the Development Site is located in a census tract (or for any adjacent census tract with a boundary less than 500 feet from the proposed Development Site that is not separated from the Development Site by a natural barrier such as a river or lake, or an intervening restricted area, such as a military installation) in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com; and

*(ii)* the Development Site is located within the attendance zones of an elementary school, a middle school, or a high school that is rated D for 2019 and Improvement Required for 2018, or that is rated F for 2019.

(2) Evidence in the form of a certification provided in the pre-application, that all of the notifications required under this paragraph have been made and that a reasonable search for applicable entities has been conducted. (§2306.6704)

(A) The Applicant must list in the pre-application all Neighborhood Organizations on record with the county or state whose boundaries include the entire proposed Development Site as of the beginning of the Application Acceptance Period.

(B) Notification Recipients. No later than the date the pre-application is submitted, notification must be sent to all of the persons or entities prescribed in clauses (i) - (viii) of this subparagraph. Developments located in an ETJ of a municipality are required to notify both municipal and county officials. The notifications may be sent by e-mail, fax or mail with registered return receipt or similar tracking mechanism in the format included in the Public Notification Template provided in the Uniform 2020 Multifamily Application Template or in an alternative format that meets the applicable requirements and achieves the intended purpose. The Applicant is required to retain proof of delivery in the event the Department requests proof of notification. Acceptable evidence of such delivery is demonstrated by signed receipt for mail or courier delivery and confirmation of delivery for fax and e-mail. Officials to be notified are those officials in office at the time the pre-application is submitted. Between the time of pre-application (if made) and full Application, such officials may change and the boundaries of their jurisdictions may change. If there is a change between pre-application and the Full Application Delivery Date, additional notifications must be made at full Application to any person or entity that has not been previously notified by the Applicant. Meetings and discussions do not constitute notification. Only a timely and compliant written notification to the correct person constitutes notification.

*(i)* Neighborhood Organizations on record with the state or county as of the beginning of the Application Acceptance Period whose boundaries include the entire proposed Development Site;

*(ii)* superintendent of the school district in which the Development Site is located;

*(iii)* presiding officer of the board of trustees of the school district in which the Development Site is located;

*(iv)* mayor of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

*(v)* all elected members of the Governing Body of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

*(vi)* presiding officer of the Governing Body of the county in which the Development Site is located;

*(vii)* all elected members of the Governing Body of the county in which the Development Site is located; and

*(viii)* State Senator and State Representative of the districts whose boundaries include the proposed Development Site.

(C) Contents of Notification.

*(i)* the notification must include, at a minimum, all of the information described in subclauses (I) - (VIII) of this clause.

*(I)* The Applicant's name, address, an individual contact name and phone number;

*(II)* The Development name, address, city, and county;

*(III)* A statement informing the entity or individual being notified that the Applicant is submitting a request for Housing Tax Credits with the Texas Department of Housing and Community Affairs;

*(IV)* Whether the Development proposes New Construction, Reconstruction, Adaptive Reuse, or Rehabilitation;

*(V)* The physical type of Development being proposed (e.g. single family homes, duplex, apartments, high-rise, etc.);

*(VI)* The approximate total number of Units and approximate total number of Low-Income Units;

*(VII)* The residential density of the Development, i.e., the number of Units per acre; and

*(VIII)* Information on how and when an interested party or Neighborhood Organization can provide input to the Department.

*(ii)* the notification may not contain any false or misleading statements. Without limiting the generality of the foregoing, the notification may not create the impression that the proposed Development will serve a population exclusively or as a preference unless such targeting or preference is documented in the Application and is in full compliance with all applicable state and federal laws, including state and federal fair housing laws; and

*(iii)* notifications or any other communications may not contain any statement that violates Department rules, statute, code, or federal requirements.

(c) Pre-Application Results. Only pre-applications which have satisfied all of the pre-application requirements, including those in §11.9(e)(3) of this chapter, will be eligible for pre-application points. The order and scores of those Developments released on the pre-application Submission Log do not represent a Commitment on the part of the Department or the Board to allocate tax credits to any Development and the Department bears no liability for decisions made by Applicants based on the results of the pre-application Submission Log. Inclusion of a pre-application on the pre-application Submission Log does not ensure that an Applicant will receive points for a pre-application.

*§11.9. Competitive HTC Selection Criteria.*

(a) General Information. This section identifies the scoring criteria used in evaluating and ranking Applications. The criteria identified in subsections (b) - (e) of this section include those items required under Tex. Gov't Code, Chapter 2306, Code §42, and other criteria established in a manner consistent with Chapter 2306 and Code §42. There is no rounding of numbers in this section for any of the calculations in order to achieve the desired requirement or limitation, unless rounding is explicitly stated as allowed for that particular calculation or criteria. The Application must include one or more maps indicating the location of the Development Site and the related distance to the applicable facility. Distances are to be measured from the nearest boundary of the Development Site to the nearest boundary of the property or easement containing the facility, unless otherwise noted. For the purposes of this section, all measurements will include ingress/egress requirements and any easements regardless of how they will be held. Due to the highly competitive nature of the program, Applicants that elect points where supporting documentation is required but fail to provide any supporting documentation will not be allowed to cure the issue through an Administrative Deficiency. However, Department staff may provide the Applicant an opportunity to explain how they believe

the Application, as submitted, meets the requirements for points or otherwise satisfies the requirements.

(b) Criteria promoting development of high quality housing.

(1) Size and Quality of the Units. (§2306.6710(b)(1)(D); §42(m)(1)(C)(iii)) An Application may qualify for up to 15) points under subparagraphs (A) and (B) of this paragraph.

(A) Unit Sizes (6 points). The Development must meet the minimum requirements identified in this subparagraph to qualify for points. Points for this item will be automatically granted for Applications involving Rehabilitation (excluding Reconstruction), for Developments receiving funding from USDA, or for Supportive Housing Developments without meeting these square footage minimums only if requested in the Self Scoring Form.

*(i)* five-hundred fifty (550) square feet for an Efficiency Unit;

*(ii)* six-hundred fifty (650) square feet for a one Bedroom Unit;

*(iii)* eight-hundred fifty (850) square feet for a two Bedroom Unit;

*(iv)* one-thousand fifty (1,050) square feet for a three Bedroom Unit; and

*(v)* one-thousand two-hundred fifty (1,250) square feet for a four Bedroom Unit.

(B) Unit, Development Construction, and Energy and Water Efficiency Features (9 points). Applicants that elect in an Application to provide specific amenity and quality features in every Unit at no extra charge to the tenant will be awarded points based on the point structure provided in §11.101(b)(6)(B) of this title (relating to Unit, Development Construction, and Energy and Water Efficiency Features) and as certified to in the Application. The amenities will be required to be identified in the LURA. Rehabilitation Developments will start with a base score of five (5) points and Supportive Housing Developments will start with a base score of five (5) points.

(2) Sponsor Characteristics. (§42(m)(1)(C)(iv)) An Application may qualify to receive either one (1) or two (2) points if it meets one of the following conditions. Any Application that includes a HUB must include a narrative description of the HUB's experience directly related to the housing industry.

(A) The ownership structure contains either a HUB certified by the Texas Comptroller of Public Accounts by the Full Application Delivery Date or it contains a Qualified Nonprofit Organization, provided the Application is under the Nonprofit Set-Aside. The HUB or Qualified Nonprofit Organization must have some combination of ownership interest in each of the General Partner of the Applicant, Cash Flow from operations, and Developer Fee which taken together equal at least 50% and no less than 5% for any category. For HUD 202 Rehabilitation projects which prohibit for-profit ownership, ownership will not be required for a HUB, only for Cash Flow and/or Developer Fee; the total ownership percentage must still equal 50%, even if it is only attributable to one of the two categories.

*(i)* the HUB or Qualified Nonprofit Organization must materially participate in the Development and operation of the Development throughout the Compliance Period and must have experience directly related to the housing industry, which may include experience with property management, construction, development, financing, or compliance. Material participation means that the HUB or Qualified Nonprofit is regularly, continuously, and substantially involved in providing services integral to the Development Team; providing services as an independent contractor is not sufficient.

*(ii)* a Principal of the HUB or Qualified Nonprofit Organization cannot be a Related Party to any other Principal of the Applicant or Developer (excluding another Principal of said HUB or Qualified Nonprofit Organization). (2 points)

(B) The HUB or Nonprofit Organization must be involved with the Development Services or in the provision of on-site tenant services during the Development's Affordability Period. A Principal of the HUB or Nonprofit Organization cannot be a Related Party to or Affiliate, including the spouse of, any other Principal of the Applicant or Developer (excluding another Principal of said HUB or Nonprofit Organization). Selecting this item because of the involvement of a Nonprofit Organization does not make an Application eligible for the Nonprofit Set-Aside. (1 point)

(c) Criteria to serve and support Texans most in need.

(1) Income Levels of Residents. (§§2306.111(g)(3)(B) and (E); 2306.6710(b)(1)(C) and (e); and §42(m)(1)(B)(ii)(I)) An Application may qualify for up to sixteen (16) points for rent and income restricting a Development for the entire Affordability Period at the levels identified in subparagraph (A), (B), (C), or (D) of this paragraph.

(A) For any Development located within a non-Rural Area of the Dallas, Fort Worth, Houston, San Antonio, or Austin MSAs that propose to use either the 20-50 or 40-60 election under §42(g)(1)(A) or §42(g)(1)(B) of the Code, respectively:

*(i)* at least 60% of all Low-Income Units at 50% or less of AMGI in a Supportive Housing Development proposed by a Qualified Nonprofit (16 points);

*(ii)* at least 40 % of all Low-Income Units at 50% or less of AMGI (15 points);

*(iii)* at least 30% of all Low-Income Units at 50% or less of AMGI (13points); or

*(iv)* at least 20% of all Low-Income Units at 50 %or less of AMGI (11 points).

(B) For Developments proposed to be located in areas other than those listed in subparagraph (A) of this paragraph and that propose to use either the 20-50 or 40-60 election under §42(g)(1)(A) or §42(g)(1)(B) of the Code, respectively:

*(i)* at least 60% of all Low-Income Units at 50% or less of AMGI in a Supportive Housing Development proposed by a Qualified Nonprofit (16 points);

*(ii)* at least 20% of all Low-Income Units at 50% or less of AMGI (15 points);

*(iii)* at least 15% of all Low-Income Units at 50% or less of AMGI (13 points); or

*(iv)* at least 10% of all Low-Income Units at 50% or less of AMGI (11 points).

(C) For any Development located within a non-Rural Area of the Dallas, Fort Worth, Houston, San Antonio, or Austin MSAs that propose to use the Average Income election under §42(g)(1)(C) of the Code:

*(i)* the Average Income and Rent restriction for all Low-Income Units for the proposed Development will be 54% or lower (15 points);

*(ii)* the Average Income and Rent restriction for all Low-Income Units for the proposed Development will be 55% or lower (13 points); or

*(iii)* the average income and Rent restriction for all Low-Income Units for the proposed Development will be 56% or lower (11 points).

(D) For Developments proposed to be located in the areas other than those listed in subparagraph (C) of this paragraph and that propose to use the Average Income election under §42(g)(1)(C) of the Code:

*(i)* the Average Income and Rent restriction for all Low-Income Units for the proposed Development will be 55% or lower (15 points);

*(ii)* the Average Income and Rent restriction for all Low-Income Units for the proposed Development will be 56% or lower (13 points); or

*(iii)* the Average Income and Rent restriction for all Low-Income Units for the proposed Development will be 57% or lower (11 points).

(2) Rent Levels of Tenants. (§2306.6710(b)(1)(E)) An Application may qualify to receive up to thirteen (13) points for rent and income restricting a Development for the entire Affordability Period. If selecting points from §11.9(c)(1)(A) or §11.9(c)(1)(B), these levels are in addition to those committed under paragraph (1) of this subsection. If selecting points from §11.9(c)(1)(C) or §11.9(c)(1)(D), these levels are included in the income average calculation under paragraph (1) of this subsection. These units must be maintained at this rent level throughout the Affordability Period regardless of the Average Income calculation.

(A) At least 20% of all Low-Income Units at 30% or less of AMGI for Supportive Housing Developments proposed by a Qualified Nonprofit (13 points);

(B) At least 10% of all Low-Income Units at 30% or less of AMGI or, for a Development located in a Rural Area, 7.5% of all Low-Income Units at 30% or less of AMGI (11 points); or

(C) At least 5% of all Low-Income Units at 30% or less of AMGI (7 points).

(3) Resident Services. (§2306.6710(b)(1)(G) and §2306.6725(a)(1)) A Development may qualify to receive up to eleven (11) points.(A) The Applicant certifies that the Development will provide a combination of supportive services, which are listed in §11.101(b)(7) of this chapter, appropriate for the proposed residents and that there is adequate space for the intended services. The provision and complete list of supportive services will be included in the LURA. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application will remain the same. No fees may be charged to the residents for any of the services. Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item. (10 points)

(B) The Applicant certifies that the Development will contact local nonprofit and governmental providers of services that would support the health and well-being of the Department's residents, and will make Development community space available to them on a regularly-scheduled basis to provide outreach services and education to the tenants. Applicants may contact service providers on the Department list, or contact other providers that serve the general area in which the Development is located. (1 point)

(4) Opportunity Index. The Department may refer to locations qualifying for points under this scoring item as high opportunity areas in some materials. A Development is eligible for a maximum of seven (7) opportunity index points.

(A) A proposed Development is eligible for up to two (2) opportunity index points if it is located entirely within a census tract with a poverty rate of less than the greater of 20% or the median poverty rate for the region and meets the requirements in (i) or (ii) of this subparagraph.

*(i)* the Development Site is located entirely within a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region and a median household income rate in the two highest quartiles within the uniform service region. (2 points)

*(ii)* the Development Site is located entirely within a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, with a median household income in the third quartile within the region, and is contiguous to a census tract in the first or second quartile, without physical barriers such as (but not limited to) highways or rivers between, and the Development Site is no more than 2 miles from the boundary between the census tracts. For purposes of this scoring item, a highway is a limited-access road with a speed limit of 50 miles per hour or more; and, (1 point)

(B) An Application that meets one of the foregoing criteria in subparagraph (A) of this paragraph may qualify for additional points for any one or more of the following factors. Each amenity may be used only once for scoring purposes, unless allowed within the scoring item, regardless of the number of categories it fits. All members of the Applicant or Affiliates cannot have had an ownership position in the amenity or served on the board or staff of a nonprofit that owned or managed that amenity within the year preceding the Pre-Application Final Delivery Date. All amenities must be operational or have started Site Work at the Pre-Application Final Delivery Date. Any age restrictions associated with an amenity must positively correspond to the Target Population of the proposed Development.

*(i)* for Developments located in an Urban Area (other than Applicants competing in the USDA Set-Aside), an Application may qualify to receive points through a combination of requirements in subclauses (I) - (XV) of this clause.

*(I)* The Development Site is located on a route, with sidewalks for pedestrians, that is 1/2 mile or less from the entrance to a public park with a playground or from a multiuse hike-bike trail. The entirety of the sidewalk route must consist of smooth hard surfaces, curb ramps, and marked pedestrian crossings when traversing a street. (1 point)

*(II)* The Development Site is located on a route, with sidewalks for pedestrians, that is within a specified distance from the entrance of a public transportation stop or station with a route schedule that provides regular service to employment and basic services. The entirety of the sidewalk route must consist of smooth hard surfaces, curb ramps, and marked pedestrian crossings when traversing a street. Only one of the following may be selected.

(-a-) the Development Site is 1/2 mile or less from the stop or station and the scheduled service is beyond 8 a.m. to 5 p.m., plus weekend service (both Saturday and Sunday). (1 point); or

(-b-) the Development Site is 1/2 mile or less from the stop or station and the scheduled service arrives every 15 minutes, on average, between 6 a.m. and 8 p.m., every day of the week. (2 points)

*(III)* The Development Site is located within 1 mile of a full-service grocery store. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed Development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen, canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items. (1 point)

*(IV)* The Development Site is located within 1 mile of a pharmacy. For the purposes of this menu item only, the pharmacy may be claimed if it is within the same building as a grocery store. (1 point)

*(V)* The Development Site is located within 3 miles of a health-related facility, such as a full service hospital, community health center, minor emergency center, emergency room or urgent care facility. Physician offices and physician specialty offices are not considered in this category. (1 point)

*(VI)* The Development Site is within 2 miles of a center that is licensed by the Department of Family and Protective Services (DFPS) specifically to provide a school-age program or to provide a child care program for infants, toddlers, and/or pre-kindergarten. The Application must include evidence from DFPS that the center meets the above requirements. (1 point)

*(VII)* The Development Site is located in a census tract with a property crime rate of 26 per 1,000 persons or less as defined by neighborhoodscout.com, or local law enforcement data sources. If employing the latter source, the formula for determining the crime rate will include only data relevant to the census tract in which the Development Site is located. (1 point)

*(VIII)* The development Site is located within 1 mile of a public library that has indoor meeting space, physical books that can be checked out and that are of a general and wide-ranging subject matter, computers and internet access, and that is open 50 hours or more per week. The library must not be age or subject-restricted and must be at least partially funded with government funding. (1 point)

*(IX)* The Development Site is located within 5 miles of an accredited university or community college, as confirmed by the Texas Higher Education Coordination Board (THECB). To be considered a university for these purposes, the provider of higher education must have the authority to confer bachelor's degrees. Two-year colleges are considered community colleges, and to be considered for these purposes must confer at least associate's degrees. The university or community college must have a physical campus, where classes are regularly held for students pursuing their degrees, within the required distance; online-only institutions do not qualify under this item. (1 point)

*(X)* Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher is 27% or higher as tabulated by the most recent American Community Survey 5-year Estimate. (1 point)

*(XI)* Development Site is within 1 mile of an indoor recreation facility available to the public. Examples include, but are not limited to, a gym, health club, a bowling alley, a theater, or a municipal or county community center. (1 point)

*(XII)* Development Site is within 1 mile of an outdoor, dedicated, and permanent recreation facility available to the public. Examples include, but are not limited to, swimming pools or splash pads, tennis courts, golf courses, softball fields, or basketball courts. (1 point)

*(XIII)* Development Site is within 1 mile of community, civic or service organizations that provide regular and recurring substantive services, beyond exclusively congregational or member-affiliated activities, available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club as long as they make services available without regard to affiliation or membership). (1 point)

*(XIV)* Development Site is in the current service area of Meals on Wheels or similar nonprofit service that provides regular visits and meals to individuals in their homes. (1 point)

*(XV)* Development Site is located in the attendance zone of a general enrollment public school rated A or B by TEA for the past academic year. (1 point)

*(ii)* for Developments located in a Rural Area and any Application qualifying under the USDA set-aside, an Application may qualify to receive points through a combination of requirements in subclauses (I) - (XIV) of this clause.

*(I)* The Development Site is located within 4 miles of a full-service grocery store. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed Development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen, canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items. (1 point)

*(II)* The Development Site is located within 4 miles of a pharmacy. For the purposes of this menu item only, the pharmacy may be claimed if it is within the same building as a grocery store. (1 point)

*(III)* The Development Site is located within 4 miles of health-related facility, such as a full service hospital, community health center, minor emergency center, or a doctor with a general practice that takes walk-in patients. Physician specialty offices are not considered in this category. (1 point)

*(IV)* The Development Site is located within 4 miles of a center that is licensed by the Department of Family and Protective Services (DFPS) specifically to provide a school-age program or to provide a child care program for infants, toddlers, and/or pre-kindergarten. The Application must include evidence from DFPS that the center meets the above requirements. (1 point)

*(V)* The Development Site is located in a census tract with a property crime rate 26 per 1,000 or less, as defined by neighborhoodscout.com, or local law enforcement data sources. If employing the latter source, the formula for determining the crime rate will include only data relevant to the census tract in which the Development Site is located. (1 point)

*(VI)* The Development Site is located within 4 miles of a public library that has indoor meeting space, physical books that can be checked out and that are of a general and wide-ranging subject matter, computers and internet access, and that is open 40 hours or more per week. The library must not be age or subject-restricted and must be at least partially funded with government funding. (1 point)

*(VII)* The Development Site is located within 4 miles of a public park with a playground. (1 point)

*(VIII)* The Development Site is located within 15 miles of an accredited university or community college, as confirmed by the Texas Higher Education Coordination Board (THECB). To be considered a university for these purposes, the provider of higher education must have the authority to confer bachelor's degrees. Two-year colleges are considered community colleges, and to be considered for these purposes must confer at least associate's degrees. The university or community college must have a physical campus, where classes are regularly held for students pursuing their degrees, within the required distance; online-only institutions do not qualify under this item. (1 point)

*(IX)* Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher is 27% or higher. (1 point)

*(X)* Development Site is within 3 miles of an indoor recreation facility available to the public. Examples include, but are not limited to, a gym, health club, a bowling alley, a theater, or a municipal or county community center. (1 point)

*(XI)* Development Site is within 3 miles of an outdoor, dedicated, and permanent recreation facility available to the public. Examples include, but are not limited to, swimming pools or splash pads, tennis courts, golf courses, softball fields, or basketball courts. (1 point)

*(XII)* Development Site is within 3 miles of community, civic or service organizations that provide regular and recurring substantive services, beyond exclusively congregational or member-affiliated activities, available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club as long as they make services available without regard to affiliation or membership). (1 point)

*(XIII)* Development Site is in the current service area of Meals on Wheels or similar nonprofit service that provides regular visits and meals to individuals in their homes. (1 point)

*(XIV)* Development Site is located in the attendance zone of a general enrollment public school rated A or B by TEA for the past academic year. (1 point)

(5) Underserved Area. (§§2306.6725(b)(2); 2306.127(3), 42(m)(1)(C)(ii)) An Application may qualify to receive up to five (5) points if the Development Site meets the criteria described in subparagraphs (A) - (H) of this paragraph. Points are not cumulative and an Applicant is therefore limited to selecting one subparagraph. If an Application qualifies for points under paragraph §11.9(c)(4) of this subsection, then the Application is not eligible for points under subparagraphs (A)and (B) of this paragraph. Years are measured by deducting the most recent year of award on the property inventory of the Site Demographic Characteristics Report from January 1 of the current year. The Application must include evidence that the Development Site meets the requirements.

(A) The Development Site is located wholly or partially within the boundaries of a colonia as such boundaries are determined by the Office of the Attorney General and within 150 miles of the Rio Grande River border. For purposes of this scoring item, the colonia must lack water, wastewater, or electricity provided to all residents of the colonia at a level commensurate with the quality and quantity expected of a municipality and the proposed Development must make available any such missing water, wastewater, and electricity supply infrastructure physically within the borders of the colonia in a manner that would enable the current dwellings within the colonia to connect to such infrastructure (2 points);

(B) The Development Site is located entirely within the boundaries of an Economically Distressed Area that has been awarded funds by the Texas Water Development Board in the previous five years ending at the beginning of the Application Acceptance Period (1 point);

(C) The Development Site is located entirely within a census tract that does not have another Development that was awarded less than 30 years ago according to the Department's property inventory tab of the Site Demographic Characteristics Report (4 points);

(D) For areas not scoring points for subparagraph (C) above, the Development Site is located entirely within a census tract that does not have another Development that was awarded less than 20 years ago according to the Department's property inventory tab of the Site Demographic Characteristics Report (3 points);

(E) For areas not scoring points for subparagraphs (C) or (D) of this paragraph, the Development Site is located entirely within a census tract that does not have another Development that was awarded less than 15 years ago according to the Department's property inventory tab of the Site Demographic Characteristics Report (2 points);

(F) The Development Site is located entirely within a census tract whose boundaries are wholly within an incorporated area and the census tract itself and all of its contiguous census tracts do not have another Development that was awarded less than 15 years ago according to the Department's property inventory tab of the Site Demographic Characteristics Report. This item will apply in Places with a population of 100,000 or more, and will not apply in the At-Risk Set-Aside. (5 points)

(G) The Development Site is located entirely within a census tract where, according to American Community Survey 5-year Estimates, the population share of persons below 200% federal poverty level decreased by 10% or more and where the total number of persons at or above 200% federal poverty level had increased by 15% or more between the years 2010 and 2017. This measure is referred to as the Affordable Housing Needs Indicator in the Site Demographic Characteristics Report. (3 points); or

(H) An At-risk or USDA Development placed in service 25 or more years ago, that is still occupied, and that has not yet received federal funding, or LIHTC equity, for the purposes of Rehabilitation for the Development. If the Application involves multiple sites, the age of all sites will be averaged for the purposes of this scoring item. (3 points).

(6) Residents with Special Housing Needs. (§42(m)(1)(C)(v)) An Application may qualify to receive two (2) points by serving Residents with Special Housing Needs.
The Development must commit at least 5% of the total Units to Persons with Special Housing Needs. The Units identified for this scoring item may not be the same Units identified previously for the Section 811 PRA Program. For purposes of this subparagraph, Persons with Special Housing Needs is defined as a household where one or more individuals have alcohol and/or drug addictions, is a Colonia resident, a Person with a Disability, has Violence Against Women Act Protections (domestic violence, dating violence, sexual assault, and stalking), HIV/AIDS, homeless, veterans, , and farmworkers. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to specifically market Units to Persons with Special Housing Needs. In addition, the Department will require an initial minimum twelve-month period during which Units must either be occupied by Persons with Special Housing Needs or held vacant, unless the Units receive HOME funds from any source. After the initial twelve-month period, the Development Owner will no longer be required to hold Units vacant for Persons with Special Housing Needs,

but will be required to continue to specifically market Units to Persons with Special Housing Needs. (2 points)

(7) Proximity to Job Areas. An Application may qualify to receive up to six (6) points if the Development Site is located in one of the areas described in subparagraphs (A) or (B) of this paragraph, and the Application contains evidence substantiating qualification for the points. Points are mutually exclusive and, therefore, an Applicant may only select points from subparagraph (A) or (B).

(A) Proximity to the Urban Core. A Development in a Place, as defined by the US Census Bureau, with a population over 200,000 may qualify for points under this item. The Development Site must be located within 4 miles of the main municipal government administration building if the population of the Place is 750,000 or more, or within 2 miles of the main municipal government administration building if the population of the city is 200,000 - 749,999. The main municipal government administration building will be determined by the location of regularly scheduled municipal Governing Body meetings. Distances are measured from the nearest property boundaries, not inclusive of non-contiguous parking areas. This scoring item will not apply to Applications under the At-Risk Set-Aside. (6 points)

(B) Proximity to Jobs. A Development may qualify for points under this subparagraph if it meets one of the criteria in clauses (i) - (vi) of this subparagraph. The data used will be based solely on that available through US Census' OnTheMap tool. Jobs counted are limited to those based on the work area, all workers, and all primary jobs. Only the most recently available data set (as of October 1) will be used. The Development will use either OnTheMap's selection tool to identify a point within the Development Site or OnTheMap's function to import GPS coordinates that fall within the Development Site. This scoring item will not apply to Applications under the At-Risk Set-Aside.

*(i)* the Development is located within 1 mile of 16,500 jobs. (6 points)

*(ii)* the Development is located within 1 mile of 13,500 jobs. (5 points)

*(iii)* the Development is located within 1 mile of 10,500 jobs. (4 points)

*(iv)* the Development is located within 1 mile of 7,500 jobs. (3 points)

*(v)* the Development is located within 1 mile of 4,500 jobs. (2 points)

*(vi)* the Development is located within 1 mile of 2,000 jobs. (1 point)

(8) Readiness to proceed in disaster impacted counties. An Application for a proposed Development that is located in a county declared by the Federal Emergency Management Agency to be eligible for individual assistance within three years preceding December 1, 2019, that provides a certification that they will close all financing and fully execute the construction contract on or before the last business day of November or as otherwise permitted under subparagraph (C) of this paragraph. For the purposes of this paragraph only, an Application may be designated as "priority." (5 points)

(A) Applications must include evidence that appropriate zoning will be in place at award and acknowledgement from all lenders and the syndicator of the required closing date.

(B) The Board cannot and will not waive the deadline and will not consider waiver under its general rule regarding waivers. Failure to close all financing and provide evidence of an executed construction contract by the November deadline will result in penalty under 10 TAC §11.9(f), as determined solely by the Board.

(C) Applications seeking points under this paragraph will receive an extension of the November deadline equivalent to the period of time they were not indicated as a priority Application, if they ultimately receive an award. The period of the extension begins on the date the Department publishes a list or log showing an Application without a priority designation, and ends on the earlier of the date a log is posted that shows the Application with a priority designation, or the date of award.

(d) Criteria promoting community support and engagement.

(1) Local Government Support. (§2306.6710(b)(1)(B)) An Application may qualify for up to seventeen (17) points for a resolution or resolutions voted on and adopted by the bodies reflected in subparagraphs (A) - (C) of this paragraph, as applicable. The resolution(s) must be dated prior to Final Input from Elected Officials Delivery Date and must be submitted to the Department no later than the Final Input from Elected Officials Delivery Date as identified in §11.2(a) of this chapter, relating to Competitive HTC Deadlines. Such resolution(s) must specifically identify the Development whether by legal description, address, Development name, Application number or other verifiable method. A municipality or county should consult its own staff and legal counsel as to whether its handling of their actions regarding such resolution(s) are consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any Fair Housing Activity Statement-Texas (FHAST) form on file, any current Analysis of Impediments to Fair Housing Choice, or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds, such as HOME or CDBG funds. Resolutions received by the Department setting forth that the municipality and/or county objects to or opposes the Application or Development will result in zero points awarded to the Application for that Governing Body. Such resolutions will be added to the Application posted on the Department's website. Once a resolution is submitted to the Department it may not be changed or withdrawn. For an Application with a proposed Development Site that, at the time of the initial filing of the Application, is:

(A) Within a municipality, the Application will receive:

*(i)* Seventeen (17) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or

*(ii)* Fourteen (14) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development.

(B) Within the extraterritorial jurisdiction of a municipality, the Application may receive points under clause (i) or (ii) of this subparagraph and under clause (iii) or (iv) of this subparagraph:

*(i)* Eight and one-half (8.5) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or

*(ii)* Seven (7) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development; and

*(iii)* Eight and one-half (8.5) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

*(iv)* Seven (7) points for a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(C) Within a county and not within a municipality or the extraterritorial jurisdiction of a municipality:

*(i)* Seventeen (17) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

*(ii)* Fourteen (14) points for a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(2) Commitment of Development Funding by Local Political Subdivision. (§2306.6725(a)(5)) The source of the funding cannot be the Applicant, Developer, or an Affiliate of the Applicant. The commitment of Development funding must be reflected in the Application as a financial benefit to the Development, i.e. reported as a source of funds on the Sources and Uses Form and/or reflected in a lower cost in the Development Cost Schedule, such as notation of a reduction in building permits and related costs. Documentation must include a letter from an official of the municipality, county, or other instrumentality with jurisdiction over the proposed Development stating they will provide a loan, grant, reduced fees or contribution of other value that equals $500 or more for Applications located in Urban subregions or $250 or more for Applications located in Rural subregions for the benefit of the Development. The letter must describe the value of the contribution, the form of the contribution, e.g. reduced fees or gap funding, and any caveats to delivering the contribution. Once a letter is submitted to the Department it may not be changed or withdrawn. (1 point)

(3) Declared Disaster Area. (§2306.6710(b)(1)(H)) An Application may receive ten (10) points if at the time of Application submission or at any time within the two-year period preceding the date of submission, the Development Site is located in an area declared to be a disaster area under the Tex. Gov't Code §418.014.

(4) Quantifiable Community Participation. (§2306.6710(b)(1)(I); §2306.6725(a)(2)) An Application may qualify for up to nine (9) points for written statements from a Neighborhood Organization. In order for the statement to qualify for review, the Neighborhood Organization must have been in current, valid existence with boundaries that contain the entire Development Site 30 days prior to the beginning of the Application Acceptance Period. In addition, the Neighborhood Organization must be on record with the Secretary of State or county in which the Development Site is located as of the beginning of the Application Acceptance Period. Once a letter is submitted to the Department it may not be changed or withdrawn. The written statement must meet all of the requirements in subparagraph (A) of this paragraph. Letters received by the Department setting forth that the eligible Neighborhood Organization objects to or opposes the Application or Development will be added to the Application posted on the Department's website. Written statements from the Neighborhood Organizations included in an Application and not received by the Department from the Neighborhood Organization will not be scored but will be counted as public comment.

(A) Statement Requirements. If an organization cannot make the following affirmative certifications or statements then the organization will not be considered a Neighborhood Organization for purposes of this paragraph.

*(i)* the Neighborhood Organization's name, a written description and map of the organization's boundaries, signatures and contact information (phone, email and mailing address) of at least two individual members with authority to sign on behalf of the organization;

*(ii)* certification that the boundaries of the Neighborhood Organization contain the entire Development Site and that the Neighborhood Organization meets the definition pursuant to Tex. Gov't Code §2306.004(23-a) and includes at least two separate residential households;

*(iii)* certification that no person required to be listed in accordance with Tex. Gov't Code §2306.6707 with respect to the Development to which the Application requiring their listing relates participated in any way in the deliberations of the Neighborhood Organization, including any votes taken;

*(iv)* certification that at least 80% of the current membership of the Neighborhood Organization consists of homeowners and/or tenants living within the boundaries of the Neighborhood Organization; and

*(v)* an explicit expression of support, opposition, or neutrality. Any expression of opposition must be accompanied with at least one reason forming the basis of that opposition. A Neighborhood Organization should be prepared to provide additional information with regard to opposition.

(B) Technical Assistance. For purposes of this paragraph, if and only if there is no Neighborhood Organization already in existence or on record, the Applicant, Development Owner, or Developer is allowed to provide technical assistance in the creation of and/or placing on record of a Neighborhood Organization. Technical assistance is limited to:

*(i)* the use of a facsimile, copy machine/copying, email and accommodations at public meetings;

*(ii)* assistance in completing the QCP Neighborhood Information Packet, providing boundary maps and assisting in the Administrative Deficiency process;

*(iii)* presentation of information and response to questions at duly held meetings where such matter is considered; and

*(iv)* notification regarding deadlines for submission of responses to Administrative Deficiencies.

(C) Point Values for Quantifiable Community Participation. An Application may receive points based on the values in clauses (i) - (vi) of this subparagraph. Points will not be cumulative. Where more than one written statement is received for an Application, the average of all statements received in accordance with this subparagraph will be assessed and awarded.

*(i)* nine (9) points for explicit support from a Neighborhood Organization that, during at least one of the three prior Application Rounds, provided a written statement that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;

*(ii)* eight (8) points for explicitly stated support from a Neighborhood Organization;

*(iii)* six (6) points for explicit neutrality from a Neighborhood Organization that, during at least one of the three prior Application Rounds provided a written statement, that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;

*(iv)* four (4) points for statements of neutrality from a Neighborhood Organization or statements not explicitly stating support or opposition, or an existing Neighborhood Organization provides no statement of either support, opposition or neutrality, which will be viewed as the equivalent of neutrality or lack of objection;

*(v)* four (4) points for areas where no Neighborhood Organization is in existence, equating to neutrality or lack of objection, or where the Neighborhood Organization did not meet the explicit requirements of this section; or

*(vi)* zero (0) points for statements of opposition meeting the requirements of this subsection.

(D) Challenges to opposition. Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local Governmental Entity having jurisdiction or oversight over the finding or determination. If any such statement is challenged, the challenger must declare the basis for the challenge and submit such challenge by the Challenges to Neighborhood Organization Opposition Delivery Date May 1, 2020. The Neighborhood Organization expressing opposition will be given seven calendar days to provide any information related to the issue of whether their assertions are contrary to the findings or determinations of a local Governmental Entity. All such materials and the analysis of the Department's staff will be provided to a fact finder, chosen by the Department, for review and a determination of the issue presented by this subsection. The fact finder will not make determinations as to the accuracy of the statements presented, but only with regard to whether the statements are contrary to findings or determinations of a local Governmental Entity. The fact finder's determination will be final and may not be waived or appealed. Should the Neighborhood Organization's statements be found to be contrary to findings or determinations of a local Government Entity, or should the Neighborhood Organization not respond in seven calendar days, then the Application shall be eligible for four (4) points under subparagraph (C)(v) of this subsection.

(5) Community Support from State Representative. (§2306.6710(b)(1)(J); §2306.6725(a)(2; §2306.6710(g)) Applications may receive up to eight (8) points for express support, zero points for neutral statements, or have deducted up to eight (8) points for express opposition.

(A) Letter from a State Representative. To qualify under this subparagraph, letters must be on the State Representative's letterhead, be signed by the State Representative, identify the specific Development and express whether the letter conveys support, neutrality, or opposition. This documentation will be accepted with the Application or through delivery to the Department from the Applicant or the State Representative and must be submitted no later than the Final Input from Elected Officials Delivery Date as identified in §11.2(a) of this chapter, relating to Competitive HTC Deadlines. Letters received by the Department setting forth that the State Representative objects to or opposes the Application or Development will be added to the Application posted on the Department's website. Once a letter is submitted to the Department it may not be changed or withdrawn. Therefore, it is encouraged that letters not be submitted well in advance of the specified deadline in order to facilitate consideration of all constituent comment and other relevant input on the proposed Development. State Representatives to be considered are those in office at the time the letter is submitted and whose district boundaries include the Development Site. If the office is vacant, the Application will be considered to have received a neutral letter. Neutral letters, letters of opposition, or letters that do not specifically refer to the Development will receive zero (0) points. A letter from a state representative expressing the level of community support may be expressly based on the representative's understanding or assessments of indications of support by others, such as local government officials, constituents, and/or other applicable representatives of the community. In providing this letter, pursuant to Tex. Gov't Code §2306.6710(b)(1)(J), a representative may either express their position of support, opposition, or neutrality regarding the Application, which shall be presumed to reflect their assessment of the views of their constituents, or they may provide a statement of the support, opposition, or neutrality of their constituents regarding the Application without expressing their personal views on the matter.

(B) No Letter from a State Representative. To qualify under this subparagraph, no written statement can be received for an Application from the State Representative who represents the geographic area in which the proposed Development is located, unless the sole content of the written statement is to convey to the Department that no written statement of support, neutrality, or opposition will be provided by the State Representative for a particular Development. Points available under this subparagraph will be based on how an Application scores under §11.9(d)(1), of this section, (relating to Local Government Support). For an Application with a proposed Development Site that, at the time of the initial filing of the Application, is:

*(i)* within a municipality, the Application will receive:

*(I)* Eight (8) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or

*(II)* Zero (0) points for no resolution or a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development; or

*(III)* Negative eight (-8) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality opposes the Application or Development.

*(ii)* within the extraterritorial jurisdiction of a municipality, the Application will receive points under subclause (I) or (II) or (III) of this subparagraph and under subclause (IV) or (V) or (VI) of this subparagraph:

*(I)* Four (4) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or

*(II)* Zero (0) points for no resolution or a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development; or

*(III)* Negative four (-4) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality opposes the Application or Development; and

*(IV)* Four (4) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

*(V)* Zero (0) points for no resolution or a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development; or

*(VI)* Negative four (-4) points for a resolution from the Governing Body of that county expressly setting forth that the county opposes the Application or Development.

*(iii)* within a county and not within a municipality or the extraterritorial jurisdiction of a municipality:

*(I)* Eight (8) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

*(II)* Zero (0) points for no resolution or a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

*(III)* Negative eight (-8) points for a resolution from the Governing Body of that county expressly setting forth that the county opposes the Application or Development.

(6) Input from Community Organizations. (§2306.6725(a)(2)) Where, at the time of Application, the Development Site does not fall within the boundaries of any qualifying Neighborhood Organization or there is a qualifying Neighborhood Organization that has given no statement or a statement of neutrality (as described in clauses (4)(C)(iv) or (v) of this subsection), then, in order to ascertain if there is community support, an Application may receive up to four (4) points for letters that qualify for points under subparagraphs (A), (B), and/or (C) of this paragraph. No more than four (4) points will be awarded under this point item under any circumstances. All letters of support must be submitted within the Application. Once a letter is submitted to the Department it may not be changed or withdrawn. Should an Applicant elect this option and the Application receives letters in opposition, then one (1) point will be subtracted from the score under this paragraph for each letter in opposition, provided that the letter is from an organization that would otherwise qualify under this paragraph. However, at no time will the Application receive a score lower than zero (0) for this item. Letters received by the Department setting forth that the community organization objects to or opposes the Application or Development will be added to the Application posted on the Department's website.

(A) An Application may receive two (2) points for each letter of support submitted from a community or civic organization that serves the community in which the Development Site is located. Letters of support must identify the specific Development and must state support of the specific Development at the proposed location. To qualify, the organization must be qualified as tax exempt and have as a primary (not ancillary or secondary) purpose the overall betterment, development, or improvement of the community as a whole or of a major aspect of the community such as improvement of schools, fire protection, law enforcement, city-wide transit, flood mitigation, or the like. The Applicant must provide evidence that the community or civic organization remains in good standing by providing evidence from a federal or state government database confirming that the exempt status continues. An Organization must also provide evidence of its participation in the community in which the Development Site is located including, but not limited to, a listing of services and/or members, brochures, annual reports, etc. Letters of support from organizations that cannot provide reasonable evidence that they are active in the area that includes the location of the Development Site will not be awarded points. For purposes of this subparagraph, community and civic organizations do not include neighborhood organizations, governmental entities (excluding Special Management Districts as described in subparagraph C), or taxing entities.

(B) An Application may receive two (2) points for a letter of support from a property owners association created for a master planned community whose boundaries include the Development Site and that does not meet the requirements of a Neighborhood Organization for the purpose of awarding points under paragraph (4) of this subsection.

(C) An Application may receive two (2) points for a letter of support from a Special Management District formed under Tex. Local Gov't Code ch. 375 whose boundaries, as of the Full Application Delivery Date as identified in §11.2(a) of this chapter, (relating to Competitive HTC Deadlines, Program Calendar for Competitive Housing Tax Credits), include the Development Site.

(D) Input that evidences unlawful discrimination against classes of persons protected by Fair Housing law or the scoring of which the Department determines to be contrary to the Department's efforts to affirmatively further fair housing will not be considered. If the Department receives input that could reasonably be suspected to implicate issues of non-compliance under the Fair Housing Act, staff will refer the matter to the Texas Workforce Commission for investigation, but such referral will not, standing alone, cause staff or the Department to terminate the Application. Staff will report all such referrals to the Board and summarize the status of any such referrals in any recommendations.

(7) Concerted Revitalization Plan. An Application may qualify for up to seven (7) points under this paragraph only if no points are elected under subsection (c)(4) of this section, related to Opportunity Index.

(A) For Developments located in an Urban Area:

*(i)* an Application may qualify to receive points if the Development Site is located in a distinct area that was once vital and has lapsed into a condition requiring concerted revitalization, and where a concerted revitalization plan (plan or CRP) has been developed and executed.

*(ii)* a plan may consist of one or two, but complementary, local planning documents that together create a cohesive agenda for the plan's specific area. The plan and supporting documentation must be submitted using the CRP Application Packet. No more than two local plans may be submitted for each proposed Development. A Consolidated Plan, One-year Action Plan or any other plan prepared to meet HUD requirements will not meet the requirements under this clause, unless evidence is presented that additional efforts have been undertaken to meet the requirements in clause (iii) of this subparagraph. The concerted revitalization plan may be a Tax Increment Reinvestment Zone (TIRZ) or Tax Increment Finance (TIF) or similar plan. A city- or county-wide comprehensive plan, by itself, does not equate to a concerted revitalization plan.

*(iii)* the area targeted for revitalization must be larger than the assisted housing footprint and should be a neighborhood or small group of contiguous neighborhoods with common attributes and problems. The Application must include a copy of the plan or a link to the online plan and a description of where specific information required below can be found in the plan. The plan must meet the criteria described in subclauses (I) - (IV) of this clause:

*(I)* The concerted revitalization plan, or each of the local planning documents that compose the plan, must have been adopted by the municipality or county in which the Development Site is located. The resolution adopting the plan, or if development of the plan and budget were delegated, the resolution of delegation and other evidence in the form of certifications by authorized persons confirming the adoption of the plan and budget, must be submitted with the application.

*(II)* The problems in the revitalization area must be identified through a process in which affected local residents had an opportunity to express their views on problems facing the area, and how those problems should be addressed and prioritized. Eligible problems that are appropriate for a concerted revitalization plan may include the following:

(-a-) long-term disinvestment, such as significant presence of residential and/or commercial blight, streets infrastructure neglect, and/or sidewalks in significant disrepair;

(-b-) declining quality of life for area residents, such as high levels of violent crime, property crime, gang

activity, or other significant criminal matters such as the manufacture or distribution of illegal substances or overt illegal activities; or

(-c-) lack of a robust economy for that neighborhood area, or, if economic revitalization is already underway, lack of new affordable housing options for long-term residents.

*(III)* The goals of the adopted plan must have a history of sufficient, documented and committed funding to accomplish its purposes on its established timetable. This funding must be flowing in accordance with the plan, such that the problems identified within the plan are currently being or have been sufficiently addressed.

*(IV)* The plan must either be current at the time of Application and must officially continue for a minimum of three years thereafter OR the work to address the items in need of mitigation or rehabilitation has begun and, additionally, the Applicant must include confirmation from a public official who oversees the plan that accomplishment of those objectives is on schedule and there are no budgetary or other obstacles to accomplishing the purposes of the plan.

*(iv)* up to seven (7) points will be awarded based on:

*(I)* A letter from the appropriate local official for the municipality (or county if the Development Site is completely outside of a municipality) providing documentation of measurable improvements within the revitalization area based on the targeted efforts outlined in the plan and in reference to the requirements of 10 TAC §11.9(d)(7)(A)(iii)(I-IV). The letter must also discuss how the improvements will lead to an appropriate area for the placement of housing (4 points); and

*(II)* A resolution by the municipality (or county if the Development Site is completely outside of a municipality) that explicitly identifies the proposed Development as contributing more than any other to the concerted revitalization efforts of the municipality or county (as applicable). A municipality or county may only identify one Development per CRP area during each Application Round for the additional points under this subclause, unless the concerted revitalization plan includes more than one distinct area within the city or county, in which case a resolution may be provided for each Development in its respective area. The resolution from the Governing Body of the municipality or county that approved the plan is required to be submitted in the Application. If multiple Applications submit resolutions under this subclause from the same Governing Body for the same CRP area, none of the Applications shall be eligible for the additional points, unless the resolutions address the respective and distinct areas described in the plan (2 points); and

*(III)* The development is in a location that would score at least five (5) points under Opportunity Index, §11.9(c)(4)(B), except for the criteria found in §11.9(c)(4)(A) and subparagraphs §11.9(c)(4)(A)(i) and §11.9(c)(4)(A)(ii). (1 point)

(B) For Developments located in a Rural Area:

*(i)* the Rehabilitation, or demolition and Reconstruction, of a Development in a rural area that has been leased at 85% or greater for the six months preceding Application by low income households and which was initially constructed 25 or more years prior to Application submission as either public housing or as affordable housing with support from USDA, HUD, the HOME program, or the CDBG program. The occupancy percentage will not include Units that cannot be occupied due to needed repairs, as confirmed by the SCR or CNA. Demolition and relocation of units must be determined locally to be necessary to comply with the Affirmatively Furthering Fair Housing Rule, or if necessary to create an acceptable distance form Undesirable Site Features or Neighborhood Risk Factors. (4 points)

*(ii)* the Development is explicitly identified in a resolution by the municipality (or county if the Development Site is completely outside of a city) as contributing more than any other to the concerted revitalization efforts of the municipality or county (as applicable). Where a Development Site crosses jurisdictional boundaries, resolutions from all applicable governing bodies must be submitted. A municipality or county may only identify one single Development during each Application Round for each specific area to be eligible for the additional points under this subclause. If multiple Applications submit resolutions under this subclause from the same Governing Body for a specific area described in the plan, none of the Applications shall be eligible for the additional points (2 points); and

*(iii)* The development is in a location that would score at least five (5) points under Opportunity Index, §11.9(c)(4)(B), except for the criteria found in §11.9(c)(4)(A) and subparagraphs §11.9(c)(4)(A)(i) and §11.9(c)(4)(A)(ii). (1 point)

(e) Criteria promoting the efficient use of limited resources and applicant accountability.

(1) Financial Feasibility. (§2306.6710(b)(1)(A)) To qualify for points, a 15-year pro forma itemizing all projected income including Unit rental rate assumptions, operating expenses and debt service, and specifying the underlying growth assumptions and reflecting a minimum must-pay debt coverage ratio of 1.15 for each year must be submitted. The pro forma must include the signature and contact information evidencing that it has been reviewed and found to be acceptable by an authorized representative of a proposed Third Party construction or permanent lender. In addition to the signed pro forma, a lender approval letter must be submitted. An acceptable form of lender approval letter may be obtained in the Uniform Multifamily Application Templates. If the letter evidences review of the Development alone it will receive twenty-four (24) points. If the letter is from the Third Party permanent lender and evidences review of the Development and the Principals, it will receive twenty-six (26) points.

(2) Cost of Development per Square Foot. (§2306.6710(b)(1)(F); §42(m)(1)(C)(iii)) For the purposes of this scoring item, Eligible Building Costs will be defined as Building Costs voluntarily included in Eligible Basis for the purposes of determining a Housing Credit Allocation. Eligible Building Costs will exclude structured parking or commercial space that is not included in Eligible Basis, and voluntary Eligible Hard Costs will include general contractor overhead, profit, and general requirements. The square footage used will be the Net Rentable Area (NRA). The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule. If the proposed Development is a Supportive Housing Development, the NRA will include conditioned Common Area up to 75 square feet per Unit.

(A) A high cost development is a Development that meets one or more of the following conditions:

*(i)* the Development is elevator served, meaning it is either an Elderly Development with an elevator or a Development with one or more buildings any of which have elevators serving four or more floors;

*(ii)* the Development is more than 75% single family design;

*(iii)* the Development is Supportive Housing; or

*(iv)* the Development Site qualifies for a minimum of five (5) points under subsection (c)(4) of this section, related to Opportunity Index, and is located in an Urban Area.

(B) Applications proposing New Construction or Reconstruction or Adaptive Reuse will be eligible for twelve (12) points if one of the following conditions is met:

*(i)* the voluntary Eligible Building Cost per square foot is less than $76.44 per square foot;

*(ii)* the voluntary Eligible Building Cost per square foot is less than $81.90 per square foot, and the Development meets the definition of a high cost development;

*(iii)* the voluntary Eligible Hard Cost per square foot is less than $98.28 per square foot; or

*(iv)* the voluntary Eligible Hard Cost per square foot is less than $109.20 per square foot, and the Development meets the definition of high cost development.

(C) Applications proposing New Construction or Reconstruction will be eligible for eleven (11) points if one of the following conditions is met:

*(i)* the voluntary Eligible Building Cost per square foot is less than $81.90 per square foot;

*(ii)* the voluntary Eligible Building Cost per square foot is less than $87.36 per square foot, and the Development meets the definition of a high cost development;

*(iii)* the voluntary Eligible Hard Cost per square foot is less than $103.74 per square foot; or

*(iv)* the voluntary Eligible Hard Cost per square foot is less than $114.66 per square foot, and the Development meets the definition of high cost development.

(D) Applications proposing New Construction or Reconstruction will be eligible for ten (10) points if one of the following conditions is met:

*(i)* the voluntary Eligible Building Cost is less than $98.28 per square foot; or

*(ii)* the voluntary Eligible Hard Cost is less than $120.12 per square foot.

(E) Applications proposing Rehabilitation (excluding Reconstruction) will be eligible for points if one of the following conditions is met:

*(i)* Twelve (12) points for Applications which include voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than $109.20 per square foot;

*(ii)* Twelve (12) points for Applications which include voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than $141.96 per square foot, located in an Urban Area, and that qualify for 5 or more points under subsection (c)(4) of this section, related to Opportunity Index; or

*(iii)* Eleven (11) points for Applications which include voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than $141.96 per square foot.

(3) Pre-application Participation. (§2306.6704) An Application may qualify to receive up to six (6) points provided a pre-application was submitted by the Pre-Application Final Delivery Date. Applications that meet all of the requirements described in subparagraphs (A) - (H) of this paragraph will qualify for six (6) points:

(A) The total number of Units does not increase by more than 10% from pre-application to Application;

(B) The designation of the proposed Development as Rural or Urban remains the same;

(C) The proposed Development serves the same Target Population;

(D) The pre-application and Application are participating in the same set-asides (At-Risk, USDA, Non-Profit, and/or Rural);

(E) The Application final score (inclusive of only scoring items reflected on the self score form) does not vary by more than four (4) points from what was reflected in the pre-application self score;

(F) The Development Site at Application is at least in part the Development Site at pre-application, and the census tract number listed at pre-application is the same at Application. The site at full Application may not require notification to any person or entity not required to have been notified at pre-application;

(G) The Development Site does not have the following Neighborhood Risk Factors as described in 10 TAC §11.101(a)(3) that were not disclosed with the pre-application:

*(i)* the Development Site is located in a census tract (or for any adjacent census tract with a boundary less than 500 feet from the proposed Development Site that is not separated from the Development Site by a natural barrier such as a river or lake, or an intervening restricted area, such as a military installation) in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com.

*(ii)* The Development Site is located within the attendance zones of an elementary school, a middle school, or a high school that is rated D for 2019 and Improvement Required for 2018, or a school that is rated F for 2019.

(H) The pre-application met all applicable requirements.

(4) Leveraging of Private, State, and Federal Resources. (§2306.6725(a)(3))

(A) An Application may qualify to receive up to three (3) points if at least 5% of the total Units are restricted to serve households at or below 30% of AMGI (restrictions elected under other point items may count) and the Housing Tax Credit funding request for the proposed Development meet one of the levels described in clauses (i) - (iv) of this subparagraph:

*(i)* the Development leverages CDBG Disaster Recovery, HOPE VI, RAD, or Choice Neighborhoods funding and the Housing Tax Credit Funding Request is less than 9% of the Total Housing Development Cost (3 points). The Application must include a commitment of such funding; or

*(ii)* if the Housing Tax Credit funding request is less than 9% of the Total Housing Development Cost (3 points); or

*(iii)* if the Housing Tax Credit funding request is less than 10% of the Total Housing Development Cost (2 points); or

*(iv)* if the Housing Tax Credit funding request is less than 11% of the Total Housing Development Cost (1 point).

(B) The calculation of the percentages stated in subparagraph (A) of this paragraph will be based strictly on the figures listed in the Funding Request and Development Cost Schedule. Should staff issue an Administrative Deficiency that requires a change in either form, then the calculation will be performed again and the score adjusted, as necessary. However, points may not increase based on changes to the Application. In order to be eligible for points, no more than 50% of the Developer Fee can be deferred. Where costs or fi-

nancing change after completion of underwriting or award (whichever occurs later), the points attributed to an Application under this scoring item will not be reassessed unless there is clear evidence that the information in the Application was intentionally misleading or incorrect.

(5) Extended Affordability. (§§2306.6725(a)(5); 2306.111(g)(3)(C); 2306.185(a)(1) and (c); 2306.6710(e)(2); and 42(m)(1)(B)(ii)(II)) An Application may qualify to receive up to four (4) points for this item.

(A) Development Owners that agree to extend the Affordability Period for a Development to 45 years total. (4 points)

(B) Development Owners that agree to extend the Affordability Period for a Development to 40 years total. (3 points)

(C) Development Owners that agree to extend the Affordability Period for a Development to 35 years total. (2 points)

(6) Historic Preservation. (§2306.6725(a)(6)) An Application may qualify to receive five (5) points if at least 75% of the residential Units shall reside within the Certified Historic Structure. The Development must receive historic tax credits before or by the issuance of Forms 8609. The Application must include either documentation from the Texas Historical Commission that the Property is currently a Certified Historic Structure, or documentation determining preliminary eligibility for Certified Historic Structure status and evidence that the Texas Historic Commission received the request for determination of preliminary eligibility and supporting information on or before February 1 of the current year (5 points).

(7) Right of First Refusal. (§2306.6725(b)(1); §42(m)(1)(C)(viii)) An Application may qualify to receive (1 point) for Development Owners that will agree to provide a right of first refusal to purchase the Development upon or following the end of the Compliance Period in accordance with Tex. Gov't Code, §2306.6726 and the Department's rules including §10.407 of this title (relating to Right of First Refusal) and §10.408 of this title (relating to Qualified Contract Requirements).

(8) Funding Request Amount. The Application requests no more than 100% of the amount of LIHTC available within the subregion or set-aside as determined by the regional allocation formula on or before December 1, 2019. (1 point)

(f) Factors Affecting Scoring and Eligibility in current and future Application Rounds. Staff may recommend to the Board and the Board may find that an Applicant or Affiliate should be ineligible to compete in the following year's competitive Application Round or that it should be assigned a penalty deduction in the following year's competitive Application Round of no more than two points for each submitted Application (Tex. Gov't Code §2306.6710(b)(2)) because it meets the conditions for any of the items listed in paragraphs (1) - (4) of this subsection. For those items pertaining to non-statutory deadlines, an exception to the penalty may be made if the Board or Executive Director, as applicable, makes an affirmative finding setting forth that the need for an extension of the deadline was beyond the reasonable control of the Applicant and could not have been reasonably anticipated. Any such matter to be presented for final determination of deduction by the Board must include notice from the Department to the affected party not less than 14 days prior to the scheduled Board meeting. The Executive Director may, but is not required, to issue a formal notice after disclosure if it is determined that the matter does not warrant point deductions. The Executive Director may make a determination that the matter does not warrant point deduction only for paragraph (1). (§2306.6710(b)(2)) Any deductions assessed by the Board for paragraphs (1), (2), (3), or (4) of this subsection based on a Housing Tax Credit Commitment from a preceding Application round will be attributable to the Applicant or Affiliate of an Application submitted in the Application round referenced above.

(1) If the Applicant or Affiliate failed to meet the original Carryover submission or 10% Test deadline(s) or has requested an extension of the Carryover submission deadline or the 10% Test deadline (relating to either submission or expenditure).

(2) If the Applicant or Affiliate failed to meet the commitment or expenditure requirements or benchmarks of their Contract with the Department for a HOME or National Housing Trust Fund award from the Department.

(3) If the Applicant or Affiliate, in the Competitive HTC round immediately preceding the current round, failed to meet the deadline to both close financing and provide evidence of an executed construction contract under 10 TAC §11.9(c)(8) related to construction in specific disaster counties.

(4) If the Developer or Principal of the Applicant has violated and/or violates the Adherence to Obligations.

*§11.10. Third Party Request for Administrative Deficiency for Competitive HTC Applications.*

The purpose of the Third Party Request for Administrative Deficiency (RFAD) process is to allow an unrelated person or entity to bring new, material information about an Application to staff's attention. Such Person may request staff to consider whether a matter in an Application in which the Person has no involvement should be the subject of an Administrative Deficiency. Staff will consider the request and proceed as it deems appropriate under the applicable rules including, if the Application in question has a noncompetitive score relative to other Applications in the same Set-Aside or subregion or will not be eligible for an award through the collapse as outlined in 10 TAC §11.6(3), not reviewing the matter further. If the assertion(s) in the RFAD have been addressed through the Application review process, and the RFAD does not contain new information, staff will not review or act on it. The RFAD may not be used to appeal staff decisions regarding competing Applications (§2306.6715(b)). Any RFAD that questions a staff decision regarding staff's scoring of an Application filed by another Applicant will be disregarded. Requestors must provide, at the time of filing the request, all briefings, documentation, and other information that the requestor offers in support of the deficiency. A copy of the request and supporting information must be provided by the requestor directly to the Applicant at the same time it is provided to the Department. Requestors must provide sufficient credible evidence that, if confirmed, would substantiate the deficiency request. Assertions not accompanied by supporting documentation susceptible to confirmation will not be considered. Staff shall provide to the Board a written report summarizing each third party request for administrative deficiency and the manner in which it was addressed. Interested persons may provide testimony on this report before the Board takes any formal action to accept the report. The results of a RFAD may not be appealed by the Requestor. A scoring notice or termination notice that results from a RFAD may be appealed by the Applicant as further described in §11.902 of this chapter, relating to Appeals Process. Information received after the RFAD deadline will not be considered by staff or presented to the Board unless the information is of such a matter as to warrant a termination notice. When the Board receives a report on the disposition of RFADs it may, for any staff disposition contained in the report, change the conclusion if it believes the change is necessary to bring the result into compliance with applicable laws and rules as construed by the Board; or if based on public testimony, it believes staff's conclusion should be revisited, it may remand the RFAD to staff for

further consideration, which may result in a reaffirmation, reversal, or modification.

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 September 9, 2019.

TRD-201903181
Robert Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 20, 2019
For further information, please call: (512) 475-3929

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## SUBCHAPTER B. SITE AND DEVELOPMENT REQUIREMENTS AND RESTRICTIONS

### 10 TAC §11.101

STATUTORY AUTHORITY. The new section is proposed pursuant to Texas Gov't Code, §2306.053, which authorized the Department to adopt rules.

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

*§11.101. Site and Development Requirements and Restrictions.*

(a) Site Requirements and Restrictions. The purpose of this section is to identify specific requirements and restrictions related to a Development Site seeking multifamily funding or assistance from the Department.

(1) Floodplain. New Construction or Reconstruction Developments located within a 100 year floodplain as identified by the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps must develop the site in full compliance with the National Flood Protection Act and all applicable federal and state statutory and regulatory requirements. The Applicant will have to use floodplain maps and comply with regulation as they exist at the time of commencement of construction. Even if not required by such provisions, the Site must be developed so that all finished ground floor elevations are at least one foot above the floodplain and parking and drive areas are no lower than six inches below the floodplain. If there are more stringent federal or local requirements they must also be met. Applicants requesting funds from the Supportive Housing/Soft Repayment setaside must also meet the federal environmental provisions under 24 CFR §93.301(f)(1)(vi). Applicants requesting funds from all other direct loan setasides, must meet the federal environmental provisions under 24 CFR Part 58, as in effect at the time of execution of the Contract between the Department and the Owner. If no FEMA Flood Insurance Rate Maps are available for the proposed Development Site, flood zone documentation must be provided from the local government with jurisdiction identifying the 100 year floodplain. Rehabilitation (excluding Reconstruction) Developments with existing and ongoing federal funding assistance from HUD or USDA are exempt from this requirement, but must state in the Tenant Rights and Resource Guide that part or all of the Development Site is located in a floodplain, and that it is encouraged that they consider getting appropriate insurance or take necessary precautions. Rehabilitation (excluding Reconstruction) Developments requesting funds in the Supportive Housing/Soft Repayment setaside are not eligible for the exemption. However, where existing and ongoing federal assistance is not applicable such Rehabilitation (excluding Reconstruction) Developments will be allowed in the 100 year floodplain provided the local government has undertaken and can substantiate sufficient mitigation efforts and such documentation is submitted in the Application or the existing structures meet the requirements that are applicable for New Construction or Reconstruction Developments, as certified to by a Third Party engineer.

(2) Undesirable Site Features. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs (VA) may be granted an exemption; however, depending on the undesirable site feature(s) staff may recommend mitigation still be provided as appropriate. Such an exemption must be requested at the time of or prior to the filing of an Application. Historic Developments that would otherwise qualify under §11.9(e)(6) of this chapter (relating to Competitive HTC Selection Criteria) may be granted an exemption, and such exemption must be requested at the time of or prior to the filing of an Application. The distances are to be measured from the nearest boundary of the Development Site to the nearest boundary of the property or easement containing the undesirable feature, unless otherwise noted below. Where there is a local ordinance that specifies the proximity of such undesirable feature to a multifamily development that has smaller distances than the minimum distances noted below, then such smaller distances may be used and documentation such as a copy of the local ordinance identifying such distances relative to the Development Site must be included in the Application. Pre-existing zoning does not meet the requirement for a local ordinance. If a state or federal cognizant agency would require a new facility under its jurisdiction to have a minimum separation from housing, the Department will defer to that agency and require the same separation for a new housing facility near an existing regulated or registered facility. In addition to these limitations, a Development Owner must ensure that the proposed Development Site and all construction thereon comply with all applicable state and federal requirements regarding separation for safety purposes. If Department staff identifies what it believes would constitute an undesirable site feature not listed in this paragraph or covered under subparagraph (K) of this paragraph, staff may issue a Deficiency.

(A) Development Sites located within 300 feet of junkyards. For purposes of this paragraph, a junkyard shall be defined as stated in Texas Transportation Code §396.001;

(B) Development Sites located within 300 feet of a solid waste facility or sanitary landfill facility or illegal dumping sites (as such dumping sites are identified by the local municipality);

(C) Development Sites located within 300 feet of a sexually-oriented business. For purposes of this paragraph, a sexually-oriented business shall be defined in Local Government Code §243.002, or as zoned, licensed and regulated as such by the local municipality;

(D) Development Sites in which any of the buildings or designated recreational areas (including pools) are to be located within 100 feet of the nearest line or structural element of any overhead high voltage transmission line, support structures for high voltage transmission lines, or other similar structures. This does not apply to local service electric lines and poles;

(E) Development Sites located within 500 feet of active railroad tracks, measured from the closest rail to the boundary of the Development Site, unless:

*(i)* the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone covering the area within 500 feet of the Development Site;

*(ii)* the Applicant has engaged a qualified Third Party to perform a noise assessment and the Applicant commits to

perform sound mitigation in accordance with HUD standards as if they were directly applicable to the Development; or

*(iii)* the railroad in question is commuter or light rail;

(F) Development Sites located within 500 feet of heavy industry (i.e. facilities that require extensive use of land and machinery, produce high levels of external noise such as manufacturing plants, or maintains fuel storage facilities (excluding gas stations);

(G) Development Sites located within 10 miles of a nuclear plant;

(H) Development Sites in which the buildings are located within the accident potential zones or the runway clear zones of any airport;

(I) Development Sites that contain one or more pipelines, situated underground or aboveground, which carry highly volatile liquids or Development Sites located adjacent to a pipeline easement (for a pipeline carrying highly volatile liquids), the Application must include a plan for developing near the pipeline(s) and mitigation, if any, in accordance with a report conforming to the Pipelines and Informed Planning Alliance (PIPA);

(J) Development Sites located within 2 miles of refineries capable of refining more than 100,000 barrels of oil daily; or

(K) Any other Site deemed unacceptable, which would include, without limitation, those with exposure to an environmental factor that may adversely affect the health and safety of the residents or render the Site inappropriate for housing use and which cannot be adequately mitigated. If staff believe that a Site should be deemed unacceptable under this provision due to information that was not included in the Application, it will provide the Applicant with written notice and an opportunity to respond.

(3) Neighborhood Risk Factors.

(A) If the Development Site has any of the characteristics described in subparagraph (B) of this paragraph, the Applicant must disclose the presence of such characteristics in the Application submitted to the Department. For Competitive HTC Applications, an Applicant must disclose at pre-application as required by §11.8(b) of this chapter (relating to Pre-Application Requirements (Competitive HTC Only). For all other Applications, an Applicant may choose to disclose the presence of such characteristics at the time the pre-application (if applicable) is submitted to the Department. Requests for pre-determinations of Site eligibility prior to pre-application or Application submission will not be binding on full Applications submitted at a later date. For Tax-Exempt Bond Developments where the Department is the Issuer, the Applicant may submit the documentation described under subparagraphs (C) and (D) of this paragraph at pre-application or for Tax-Exempt Bond Developments utilizing a local issuer such documentation may be submitted with the request for a pre-determination and staff may perform an assessment of the Development Site to determine Site eligibility. An Applicant should understand that any determination made by staff or the Board at that point in time regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information related to any of the Neighborhood Risk Factors become available while the Tax- Exempt Bond Development or Direct Loan only Application is under review, or the information by which the original determination was made changes in a way that could affect eligibility, then such information will be re-evaluated by staff and may result in staff issuing a Deficiency. Should staff determine that the Development Site has any of the characteristics described in subparagraph (B) of this paragraph and such characteristics were not disclosed, staff will issue a Material Deficiency An Applicant's own non-disclosure is not appealable as such appeal is in direct conflict with certifications made in the Application and within the control of the Applicant. The presence of any characteristics listed in subparagraph (B) of this paragraph will prompt staff to perform an assessment of the Development Site and neighborhood, which may include a site visit, and include, where applicable, a review as described in subparagraph (C) of this paragraph. Additional mitigating factors to be considered by staff besides those allowed in subparagraph (C) of this paragraph, despite the existence of the Neighborhood Risk Factors, are identified in subparagraph (E) of this paragraph. Preservation of affordable units alone does not present a compelling reason to support a conclusion of eligibility.

(B) The Neighborhood Risk Factors include those noted in clauses (i) - (iv) of this subparagraph and additional information as applicable to the neighborhood risk factor(s) disclosed as provided in subparagraphs (C) and (D) of this paragraph must be submitted in the Application. In order to be considered an eligible Site despite the presence of Neighborhood Risk Factors, an Applicant must demonstrate actions being taken that would lead staff to conclude that there is a high probability and reasonable expectation the risk factor will be sufficiently mitigated or significantly improved prior to placement in service and that the risk factor demonstrates a positive trend and continued improvement. Conclusions for such reasonable expectation may need to be affirmed by an industry professional, as appropriate, and may be dependent upon the severity of the Neighborhood Risk Factor disclosed.

*(i)* the Development Site is located within a census tract that has a poverty rate above 40% for individuals (or 55% for Developments in regions 11 and 13).

*(ii)* the Development Site is located in a census tract (or for any adjacent census tract with a boundary less than 500 feet from the proposed Development Site that is not separated from the Development Site by a natural barrier such as a river or lake, or an intervening restricted area, such as a military installation) in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com.

*(iii)* the Development Site is located within 1,000 feet (measured from nearest boundary of the Site to the nearest boundary of blighted structure) of multiple vacant structures that have fallen into such significant disrepair, overgrowth, and/or vandalism that they would commonly be regarded as blighted or abandoned.

*(iv)* the Development Site is located within the attendance zone of an elementary school, a middle school or a high school that has a 2019 TEA Accountability Rating of D and a 2018 Improvement Required Rating or a 2019 TEA Accountability Rating of F and a 2018 Met Standard Rating by the Texas Education Agency. In districts with district-wide enrollment or choice districts an Applicant shall use the rating of the closest elementary, middle and high school, respectively, which may possibly be attended by the tenants in determining whether or not disclosure is required. Schools with an application process for admittance, limited enrollment or other requirements that may prevent a child from attending will not be considered as the closest school or the school which attendance zone contains the site. The applicable school rating will be the 2019 accountability rating assigned by the Texas Education Agency, unless the school is Not Rated because it meets the TEA Hurricane Harvey Provision, in which case the 2018 rating will apply. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically

grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. Sixth grade centers will be considered as part of the middle school rating. Elderly Developments, Developments encumbered by a TDHCA LURA on the first day of the application or pre-application acceptance period (if applicable), and Supportive Housing SRO Developments or Supportive Housing Developments where all Units are Efficiency Units are not required to provide mitigation for this subparagraph. Except for a Development encumbered by a TDHCA LURA on the first day of the application or pre-application acceptance period (if applicable), an Elderly Development, or a Supportive Housing SRO Development or Supportive Housing Development where all Units are Efficiency Units, a Development that falls within the attendance zone of a school that has a 2019 TEA Accountability Rating of F and a 2018 Improvement Required Rating is ineligible with no opportunity for mitigation.

(C) Should any of the neighborhood risk factors described in subparagraph (B) of this paragraph exist, the Applicant must submit the Neighborhood Risk Factors Report that contains the information described in clauses (i) - (viii) of this subparagraph and mitigation pursuant to subparagraph (D) of this paragraph if such information pertains to the Neighborhood Risk Factor(s) disclosed so staff may conduct a further Development Site and neighborhood review. The Neighborhood Risk Factors Report cannot be supplemented or modified unless requested by staff through the deficiency process.

*(i)* a determination regarding neighborhood boundaries, which will be based on the review of a combination of natural and manmade physical features (rivers, highways, etc.), apparent changes in land use, the Primary Market Area as defined in the Market Analysis, census tract or municipal boundaries, and information obtained from any Site visits;

*(ii)* an assessment of general land use in the neighborhood, including comment on the prevalence of residential uses;

*(iii)* an assessment concerning any of the features reflected in paragraph (2) of this subsection if they are present in the neighborhood, regardless of whether they are within the specified distances referenced in paragraph (2) of this subsection;

*(iv)* an assessment of the number of existing affordable rental units (generally includes rental properties subject to TDHCA, HUD, or USDA restrictions) in the Primary Market Area, including comment on concentration based on the size of the Primary Market Area;

*(v)* an assessment of the percentage of households residing in the census tract that have household incomes equal to or greater than the median household income for the MSA or county where the Development Site is located;

*(vi)* an assessment of the number of market rate multifamily units in the neighborhood and their current rents and levels of occupancy;

*(vii)* a copy of the TEA Accountability Rating Report for each of the schools in the attendance zone containing the Development that achieved a D rating in 2019 and a 2018 Improvement Required rating or a 2019 TEA Accountability Rating of F and a 2018 Met Standard Rating , along with a discussion of performance indicators and what progress has been made over the prior year, and progress relating to the goals and objectives identified in the campus improvement plan or turnaround plan pursuant to §39.107 of the Texas Education Code in effect. The actual campus improvement plan does not need to be submitted unless there is an update to the plan or if such update is not available, information from a school official that speaks to progress made under the plan as further indicated under subparagraph (D)(iv) of this paragraph; and

*(viii)* any additional information necessary to complete an assessment of the Development Site, as requested by staff.

(D) Information regarding mitigation of neighborhood risk factors should be relevant to the risk factors that are present in the neighborhood. Mitigation must include documentation of efforts underway at the time of Application, and may include the measures described in clauses (i) - (iv) of this subparagraph or such other mitigation as the Applicant determines appropriate to support a finding of eligibility. If staff determines that the Development Site cannot be found eligible and the Applicant appeals that decision to the Board, the Applicant may not present new information at the Board meeting. In addition to those measures described herein, documentation from the local municipality may also be submitted stating the Development is consistent with their obligation to affirmatively further fair housing.

*(i)* mitigation for Developments in a census tract that has a poverty rate that exceeds 40% must be in the form of a resolution from the Governing Body of the appropriate municipality or county containing the Development, referencing this rule and/or acknowledging the high poverty rate and authorizing the Development to move forward.

*(ii)* evidence by the most qualified person that the data and evidence establish that there is a reasonable basis to proceed on the belief that the crime data shows, or will show, a favorable trend such that within the next two years Part I violent crime for that location is expected to be less than 18 per 1,000 persons or the data and evidence reveal that the data reported on neighborhoodscout.com does not accurately reflect the true nature of what is occurring and what is actually occurring does not rise to the level to cause a concern to the Board over the level of Part I violent crime for the location. The data and evidence may be based on violent crime data from the city's police department or county sheriff's department, as applicable based on the location of the Development, for the police beat or patrol area within which the Development Site is located, based on the population of the police beat or patrol area that yields a crime rate below the threshold indicated in this section or that would yield a crime rate below the threshold indicated in this section by the time the Development is placed into service. The instances of violent crimes within the police beat or patrol area that encompass the census tract, calculated based on the population of the census tract, may also be used. The data must include incidents reported during the entire 2018 and 2019 calendar year. Violent crimes reported through the date of Application submission may be requested by staff as part of the assessment performed under subparagraph (C) of this paragraph. A written statement from the most qualified person (i.e. Chief of Police or Sheriff (as applicable) or the police officer/detective for the police beat or patrol area containing the proposed Development Site), including a description of efforts by such enforcement agency addressing issues of crime and the results of their efforts must be provided, and depending on the data provided by the Applicant, such written statement may be required, as determined by staff. It is expected that such written statement would also speak to whether there is a reasonable expectation that based on the efforts underway there is crime data that reflects a favorable downward trend in crime rates. For Rehabilitation or Reconstruction Developments, to the extent that the high level of criminal activity is concentrated at the Development Site, documentation may be submitted to indicate such issue(s) could be remedied by the proposed Development. Evidence of such remediation should go beyond what would be considered a typi-

cal scope of work and should include a security plan, partnerships with external agencies, or other efforts to be implemented that would deter criminal activity. Information on whether such security features have been successful at any of the Applicant's existing properties should also be submitted, if applicable.

*(iii)* evidence of mitigation efforts to address blight or abandonment may include new construction in the area already underway that evidences public and/or private investment. Acceptable mitigation to address extensive blight should include a plan, whereby it is contemplated such blight and/or infestation will have been remediated within no more than two years from the date of the award and that a responsible party will use the blighted property in a manner that complies with local ordinances. In instances where blight exists but may only include a few properties, mitigation efforts could include partnerships with local agencies to engage in community-wide clean-up efforts, or other efforts to address the overall condition of the neighborhood.

*(iv)* evidence of mitigation for each of the schools in the attendance zone that has a 2019 TEA Accountability Rating of D and 2018 Improvement Required Rating or a 2019 TEA Accountability Rating of F and a 2018 Met Standard Rating may include satisfying the requirements of subclauses (I) - (III) of this clause.

*(I)* Documentation from a person authorized to speak on behalf of the school district with oversight of the school in question that indicates the specific plans in place and current progress towards meeting the goals and performance objectives identified in the Campus Improvement Plan and in restoring the school(s) to an acceptable rating status. The documentation should include actual data from progress already made under such plan(s) to date demonstrating favorable trends and should speak to the authorized persons assessment that the plan(s) and the data supports a reasonable conclusion that the school(s) will have an acceptable rating by the time the proposed Development places into service. The letter may, to the extent applicable, identify the efforts that have been undertaken to increase student performance, decrease mobility rate, benchmarks for re-evaluation, increased parental involvement, plans for school expansion, plans to implement early childhood education, and long-term trends that would point toward their achieving an A, B, or C Rating by the time the Development is placed in service. The letter from such education professional should also speak to why they believe the staff tasked with carrying out the plan will be successful at making progress towards acceptable student performance considering that prior Campus Improvement Plans were unable to do so. Such assessment could include whether the team involved has employed similar strategies at prior schools and were successful.

*(II)* The Applicant provides evidence that it has entered into agreement with the applicable school district or elementary school that has not achieved Met Standard, a Head Start provider with capacity in their charter, or a charter school provider to provide suitable and appropriately designed space on-site for the provision of an early childhood pre-K program at no cost to residents of the proposed Development. Suitable and appropriately designed space includes at a minimum a bathroom and large closet in the classroom space, appropriate design considerations made for the safety and security of the students, and satisfaction of the requirements of the applicable building code for school facilities. Such provision must be made available to the school or provider, as applicable, until the later of the elementary school that had not achieved a rating of A, B or C, or the school or provider electing to end the agreement. If a charter school or Head Start provider is the provider in the named agreement and that provider becomes defunct or no longer elects to participate in the agreement prior to the achievement of a rating of A, B or C, the Development Owner must document their attempt to identify an alternate agreement with one of the other acceptable provider choices. However, if the contracted provider is the school district or the school who is lacking the A, B or C rating and they elect to end the agreement prior to the achievement of such rating, the Development will not be considered to be in violation of its commitment to the Department.

*(III)* The Applicant has committed that until such time the school(s) achieves a rating of A, B, or C it will operate an after school learning center that offers at a minimum 15 hours of weekly, organized, on-site educational services provided middle and high school children by a dedicated service coordinator or Third-Party entity which includes at a minimum: homework assistance, tutoring, test preparation, assessment of skill deficiencies and provision of assistance in remediation of those deficiencies (e.g., if reading below grade level is identified for a student, tutoring in reading skills is provided), research and writing skills, providing a consistent weekly schedule, provides for the ability to tailor assistance to the age and education levels of those in attendance, and other evidence-based approaches and activities that are designed to augment classroom performance. Up to 20% of the activities offered may also include other enrichment activities such as music, art, or technology.

(E) In order for the Development Site to be found eligible when mitigation described in subparagraph (D) of this paragraph is not provided in the Application, despite the existence of one or more Neighborhood Risk Factors, the Applicant must explain how the use of Department funds at the Development Site is consistent with the goals in clauses (i) - (iii) of this subparagraph. If the Board grants an Appeal of staff's determination of Site eligibility, the Board shall document the reasons for a determination of eligibility.

*(i)* preservation of existing occupied affordable housing units to ensure they are safe and suitable or the new construction of high quality affordable housing units that are subject to federal rent or income restrictions; and

*(ii)* determination that the risk factor(s) that has been disclosed are not of such a nature or severity that should render the Development Site ineligible based on the assessment and mitigation provided under subparagraphs (C) and (D) of this paragraph; or

*(iii)* no mitigation was provided, or in staff's determination the mitigation was considered unsatisfactory and the Applicant has requested a waiver of the presence of Neighborhood Risk Factors on the basis that the Development is necessary to enable the state, a participating jurisdiction, or an entitlement community to comply with its obligation to affirmatively further fair housing, a HUD approved Conciliation Agreement, or a final and non-appealable court order and such documentation is submitted with the disclosure.

(b) Development Requirements and Restrictions. The purpose of this section is to identify specific restrictions on a proposed Development requesting multifamily funding by the Department.

(1) Ineligible Developments. A Development shall be ineligible if any of the criteria in subparagraphs (A) - (C) of this paragraph apply.

(A) General Ineligibility Criteria.

*(i)* Developments such as hospitals, nursing homes, trailer parks, dormitories (or other buildings that will be predominantly occupied by students) or other facilities that are usually classified as transient housing (as provided in Code §42(i)(3)(B)(iii) and (iv));

*(ii)* any Development with any building(s) with four or more stories that does not include an elevator;

*(iii)* a Housing Tax Credit Development that provides on-site continual or frequent nursing, medical, or psychiatric services. Refer to IRS Revenue Ruling 98-47 for clarification of assisted living;

*(iv)* a Development that proposes population limitations that violate §1.15 of this title (relating to Integrated Housing Rule);

*(v)* a Development seeking Housing Tax Credits that will not meet the general public use requirement under Treasury Regulation, §1.42-9 or a documented exception thereto; or

*(vi)* a Development utilizing a Direct Loan that is subject to the Housing and Community Development Act, 104(d) requirements and proposing Rehabilitation or Reconstruction, if the Applicant is not proposing at least the one-for-one replacement of the existing Unit mix. Adding additional units would not violate this provision.

(B) Ineligibility of Elderly Developments.

*(i)* any Elderly Development of two stories or more that does not include elevator service for any Units or Common Areas above the ground floor;

*(ii)* any Elderly Development with any Units having more than two Bedrooms with the exception of up to three employee Units reserved for the use of the manager, maintenance, and/or security officer. These employee Units must be specifically designated as such; or

*(iii)* any Elderly Development (including Elderly in a Rural Area) proposing more than 70% two-Bedroom Units.

(C) Ineligibility of Developments within Certain School Attendance Zones. Except for Developments that are encumbered by a TDHCA LURA on the first day of the application or pre-application acceptance period (if applicable), an Elderly Development, or a Supportive Housing SRO Development or Supportive Housing Development where all Units are Efficiency Units, any Development that falls within the attendance zone of a school that has a 2019 TEA Accountability Rating of F and a 2018 Improvement Required Rating is ineligible with no opportunity for mitigation.

(2) Development Size Limitations. The minimum Development size is 16 Units. Competitive Housing Tax Credit or Multifamily Direct Loan-only Developments involving New Construction or Adaptive Reuse in Rural Areas are limited to a maximum of 80 total Units. Tax-Exempt Bond Developments involving New Construction or Adaptive Reuse in a Rural Area are limited to a maximum of 120 total Units. Rehabilitation Developments do not have a limitation as to the maximum number of Units.

(3) Rehabilitation Costs. Developments involving Rehabilitation must establish a scope of work that will substantially improve the interiors of all units and exterior deferred maintenance, and meet the minimum Rehabilitation amounts identified in subparagraphs (A) - (C) of this paragraph. Such amounts must be maintained through the issuance of IRS Forms 8609. For Developments with multiple buildings that have varying placed in service dates, the earliest date will be used for purposes of establishing the minimum Rehabilitation amounts. Applications must meet the minimum standards and Rehabilitation amounts identified in subparagraphs (A), (B) or (C) of this paragraph.

(A) For Housing Tax Credit Developments under the USDA Set-Aside the minimum Rehabilitation will involve at least $25,000 per Unit in Building Costs and Site Work;

(B) For Tax-Exempt Bond Developments, less than 20 years old, based on the placed in service date, the minimum Rehabilitation will involve at least $20,000 per Unit in Building Costs and Site Work. If such Developments are greater than 20 years old, based on the placed in service date, the minimum Rehabilitation will involve at least $30,000 per Unit in Building Costs and Site Work; or

(C) For all other Developments, the minimum Rehabilitation will involve at least $30,000 per Unit in Building Costs and Site Work.

(4) Mandatory Development Amenities. (§2306.187) New Construction, Reconstruction or Adaptive Reuse Units must include all of the amenities in subparagraphs (A) - (N) of this paragraph. Rehabilitation (excluding Reconstruction) Developments must provide the amenities in subparagraphs (D) - (N) of this paragraph unless stated otherwise. Supportive Housing Developments are not required to provide the amenities in subparagraph (B), (E), (F), (G), or (M) of this paragraph; however, access must be provided to a comparable amenity in a Common Area. All amenities listed below must be at no charge to the residents. Residents must be provided written notice of the applicable required amenities for the Development. The Board may waive one or more of the requirements of this paragraph for Developments that will include Historic Tax Credits, with evidence submitted with the request for amendment that the amenity has not been approved by the Texas Historical Commission.

(A) All Bedrooms, the dining room and living room in Units must be wired with current cabling technology for data and phone;

(B) Laundry connections;

(C) Exhaust/vent fans (vented to the outside) in the bathrooms;

(D) Screens on all operable windows;

(E) Disposal and Energy-Star or equivalently rated dishwasher (not required for USDA; Rehabilitation Developments exempt from dishwasher if one was not originally in the Unit);

(F) Energy-Star or equivalently rated refrigerator;

(G) Oven/Range;

(H) Blinds or window coverings for all windows;

(I) At least one Energy-Star or equivalently rated ceiling fan per Unit;

(J) Energy-Star or equivalently rated lighting in all Units;

(K) All areas of the Unit (excluding exterior storage space on an outdoor patio/balcony) must have heating and air-conditioning;

(L) Adequate parking spaces consistent with local code, unless there is no local code, in which case the requirement would be one and a half spaces per Unit for non- Elderly Developments and one space per Unit for Elderly Developments. The minimum number of required spaces must be available to the tenants at no cost. If parking requirements under local code rely on car sharing or similar arrangements, the LURA will require the Owner to provide the service at no cost to the tenants throughout its term;

(M) Energy-Star or equivalently rated windows (for Rehabilitation Developments, only if windows are planned to be replaced as part of the scope of work); and

(N) Adequate accessible parking spaces consistent with the requirements of the 2010 ADA Standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" 79 FR 29671, the Texas Accessibility Standards, and if covered by the Fair Housing Act, HUD's Fair Housing Act Design Manual.

(5) Common Amenities.

(A) All Developments must include sufficient common amenities as described in subparagraph (C) of this paragraph to qualify for at least the minimum number of points required in accordance with clauses (i) - (vi) of this subparagraph.

*(i)* Developments with 16 to 40 Units must qualify for four (4) points;

*(ii)* Developments with 41 to 76 Units must qualify for seven (7) points;

*(iii)* Developments with 77 to 99 Units must qualify for ten (10) points;

*(iv)* Developments with 100 to 149 Units must qualify for fourteen (14) points;

*(v)* Developments with 150 to 199 Units must qualify for eighteen (18) points; or

*(vi)* Developments with 200 or more Units must qualify for twenty-two (22) points.

(B) These points are not associated with any selection criteria points. The amenities must be for the benefit of all residents and made available throughout normal business hours and maintained throughout the Affordability Period. Residents must be provided written notice of the elections made by the Development Owner. If fees or deposits in addition to rent are charged for amenities, then the amenity may not be included among those provided to satisfy the requirement. All amenities must meet all applicable accessibility standards, including those adopted by the Department, and where a specific space or size requirement for a listed amenity is not specified then the amenity must be reasonably adequate based on the Development size. Applications for non-contiguous scattered site housing, excluding non-contiguous single family sites, will have the test applied based on the number of Units per individual site and the amenities selected must be distributed proportionately across all sites. In the case of additional phases of a Development any amenities that are anticipated to be shared with the first phase development cannot be claimed for purposes of meeting this requirement for the second phase. The second phase must include enough points to meet this requirement that are provided on the Development Site. For example, if a swimming pool exists on the phase one Property and it is anticipated that the second phase tenants will be allowed it use it, the swimming pool cannot be claimed for points for purposes of this requirement for the second phase Development. All amenities must be available to all Units via an accessible route.

(C) The common amenities and respective point values are set out in clauses (i) - (v) of this subparagraph, which are grouped primarily for organizational purposes. Applicants are not required to select a specific number of amenities from each section. An Applicant can only count an amenity once; therefore, combined functions (a library which is part of a community room) will only qualify for points under one category:

*(i)* Community Space for Resident Supportive Services

*(I)* Except in Applications where more than 10% of the units in the proposed Development are Supportive Housing SRO Units, an Application may qualify to receive half of the points required under 10 TAC §11.101(b)(5)(A)(i)-(vi) by electing to provide a High Quality Pre-Kindergarten (HQ Pre-K) program and associated educational space at the Development Site. To receive the points the Applicant must commit to all of items (-a-) - (-c-) of this subclause.

(-a-) Space and Design. The educational space for the HQ Pre-K program must be provided on the Development Site and must be a suitable and appropriately designed space for educating children that an independent school district or open-enrollment charter school can utilize to establish and operate a HQ Pre-K program. This space includes at a minimum a bathroom and large closet in the classroom space; appropriate design considerations made for the safety and security of the students; including limited and secure ingress and egress to the classroom space; and satisfaction of the requirements of all applicable building codes for school facilities. The Applicant must provide in the Application a copy of the current school facility code requirements applicable to the Development Site and Owner and Architect certifications that they understand the associated space and design requirements reflected in those code requirements. The Application must also include acknowledgement by all lenders, equity providers and partners that the Application includes election of these points.

(-b-) Educational Provider. The Applicant must enter into an agreement, addressing all items as described in subitems (-1-) - (-5-) below, and provide evidence of such agreement to the Department on or before submission of the Cost Certification . Lack of evidence of such agreement by the deadline will be cause for rescission of the Carryover Agreement.

(-1-) The agreement must be between the Owner and any one of the following: a school district; open-enrollment charter school; or Education Service Center. Private schools and private childcare providers, whether nonprofit or for profit, are not eligible parties, unless the private school or private childcare provider has entered into a partnership with a school district or open-enrollment charter school to provide a HQ Pre-K program in accordance with Texas Education Code Chapter 29, Subchapter E-1.

(-2-) The agreement must reflect that at the Development Site the educational provider will provide a HQ Pre-K program, in accordance with Texas Education Code Chapter 29, Subchapter E-1, at no cost to residents of the proposed Development and that is available for general public use, meaning students other than those residing at the Development may attend.

(-3-) Such agreement must reflect a provision that the option to operate the HQ Pre-K program in the space at the Development Site will continue to be made available to the school or provider until such time as the school or provider wishes to withdraw from the location. This provision will not limit the Owner's right to terminate the agreement for good cause.

(-4-) Such agreement must set forth the responsibility of each party regarding payment of costs to use the space, utility charges, insurance costs, damage to the space or any other part of the Development, and any other costs that may arise as the result of the operation of the HQ Pre-K program.

(-5-) The agreement must include provision for annual renewal, unless terminated under the provisions of item (-c-).

(-c-) If an education provider who has entered into an agreement becomes defunct or elects to withdraw from the agreement and provision of services at the location, as provided for in subitem (-b-)(-3-) of this subclause, the Owner must notify the Texas Commissioner of Education at least 30 days prior to ending the agreement to seek out any other eligible parties listed in subitem (-b-)(-1-)

of this subclause above. If another interested open-enrollment charter school or school district is identified by the Texas Commissioner of Education or the Owner, the Owner must enter into a subsequent agreement with the interested open-enrollment charter school or school district and continue to offer HQ Pre-K services. If another interested provider cannot be identified, and the withdrawing provider certifies to the Department that their reason for ending the agreement is not due to actions of the Owner, the Owner will not be considered to be in violation of its commitment to the Department. If the Owner is not able to find a provider, they must notify the Commissioner annually of the availability of the space.

*(II)* Multifunctional learning and care center(s) or conference room(s) with the appropriate furnishings to deliver the Resident Supportive Services pertaining to classes or care for children and selected by the Development Owner. The room(s) devoted to meeting this requirement must equal 15 square feet times the total number of Units, but need not exceed 2,000 square feet in total. This space must be separate from any other community space but may include a full kitchen. The room(s) must include storage space, such as closets and/or cabinetry (4 points);

*(III)* Multifunctional learning and care center(s) or conference room(s) with the appropriate furnishings to deliver the Resident Supportive Services pertaining to classes or care for adults and selected by the Development Owner. The room(s) devoted to meeting this requirement must equal 10 square feet times the total number of Units, but need not exceed 1,000 square feet in total. This space must be separate from any other community space but may include a full kitchen. The room(s) must include storage space, such as closets and/or cabinetry (2 points);

*(IV)* Service provider office in addition to leasing offices (1 point);

*(ii)* Safety

*(I)* Controlled gate access for entrance and exit areas, intended to provide access that is limited to the Development's tenancy (1 point);

*(II)* Secured Entry (applicable only if all Unit entries are within the building's interior) (1 point);

*(III)* Twenty-four hour, seven days a week monitored camera/security system in each building. Monitoring may be on-site or off-site (2 points);

*(IV)* Twenty-four hour, seven days a week recorded camera / security system in each building (1 point);

*(V)* The provision of a courtesy patrol service that, at a minimum, answers after-hour resident phone calls regarding noise and crime concerns or apartment rules violations and that can dispatch to the apartment community a courtesy patrol officer in a timely manner (3 points);

*(iii)* Health/Fitness/Play

*(I)* Accessible walking/jogging path, equivalent to the perimeter of the Development or a length that reasonably achieves the same result, separate from a sidewalk and in addition to required accessible routes to Units or other amenities (1 point);

*(II)* Furnished fitness center. Equipped with a variety of fitness equipment (at least one item for every 40 Units). Choose from the following: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, stair-climber, dumbbell set, or other similar equipment. Equipment shall be commercial use grade or quality. Fitness center must be located indoors or be a designated room with climate control and allow for after-hours access. (1 point);

*(III)* Furnished fitness center. Equipped with a variety of fitness equipment (at least one item for every 20 Units). Choose from the following: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, stair-climber, dumbbell set, or other similar equipment. Equipment shall be commercial use grade or quality. Fitness center must be located indoors or be a designated room with climate control and allow for after-hours access. (2 points);

*(IV)* One Children's Playscape Equipped for five to 12 year olds, or one Tot Lot (2 points). Must be covered with a shade canopy or awning, intended to keep equipment cool, and provide shade and ultraviolet protection. This item can only be selected if clause (V) of this subparagraph is not selected; or

*(V)* Two Children's Playscapes Equipped for five to 12 year olds, two Tot Lots, or one of each (4 points). Must be covered with a shade canopy or awning, intended to keep equipment cool, and provide shade and ultraviolet protection. This item can only be selected if clause (IV) of this subparagraph is not selected;

*(VI)* Horseshoe pit; putting green; shuffleboard court; pool table; or ping pong table in a dedicated location accessible to all residents to play such games (1 point);

*(VII)* Swimming pool (3 points);

*(VIII)* Splash pad/water feature play area (1 point);

*(IX)* Sport Court or field (including, but not limited to, Tennis, Basketball, Volleyball, Soccer or Baseball Field) (2 points);

*(iv)* Design/Landscaping

*(I)* Full perimeter fencing that includes parking areas and all amenities (excludes guest or general public parking areas) (2 points);

*(II)* Enclosed community sun porch or covered community porch/patio (1 point);

*(III)* Dog Park area that is fully enclosed (the perimeter fencing may be used for part of the enclosure) and intended for tenant owned dogs to run off leash (requires that the Development allow dogs) (1 point);

*(IV)* Shaded rooftop or structural viewing deck of at least 500 square feet (2 points);

*(V)* Porte-cochere (1 point);

*(VI)* Lighted pathways along all accessible routes (1 point);

*(VII)* A resident-run community garden with annual soil preparation and mulch provided by the Owner and access to water (which may be subject to local water usage restrictions) (1 point);

*(v)* Community Resources

*(I)* Gazebo or covered pavilion w/sitting area (seating must be provided) (1 point);

*(II)* Community laundry room with at least one washer and dryer for every 40 Units (2 points);

*(III)* Barbecue grill and picnic table with at least one of each for every 50 Units (1 point). Grill must be permanently installed (no portable grills);

*(IV)* Business center with workstations and seating internet access, 1 printer and at least one scanner which may be integrated with the printer, and either 2 desktop computers or laptops available to check-out upon request (2 points);

*(V)* Furnished Community room (2 points);

*(VI)* Library with an accessible sitting area (separate from the community room) (1 point);

*(VII)* Activity Room stocked with supplies (Arts and Crafts, board games, etc.) (2 points);

*(VIII)* Community Dining Room with full or warming kitchen furnished with adequate tables and seating (3 points);

*(IX)* Community Theater Room equipped with a 52 inch or larger screen or projection with surround sound equipment; DVD player or a streaming service at no cost to residents; and seating (3 points);

*(X)* High-speed Wi-Fi of 10 Mbps download speed or more with coverage throughout the clubhouse and/or community building (1 point);

*(XI)* High-speed Wi-Fi of 10 Mbps download speed or more with coverage throughout the Development (2 points);

*(XII)* Bicycle parking that allows for, at a minimum, one bicycle for every five Units, within reasonable proximity to each residential building that allows for bicycles to be secured with lock (lock not required to be provided to tenant) (1 point);

*(XIII)* Package Lockers. Automated Package Lockers provided at a location within the complex that can be accessed by residents 24/7 and at no charge to the resident. To qualify, there would need to be at least one locker for every eight residential units (2 points);

*(XIV)* Recycling Service (includes providing a storage location and service for pick-up) (1 point);

*(XV)* Community car vacuum station (1 point).

(6) Unit Requirements.

(A) Unit Sizes. Developments proposing New Construction or Reconstruction will be required to meet the minimum sizes of Units as provided in clauses (i) - (v) of this subparagraph. These minimum requirements are not associated with any selection criteria. Developments proposing Rehabilitation (excluding Reconstruction) or Supportive Housing Developments will not be subject to the requirements of this subparagraph.

*(i)* five hundred (500) square feet for an Efficiency Unit;

*(ii)* six hundred (600) square feet for a one Bedroom Unit;

*(iii)* eight hundred (800) square feet for a two Bedroom Unit;

*(iv)* one thousand (1,000) square feet for a three Bedroom Unit; and

*(v)* one thousand, two-hundred (1,200) square feet for a four Bedroom Unit.

(B) Unit, Development Construction, and Energy and Water Efficiency Features. Housing Tax Credit Applicants may select amenities for the score of an Application under this section, but must maintain the points associated with those amenities by maintaining the amenity selected or providing substitute amenities with equal or higher point values. Tax-Exempt Bond Developments must include enough amenities to meet a minimum of nine (9) points. Direct Loan Applications not layered with Housing Tax Credits must include enough amenities to meet a minimum of four (4) points. The amenity shall be for every Unit at no extra charge to the tenant. The points selected at Application and corresponding list of amenities will be required to be identified in the LURA, and the points selected at Application must be maintained throughout the Affordability Period. Applications involving scattered site Developments must have a specific amenity located within each Unit to count for points. Rehabilitation Developments and Supportive Housing Developments will start with a base score of five (5) points. At least two (2) points must be selected from clause (iii), Energy and Water Efficiency Features, of this subparagraph (B).

*(i)* Unit Features

*(I)* Covered entries (0.5 point);

*(II)* Nine foot ceilings in living room and all Bedrooms (at minimum) (1 point);

*(III)* Microwave ovens (0.5 point);

*(IV)* Self-cleaning or continuous cleaning ovens (0.5 point);

*(V)* Storage room or closet, of approximately 9 square feet or greater, separate from and in addition to Bedroom, entryway or linen closets and which does not need to be in the Unit but must be on the Property site (0.5 point);

*(VI)* Covered patios or covered balconies (0.5 point);

*(VII)* High Speed Internet service to all Units (can be wired or wireless; required equipment for either must be provided) (1 point);

*(VIII)* Built-in (recessed into the wall) shelving unit (0.5 point);

*(IX)* Breakfast Bar (a space, generally between the kitchen and dining area, that includes an area for seating although actual seating such as bar stools does not have to be provided) (0.5 point);

*(X)* Walk-in closet in at least one Bedroom (0.5 point);

*(XI)* 48" upper kitchen cabinets (1 point);

*(XII)* Kitchen island (0.5 points);

*(XIII)* Kitchen pantry with shelving (may include the washer/dryer unit for Rehabilitation Developments only) (0.5 point);

*(XIV)* Natural stone or quartz countertops in kitchen and bath (1 point);

*(XV)* Double vanity in at least one bathroom (0.5 point); and

*(XVI)* Hard floor surfaces in over 50% of unit NRA (0.5 point).

*(ii)* Development Construction Features

*(I)* Covered parking (may be garages or carports, attached or freestanding) and include at least one covered space per Unit (1.5 points);

*(II)* Thirty year roof (0.5 point);

*(III)* Greater than 30% stucco or masonry (includes stone, cultured stone, and brick but excludes cementitious and metal siding) on all building exteriors; the percentage calculation may exclude exterior glass entirely (2 points);

*(IV)* Electric Vehicle Charging Station (0.5 points);

*(V)* An Impact Isolation Class (IIC) rating of at least 55 and a Sound Transmission Class ( STC) rating of 60 or higher in all Units, as certified by the architect or engineer of record (3 points); and

*(VI)* Green Building Features. Points under this item are intended to promote energy and water conservation, operational savings and sustainable building practices. Four (4) points may be selected from only one of the categories described in items (-a-) - (-d-) of this subclause. If the Development involves scattered sites, there must be green building features incorporated into each site in order to qualify for these points.

(-a-) Enterprise Green Communities. The Development must incorporate all mandatory and optional items applicable to the construction type (i.e. New Construction, Rehabilitation, etc.) as provided in the most recent version of the Enterprise Green Communities Criteria found at http://www.greencommunitiesonline.org.

(-b-) Leadership in Energy and Environmental Design (LEED) . The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a LEED Certification, regardless of the rating level achieved (i.e., Certified, Silver, Gold or Platinum).

(-c-) ICC/ASHRAE - 700 National Green Building Standard (NGBS) . The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a NGBS Green Certification, regardless of the rating level achieved (i.e. Bronze, Silver, Gold, or Emerald).

(-d-) 2018 International Green Construction Code.

*(iii)* Energy and Water Efficiency Features

*(I)* Energy-Star or equivalently rated refrigerator with icemaker (0.5 point);

*(II)* Energy-Star or equivalently rated laundry equipment (washers and dryers) for each individual Unit; must be front loading washer and dryer in required accessible Units (2 points);

*(III)* Recessed LED lighting or LED lighting fixtures in kitchen and living areas (1 point);

*(IV)* Energy-Star or equivalently rated ceiling fans in all Bedrooms (0.5 point);

*(V)* EPA WaterSense or equivalent qualified toilets in all bathrooms (0.5 point);

*(VI)* EPA WaterSense or equivalent qualified showerheads and faucets in all bathrooms (0.5 point);

*(VII)* 15 SEER HVAC, or in Region 13, an efficient evaporative cooling system. For Rehabilitation (excluding Reconstruction) where such systems are not being replaced as part of the scope of work, a radiant barrier in the attic is provided, (1 point);

*(VIII)* 16 SEER HVAC, for New Construction or Rehabilitation (1.5 points); and

*(IX)* A rainwater harvesting/collection system and/or locally approved greywater collection system (0.5 points);

(7) Resident Supportive Services. The supportive services include those listed in subparagraphs (A) - (E) of this paragraph, which are grouped primarily for organizational purposes. Applicants are not required to select a specific number of services from each section. Tax Exempt Bond Developments must select a minimum of eight points; Direct Loan Applications not layered with Housing Tax Credits must include enough services to meet a minimum of four points. The points selected and complete list of supportive services will be included in the LURA and the timeframe by which services are offered must be in accordance with §10.619 of this title (relating to Monitoring for Social Services) and maintained throughout the Affordability Period. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. A Development Owner may be required to substantiate such service(s) if requested by staff. Should the QAP in subsequent years provide different services than those listed in subparagraphs (A) - (E) of this paragraph, the Development Owner may request an Amendment as provided in 10 TAC §10.405(a)(2). The services provided should be those that will directly benefit the Target Population of the Development. Residents must be provided written notice of the elections made by the Development Owner. No fees may be charged to the residents for any of the services, there must be adequate space for the intended services and services offered should be accessible to all (e.g. exercises classes must be offered in a manner that would enable a person with a disability to participate). Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item. These services are intended to be provided by a qualified and reputable provider in the specified industry such that the experience and background of the provider demonstrates sufficient knowledge to be providing the service. In general, on-site leasing staff or property maintenance staff would not be considered a qualified provider. Where applicable, the services must be documented by a written agreement with the provider. Unless otherwise noted in a particular clause, courses and services must be offered by an onsite instructor(s).

(A) Transportation Supportive Services.

*(i)* shuttle, at least three days a week, to a grocery store and pharmacy and/or a major, big-box retailer that includes a grocery store and pharmacy, OR a daily shuttle, during the school year, to and from nearby schools not served by a school bus system for children who live at the Development (3.5 points);

*(ii)* monthly transportation to community/social events such as mall trips, community theatre, bowling, organized tours, etc. (1 point);

(B) Children Supportive Services

*(i)* provide a High Quality Pre-Kindergarten (HQ Pre-K) program and associated educational space at the Development Site meeting the requirements of 10 TAC §11.101(b)(5)(C)(i)(I). (Half of the points required under 10 TAC §11.101(b)(7));

*(ii)* twelve hours of weekly, organized, on-site services provided to K-12 children by a dedicated service coordinator or third-party entity. Services include after-school and summer care and tutoring, recreational activities, character building programs, mentee opportunities, test preparation, and similar activities that promote the betterment and growth of children and young adults (3.5 points);

(C) Adult Supportive Services

*(i)* four hours of weekly, organized, on-site classes provided to an adult audience by persons skilled or trained in the subject matter being presented, such as English as a second language classes, computer training, financial literacy courses, health education courses,

certification courses, GED preparation classes, resume and interview preparatory classes, general presentations about community services and resources, and any other course, class, or presentation that may equip residents with new skills that they may wish to develop (3.5 points);

*(ii)* annual income tax preparation (offered by an income tax prep service) or IRS-certified VITA (Volunteer Income Tax Assistance) program (offered by a qualified individual) that also emphasizes how to claim the Earned Income Tax Credit (1 point);

*(iii)* contracted career training and placement partnerships with local worksource offices, culinary programs, or vocational counseling services; may include resident training programs that train and hire residents for job opportunities inside the development in areas like leasing, tenant services, maintenance, landscaping, or food and beverage operation (2 points);

*(iv)* external partnerships for provision of weekly substance abuse meetings at the Development Site (1 point);

(D) Health Supportive Services

*(i)* food pantry consisting of an assortment of non-perishable food items and common household items (i.e. laundry detergent, toiletries, etc.) accessible to residents at least on a monthly basis or upon request by a resident. While it is possible that transportation may be provided to a local food bank to meet the requirement of this resident service, the resident must not be required to pay for the items they receive at the food bank (2 points);

*(ii)* annual health fair provided by a health care professional (1 point);

*(iii)* weekly exercise classes (offered at times when most residents would be likely to attend) (2 points);

*(iv)* contracted onsite occupational or physical therapy services for Elderly Developments or Developments where the service is provided for Persons with Disabilities and documentation to that effect can be provided for monitoring purposes (2 points);

(E) Community Supportive Services

*(i)* partnership with local law enforcement and/or local first responders to provide quarterly on-site social and interactive activities intended to foster relationships with residents (such activities could include playing sports, having a cook-out, swimming, card games, etc.) (2 points);

*(ii)* Notary Services during regular business hours (§2306.6710(b)(3)) (1 point);

*(iii)* twice monthly arts, crafts, and other recreational activities (e.g. Book Clubs and creative writing classes) (1 point);

*(iv)* twice monthly on-site social events (i.e. potluck dinners, game night, sing-a-longs, movie nights, birthday parties, holiday celebrations, etc.) (1 point);

*(v)* specific service coordination services offered by a qualified Owner or Developer, qualified provider or through external, contracted parties for seniors, Persons with Disabilities or Supportive Housing (3 points);

*(vi)* weekly home chore services (such as valet trash removal, assistance with recycling, furniture movement, etc., and quarterly preventative maintenance including light bulb replacement) for Elderly Developments or Developments where the service is provided for Persons with Disabilities and documentation to that effect can be provided for monitoring purposes (2 points);

*(vii)* any of the programs described under Title IV-A of the Social Security Act (42 U.S.C. §§601, et seq.) which enables children to be cared for in their homes or the homes of relatives; ends the dependence of needy families on government benefits by promoting job preparation, work and marriage; prevents and reduces the incidence of unplanned pregnancies; and encourages the formation and maintenance of two-parent families (1 point);

*(viii)* a part-time resident services coordinator with a dedicated office space at the Development or a contract with a third-party to provide the equivalent of 15 hours or more of weekly resident supportive services at the Development (2 points);

*(ix)* provision, by either the Development Owner or a community partner, of an education tuition- or savings-match program or scholarships to residents who may attend college (2 points).

(8) Development Accessibility Requirements. All Developments must meet all specifications and accessibility requirements as identified in subparagraphs (A) - (F) of this paragraph and any other applicable state or federal rules and requirements. The accessibility requirements are further identified in the Certification of Development Owner as provided in the Application.

(A) The Development shall comply with the accessibility requirements under Federal law and as further defined in Chapter 1, Subchapter B of this title (relating to Accessibility and Reasonable Accommodations). (§§2306.6722; 2306.6730)

(B) Regardless of building type, all Units accessed by the ground floor or by elevator (affected units) must comply with the visitability requirements in clauses (i) - (iii) of this subparagraph. Design specifications for each item must comply with the standards of the Fair Housing Act Design Manual. Buildings occupied for residential use on or before March 13, 1991 are exempt from this requirement. If the townhome Units of a Rehabilitation Development do not have a bathroom on the ground floor, the Applicant will not be required to add a bathroom to meet the requirements of clause (iii) of this subparagraph.

*(i)* all common use facilities must be in compliance with the Fair Housing Design Act Manual;

*(ii)* to the extent required by the Fair Housing Design Act Manual, there must be an accessible or exempt route from common use facilities to the affected units;

*(iii)* each affected unit must include the features in subclauses (I) - (V) of this clause.

*(I)* At least one zero-step, accessible entrance;

*(II)* At least one bathroom or half-bath with toilet and sink on the entry level. The layout of this bathroom or half-bath must comply with one of the specifications set forth in the Fair Housing Act Design Manual;

*(III)* The bathroom or half-bath must have the appropriate blocking relative to the toilet for the later installation of a grab bar, if ever requested by the tenant of that Unit;

*(IV)* There must be an accessible route from the entrance to the bathroom or half-bath, and the entrance and bathroom must provide usable width; and

*(V)* Light switches, electrical outlets, and thermostats on the entry level must be at accessible heights.

(C) The Development Owner is and will remain in compliance with state and federal laws, including but not limited to, fair housing laws, including Chapter 301, Property Code, Title VIII of the

Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), the Fair Housing Amendments Act of 1988 (42 U.S.C. §§3601 et seq.); the Civil Rights Act of 1964 (42 U.S.C. §§2000a et seq.); the Americans with Disabilities Act of 1990 (42 U.S.C. §§12101 et seq.); the Rehabilitation Act of 1973 (29 U.S.C. §§701 et seq.); Fair Housing Accessibility; the Texas Fair Housing Act; and that the Development is designed consistent with the Fair Housing Act Design Manual produced by HUD, and the Texas Accessibility Standards. (§2306.257; §2306.6705(7))

(D) All Applications proposing Rehabilitation (including Reconstruction) will be treated as substantial alteration, in accordance with Chapter 1, Subchapter B of this title (relating to Accessibility and Reasonable Accommodations).

(E) For all Developments other than Direct Loan Developments, for the purposes of determining the appropriate distribution of accessible Units across Unit Types, only the number of Bedrooms and full bathrooms will be used to define the Unit Type, but accessible Units must have an equal or greater square footage than the square footage offered in the smallest non-accessible Unit with the same number of Bedrooms and full bathrooms. For Direct Loan Developments, for purposes of determining the appropriate distribution of accessible Units across Unit Types, the definition of Unit Type will be used.

(F) Alternative methods of calculating the number of accessible Units required in a Development must be approved by the Department prior to award or allocation.

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

Filed with the Office of the Secretary of State on September 9, 2019.

TRD-201903182
Robert Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 20, 2019
For further information, please call: (512) 475-3929

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## SUBCHAPTER C. APPLICATION SUBMISSION REQUIREMENTS, INELIGIBILITY CRITERIA, BOARD DECISIONS AND WAIVER OF RULES

### 10 TAC §§11.201 - 11.207

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

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

*§11.201. Procedural Requirements for Application Submission.*

This subchapter establishes the procedural requirements for Application submission. Only one Application may be submitted for a Development Site in an Application Round. While the Application Acceptance Period is open or prior to the Application deadline, an Applicant may withdraw an Application and subsequently file a new Application utilizing the original pre-application fee (as applicable) that was paid as long as no substantive evaluation was performed by the Department and the re-submitted Application relates to the same Development Site, consistent with §11.9(e)(3) (relating to Competitive HTC Selection Criteria) regarding pre-application Site changes. Applicants are subject to the schedule of fees as set forth in §11.901 of this chapter (relating to Fee Schedule).

(1) General Requirements.

(A) An Applicant requesting funding from the Department must submit an Application in order to be considered for an award. An Application must be complete (including all required exhibits and supporting materials) and submitted by the required program deadline. If an Application, including the corresponding Application fee as described in §11.901 of this chapter, is not submitted to the Department on or before the applicable deadline, the Applicant will be deemed not to have made an Application; provided, however, that errors in the calculation of applicable fees may be cured via an Administrative Deficiency. The deficiency period for curing fee errors will be three business days from the date the fee was originally required to be submitted, and may not be extended. Failure to cure such an error timely will be grounds for termination.

(B) Applying for multifamily funds from the Department is a technical process that must be followed completely. As a result of the competitive nature of some funding sources, an Applicant should proceed on the assumption that deadlines are fixed and firm with respect to both date and time and cannot be waived except where authorized and for truly extraordinary circumstances, such as the occurrence of a significant natural disaster that makes timely adherence impossible. If checks or original Carryover Allocation Agreements are physically delivered to the Department, it is the Applicant's responsibility to be within the Department's doors by the appointed deadline. All Applications and all related materials are to be delivered electronically pursuant to the Multifamily Programs Procedures Manual. Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Applicants must ensure that all documents are legible, properly organized and tabbed, and that materials are fully readable by the Department.

(C) The Applicant must timely upload a PDF copy and Excel copy of the complete Application to the Department's secure web transfer server. Each copy must be in a single file and individually bookmarked as further described in the Multifamily Programs Procedures Manual. Additional files required for Application submission (e.g., Third Party Reports) outside the Uniform Application must also be uploaded to the secure web transfer server. It is the responsibility of the Applicant to confirm the upload to the Department's secure web transfer server was successful and to do so in advance of the deadline. Where there are instances of computer problems, mystery glitches, etc. that prevent the Application from being received by the Department prior to the deadline the Application may be terminated.

(D) Applications must include materials addressing each and all of the items enumerated in this chapter and other chapters as applicable. If an Applicant does not believe that a specific item should be applied, the Applicant must include, in its place, a statement identifying the required item, stating that it is not being supplied, and a statement as to why the Applicant does not believe it should be required.

(2) Filing of Application for Tax-Exempt Bond Developments. Applications must be submitted to the Department as described in either subparagraph (A) or (B) of this paragraph. Applications will be required to satisfy the requirements of this chapter and applicable Department rules that coincide with the year the Certificate of Reservation is issued. Those Applications that receive a Traditional Carryforward Designation will be subject to the QAP and applicable De-

partment rules in place at the time the Application is received by the Department, unless determined otherwise by staff.

(A) Lottery Applications. For Applicants participating in the TBRB lottery for private activity bond volume cap and advance notice is given regarding a Certificate of Reservation, the Applicant must submit a Notice to Submit Lottery Application form to the Department no later than the Notice to Submit Lottery Application Delivery Date described in §11.2(b) of this chapter (relating to Tax-Exempt Bond and Direct Loan Development Dates and Deadlines). The complete Application, including all required Third Party Reports, accompanied by the Application Fee described in §11.901 of this chapter must be submitted no later than the Applications Associated with Lottery Delivery Date described in §11.2(b) of this chapter.

(B) Non-Lottery Applications.

*(i)* Applications designated as Priority 1 or 2 by the TBRB and receiving advance notice of a Certificate of Reservation for private activity bond volume cap must submit the Application Fee described in §11.901 of this chapter and the complete Application, with the exception of the Third Party Reports, prior to the issuance of the Certificate of Reservation by the TBRB. The Third Party Reports must be submitted on the fifth day of the month and the Application may be scheduled for a Board meeting at which the decision to issue a Determination Notice would be made approximately 90 days following such submission deadline. If the fifth day falls on a weekend or holiday, the submission deadline shall be on the next business day.

*(ii)* an Application designated as Priority 3 will not be accepted until after the TBRB has issued a Certificate of Reservation and may be submitted on the fifth day of the month. Priority 3 Application submissions must be complete, including all Third Party Reports, before they will be considered accepted by the Department and meeting the submission deadline for the applicable Board meeting date.

*(iii)* if, as of November 15, an Applicant is unable to obtain a Certificate of Reservation from the current program year because there is no private activity bond volume cap, an Applicant may submit a complete Application without a bond reservation, provided that, a copy of the inducement resolution is included in the Application, and a Certificate of Reservation is issued as soon as possible by BRB staff in January 2021. The determination as to whether a 2020 Application can be submitted and supplemented with 2021 forms and certifications, will be at the discretion of staff. Applicants are encouraged to communicate with staff any issues and timing considerations unique to a Development as early in the process as possible.

(C) The Department will require at least 90 days to review an Application, unless Department staff can complete its evaluation in sufficient time for an earlier Board consideration. Applicants should be aware that unusual financing structures, portfolio transactions, and the need to resolve Administrative Deficiencies may require additional time to review and the prioritization of Applications will be subject to the review priority established in paragraph (6) of this subsection.

(D) Department staff may choose to delay presentation to the Board in instances where an Applicant is not expected to close within a reasonable timeframe following the issuance of a Determination Notice. Applications that receive a Traditional Carryforward Designation will be subject to closing within the same general timeframe as would be typical of the Certificate of Reservation. This will be a condition of the award and reflected in the Determination Notice.

(3) Certification of Tax Exempt Bond Applications with New Docket Numbers. Applications that receive an affirmative Board Determination, but for which closing on the bonds does not occur prior to the Certificate of Reservation expiration date, and which subsequently have that docket number withdrawn from the TBRB, may have their Determination Notice reinstated. In the event that the Department's Board has not yet approved the Application, the Application will continue to be processed and ultimately provided to the Board for consideration. The Applicant would need to receive a new docket number from the TBRB and meet the requirements described in subparagraphs (A) - (C) of this paragraph:

(A) The Application must remain unchanged with regard to: Site Control, total number of Units, unit mix (Bedroom sizes and income restrictions), design/site plan documents, financial structure including bond and Housing Tax Credit amounts, development costs, rent schedule, operating expenses, sources and uses, ad valorem tax exemption status, Target Population, scoring criteria (if TDHCA is bond issuer) and TBRB priority status including the effect on the inclusive capture rate. The entities involved in the Applicant entity and Developer cannot change; however, the certification can be submitted even if the lender, syndicator or issuer changes, as long as the financing structure and terms remain unchanged. Should any of the aforementioned items have changed, but in staff's determination and review such change is determined not to be material or determined not to have an effect on the original underwriting conclusions or program review then the Applicant may be allowed to submit the certification and subsequently have the Determination Notice re-issued. Notifications under §11.203 of this chapter (relating to Public Notifications (§2306.6705(9)) are not required to be reissued. A revised Determination Notice will be issued once notice of the assignment of a new docket number has been provided to the Department and the Department has confirmed that the capture rate and market demand remain acceptable. This certification must be submitted no later than 30 calendar days after the date the TBRB issues the new docket number; or

(B) The new docket number may not be issued more than four months from the date the original application was withdrawn from the TBRB. The new docket number must be from the same program year as the original docket number or, for Applications that receive a new docket number from the program year that is immediately succeeding the program year of the original docket number, the requirements in clauses (i) and (ii) of this subparagraph must be met:

*(i)* the Applicant must certify that the Development will meet all rules and requirements in effect at the time the new docket number is issued; and

*(ii)* the Department must determine that the changes in the rules applicable to the program(s) under which the Application was originally awarded are not of a material nature that would necessitate a new Application and that any new forms and clarifications to the Application are of a nature that can be resolved through the Administrative Deficiency process; or

(C) If there are changes to the Application as referenced in subparagraph (A) of this paragraph or if such changes in the rules pursuant to subparagraph (B)(ii) of this paragraph are of a material nature the Applicant will be required to submit a new Application in full, along with the applicable fees, to be reviewed and evaluated in its entirety for a new Determination Notice to be issued. If there is public opposition but the Application remains the same pursuant to subparagraph (A) of this paragraph, a new Application will not be required to be submitted; however, the Application must be presented before the Board for consideration of the re-issuance of the Determination Notice.

(4) Withdrawal of Application. An Applicant may withdraw an Application prior to or after receiving an award of funding by submitting to the Department written notice of the withdrawal.

(5) Evaluation Process. Applications believed likely to be competitive will undergo a program review for compliance with submission requirements and selection criteria, as applicable. In general, Application reviews by the Department shall be conducted based upon the likelihood that an Application will be competitive for an award based upon the region, set-aside, self score, received date, or other ranking factors. Thus, non-competitive or lower scoring Applications may never be reviewed. The Director of Multifamily Finance will identify those Applications that will receive a full program review based upon a reasonable assessment of each Application and its relative position to other Applications, but no Application with a competitive ranking shall be skipped or otherwise overlooked. This initial assessment may be a high level assessment, not a full assessment. The Real Estate Analysis division shall underwrite Applications that received a full program review and remain competitive to determine financial feasibility and an appropriate funding amount. In making this determination, the Department will use §11.302 of this chapter (relating to Underwriting Rules and Guidelines) and §13.6 of this title (relating to Multifamily Direct Loan Rule). The Department may have an external party perform all or part of the underwriting evaluation and components thereof to the extent it determines appropriate. The expense of any external underwriting shall be paid by the Applicant prior to the commencement of the aforementioned evaluation pursuant to §11.901(5) of this chapter (relating to Fee Schedule, Appeals and other Provisions). Applications will undergo a previous participation review in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee ) and a Development Site may be evaluated by the Department or its agents through a physical site inspection or site visit, (which may include neighboring areas), independent of or concurrent with a site visit that may be performed in conjunction with §11.101(a)(3) (relating to Neighborhood Risk Factors). The Department will, from time to time during the review process, publish an application log which shall include the self-score and any scoring adjustments made by staff. The posting of such scores on the application log may trigger appeal rights and corresponding deadlines pursuant to Tex. Gov't. Code §2306.6715 and §11.902 of this chapter (relating to Appeals Process); in such cases the corresponding deadlines are based on the date on which the log is posted to the Department's website. The Department may also provide a scoring notice reflecting such score to the Applicant which will also trigger appeal rights and corresponding deadlines pursuant to Tex. Gov't. Code §2306.6715 and §11.902 of this chapter (relating to Appeals Process).

(6) Order of review of Applications under various Programs. This paragraph identifies how ties or other matters will be handled when dealing with de-concentration requirements, capture rate calculations, and general order of review of Applications submitted under different programs.

(A) De-concentration and Capture Rate. Priority will be established based on the earlier date associated with an Application. The dates that will be used to establish priority are as follows:

*(i)* for Tax-Exempt Bond Developments, the issuance date of the Certificate of Reservation issued by the TBRB; or in instances where there is a Traditional Carryforward Designation associated with an Application the Department will utilize the date the complete HTC Application associated with the Traditional Carryforward Designation is submitted to the Department; and

*(ii)* for all other Developments, the date the Application is considered received by the Department; and

*(iii)* notwithstanding the foregoing, after July 31 of the current program year, a Tax-Exempt Bond Development with a Certificate of Reservation from the TBRB will take precedence over any Housing Tax Credit Application from the current Application Round on the waiting list.

(B) General Review Priority. Order of reviews of Applications under various multifamily programs will be established based on Department staff's consideration of any statutory timeframes associated with a program or Application in relation to the volume of Applications being processed. Those with statutory deadlines or more restrictive deadlines will be prioritized for review and processing ahead of those that are not subject to the same constraints. In general, any non-Competitive Housing Tax Credit Applications received during the competitive tax credit round that include a request to be placed on the May, June, or July Board agendas may not be reviewed or underwritten due to the statutory constraints on the award and allocation of competitive tax credits. Applicants are advised to keep this in consideration when planning the submission of an Application and issuance of the Certificate of Reservation. Should an Applicant submit an Application regardless of this provision, the Department is not obligated to include the Application on the requested Board meeting agenda and the Applicant should be prepared to be placed on a subsequent Board meeting agenda.

(7) Deficiency Process. The purpose of the deficiency process is to allow an Applicant to provide clarification, explanation, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in an efficient and effective review of the Application. Deficiencies may be Administrative or Material, in either case they will be treated similarly in that Applicants may receive a deficiency notice and have an opportunity to respond. Applicants are encouraged to utilize manuals or other materials produced by staff, as additional guidance in conjunction with the rules to provide appropriate support for each item substantiating a claim or representation, such as claims for points, qualification for set-asides, or meeting of threshold and eligibility requirements. Any Application that staff identifies as having insufficient support information will be directed to cure the matter via the deficiency process. Applicants are reminded that this process may not be used to increase a scoring item's points or to change any aspect of the proposed Development, financing structure, or other element of the Application. Because the review of an Application occurs in several phases, deficiency notices may be issued during any of these phases. Staff will send the deficiency notice via an e-mail to the Applicant and one other contact party if identified in the Application. It is the Applicant's responsibility to ensure that e-mails sent from TDHCA staff to the Applicant or contact are not electronically blocked or redirected by a security feature as they will be considered to be received once they are sent. The time period for responding to a deficiency notice commences on the first business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period and may also be sent in response to reviews on post-award submissions. Responses are required to be submitted electronically as a PDF or multiple PDF files. A review of the response provided by the Applicant may reveal that issues initially identified as an Administrative Deficiency are actually determined to be beyond the scope of an Administrative Deficiency process, meaning they are Material Deficiencies not susceptible to being resolved. Department staff may in good faith provide an Applicant confirmation that an Administrative Deficiency response has been received or that such response is satisfactory. Communications from staff that the response was satisfactory do not establish any entitlement to points, eligibility status, or to any presumption of having fulfilled any requirements. Final determinations regarding the sufficiency of documentation submitted to cure a Deficiency as well as the distinction between material and non-material missing information are reserved for the Director of Multifamily Finance, Executive Director, and Board.

(A) It is critical that the use of the deficiency process not unduly slow the review process, and since the process is intended to clarify or explain matters or obtain at the Department's request missing information, there is a reasonable expectation that a party responding to an Administrative Deficiency will be able to respond immediately. It is the responsibility of a person who receives a deficiency to address the matter in a timely manner so that staff has the ability to review the response by the close of business on the date by which resolution must be complete and the deficiency fully resolved. Merely submitting materials prior to that time places the responsibility on the responding party that if the materials do not fully resolve the matter there may be adverse consequences such as point deductions or termination. Extensions relating to Administrative Deficiency deadlines may only be extended up to five days if documentation needed to resolve the item is needed from a Third Party or the documentation involves Third Party signatures needed on certifications in the Application. A Deficiency response may not contain documentation that did not exist prior to submission of the pre-application or Full Application, as applicable.

(B) Deficiencies for Competitive HTC Applications. Unless an extension has been timely requested and granted prior to the deadline, if a deficiency is not fully resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice, then five (5) points shall be deducted from the selection criteria score for each additional day the deficiency remains unresolved. If deficiencies are not resolved by 5:00 p.m. on the seventh business day following the date of the deficiency notice, then the Application shall be terminated, subject to the Applicant's right to appeal. An Applicant may not change or supplement any part of an Application in any manner after the filing deadline or while the Application is under consideration for an award, and may not add any set-asides, increase the requested credit amount, revise the Unit mix (both income levels and Bedroom mixes), or adjust their self-score except in response to a direct request from the Department to do so as a result of an Administrative Deficiency. (§2306.6708(b); §2306.6708) To the extent that the review of deficiency documentation or the imposing of point reductions for late responses alters the score assigned to the Application, such score will be reflected in the updated application log published on the Department's website or a Scoring Notice may be issued.

(C) Deficiencies for Tax-Exempt Bond Developments. Unless an extension has been requested prior to the deadline, deficiencies must be resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice. Applications with unresolved deficiencies after 5:00 p.m. on the fifth business day following the date of the deficiency notice will be suspended from further processing and the Applicant will be provided with notice to that effect. If, on the fifth business day following the date of the suspension notice, there are deficiencies that remain unresolved, the Application will be terminated and the Applicant will be provided notice to that effect. Should an Applicant still desire to move forward with the Development, staff will require a completely new Application be submitted, along with a new Application Fee pursuant to §11.901 of this chapter. All of the deficiencies noted in the original deficiency notice must be incorporated into the re-submitted Application. Staff will proceed with a new review of the Application, but it will not be prioritized over other Applications that are under review or were submitted prior to its re-submission.

(D) Deficiencies for Direct Loan Applications. Deficiencies must be resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice. Applications with unresolved deficiencies after 5:00 p.m. on the fifth business day following the date of the deficiency notice will be suspended from further processing and the Applicant will be provided with notice to that effect. If, during the period of time when the Application is suspended from review Direct Loan funds in the set aside become oversubscribed, the Applicant will be informed that unless the outstanding item(s) are resolved within one business day the Application will be terminated. For purposes of priority under the Direct Loan set-asides, if the outstanding item(s) are resolved within one business day, the date by which the item is submitted shall be the new received date pursuant to §13.5(c) of this chapter (relating to Multifamily Direct Loan Rule). Applicants should be prepared for additional time needed for completion of staff reviews as described in paragraph (2)(B) of this section. If, on the fifth business day following the date of the suspension notice, there are deficiencies that remain unresolved and the Direct Loan funds are not oversubscribed, the Application will be terminated, and the Applicant will be provided notice to that effect. Should an Applicant still desire to move forward with the Development, staff will require a completely new Application be submitted, along with a new Application Fee, as applicable, pursuant to rule. All of the deficiencies noted in the original deficiency notice must be incorporated into the re-submitted Application. Staff will proceed with a new review of the Application, but it will not be prioritized over other Applications that are under review or were submitted prior to its re-submission, and will obtain a new received date pursuant to §13.5(c) of this chapter.

(8) Limited Reviews. If, after the submission of the Application, an Applicant identifies an error in the Application that could likely be the subject of a Deficiency, the Applicant may request a limited review of the specific and limited issues in need of clarification or correction. The issue may not relate to the score of an Application. This limited review may only cover the specific issue and not the entire Application. If the limited review results in the identification of an issue that requires correction or clarification, staff will request such through the Deficiency process as stated in paragraph (7) of this section, if deemed appropriate. A limited review is intended to address:

(A) Clarification of issues that Department staff would have difficulty identifying due to the omission of information that the Department may have access to only through Applicant disclosure, such as a prior removal from a tax credit transaction or participation in a Development that is not identified in the previous participation portion of the Application; or

(B) Technical correction of non-material information that would cause an Application deemed non-competitive to be deemed competitive and, therefore, subject to a staff review. For example, failure to mark the Nonprofit Set-Aside in an Application that otherwise included complete submission of documentation for participation in the Nonprofit Set-Aside.

(9) Challenges to Opposition. Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local Governmental Entity having jurisdiction or oversight over the finding or determination. If any such comment is challenged, the challenger must declare the basis for the challenge and submit such challenge by the Challenges to Neighborhood Organization Opposition Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Housing Tax Credits) and no later than May 1 of the current year for Competitive HTC Applications. The Neighborhood Organization expressing opposition will be given seven calendar days to provide any information related to the issue of whether their assertions are contrary to the findings or determinations of a local Governmental Entity. All such materials and the analysis by staff will be provided to a fact finder, chosen by the Department, for review and a determination. The fact finder will not make determinations as to the accuracy of the statements presented, but only regarding whether the statements are

contrary to findings or determinations of a local Governmental Entity. The fact finder's determination will be final and may not be waived or appealed.

*§11.202. Ineligible Applicants and Applications.*

The purpose of this section is to identify those situations in which an Application or Applicant may be considered ineligible for Department funding and subsequently terminated. Such matters may be brought to the attention of staff by anyone, including members of the general public. The items listed in this section include those requirements in Code, §42, Tex. Gov't Code, Chapter 2306, and other criteria considered important by the Department, and does not represent an exhaustive list of ineligibility criteria that may otherwise be identified in applicable rules, federal statutes or regulations, or a specific program NOFA. The Application may include, or Department staff may request, documentation or verification of compliance with any requirements related to the eligibility of an Applicant, Application, Development Site, or Development. One or more of the matters enumerated in paragraph (1) of this section may also serve as a basis for debarment, or the assessment of administrative penalties, and nothing herein shall limit the Department's ability to pursue any such matter. Failure to provide disclosure may be cause for termination.

(1) Applicants. An Applicant may be considered ineligible if any of the criteria in subparagraphs (A) - (N) of this paragraph apply to those identified on the organizational chart for the Applicant, Developer and Guarantor. An Applicant is ineligible if the Applicant, Developer, or Guarantor:

(A) Has been or is barred, suspended, or terminated from participation in a state or Federal program, including those listed in HUD's System for Award Management (SAM); (§2306.0504)

(B) Has been convicted of a state or federal felony crime involving fraud, bribery, theft, misrepresentation of material fact, misappropriation of funds, or other similar criminal offenses within 15 years preceding the received date of Application or Pre-Application submission (if applicable);

(C) Is, at the time of Application, subject to an order in connection with an enforcement or disciplinary action under state or federal securities law or by the NASD; subject to a federal tax lien (other than a contested lien for which provision has been made); or the subject of a proceeding in which a Governmental Entity has issued an order to impose penalties, suspend funding, or take adverse action based on an allegation of financial misconduct or uncured violation of material laws, rules, or other legal requirements governing activities considered relevant by the Governmental Entity;

(D) Has materially breached a contract with a public agency, and, if such breach is permitted to be cured under the contract, has been given notice of the breach and a reasonable opportunity to cure, and failed to cure that breach within the time specified in the notice of breach;

(E) Has misrepresented to a subcontractor the extent to which the Developer has benefited from contracts or financial assistance that has been awarded by a public agency, including the scope of the Developer's participation in contracts with the agency, and the amount of financial assistance awarded to the Developer by the agency;

(F) Has been found by the Board to be ineligible based on a previous participation review performed in accordance with Chapter 1 Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee);

(G) Is delinquent in any loan, fee, or escrow payments to the Department in accordance with the terms of the loan, as amended, or is otherwise in default with any provisions of such loans, and for which no repayment plan has been approved by the Department;

(H) Has failed to cure any past due fees owed to the Department within the time frame provided by notice from the Department and at least 10 days prior to the Board meeting at which the decision for an award is to be made;

(I) Would be prohibited by a state or federal revolving door or other standard of conduct or conflict of interest statute, including Tex. Gov't Code, §2306.6733, or a provision of Tex. Gov't Code, Chapter 572, from participating in the Application in the manner and capacity they are participating;

(J) Has, without prior approval from the Department, had previous Contracts or Commitments that have been partially or fully Deobligated during the 12 months prior to the submission of the Application, and through the date of final allocation due to a failure to meet contractual obligations, and the Person is on notice that such Deobligation results in ineligibility under this chapter;

(K) Has provided false or misleading documentation or made other intentional or negligent material misrepresentations or omissions in or in connection with an Application (and certifications contained therein), Commitment, or Determination Notice for a Development;

(L) Was the Owner or Affiliate of the Owner of a Department assisted rental Development for which the federal affordability requirements were prematurely terminated and the affordability requirements have not been re-affirmed or Department funds repaid;

(M) Fails to disclose, in the Application, any Principal or any entity or Person in the Development ownership structure who was or is involved as a Principal in any other affordable housing transaction, that has terminated voluntarily or involuntarily within the past 10 years, or plans to or is negotiating to terminate, their relationship with any other affordable housing development. The disclosure must identify the person or persons and development involved, the identity of each other development, and contact information for the other Principals of each such development, a narrative description of the facts and circumstances of the termination or proposed termination, and any appropriate supporting documents. An Application may be referred to the Board for a determination of a person's fitness to be involved as a Principal with respect to an Application, which may include a staff recommendation, using the factors described in clauses (i) - (v) of this subparagraph as considerations:

*(i)* the amount of resources in a Development and the amount of the benefit received from the Development;

*(ii)* the legal and practical ability to address issues that may have precipitated the termination or proposed termination of the relationship;

*(iii)* the role of the person in causing or materially contributing to any problems with the success of the development;

*(iv)* the person's compliance history, including compliance history on other developments; and

*(v)* any other facts or circumstances that have a material bearing on the question of the person's ability to be a compliant and effective participant in their proposed role as described in the Application; or

(N) Fails to disclose in the Application any voluntary compliance agreement or similar agreement with any governmental agency that is the result of negotiation regarding noncompliance of any affordable housing Development with any requirements. Any such

agreement impacting the proposed Development or any other affordable housing Development controlled by the Applicant must be disclosed.

(2) Applications. An Application shall be ineligible if any of the criteria in subparagraphs (A) - (C) of this paragraph apply to the Application:

(A) A violation of Tex. Gov't Code, §2306.1113, exists relating to Ex Parte Communication. An ex parte communication occurs when an Applicant or Person representing an Applicant initiates substantive contact (other than permitted social contact) with a board member, or vice versa, in a setting other than a duly posted and convened public meeting, in any manner not specifically permitted by Tex. Gov't Code, §2306.1113(b). Such action is prohibited. For Applicants seeking funding after initial awards have been made, such as waiting list Applicants, the ex parte communication prohibition remains in effect so long as the Application remains eligible for funding. The ex parte provision does not prohibit the Board from participating in social events at which a Person with whom communications are prohibited may, or will be present; provided that no matters related to any Application being considered by the Board may be discussed;

(B) The Application is submitted after the Application submission deadline (time or date); is missing multiple parts of the Application; or has a Material Deficiency; or

(C) For any Development utilizing Housing Tax Credits or Tax-Exempt Bonds:

*(i)* at the time of Application or at any time during the two-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments any time during the two-year period preceding the date the Application is submitted to the Department), the Applicant or a Related Party is or has been a person covered by Tex. Gov't Code, §2306.6703(a)(1);

*(ii)* if the Application is represented or communicated about by a Person that would prompt the violations covered by Tex. Gov't Code §2306.6733; or

*(iii)* the Applicant proposes to replace in less than 15 years any private activity bond financing of the Development described by the Application, unless the exceptions in Tex. Gov't Code §2306.6703(a)(2) are met.

*§11.203. Public Notifications (§2306.6705(9)).*

A certification, as provided in the Application, that the Applicant met the requirements and deadlines identified in paragraphs (1) - (3) of this section must be submitted with the Application. For Applications utilizing Competitive Housing Tax Credits, notifications must not be older than three months from the first day of the Application Acceptance Period. For Tax-Exempt Bond Developments and Direct Loan Applications, notifications must not be older than three months prior to the date the complete Application is submitted. If notifications were made in order to satisfy requirements of pre-application submission (if applicable to the program) for the same Application, then no additional notification is required at Application. However, re-notification is required by all Applicants who have submitted a change from pre-application to Application that reflects a total Unit increase of greater than 10% or a 5% increase in density (calculated as units per acre) as a result of a change in the size of the Development Site. In addition, should the person holding any position or role described in paragraph (2) of this section change between the submission of a pre-application and the submission of an Application, Applicants are required to notify the new person no later than the Full Application Delivery Date.

(1) Neighborhood Organization Notifications.

(A) The Applicant must identify and notify all Neighborhood Organizations on record with the county or the state as of 30 days prior to the beginning of the Application Acceptance Period and whose boundaries include the entire proposed Development Site. As used in this section, "on record with the state" means on record with the Secretary of State.

(B) The Applicant must list, in the certification form provided in the pre-application and Application, all Neighborhood Organizations on record with the county or state as of 30 days prior to the beginning of the Application Acceptance Period and whose boundaries include the proposed Development Site as of the submission of the Application, and the Applicant must certify that a reasonable search for applicable entities has been conducted.

(2) Notification Recipients. No later than the date the Application is submitted, notification must be sent to all of the persons or entities identified in subparagraphs (A) - (H) of this paragraph. Developments located in an Extra Territorial Jurisdiction (ETJ) of a city are required to notify both city and county officials. The notifications may be sent by e-mail, fax or mail with return receipt requested or similar tracking mechanism. A template for the notification is included in the Application Notification Template provided in the Application. Evidence of notification is required in the form of a certification provided in the Application. The Applicant is required to retain proof of delivery in the event it is requested by the Department. Evidence of proof of delivery is demonstrated by a signed receipt for mail or courier delivery and confirmation of receipt by recipient for fax and e-mail. Officials to be notified are those individuals in office at the time the Application is submitted. Note that between the time of pre-application (if made) and full Application, such individuals may change and the boundaries of their jurisdictions may change. Meetings and discussions do not constitute notification.

(A) Neighborhood Organizations on record with the state or county as of 30 days prior to the beginning of the Application Acceptance Period whose boundaries include the entire Development Site;

(B) Superintendent of the school district in which the Development Site is located;

(C) Presiding officer of the board of trustees of the school district in which the Development Site is located;

(D) Mayor of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

(E) All elected members of the Governing Body of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

(F) Presiding officer of the Governing Body of the county in which the Development Site is located;

(G) All elected members of the Governing Body of the county in which the Development Site is located; and

(H) State Senator and State Representative of the districts whose boundaries include the Development Site.

(3) Contents of Notification.

(A) The notification must include, at a minimum, all information described in clauses (i) - (viii) of this subparagraph.

*(i)* the Applicant's name, address, individual contact name, and phone number;

*(ii)* the Development name, address, city and county;

*(iii)* a statement indicating the program(s) to which the Applicant is applying with the Texas Department of Housing and Community Affairs;

*(iv)* whether the Development proposes New Construction, Reconstruction, Adaptive Reuse or Rehabilitation;

*(v)* the physical type of Development being proposed (e.g. single family homes, duplex, apartments, high-rise etc.);

*(vi)* the total number of Units proposed and total number of Low-Income Units proposed;

*(vii)* the residential density of the Development, i.e., the number of Units per acre; and

*(viii)* information on how and when an interested party or Neighborhood Organization can provide input to the Department.

(B) The notification may not contain any false or misleading statements. Without limiting the generality of the foregoing, the notification may not create the impression that the proposed Development will target, provide a preference, or serve a Target Population exclusively, unless such population limitation, targeting, or preference is documented in the Application, and is or will be in full compliance with all applicable state and federal laws, including state and federal fair housing laws; and

(C) Notifications or any other communications may not contain any statement that violates Department rules, statute, code, or federal requirements.

*§11.204. Required Documentation for Application Submission.*

The purpose of this section is to identify the threshold documentation that is required at the time of Application submission, unless specifically indicated or otherwise required by Department rule. Unless stated otherwise, all documentation identified in this section must not be dated more than six (6) months prior to the close of the Application Acceptance Period or the date of Application submission as applicable to the program.

(1) Certification, Acknowledgement and Consent of Development Owner. A certification of the information in this subchapter as well as Subchapter B of this chapter must be executed by the Development Owner and addresses the specific requirements associated with the Development. The Person executing the certification is responsible for ensuring all individuals referenced therein are in compliance with the certification and that they have given it with all required authority and with actual knowledge of the matters certified.

(A) The Development will adhere to the Texas Property Code relating to security devices and other applicable requirements for residential tenancies, and will adhere to local building codes or, if no local building codes are in place, then to the most recent version of the International Building Code.

(B) This Application and all materials submitted to the Department constitute records of the Department subject to Tex. Gov't Code, Chapter 552. Any person signing the Certification acknowledges that they have the authority to release all materials for publication on the Department's website, that the Department may publish them on the Department's website and release them in response to a request for public information, and make other use of the information as authorized by law.

(C) All representations, undertakings and commitments made by Applicant in the Application process expressly constitute conditions to any Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment for such Development which the Department may issue or award, and the violation of any such condition shall be sufficient cause for the cancellation and rescission of such Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment by the Department. If any such representations, undertakings and commitments concern or relate to the ongoing features or operation of the Development, they shall be enforceable even if not reflected in the Land Use Restriction Agreement. All such representations, undertakings and commitments are also enforceable by the Department and the residents of the Development, including enforcement by administrative penalties for failure to perform (consistent with Chapter 2, Subchapter C of this title (relating to Administrative Penalties), in accordance with the Land Use Restriction Agreement.

(D) The Development Owner has read and understands the Department's fair housing educational materials posted on the Department's website as of the beginning of the Application Acceptance Period.

(E) The Development Owner agrees to implement a plan to use Historically Underutilized Businesses (HUB) in the development process consistent with the Historically Underutilized Business Guidelines for contracting with the State of Texas. The Development Owner will be required to submit a report of the success of the plan as part of the cost certification documentation, in order to receive IRS Forms 8609 or, if the Development does not have Housing Tax Credits, release of retainage.

(F) The Applicant will attempt to ensure that at least 30% of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses as further described in Tex. Gov't Code, §2306.6734.

(G) The Development Owner will specifically market to veterans through direct marketing or contracts with veteran's organizations. The Development Owner will be required to identify how they will specifically market to veterans and report to the Department in the annual housing report on the results of the marketing efforts to veterans. Exceptions to this requirement must be approved by the Department.

(H) The Development Owner will comply with any and all notices required by the Department.

(I) If the Development has an existing LURA with the Department, the Development Owner will comply with the existing restrictions.

(2) Applicant Eligibility Certification. A certification of the information in this subchapter as well as Subchapter B of this chapter must be executed by any individuals required to be listed on the organizational chart and also meeting the definition of Control. The certification must identify the various criteria relating to eligibility requirements associated with multifamily funding from the Department, including but not limited to the criteria identified under §11.202 of this chapter (relating to Ineligible Applicants and Applications).

(3) Engineer/Architect Certification Form. The certification, addressing all of the accessibility requirements applicable to the Development Site, must be executed by the Development engineer or accredited architect after careful review of the Department's accessibility requirements, and including Tex. Gov't Code §2306.6722 and §2306.6730.

(4) Notice, Hearing, and Resolution for Tax-Exempt Bond Developments. In accordance with Tex. Gov't Code, §2306.67071, the following actions must take place with respect to the filing of an Application and any Department awards for a Tax-Exempt Bond Development.

(A) Prior to submission of an Application to the Department, an Applicant must provide notice of the intent to file the Application in accordance with §11.203 of this chapter (relating to Public Notifications (§2306.6705(9)).

(B) The Governing Body of a municipality must hold a hearing if the Development Site is located within a municipality or the extra territorial jurisdiction (ETJ) of a municipality. The Governing Body of a county must hold a hearing unless the Development Site is located within a municipality. For Development Sites located in an ETJ the county and municipality must hold hearings; however, the county and municipality may arrange for a joint hearing. The purpose of the hearing(s) must be to solicit public input concerning the Application or Development and the hearing(s) must provide the public with such an opportunity. The Applicant may be asked to substantively address the concerns of the public or local government officials.

(C) An Applicant must submit to the Department a resolution of no objection from the applicable Governing Body. Such resolution(s) must specifically identify the Development whether by legal description, address, Development name, Application number or other verifiable method. In providing a resolution, a municipality or county should consult its own staff and legal counsel as to whether such resolution will be consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any FHAST form on file, any current Analysis of Impediments to Fair Housing Choice, or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds such as HOME or CDBG funds. For an Application with a Development Site that is:

*(i)* within a municipality, the Applicant must submit a resolution from the Governing Body of that municipality;

*(ii)* within the ETJ of a municipality, the Applicant must submit both:

*(I)* A resolution from the Governing Body of that municipality; and

*(II)* A resolution from the Governing Body of the county; or

*(iii)* within a county and not within a municipality or the ETJ of a municipality, a resolution from the Governing Body of the county.

(D) For purposes of meeting the requirements of subparagraph (C) of this paragraph, the resolution(s) must be submitted no later than the Resolutions Delivery Date described in §11.2(b) of this chapter (relating to Tax-Exempt Bond and Direct Loan Development Dates and Deadlines). An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Applicants should ensure that the resolutions all have the appropriate references and certifications or the resolution may be determined by staff to be invalid. The resolution(s) must certify that:

*(i)* notice has been provided to the Governing Body in accordance with Tex. Gov't Code, §2306.67071(a);

*(ii)* the Governing Body has had sufficient opportunity to obtain a response from the Applicant regarding any questions or concerns about the proposed Development;

*(iii)* the Governing Body has held a hearing at which public comment may be made on the proposed Development in accordance with Tex. Gov't Code, §2306.67071(b); and

*(iv)* after due consideration of the information provided by the Applicant and public comment, the Governing Body does not object to the proposed Application.

(5) Designation as Rural or Urban.

(A) Each Application must identify whether the Development Site is located in an Urban Area or Rural Area of a Uniform State Service Region. The Department shall make available a list of Places meeting the requirements of Tex. Gov't Code, §2306.004(28-a)(A) and (B), for designation as a Rural Area and those that are an Urban Area in the Site Demographics Characteristics Report. Some Places are municipalities. For any Development Site located in the ETJ of a municipality and not in a Place, the Application shall have the Rural Area or Urban Area designation of the municipality whose ETJ within which the Development Site is located. For any Development Site not located within the boundaries of a Place or the ETJ of a municipality, the applicable designation is that of the closest Place.

(B) Certain areas located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area can request a Rural designation from the Department for purposes of receiving an allocation Housing Tax Credits (§2306.6740). In order to apply for such a designation, a letter must be submitted from a duly authorized official of the political subdivision or census designated place addressing the factors outlined in clauses (i) - (vi) of this subparagraph. Photographs and other supporting documentation are strongly encouraged. In order for the area to be designated Rural by the Department for the current Application Round, such requests must be made no later than December 15 of the previous year. If staff is able to confirm the findings outlined in the request, the Rural designation will be granted without further action and will remain in effect until such time that the population as described in clause (i) of this subparagraph exceeds 25,000. In the event that staff is unable to confirm the information contained in the request, the Applicant will be given an opportunity to supplement their case. If, after receiving any supplemental information, staff still cannot confirm the rural nature of the Application, a recommendation for denial will be presented to the Board.

*(i)* the population of the political subdivision or census designated place does not exceed 25,000;

*(ii)* the characteristics of the political subdivision or census designated place and how those differ from the characteristics of the area(s) with which it shares a contiguous boundary;

*(iii)* the percentage of the total border of the political subdivision or census designated place that is contiguous with other political subdivisions or census designated places designated as urban. For purposes of this assessment, less than 50% contiguity with urban designated places is presumptively rural in nature;

*(iv)* the political subdivision or census designated place contains a significant number of unimproved roads or relies on unimproved roads to connect it to other places;

*(v)* the political subdivision or census designated place lacks major amenities commonly associated with urban or suburban areas; and

*(vi)* the boundaries of the political subdivision or census designated place contain, or are surrounded by, significant areas of undeveloped or agricultural land. For purposes of this assessment, significant being more than one-third of the total surface area of political subdivision/census designated place, or a minimum of 1,000 acres immediately contiguous to the border.

(6) Experience Requirement. Evidence that meets the criteria as stated in subparagraph (A) of this paragraph must be provided in the Application, unless an experience certificate was issued by the Department in the years 2017 -2019, which may be submitted as acceptable evidence of this requirement. Experience of multiple parties may not be aggregated to meet this requirement.

(A) A natural Person, with control of the Development who intends and has the ability to remain in control through placement in service, who is also a Principal of the Developer, Development Owner, or General Partner must establish that they have experience that has included the development and placement in service of 150 units or more in the ten years preceding submission. Applicants requesting Multifamily Direct Loan funds only may meet the alternative requirement at §13.25(h)(1) of this title (relating to Experience). Acceptable documentation to meet this requirement shall include any of the items in clauses (i) - (ix) of this subparagraph:

*(i)* American Institute of Architects (AIA) Document (A102) or (A103) 2007 - Standard Form of Agreement between Owner and Contractor;

*(ii)* AIA Document G704--Certificate of Substantial Completion;

*(iii)* AIA Document G702--Application and Certificate for Payment;

*(iv)* Certificate of Occupancy;

*(v)* IRS Form 8609 (only one per development is required);

*(vi)* HUD Form 9822;

*(vii)* Development agreements;

*(viii)* partnership agreements; or

*(ix)* other documentation satisfactory to the Department verifying that a Principal of the Development Owner, General Partner, or Developer has the required experience.

(B) The names on the forms and agreements in subparagraph (A)(i) - (ix) of this paragraph must reflect that the individual seeking to provide experience is a Principal of the Development Owner, General Partner, or Developer as listed in the Application. For purposes of this requirement any individual attempting to use the experience of another individual or entity must demonstrate they had the authority to act on their behalf that substantiates the minimum 150 unit requirement.

(C) For competitive HTC Applications, if a Principal is determined by the Department to not have the required experience, a replacement Principal will not be allowed.

(D) Notwithstanding the foregoing, no person may be used to establish such required experience if that Person or an Affiliate of that Person would not be eligible to be an Applicant themselves.

(7) Financing Requirements.

(A) Non-Department Debt Financing. Interim and permanent financing sufficient to fund the proposed Total Housing Development Cost less any other funds requested from the Department must be included in the Application. For any Development that is a part of a larger development plan on the same site, the Department may request and evaluate information related to the other components of the development plan in instances in which the financial viability of the Development is in whole or in part dependent upon the other portions of the development plan. Any local, state or federal financing identified in this section which restricts household incomes at any level that is lower than restrictions required or elected in accordance with this Chapter or Chapter 13 of this title (relating to Multifamily Direct Loan Rule) must be identified in the rent schedule and the local, state or federal income restrictions must include corresponding rent levels in accordance with Code §42(g) if the Development will receive housing tax credits. The income and corresponding rent restrictions will be reflected in the LURA. Financing amounts must be consistent throughout the Application and acceptable documentation shall include those described in clauses (i) - (iv) of this subparagraph.

*(i)* financing is in place as evidenced by:

*(I)* A valid and binding loan agreement; and

*(II)* A valid recorded deed(s) of trust lien on the Development in the name of the Development Owner as grantor in favor of the party providing such financing; and

*(ii)* term sheets for interim and permanent loans issued by a lending institution or mortgage company must:

*(I)* Have been signed by the lender;

*(II)* Be addressed to the Development Owner or Affiliate;

*(III)* For a permanent loan, include a minimum loan term of 15 years with at least a 30 year amortization or for non-amortizing loan structures a term of not less than 30 years;

*(IV)* Include either a committed and locked interest rate, or the currently projected interest rate and the mechanism for determining the interest rate;

*(V)* Include all required Guarantors, if known;

*(VI)* Include the principal amount of the loan;

*(VII)* Include an acknowledgement of the amounts and terms of all other anticipated sources of funds and if the Application reflects an intent to elect income averaging there must be an acknowledgement to that effect in the term sheet; and

*(VIII)* Include and address any other material terms and conditions applicable to the financing. The term sheet may be conditional upon the completion of specified due diligence by the lender and upon the award of tax credits, if applicable.

*(iii)* for Developments proposing to refinance an existing USDA Section 514, 515, or 516 loan, a letter from the USDA confirming that it has been provided with the Preliminary Assessment Tool.

*(iv)* for Direct Loan Applications or Tax-Exempt Bond Development Applications utilizing FHA financing, the Application shall include the applicable pages from the HUD Application for Multifamily Housing Project. If the HUD Application has not been submitted at the time the Application is submitted then a statement to that effect should be included in the Application along with an estimated date for submission. Applicants should be aware that staff's underwriting of an Application will not be finalized and presented to the Board until staff has evaluated the HUD Application relative to the Application.

(B) Gap Financing. Any anticipated federal, state, local or private gap financing, whether soft or hard debt, must be identified and described in the Application. Applicants must provide evidence that an application for such gap financing has been made. Acceptable documentation may include a letter from the funding entity confirming receipt of an application or a term sheet from the lending agency which clearly describes the amount and terms of the financing. Other Department funding requested with Housing Tax Credit Applications must be on a concurrent funding period with the Housing Tax Credit Application, and no term sheet is required for such a request. A term loan request must comply with the applicable terms of the NOFA under which an Applicant is applying.

(C) Owner Contributions. If the Development will be financed in part with a capital contribution or debt by the General Partner, Managing General Partner, any other partner or investor that is not a partner providing the syndication equity, a Guarantor or a Principal in an amount that exceeds 5% of the Total Housing Development Cost, a letter from a Third Party CPA must be submitted that verifies the capacity of the contributor to provide the capital from funds that are not otherwise committed or pledged. Additionally, a letter from the contributor's bank(s) or depository(ies) must be submitted confirming sufficient funds are readily available to the contributor. The contributor must certify that the funds are and will remain readily available at Commitment and until the required investment is completed. Regardless of the amount, all capital contributions other than syndication equity will be deemed to be a part of, and therefore added to, the Deferred Developer Fee for feasibility purposes under §11.302(i)(2) of this chapter (relating to Underwriting Rules and Guidelines) or where scoring is concerned, unless the contribution is a seller note equal to or less than the acquisition price of the subject Development, the Development is a Supportive Housing Development, the Development is not supported with Housing Tax Credits, or the ownership structure includes a nonprofit organization with a documented history of fundraising sufficient to support the development of affordable housing.

(D) Equity Financing. (§2306.6705(2) and (3)) If applicable to the program, the Application must include a term sheet from a syndicator that, at a minimum, includes:

*(i)* an estimate of the amount of equity dollars expected to be raised for the Development;

*(ii)* the amount of Housing Tax Credits requested for allocation to the Development Owner;

*(iii)* pay-in schedules;

*(iv)* syndicator consulting fees and other syndication costs. No syndication costs should be included in the Eligible Basis; and

*(v)* include an acknowledgement of the amounts and terms of all other anticipated sources of funds and if the Application reflects an intent to elect income averaging there must be an acknowledgement to that effect in the term sheet.

(E) Financing Narrative. (§2306.6705(1)) A narrative must be submitted that describes all aspects of the financing plan for the Development, including as applicable the sources and uses of funds; construction, permanent and bridge loans, rents, operating subsidies, project-based assistance, and replacement reserves; and the status (dates and deadlines) for applications, approvals and closings, etc. associated with the term sheets for all funding sources. For Applicants requesting Direct Loan funds, Match, as applicable, must be documented with a letter from the anticipated provider of Match indicating the provider's willingness and ability to make a financial commitment should the Development receive an award of Direct Loan funds. The information provided must be consistent with all other documentation in the Application.

(8) Operating and Development Cost Documentation.

(A) Fifteen-year Pro forma. All Applications must include a 15-year pro forma estimate of operating expenses, in the form provided by the Department. Any "other" debt service included in the pro forma must include a description.

(B) Utility Allowances. This exhibit, as provided in the Application, must be submitted along with documentation from the source of the utility allowance estimate used in completing the Rent Schedule provided in the Application. This exhibit must clearly indicate which utility costs are included in the estimate and must comply with the requirements of §10.614 of this title (relating to Utility Allowances), including deadlines for submission. Where the Applicant uses any method that requires Department review, documentation indicating that the requested method has been granted by the Department must be included in the Application.

(C) Operating Expenses. This exhibit, as provided in the Application, must be submitted indicating the anticipated operating expenses associated with the Development. Any expenses noted as "other" in any of the categories must include a description. "Miscellaneous" or other nondescript designations are not acceptable.

(D) Rent Schedule. This exhibit, as provided in the Application, must indicate the type of Unit designation based on the Unit's rent and income restrictions. The rent and utility limits available at the time the Application is submitted should be used to complete this exhibit. Gross rents cannot exceed the maximum rent limits unless documentation of project-based rental assistance is provided and rents are consistent with such assistance and applicable legal requirements. The unit mix and net rentable square footages must be consistent with the site plan and architectural drawings. For Units restricted in connection with Direct Loans, the restricted Units will generally be designated "floating" unless specifically disallowed under the program specific rules. For Applications that propose utilizing Direct Loan funds, at least 90% of the Units restricted in connection with the Direct Loan program must be available to households or families whose incomes do not exceed 60% of the Area Median Income. For Applications that propose to elect income averaging, Units restricted by any fund source other than housing tax credits must be specifically identified, and all restricted Units, regardless of fund source, must be included in the average calculation.

(E) Development Costs. This exhibit, as provided in the Application, must include the contact information for the person providing the cost estimate and must meet the requirements of clauses (i) and (ii) of this subparagraph.

*(i)* Applicants must provide a detailed cost breakdown of projected Site Work costs (excluding site amenities), if any, prepared by a Third Party engineer or cost estimator. If Site Work costs (excluding site amenities) exceed $15,000 per Unit and are included in Eligible Basis, a letter must be provided from a certified public accountant allocating which portions of those site costs should be included in Eligible Basis.

*(ii)* if costs for Off-Site Construction are included in the budget as a line item, or embedded in the site acquisition contract, or referenced in the utility provider letters, then an Off-Site Cost Breakdown prepared by a Third Party engineer must be provided. The certification from a Third Party engineer must describe the necessity of the off-site improvements, including the relevant requirements of the local jurisdiction with authority over building codes. If any Off-Site Construction costs are included in Eligible Basis, a letter must be provided from a certified public accountant allocating which portions of those costs should be included in Eligible Basis. If off-site costs are included in Eligible Basis based on PLR 200916007, a statement of findings from a CPA must be provided which describes the facts relevant to the Development and affirmatively certifies that the fact pattern of the Development matches the fact pattern in PLR 200916007.

(F) Rental Assistance/Subsidy. (§2306.6705(4)) If rental assistance, an operating subsidy, an annuity, or an interest rate reduction payment is proposed to exist or continue for the Development, any related contract or other agreement securing those funds or proof of application for such funds must be provided. Such documentation shall, at a minimum, identify the source and annual

amount of the funds, the number of units receiving the funds, and the term and expiration date of the contract or other agreement.

(G) Occupied Developments. The items identified in clauses (i) - (vi) of this subparagraph must be submitted with any Application where any structure on the Development Site is occupied at any time after the Application Acceptance Period begins or if the Application proposes the demolition of any housing occupied at any time after the Application Acceptance Period begins. If the Application includes a request for Direct Loan funds, Applicants must follow the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) and other HUD requirements including Section 104(d) of the Housing and Community Development Act. HUD Handbook 1378 provides guidance and template documents. Failure to follow URA or 104(d) requirements will make the proposed Development ineligible for Direct Loan funds and may lead to penalty under §13.11(b) of this title (relating to Multifamily Direct Loan Rule). If one or more of the items described in clauses (i) - (vi) of this subparagraph is not applicable based upon the type of occupied structures on the Development Site, the Applicant must provide an explanation of such non-applicability. Applicant must submit:

*(i)* at least one of the items identified in subclauses (I) - (IV) of this clause:

*(I)* Historical monthly operating statements of the Existing Residential Development for 12 consecutive months ending not more than three months from the first day of the Application Acceptance Period;

*(II)* The two most recent consecutive annual operating statement summaries;

*(III)* The most recent consecutive six months of operating statements and the most recent available annual operating summary; or

*(IV)* All monthly or annual operating summaries available; and

*(ii)* a rent roll not more than six months old as of the first day the Application Acceptance Period that discloses the terms and rate of the lease, rental rates offered at the date of the rent roll, Unit mix, and any vacant units;

*(iii)* a written explanation of the process used to notify and consult with the tenants in preparing the Application; (§2306.6705(6))

*(iv)* a relocation plan outlining relocation requirements and a budget with an identified funding source; (§2306.6705(6))

*(v)* any documentation necessary for the Department to facilitate, or advise an Applicant with respect to or to ensure compliance with the Uniform Relocation Act and any other relocation laws or regulations as may be applicable; and

*(vi)* if applicable, evidence that the relocation plan has been submitted to all appropriate legal or governmental agencies or bodies. (§2306.6705(6))

(9) Architectural Drawings. All Applications must include the items identified in subparagraphs (A) - (D) of this paragraph, unless specifically stated otherwise, and must be consistent with all applicable exhibits throughout the Application. The drawings must have a legible scale and show the dimensions of each perimeter wall and floor heights.

(A) For all Developments a site plan must be submitted that includes the items identified in clauses (i) - (xii) of this subparagraph:

*(i)* states the size of the site on its face;

*(ii)* includes a Unit and building type table matrix that is consistent with the Rent Schedule and Building/Unit Configuration forms provided in the Application in labeling buildings and Units;

*(iii)* includes a table matrix specifying the square footage of Common Area space on a building by building basis;

*(iv)* identifies all residential and common buildings in place on the Development Site and labels them consistently with the Rent Schedule and Building/Unit Type Configuration forms provided in the Application;

*(v)* shows the locations (by Unit and floor) of mobility and hearing/visual accessible Units (unless included in residential building floor plans);

*(vi)* clearly delineates the flood plain boundary lines or states there is no floodplain;

*(vii)* indicates placement of detention/retention pond(s) or states there are no detention ponds;

*(viii)* describes, if applicable, how flood mitigation or other required mitigation will be accomplished;

*(ix)* indicates the location and number of parking spaces, garages, and carports;

*(x)* indicates the location and number of accessible parking spaces, garages, and carports, including van accessible spaces;

*(xi)* includes information regarding local parking requirements; and

*(xii)* indicates compliant accessible routes or if a route is not accessible a cite to the provision in the Fair Housing Design Manual providing for its exemption.

(B) Building floor plans must be submitted for each building type. Building floor plans must include the locations of the accessible Units and must also include square footage calculations for balconies, breezeways, corridors and any other areas not included in net rentable area;

(C) Unit floor plans for each type of Unit must be included in the Application and must include the square footage for each type of Unit. Unit floor plans must be submitted for the accessible Units. Applications for Adaptive Reuse are only required to include Unit floor plans for each distinct floor plan such as one-Bedroom, or two-Bedroom, and for all floor plans that vary in Net Rentable Area by 10% from the typical floor plan; and

(D) Elevations must be submitted for each side of each building type (or include a statement that all other sides are of similar composition as the front) and include a percentage estimate of the exterior composition and proposed roof pitch. Applications for Rehabilitation and Adaptive Reuse may submit photographs if the Unit configurations are not being altered and post-renovation drawings must be submitted if Unit configurations are proposed to be altered.

(10) Site Control.

(A) Evidence that the Development Owner has Site Control must be submitted. If the evidence is not in the name of the Development Owner, then an Affiliate of the Development Owner must have Site Control that allows for an ability to assign the Site Control to the Development Owner. All of the sellers of the proposed Property for the 36 month period prior to the first day of the Application Acceptance Period and their relationship, if any, to members of the Development Team must be identified at the time of Application. The

Department may request documentation at any time after submission of an Application of the Development Owner's ability to compel title of any Affiliated property acquisition(s) and the Development Owner must be able to promptly provide such documentation or the Application, award, or Commitment may be terminated. The Department acknowledges and understands that the Property may have one or more encumbrances at the time of Application submission and the Department will take into account whether any such encumbrance is reasonable within the legal and financial ability of the Development Owner to address without delaying development on the timeline contemplated in the Application. Tax-Exempt Bond Lottery Applications must have Site Control valid through December 1 of the prior program year with the option to extend through March 1 of the current program year.

(B) In order to establish Site Control, one of the items described in clauses (i) - (iii) of this subparagraph must be provided. In the case of land donations, Applicants must demonstrate that the entity donating the land has Site Control as evidenced through one of the items described in clauses (i) - (iii) of this subparagraph or other documentation acceptable to the Department.

*(i)* a recorded warranty deed vesting indefeasible title in the Development Owner or, if transferrable to the Development Owner, an Affiliate of the Owner, with corresponding executed settlement statement (or functional equivalent for an existing lease with at least 45 years remaining); or

*(ii)* a contract or option for lease with a minimum term of 45 years that includes a price; address and/or legal description; proof of consideration in the form specified in the contract; and expiration date; or

*(iii)* a contract for sale or an option to purchase that includes a price; address and/or legal description; proof of consideration in the form specified in the contract; and expiration date.

(C) If the acquisition can be characterized as an identity of interest transaction, as described in §11.302 of this chapter, regarding Underwriting Rules and Guidelines, then the documentation required as further described therein must be submitted in addition to that of subparagraph (B) of this paragraph.

(D) If ingress and egress to a public right of way are not part of the Property described in the site control documentation, the Applicant must provide evidence of an easement, leasehold, or similar documented access, along with evidence that the fee title owner of the property agrees that the LURA may extend to the access easement by the time of Commitment.

(E) If control of the entire proposed Development Site requires that a plat or right of way be vacated, evidence that the vacation/re-platting process has started must be included in the Application, and evidence of control of the entire Development Site must be provided by the time of Commitment.

(11) Zoning. (§2306.6705(5)) Acceptable evidence of zoning for all Developments must include one of subparagraphs (A) - (D) of this paragraph. In instances where annexation of a Development Site occurs while the Application is under review, the Applicant must submit evidence of appropriate zoning with the Commitment or Determination Notice.

(A) No Zoning Ordinance in Effect. The Application must include a letter from a local government official with appropriate jurisdiction stating that the Development is located within the boundaries of a political subdivision that has no zoning; or

(B) Zoning Ordinance in Effect. The Application must include a letter from a local government official with appropriate jurisdiction stating the Development is permitted under the provisions of the zoning ordinance that applies to the location of the Development; or

(C) Requesting a Zoning Change. The Application must include evidence in the form of a letter from a local government official with jurisdiction over zoning matters that the Applicant or Affiliate has made formal application for a required zoning change and that the jurisdiction has received a release whereby the Applicant has agreed to hold the political subdivision and all other parties harmless in the event the appropriate zoning is not granted. Documentation of final approval of appropriate zoning must be submitted to the Department with the Commitment or Determination Notice; or

(D) Zoning for Rehabilitation Developments. In an area with zoning, the Application must include documentation of current zoning. If the Property is currently conforming but with an overlay that would make it a non-conforming use as presently zoned, the Application must include a letter from a local government official with appropriate jurisdiction which addresses the items in clauses (i) - (v) of this subparagraph:

*(i)* a detailed narrative of the nature of non-conformance;

*(ii)* the applicable destruction threshold;

*(iii)* that it will allow the non-conformance;

*(iv)* Owner's rights to reconstruct in the event of damage; and

*(v)* penalties for noncompliance.

(12) Title Commitment/Policy. A title commitment or title policy must be submitted that includes a legal description that is consistent with the Site Control. If the title commitment or policy is dated more than six months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications, then a letter from the title company indicating that nothing further has transpired during the six-month period on the commitment or policy must be submitted.

(A) The title commitment must list the name of the Development Owner as the proposed insured and list the seller or lessor as the current owner of the Development Site.

(B) The title policy must show that the ownership (or leasehold) of the Development Site is vested in the name of the Development Owner.

(13) Ownership Structure and Previous Participation.

(A) The Department assumes that the Applicant will be able to form any one or more business entities, such as a limited partnership, that are to be engaged in the ownership of a Development as represented in the Application, and that all necessary rights, powers, and privileges including, but not limited to, Site Control will be transferable to that entity. The formation of the ownership entity, qualification to do business (if needed), and transfer of any such rights, powers, and privileges must be accomplished as required in this chapter and 10 TAC Chapters 12 and 13, as applicable.

(B) Organizational Charts. A chart must be submitted that clearly illustrates the organizational structure of the proposed Development Owner and of any Developer and Guarantor, identifying all Principals thereof and providing the names and ownership percentages of all Persons having an ownership interest in the Development Owner, Developer and Guarantor, as applicable, whether directly or

through one or more subsidiaries, whether or not they have Control. Persons having Control should be specifically identified on the Chart. Individual board members and executive directors of nonprofit entities, governmental bodies, and corporations, as applicable, must be included in this exhibit and trusts must list all beneficiaries that have the legal ability to control or direct activities of the trust and are not just financial beneficiaries. The List of Organizations form, as provided in the Application, must include all Persons identified on the organizational charts, and further identify which of those Persons listed exercise Control of the Development.

(C) Previous Participation. Evidence must be submitted that each individual and entity shown on the organizational charts described in subparagraph (A) of this paragraph has provided a copy of the completed previous participation information to the Department. Individual Principals of such entities identified on the organizational chart and on the List of Organizations form, must provide the previous participation information, unless excluded from such requirement pursuant to Chapter 1 Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee). The information must include a list of all Developments that are, or were, previously under ownership or Control of the Applicant and/or each Principal, including any Person providing the required experience. All participation in any Department funded or monitored activity, including non-housing activities, as well as Housing Tax Credit developments or other programs administered by other states using state or federal programs must be disclosed. The individuals providing previous participation information must authorize the parties overseeing such assistance to release compliance histories to the Department.

(D) Direct Loan. In addition to the information required in (B) and (C) of this subparagraph, if the Applicant is applying for Direct Loan funds then the Applicant must also include the definitions of Person, Affiliate, Principal, and Control found in 2 CFR Part 180, when completing the organizational chart and the Previous Participation information.

(14) Nonprofit Ownership. Applications that involve a §501(c)(3) or (4) nonprofit, housing finance corporation or public facility corporation as the General Partner or Owner shall submit the documentation identified in subparagraph (A) or (B) of this paragraph, as applicable. Additionally, a resolution approved at a regular meeting of the majority of the board of directors of the nonprofit, indicating their awareness of the organization's participation in each specific Application, and naming all members of the board and employees who may act on its behalf, must be provided.

(A) Competitive HTC Applications for the Nonprofit Set-Aside. Applications for Competitive Housing Tax Credits involving a §501(c)(3) or (4) nonprofit General Partner and which meet the Nonprofit Set-Aside requirements, must submit all of the documents described in clauses (i) to (v) of this subparagraph and indicate the nonprofit status on the carryover documentation and IRS Forms 8609. (§2306.6706) Applications that include an affirmative election to not be treated under the Nonprofit Set-Aside and a certification that they do not expect to receive a benefit in the allocation of tax credits as a result of being Affiliated with a nonprofit, only need to submit the documentation in subparagraph (B) of this paragraph.

*(i)* an IRS determination letter which states that the nonprofit organization has been determined by the Internal Revenue Service to be tax-exempt under §501(c)(3) or (4) of the Code;

*(ii)* the Nonprofit Participation exhibit as provided in the Application, including a list of the names and contact information for all board members, directors, and officers;

*(iii)* a Third Party legal opinion stating:

*(I)* That the nonprofit organization is not Affiliated with or Controlled by a for-profit organization and the basis for that opinion;

*(II)* That the nonprofit organization is eligible, as further described, for a Housing Credit Allocation from the Nonprofit Set-Aside pursuant to Code, §42(h)(5) and the basis for that opinion;

*(III)* That one of the exempt purposes of the nonprofit organization is to provide low-income housing;

*(IV)* That the nonprofit organization prohibits a member of its board of directors, other than a chief staff member serving concurrently as a member of the board, from receiving material compensation for service on the board. If the Application includes a request for Community Housing Development Corporation (CHDO) funds, no member of the board may receive compensation, including the chief staff member;

*(V)* That the Qualified Nonprofit Development will have the nonprofit entity or its nonprofit Affiliate or subsidiary be the Developer or co-Developer as evidenced in the development agreement; and

*(VI)* That the nonprofit organization has the ability to do business as a nonprofit in Texas;

*(iv)* a copy of the nonprofit organization's most recent financial statement as prepared by a Certified Public Accountant; and

*(v)* evidence in the form of a certification that a majority of the members of the nonprofit organization's board of directors principally reside:

*(I)* in this state, if the Development is located in a Rural Area; or

*(II)* not more than 90 miles from the Development, if the Development is not located in a Rural Area.

(B) All Other Applications. Applications that involve a §501(c)(3) or (4) nonprofit, housing finance corporation or public facility corporation as the General Partner or Owner must submit an IRS determination letter which states that the nonprofit organization has been determined by the Internal Revenue Service to be tax-exempt under §501(c)(3) or (4) of the Code; and the Nonprofit Participation exhibit as provided in the Application. If the Application involves a nonprofit that is not exempt from taxation under §501(c)(3) or (4) of the Code, then they must disclose in the Application the basis of their nonprofit status. Housing finance corporations or public facility corporations that do not have such IRS determination letter shall submit documentation evidencing creation under Chapter 394 of the Texas Local Government Code and corresponding citation for an exemption from taxation.

(15) Feasibility Report. This report, compiled by the Applicant or Third Party Consultant, and prepared in accordance with this paragraph, which reviews site conditions and development requirements of the Development and Development Site, is required and must meet all of the criteria provided in subparagraphs (A) to (F) of this paragraph.

(A) For all Applications, careful focus and attention should be made regarding any atypical items materially impacting costs or the successful and timely execution of the Development plan. The report must also include the following statement, "any person signing this Report acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law."

(B) An Executive Summary must provide a narrative overview of the Development in sufficient detail that would help a reviewer of the Application better understand the site, the site plan, off site requirements (including discussion of any seller contributions or reimbursements), any other unique development requirements, and their impact on Site Work and Off- Site Construction costs. It should specifically describe any atypical or unusual factors that will impact site design or costs.

(C) The Report should contain a general statement regarding the level of due diligence that has been done relating to site development (including discussions with local government development offices). Where ordinances or similar information is required, provide website links rather than copies of the ordinance. Additionally, it should contain:

*(i)* a summary of zoning requirements,

*(ii)* subdivision requirements,

*(iii)* property identification number(s) and millage rates for all taxing jurisdictions,

*(iv)* development ordinances,

*(v)* fire department requirements,

*(vi)* site ingress and egress requirements, and

*(vii)* building codes, and local design requirements impacting the Development.

(D) Survey as defined by the Texas Society of Professional Surveyors in their Manual of Practice for Land Surveying in Texas (Category 1A - Land Title Survey or Category 1B - Standard Land Boundary Survey). Surveys may not be older than 24 months from the beginning of the Application Acceptance Period.

(E) Preliminary site plan prepared by the civil engineer with a statement that the plan materially adheres to all applicable zoning, site development, and building code ordinances. The site plan must identify all structures, site amenities, parking spaces and driveways, topography (using either existing seller topographic survey or U.S. Geological Survey (USGS)/other database topography), site drainage and detention, water and waste water utility tie-ins, general placement of retaining walls, set-back requirements, and any other typical or locally required items. Off-site improvements required for utilities, detention, access or other requirement must be shown on the site plan or ancillary drawings.

(F) Architect or civil engineer prepared statement describing the entitlement, site development permitting process and timing, building permitting process and timing, and an itemization specific to the Development of total anticipated impact, site development permit, building permit, and other required fees.

*§11.205. Required Third Party Reports.*

The Environmental Site Assessment, Scope and Cost Review, Appraisal (if applicable), and the Market Analysis must be submitted no later than the Third Party Report Delivery Date as identified in §11.2(b) of this chapter (relating to Tax-Exempt Bond and Direct Loan Development Dates and Deadlines). For Competitive HTC Applications, the Environmental Site Assessment, Scope and Cost Review, Appraisal (if applicable), and the Primary Market Area map (with definition based on census tracts, and site coordinates in decimal degrees, area of PMA in square miles, and list of census tracts included) must be submitted no later than the Full Application Delivery Date as identified in §11.2(a) of this title (relating to Competitive HTC Deadlines) and the Market Analysis must be submitted no later than the Market Analysis Delivery Date as identified in §11.2(a) of this chapter. For Competitive HTC Applications, if the reports, in their entirety, are not received by the deadline, the Application will be terminated. An electronic copy of the report in the format of a single file containing all information and exhibits clearly labeled with the report type, Development name and Development location are required. All Third Party reports must be prepared in accordance with Subchapter D of this chapter (relating to Underwriting and Loan Policy). The Department may request additional information from the report provider or revisions to the report as needed. In instances of non-response by the report provider, the Department may substitute in-house analysis. The Department is not bound by any opinions expressed in the report.

(1) Environmental Site Assessment. This report, required for all Developments and prepared in accordance with the requirements of §11.305 of this chapter (relating to Environmental Site Assessment Rules and Guidelines), must not be dated more than 12 months prior to the date of Application submission for non-Competitive Applications, or the first day of the Application Acceptance Period for Competitive HTC Applications. If this timeframe is exceeded, then a letter or updated report must be submitted, dated not more than six months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications from the Person or organization which prepared the initial assessment confirming that the site has been re-inspected and reaffirming the conclusions of the initial report or identifying the changes since the initial report.

(A) Existing Developments funded by USDA will not be required to supply this information; however, it is the Applicant's responsibility to ensure that the Development is maintained in compliance with all state and federal environmental hazard requirements.

(B) If the report includes a recommendation that an additional assessment be performed, then a statement from the Applicant must be submitted with the Application indicating that those additional assessments and recommendations will be performed prior to closing. If the assessments require further mitigating recommendations, then evidence indicating that the mitigating recommendations have been carried out must be submitted at cost certification.

(2) Market Analysis. The Market Analysis, required for all Developments and prepared in accordance with the requirements of §11.303 of this chapter (relating to Market Analysis Rules and Guidelines), must not be dated more than six months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications. If the report is older than six months, but not more than 12 months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications, the Qualified Market Analyst that prepared the report may provide a statement that reaffirms the findings of the original Market Analysis. The statement may not be dated more than six months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications and must be accompanied by the original Market Analysis.

(A) The report must be prepared by a disinterested Qualified Market Analyst approved by the Department in accordance with the approval process outlined in §11.303 of this chapter.

(B) Applications in the USDA Set-Aside proposing Rehabilitation with residential structures at or above 80% occupancy at the time of Application submission, the appraisal, required for Rehabilitation Developments and Identity of Interest transactions prepared in accordance with §11.304 of this chapter (relating to Appraisal Rules and Guidelines), will satisfy the requirement for a Market Analysis; however, the Department may request additional information as needed. (§2306.67055; §42(m)(1)(A)(iii))

(C) It is the responsibility of the Applicant to ensure that this analysis forms a sufficient basis for the Applicant to be able to use the information obtained to ensure that the Development will comply with fair housing laws.

(3) Scope and Cost Review (SCR). This report, required for Rehabilitation (excluding Reconstruction) and Adaptive Reuse Developments and prepared in accordance with the requirements of §11.306 of this chapter (relating to Scope and Cost Review Guidelines), must not be dated more than six months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications. If the report is older than six months, but not more than 12 months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications, the report provider may provide a statement that reaffirms the findings of the original SCR. The statement may not be dated more than six months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications and must be accompanied by the original SCR. For Developments which require a capital needs assessment from USDA the capital needs assessment may be substituted for the SCR and may be more than six months old, as long as USDA has confirmed in writing that the existing capital needs assessment is still acceptable and it meets the requirements of §11.306 of this chapter. All Rehabilitation Developments financed with Direct Loans must also submit a capital needs assessment estimating the useful life of each major system. This assessment must include a comparison between the local building code and the International Existing Building Code of the International Code Council. The report must be accompanied by the Department's SCR Supplement in the form of an excel workbook as published on the Department's website.

(4) Appraisal. This report, required for all Rehabilitation and Adaptive Reuse Developments and prepared in accordance with the requirements of §11.304 of this chapter (relating to Appraisal Rules and Guidelines), is required for any Application claiming any portion of the building acquisition in Eligible Basis, and Identity of Interest transactions pursuant to Subchapter D of this chapter, must not be dated more than six months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications. For Developments that require an appraisal from USDA, the appraisal may be more than six months old, as long as USDA has confirmed in writing that the existing appraisal is still acceptable.

*§11.206. Board Decisions (§§2306.6725(c);2306.6731; and 42(m)(1)(A)(iv)).*

The Board's decisions regarding awards shall be based upon the Department's staff and the Board's evaluation of the proposed Developments' consistency with, and fulfillment of, the criteria and requirements set forth in this chapter, Chapter 13 of this title (relating to the Multifamily Direct Loan Rule) and other applicable Department rules and other applicable state, federal and local legal requirements, whether established in statute, rule, ordinance, NOFA, official finding, or court order. The Board shall document the reasons for each Application's selection, including any discretionary factors used in making its determination, including good cause, and the reasons for any decision that conflicts with the recommendations made by Department staff. Good cause includes the Board's decision to apply discretionary factors where authorized. The Department reserves the right to reduce the amount of funds requested in an Application, condition the award recommendation or terminate the Application based on the Applicant's inability to demonstrate compliance with program requirements.

*§11.207. Waiver of Rules.*

An Applicant may request a waiver in writing at or prior to the submission of the pre-application (if applicable) or the Application or subsequent to an award. Waiver requests on Competitive HTC Applications will not be accepted between submission of the Application and any award for the Application. Staff may identify and initiate a waiver request as part of another Board action request. Where appropriate, the Applicant must submit with the requested waiver any plans for mitigation or alternative solutions. Any such request for waiver must be specific to the unique facts and circumstances of an actual proposed Development and must be submitted to the Department in the format required in the Multifamily Programs Procedures Manual. Any waiver, if granted, shall apply solely to the Application and shall not constitute a general modification or waiver of the rule involved. All waiver requests must meet the requirements of paragraphs (1) and (2) of this subsection.

(1) A waiver request made at or prior to pre-application or Application must establish that the need for the waiver is not within the control of the Applicant. In applicable circumstances, this may include limitations of local building or zoning codes, limitations of existing building structural elements for Adaptive Reuse or Rehabilitation (excluding Reconstruction) Developments, required amenities or design elements in buildings designated as historic structures that would conflict with retaining the historic nature of the building(s), or provisions of the design element or amenity that would not benefit the tenants due to limitations of the existing layout or design of the units for Adaptive Reuse or Rehabilitation (excluding Reconstruction) Developments. A recommendation for a waiver may be subject to the Applicant's provision of alternative design elements or amenities of a similar nature or that serve a similar purpose. Waiver requests for items that were elected to meet scoring criteria or where the Applicant was provided a menu of options to meet the requirement will not be considered to satisfy this paragraph as such waiver request would be within the Applicant's control.

(2) The waiver request must establish how, by granting the waiver, it better serves the policies and purposes articulated in Tex. Gov't Code, §§2306.001, 2306.002, 2306.359, and 2306.6701, (which are general in nature and apply to the role of the Department and its programs, including the Housing Tax Credit program) than not granting the waiver.

(3) The Board may not grant a waiver to provide directly or implicitly any forward commitments or to waive any requirement contained in statute. The Board may grant a waiver that is in response to a natural, federally declared disaster that occurs after the adoption of the Qualified Allocation Plan to the extent authorized by a governor declared disaster proclamation suspending regulatory requirements.

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

Filed with the Office of the Secretary of State on September 9, 2019.

TRD-201903183
Robert Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 20, 2019
For further information, please call: (512) 475-3929

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## SUBCHAPTER D. UNDERWRITING AND LOAN POLICY

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

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

*§11.301. General Provisions.*

This subchapter applies to the underwriting, Market Analysis, appraisal, Environmental Site Assessment, Direct Loan, and Scope and Cost Review standards employed by the Department. This subchapter provides rules for the underwriting review of an affordable housing Development's financial feasibility and economic viability that ensures the most efficient allocation of resources while promoting and preserving the public interest in ensuring the long-term health of an awarded Application and the Department's portfolio. In addition, this subchapter guides staff in making recommendations to the Executive Award and Review Advisory Committee (EARAC or the Committee), Executive Director, and the Board to help ensure procedural consistency in the determination of Development feasibility (Texas Government Code, §§2306.081(c), 2306.185, and 2306.6710(d)). Due to the unique characteristics of each Development, the interpretation of the rules and guidelines described in this subchapter is subject to the discretion of the Department and final determination by the Board.

*§11.302. Underwriting Rules and Guidelines.*

(a) General Provisions. Pursuant to Tex. Gov't Code, §2306.148 and §2306.185(b), the Board is authorized to adopt underwriting standards as set forth in this section. Furthermore, for Housing Credit Allocation, Code §42(m)(2), requires the tax credits allocated to a Development not to exceed the amount necessary to assure feasibility. Additionally, 24 CFR Parts 92 and 93, as further described in CPD Notice 15-11 require the Department to adopt rules and standards to determine the appropriate Multifamily Direct Loan feasibility. The rules adopted pursuant to the Tex. Gov't Code and the Code are developed to result in an Underwriting Report (Report) used by the Board in decision making with the goal of assisting as many Texans as possible by providing no more financing than necessary based on an independent analysis of Development feasibility. The Report generated in no way guarantees or purports to warrant the actual performance, feasibility, or viability of the Development.

(b) Report Contents. The Report provides a synopsis and reconciliation of the Application information submitted by the Applicant. For the purpose of this subchapter the term Application includes additional documentation submitted after the initial award of funds that is relevant to any subsequent reevaluation. The Report contents will be based upon information that is provided in accordance with and within the timeframes set forth in this chapter, 10 TAC Chapters 11, 12, or 13, or in a Notice of Funds Availability (NOFA), as applicable.

(c) Recommendations in the Report. The conclusion of the Report, if being recommended, includes a recommended award of funds or Housing Credit Allocation Amount and states any feasibility or other conditions to be placed on the award. The award amount is based on the lesser of the amounts determined using the methods in paragraphs (1) to (3) of this subsection:

(1) Program Limit Method. For Housing Credit Allocations, this method is based upon calculation of Eligible Basis after applying all cost verification measures and program limits as described in this section. The Applicable Percentage used is defined in §11.1(d) of this chapter (relating to Definitions). For Department programs other than Housing Tax Credits, this method is based upon calculation of the funding limit in current program rules or NOFA at the time of underwriting.

(2) Gap Method. This method evaluates the amount of funds needed to fill the gap created by Total Housing Development Cost less total non-Department-sourced funds or Housing Tax Credits. In making this determination, the Underwriter resizes any anticipated Deferred Developer Fee downward (but not less than zero) before reducing the amount of Department funds or Housing Tax Credits. In the case of Housing Tax Credits, the syndication proceeds needed to fill the gap in permanent funds are divided by the syndication rate to determine the amount of Housing Tax Credits. In making this determination and based upon specific conditions set forth in the Report, the Underwriter may assume adjustments to the financing structure (including treatment of a Cash Flow loan as if fully amortizing over its term) or make adjustments to any Department financing, such that the cumulative Debt Coverage Ratio (DCR) conforms to the standards described in this section. For Housing Tax Credit Developments at cost certification, timing adjusters may be considered as a reduction to equity proceeds for this purpose. Timing adjusters must be consistent with and documented in the original partnership agreement (at admission of the equity partner) but relating to causes outside of the Developer's or Owner's control. The equity partner must provide a calculation of the amount of the adjuster to be used by the Underwriter.

(3) The Amount Requested. The amount of funds that is requested by the Applicant. For Housing Tax Credit Developments (exclusive of Tax-Exempt Bond Developments) this amount is limited to the amount requested in the original Application documentation.

(d) Operating Feasibility. The operating feasibility of a Development funded by the Department is tested by analyzing its Net Operating Income (NOI) to determine the Development's ability to pay debt service and meet other financial obligations throughout the Affordability Period. NOI is determined by subtracting operating expenses, including replacement reserves and taxes, from rental and other income sources.

(1) Income. In determining the first year stabilized pro forma, the Underwriter evaluates the reasonableness of the Applicant's income pro forma by determining the appropriate rental rate per unit based on subsidy contracts, program limitations including but not limited to Utility Allowances, actual rents supported by rent rolls and Market Rents and other market conditions. Miscellaneous income, vacancy and collection loss limits as set forth in subparagraphs (B) and (C) of this paragraph, respectively, are used unless well-documented support is provided and independently verified by the Underwriter.

(A) Rental Income. The Underwriter will review the Applicant's proposed rent schedule and determine if it is consistent with the representations made throughout the Application. The Underwriter will independently calculate a Pro Forma Rent for comparison to the Applicant's estimate in the Application.

*(i)* Market Rents. The Underwriter will use the Market Analyst's conclusion of Market Rent if reasonably justified and supported by the attribute adjustment matrix of Comparable Units as described in §11.303 of this chapter (relating to Market Analysis Rules and Guidelines). Independently determined Market Rents by the Underwriter may be used based on rent information gained from direct contact with comparable properties, whether or not used by the Market Analyst and other market data sources. For a Development that contains less than 15% unrestricted units, the Underwriter will limit the Pro Forma Rents to the lesser of Market Rent or the Gross Program Rent at 60% AMI, or 80% if the Applicant will make the Income Average election. As an alternative, if the Applicant submits Market Rents that are up to 30% higher than the Gross Program Rent at 60% AMGI gross rent, or Gross Program Rent at 80% AMGI gross rent and the Applicant will make the Income Average election, and the Applicant submits an investor commissioned market study with the application, the Un-

derwriter has the discretion to use the market rents supported by the investor commissioned market study in consideration of the independently determined rents. The Applicant must also provide a statement by the investor indicating that they have reviewed the market study and agree with its conclusions.

*(ii)* Gross Program Rent. The Underwriter will use the Gross Program Rents for the year that is most current at the time the underwriting begins. When underwriting for a simultaneously funded competitive round, all Applications are underwritten with the Gross Program Rents for the same year. If Gross Program Rents are adjusted by the Department after the close of the Application Acceptance Period, but prior to publication of the Report, the Underwriter may adjust the Effective Gross Income (EGI) to account for any increase or decrease in Gross Program Rents for the purposes of determining the reasonableness of the Applicant's EGI.

*(iii)* Contract Rents. The Underwriter will review rental assistance contracts to determine the Contract Rents currently applicable to the Development. Documentation supporting the likelihood of continued rental assistance is also reviewed. The Underwriter will take into consideration the Applicant's intent to request a Contract Rent increase. At the discretion of the Underwriter, the Applicant's proposed rents may be used as the Pro Forma Rent, with the recommendations of the Report conditioned upon receipt of final approval of such an increase.

*(iv)* Utility Allowances. The Utility Allowances used in underwriting must be in compliance with all applicable federal guidance, and §10.614 of this title (relating to Utility Allowances). Utility Allowances must be calculated for individually metered tenant paid utilities.

*(v)* Net Program Rents. Gross Program Rent less Utility Allowance.

*(vi)* Actual Rents for existing Developments will be reviewed as supported by a current rent roll. For Unstabilized Developments, actual rents will be based on the most recent units leased with occupancy and leasing velocity considered. Actual rents may be adjusted by the Underwriter to reflect lease-up concessions and other market considerations.

*(vii)* Collected Rent. Represents the monthly rent amount collected for each Unit Type. For rent-assisted units, the Contract Rent is used. In absence of a Contract Rent, the lesser of the Net Program Rent, Market Rent or actual rent is used.

(B) Miscellaneous Income. All ancillary fees and miscellaneous secondary income, including but not limited to, late fees, storage fees, laundry income, interest on deposits, carport and garage rent, washer and dryer rent, telecommunications fees, and other miscellaneous income, are anticipated to be included in a $5 to $20 per Unit per month range. Exceptions may be made at the discretion of the Underwriter and must be supported by either the normalized operating history of the Development or other existing comparable properties within the same market area.

*(i)* the Applicant must show that a tenant will not be required to pay the additional fee or charge as a condition of renting a Unit and must show that the tenant has a reasonable alternative.

*(ii)* the Applicant's operating expense schedule should reflect an itemized offsetting line-item associated with miscellaneous income derived from pass-through utility payments, pass-through water, sewer and trash payments, and cable fees.

*(iii)* collection rates of exceptional fee items will generally be heavily discounted.

*(iv)* if an additional fee is charged for the optional use of an amenity, any cost associated with the construction, acquisition, or development of the hard assets needed to produce the amenity must be excluded from Eligible Basis.

(C) Vacancy and Collection Loss. The Underwriter generally uses a normalized vacancy rate of 7.5% (5% vacancy plus 2.5% for collection loss). The Underwriter may use other assumptions based on conditions in the immediate market area. 100% project-based rental subsidy developments and other well documented cases may be underwritten at a combined 5% vacancy rate at the discretion of the Underwriter if the immediate market area's historical performance reflected in the Market Analysis is consistently higher than a 95% occupancy rate.

(D) Effective Gross Income (EGI). EGI is the total of Collected Rent for all Units plus Miscellaneous Income less Vacancy and Collection Loss. If the Applicant's pro forma EGI is within 5% of the EGI independently calculated by the Underwriter, the Applicant's EGI is characterized as reasonable in the Report; however, for purposes of calculating the underwritten DCR the Underwriter's pro forma will be used unless the Applicant's pro forma meets the requirements of paragraph (3) of this subsection.

(2) Expenses. In determining the first year stabilized operating expense pro forma, the Underwriter evaluates the reasonableness of the Applicant's expense estimate based upon the characteristics of each Development, including the location, utility structure, type, the size and number of Units, and the Applicant's management plan. Historical, stabilized and certified financial statements of an existing Development or Third Party quotes specific to a Development will reflect the strongest data points to predict future performance. The Underwriter may review actual operations on the Applicant's other properties monitored by the Department, if any, or review the proposed management company's comparable properties. The Department's database of properties located in the same market area or region as the proposed Development also provides data points; expense data from the Department's database is available on the Department's website. Data from the Institute of Real Estate Management's (IREM) most recent Conventional Apartments-Income/Expense Analysis book for the proposed Development's property type and specific location or region may be referenced. In some cases local or project-specific data such as PHA Utility Allowances and property tax rates are also given significant weight in determining the appropriate line item expense estimate. Estimates of utility savings from green building components, including on-site renewable energy, must be documented by an unrelated contractor or component vendor.

(A) General and Administrative Expense. (G&A)--Accounting fees, legal fees, advertising and marketing expenses, office operation, supplies, and equipment expenses. G&A does not include partnership related expenses such as asset management, accounting or audit fees. Costs of tenant services are not included in G&A.

(B) Management Fee. Fee paid to the property management company to oversee the operation of the Property and is most often based upon a percentage of EGI as documented in an existing property management agreement or proposal. Typically, 5% of EGI is used, though higher percentages for rural transactions may be used. Percentages as low as 3% may be used if well documented.

(C) Payroll Expense. Compensation, insurance benefits, and payroll taxes for on-site office, leasing and maintenance staff. Payroll does not include Third-Party security or tenant services contracts. Staffing specific to tenant services, security or other staffing not related to customary property operations should be itemized and included in other expenses or tenant services expense.

(D) Repairs and Maintenance Expense. Materials and supplies for the repairs and maintenance of the Development including Third-Party maintenance contracts. This line-item does not include costs that are customarily capitalized that would result from major replacements or renovations.

(E) Utilities Expense. Gas and electric energy expenses paid by the Development. Estimates of utility savings from green building components, including on-site renewable energy, must be documented by an unrelated contractor or component vendor.

(F) Water, Sewer, and Trash Expense (WST). Includes all water, sewer and trash expenses paid by the Development.

(G) Insurance Expense. Cost of Insurance coverage for the buildings, contents, and general liability, but not health or workman's compensation insurance.

(H) Property Tax. Includes real property and personal property taxes but not payroll taxes.

*(i)* an assessed value will be calculated based on the capitalization rate published by the county taxing authority. If the county taxing authority does not publish a capitalization rate, a capitalization rate of 10% or a comparable assessed value may be used.

*(ii)* other assessed values or property tax estimates may be used based on development specific factors as determined by the Underwriter.

*(iii)* if the Applicant proposes a property tax exemption or Payment in Lieu of Taxes (PILOT) agreement the Applicant must provide documentation in accordance with §10.402(d) of this title (relating to Documentation Submission Requirements at Commitment of Funds). At the underwriter's discretion, such documentation may be required prior to Commitment if deemed necessary.

(I) Replacement Reserves. Periodic deposits to a reserve account to pay for the future replacement or major repair of building systems and components (generally items considered capitalized costs). The Underwriter will use a minimum reserve of $250 per Unit for New Construction and Reconstruction Developments and $300 per Unit for all other Developments. The Underwriter may require an amount above $300 for the Development based on information provided in the Scope and Cost Review (SCR) or, for existing USDA developments, an amount approved by USDA. The Applicant's assumption for reserves may be adjusted by the Underwriter if the amount provided by the Applicant is insufficient to fund capital needs as documented by the SCR during the first 15 years of the long term pro forma. Higher reserves may be used if documented by a primary lender or syndicator.

(J) Other Operating Expenses. The Underwriter will include other reasonable, customary and documented property-level operating expenses such as audit fees, security expense, telecommunication expenses (tenant reimbursements must be reflected in EGI) and TDHCA's compliance fees. For Developments financed by USDA, a Return to Owner (RTO) may be included as an operating expense in an amount consistent with the maximum approved by USDA or an amount determined by the Underwriter. This category does not include depreciation, interest expense, lender or syndicator's asset management fees, or other ongoing partnership fees.

(K) Resident Services. Resident services are not included as an operating expense or included in the DCR calculation unless:

*(i)* there is a documented financial obligation on behalf of the Owner with a unit of state or local government to provide resident supportive services at a specified dollar amount. The financial obligation must be identified by the permanent lender in their term sheet and the dollar amount of the financial obligation must be included in the DCR calculation on the permanent lender's 15-year pro forma at Application. At cost certification and as a minimum, the estimated expenses underwritten at Application will be included in the DCR calculation regardless if actually incurred;or,

*(ii)* the Applicant demonstrates a history of providing comparable supportive services and expenses at existing affiliated properties within the local area. Except for Supportive Housing Developments, the estimated expense of supportive services must be identified by the permanent lender in their term sheet and included in the DCR calculation on the 15-year pro forma. At cost certification and as a minimum, the estimated expenses underwritten at Application will be included in the DCR calculation regardless if actually incurred;

*(iii)* on-site staffing or pro ration of staffing for coordination of services only, and not the provision of services, can be included as a supportive services expense without permanent lender documentation.

(L) Total Operating Expenses. The total of expense items described in 10 TAC 11.302(d)(2) subparagraphs (A) - (K) of this paragraph. If the Applicant's total expense estimate is within 5% of the final total expense figure calculated by the Underwriter, the Applicant's figure is characterized as reasonable in the Report; however, for purposes of calculating DCR, the Underwriter's independent calculation will be used unless the Applicant's first year stabilized pro forma meets the requirements of paragraph (3) of this subsection.

(3) Net Operating Income (NOI). The difference between the EGI and total operating expenses. If the Applicant's first year stabilized NOI figure is within 5% of the NOI calculated by the Underwriter, the Applicant's NOI is characterized as reasonable in the Report; however, for purposes of calculating the first year stabilized pro forma DCR, the Underwriter's calculation of NOI will be used unless the Applicant's first year stabilized EGI, total operating expenses, and NOI are each within 5% of the Underwriter's estimates. For Housing Tax Credit Developments at cost certification, actual NOI will be used as adjusted for stabilization of rents and extraordinary lease-up expenses. Permanent lender and equity partner stabilization requirements documented in the loan and partnership agreements will be considered in determining the appropriate adjustments and the NOI used by the Underwriter.

(4) Debt Coverage Ratio. DCR is calculated by dividing NOI by the sum of scheduled loan principal and interest payments for all permanent debt sources of funds. If executed loan documents do not exist, loan terms including principal and/or interest payments are calculated based on the terms indicated in the most current term sheet(s). Otherwise, actual terms indicated in the executed loan documents will be used. Term sheet(s) must indicate the DCR required by the lender for initial underwriting as well as for stabilization purposes. Unusual or non-traditional financing structures may also be considered.

(A) Interest Rate. The rate documented in the term sheet(s) or loan document(s) will be used for debt service calculations. Term sheets indicating a variable interest rate must provide a breakdown of the rate index and any component rates comprising an all-in interest rate. The term sheet(s) must state the lender's underwriting interest rate assumption, or the Applicant must submit a separate statement from the lender with an estimate of the interest rate as of the date of such statement. At initial underwriting, the Underwriter may adjust the underwritten interest rate assumption based on market data collected on similarly structured transactions or rate index history. Private Mortgage Insurance premiums and similar fees are not included

in the interest rate but calculated on outstanding principal balance and added to the total debt service payment.

(B) Amortization Period. For purposes of calculating DCR, the permanent lender's amortization period will be used if not less than 30 years and not more than 40 years. Up to 50 years may be used for federally sourced or insured loans. For permanent lender debt with amortization periods less than 30 years, 30 years will be used. For permanent lender debt with amortization periods greater than 40 years, 40 years will be used. For non-Housing Tax Credit transactions a lesser amortization period may be used if the Department's funds are fully amortized over the same period as the primary senior debt.

(C) Repayment Period. For purposes of projecting the DCR over a 30 year period for developments with permanent financing structures with balloon payments in less than 30 years, the Underwriter will carry forward debt service based on a full amortization at the interest rate stated in the term sheet(s).

(D) Acceptable Debt Coverage Ratio Range. Except as set forth in clauses (i) or (ii) of this subparagraph, the acceptable first year stabilized pro forma DCR for all priority or foreclosable lien financing plus the Department's proposed financing must be between a minimum of 1.15 and a maximum of 1.35 (maximum of 1.50 for Housing Tax Credit Developments at cost certification).

*(i)* if the DCR is less than the minimum, the recommendations of the Report may be based on a reduction to debt service and the Underwriter will make adjustments to the financing structure in the order presented in subclauses (I) - (III) of this clause subject to a Direct Loan NOFA and program rules:

*(I)* A reduction to the principal amount of a Direct Loan;

*(II)* In the case where the amount of the Direct Loan determined in subclause (I) of this clause is insufficient to balance the sources and uses;

(-a-) a reduction to the interest rate; and/or

(-b-) an increase in the amortization period;

*(III)* An assumed reduction in the permanent loan amount for non-Department funded loans based upon the rates and terms in the permanent loan term sheet(s) as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph.

*(ii)* except for Developments financed with a Direct Loan as the senior debt and the DCR is greater than the maximum, the recommendations of the Report may be based on an increase to debt service and the Underwriter will make adjustments to the assumed financing structure in the order presented in subclauses (I) - (III) of this clause subject to a Direct Loan NOFA and program rules:

*(I)* an increase to the interest rate up to the highest interest rate on any senior debt or if no senior debt a market rate determined by the Underwriter based on current market interest rates;

*(II)* or a decrease in the amortization period but not less than 30 years;

*(III)* an assumed increase in the permanent loan amount for non-Department funded loans based upon the rates and terms in the permanent loan term sheet as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph.

*(iii)* for Housing Tax Credit Developments, a reduction in the recommended Housing Credit Allocation Amount may be made based on the Gap Method described in subsection (c)(2) of this section as a result of an increased debt assumption, if any.

*(iv)* for Developments financed with a Direct Loan subordinate to FHA financing, DCR on the Direct Loan will be calculated using 75% of the Surplus Cash (as defined by the applicable FHA program).

*(v)* the Underwriter may limit total debt service that is senior to a Direct Loan to produce an acceptable DCR on the Direct Loan and may limit total debt service if the Direct Loan is the senior primary debt.

(5) Long Term Pro forma. The Underwriter will create a 30-year operating pro forma using the criteria provided in subparagraphs (A) to (C) of this paragraph:

(A) The Underwriter's or Applicant's first year stabilized pro forma as determined by paragraph (3) of this subsection.

(B) A 2% annual growth factor is utilized for income and a 3% annual growth factor is utilized for operating expenses except for management fees that are calculated based on a percentage of each year's EGI.

(C) Adjustments may be made to the long term pro forma if satisfactory support documentation is provided by the Applicant or as independently determined by the Underwriter.

(e) Total Housing Development Costs. The Department's estimate of the Total Housing Development Cost will be based on the Applicant's Development cost schedule to the extent that costs can be verified to a reasonable degree of certainty with documentation from the Applicant and tools available to the Underwriter. For New Construction Developments, the Underwriter's total cost estimate will be used unless the Applicant's Total Housing Development Cost is within 5% of the Underwriter's estimate. The Department's estimate of the Total Housing Development Cost for Rehabilitation Developments or Adaptive Reuse Developments will be based on the estimated cost provided in the SCR for the scope of work as defined by the Applicant and §11.306(a)(5) of this chapter (relating to SCR Guidelines); the Underwriter may make adjustments to the PCA estimated costs. If the Applicant's cost estimate is utilized and the Applicant's line item costs are inconsistent with documentation provided in the Application or program rules, the Underwriter may make adjustments to the Applicant's Total Housing Development Cost.

(1) Acquisition Costs. The underwritten acquisition cost is verified with Site Control document(s) for the Property. At Cost Certification, the acquisition cost used will be the amount verified by the settlement statement. For Identify of Interest acquisitions at cost certification, the cost will be limited to the underwritten acquisition cost at initial Underwriting, or for Developments financed by USDA, the transfer value approved by USDA.

(A) Excess Land Acquisition. In cases where more land is to be acquired (by the Applicant or a Related Party) than will be utilized as the Development Site and the remainder acreage is not accessible for use by tenants or dedicated as permanent and maintained green space, the value ascribed to the proposed Development Site will be prorated based on acreage from the total cost reflected in the Site Control document(s). An appraisal containing segregated values for the total acreage, the acreage for the Development Site and the remainder acreage, or tax assessment value may be used by the Underwriter in making a proration determination based on relative value; however, the Underwriter will not utilize a prorated value greater than the total amount in the Site Control document(s).

(B) Identity of Interest Acquisitions.

*(i)* an acquisition will be considered an identity of interest transaction when an Affiliate of the seller is an Affiliate of, a

Related Party to, any Owner at any level of the Development Team or a Related Party lender; and

*(I)* is the current owner in whole or in part of the Property; or

*(II)* has or had within the prior 36 months (60 months for Developments meeting the requirements of subclause (iii)(V) of this subparagraph), legal or beneficial ownership of the property or any portion thereof or interest therein prior to the first day of the Application Acceptance Period.

*(ii)* in all identity of interest transactions the Applicant is required to provide:

*(I)* the original acquisition cost in the most recent non-identity of interest transaction evidenced by an executed settlement statement or, if a settlement statement is not available, the original asset value listed in the most current financial statement for the identity of interest owner; and

*(II)* if the original acquisition cost evidenced by subclause (I) of this clause is less than the acquisition cost stated in the application:

(-a-) an appraisal that meets the requirements of §11.304 of this chapter (relating to Appraisal Rules and Guidelines); and

(-b-) any other verifiable costs of owning, holding, or improving the Property, excluding seller financing, that when added to the value from subclause (I) of this clause justifies the Applicant's proposed acquisition amount.

(-1-) For land-only transactions, documentation of owning, holding or improving costs since the original acquisition date may include property taxes, interest expense to unrelated Third Party lender(s), capitalized costs of any physical improvements, the cost of zoning, platting, and any off-site costs to provide utilities or improve access to the Property. All allowable holding and improvement costs must directly benefit the proposed Development by a reduction to hard or soft costs. Additionally, an annual return of 10% may be applied to the original capital investment and documented holding and improvement costs; this return will be applied from the date the applicable cost is incurred until the date of the Department's Board meeting at which the Grant, Direct Loan and/or Housing Credit Allocation will be considered.

(-2-) For transactions which include existing residential or non-residential buildings that will be rehabilitated or otherwise retained as part of the Development, documentation of owning, holding, or improving costs since the original acquisition date may include capitalized costs of improvements to the Property, and in the case of USDA financed Developments the cost of exit taxes not to exceed an amount necessary to allow the sellers to be made whole in the original and subsequent investment in the Property and avoid foreclosure. Additionally, an annual return of 10% may be applied to the original capital investment and documented holding and improvement costs; this return will be applied from the date the applicable cost was incurred until the date of the Department's Board meeting at which the Grant, Direct Loan and/or Housing Credit Allocation will be considered. The annual return may not be applied for any period of time during which the existing residential or non-residential buildings are occupied or otherwise producing revenue.

*(iii)* for Identity of Interest transactions, the acquisition cost used for underwriting will be:

*(I)* The original acquisition cost evidenced by clause (B)(ii)(I) of this subparagraph plus costs identified in item (B)(ii)(II)(-b-) of this subparagraph; or,

*(II)* The "as-is" value conclusion evidenced by item (B)(ii)(II)(-a-) of this subparagraph if less than the value identified in subclause (I); or,

*(III)* If applicable, the transfer value approved by USDA; or,

*(IV)* If applicable, the appraised land value for transactions where all existing buildings will be demolished.;or,

*(V)* If applicable, for Developments that will be financed using tax-exempt mortgage revenue bonds that currently have project-based rental assistance or currently have rent restrictions that will remain in place on the property after the acquisition and the current owner meets clause (e)(1)(B)(i) of this paragraph, the Underwriter shall only restrict the acquisition costs if it exceeds the "as-is" value conclusion evidenced by item (B)(ii)(II)(-a-) of this subparagraph. The appraisal used for this purpose must be reviewed by a licensed or certified appraiser by the Texas Appraisal Licensing and Certification Board that is not related to the original appraiser or anyone on the Development Team and in accordance with USPAP Standard 3. If the reviewing appraiser disagrees with the appraised value determined by the appraiser, the Underwriter will determine the acquisition cost to be used in the analysis.

(C) Eligible Basis on Acquisition of Buildings. Building acquisition cost will be included in the underwritten Eligible Basis if the Applicant provided an appraisal that meets the Department's Appraisal Rules and Guidelines as described in §11.304 of this chapter (relating to Appraisal Rules and Guidelines). The underwritten eligible building cost will be evaluated as described in clause (iv) of this subparagraph and with the lowest of the values determined based on clauses (i) - (iv) of this subparagraph:

*(i)* the Applicant's stated eligible building acquisition cost;

*(ii)* the total acquisition cost reflected in the Site Control document(s), or the Adjusted Acquisition Cost (as defined in subparagraph (B)(iii) of this paragraph), prorated using the relative land and building values indicated by the applicable appraised value; or

*(iii)* the total acquisition cost reflected in the Site Control document(s), or the Adjusted Acquisition Cost (as defined in subparagraph (B)(iii) of this paragraph), less the appraised "as-vacant" land value; or

*(iv)* the Underwriter will use the value that best corresponds to the circumstances presently affecting the Development that will continue to affect the Development after transfer to the new owner in determining the building value. These circumstances include but are not limited to operating subsidies, rental assistance, transfer values approved by USDA and/or property tax exemptions. Any value of existing favorable financing will be attributed prorata to the land and buildings.

(2) Off-Site Costs. The Underwriter will only consider costs of Off-Site Construction that are well documented and certified to by a Third Party engineer on the required Application forms with supporting documentation.

(3) Site Work Costs. The Underwriter will only consider costs of Site Work, including site amenities, that are well documented and certified to by a Third Party engineer on the required Application forms with supporting documentation.

(4) Building Costs.

(A) New Construction and Reconstruction. The Underwriter will use the Marshall and Swift Residential Cost Handbook, other comparable published Third-Party cost estimating data sources, historical final cost certifications of previous Housing Tax Credit developments and other acceptable cost data available to the Underwriter to estimate Building Cost. Generally, the "Average Quality" multiple, townhouse, or single family costs, as appropriate, from the Marshall and Swift Residential Cost Handbook or other comparable published Third-Party data source, will be used based upon details provided in the Application and particularly building plans and elevations. Costs for multi-level parking structures must be supported by a cost estimate from a Third Party contractor with demonstrated experience in structured parking construction. The Underwriter will consider amenities, specifications and development types not included in the Average Quality standard. The Underwriter may consider a sales tax exemption for nonprofit General Contractors.

(B) Rehabilitation and Adaptive Reuse.

*(i)* the Applicant must provide a scope of work and narrative description of the work to be completed. The narrative should speak to all Off-Site Construction, Site Work, building components including finishes and equipment, and development amenities. The narrative should be in sufficient detail so that the reader can understand the work and it must generally be arranged consistent with the line-items on the SCR Supplement and must also be consistent with the Development Cost Schedule of the Application.

*(ii)* the Underwriter will use cost data provided on the SCR Supplement as the basis for estimating Total Housing Development Costs.

(5) Contingency. Total contingency, including any soft cost contingency, will be limited to a maximum of 7% of Building Cost plus Site Work and Off-Site Construction for New Construction and Reconstruction Developments, and 10% of Building Cost plus Site Work and Off-Site Construction for Rehabilitation and Adaptive Reuse Developments. For Housing Tax Credit Developments, the percentage is applied to the sum of the eligible Building Cost, eligible Site Work costs and eligible Off-Site Construction costs in calculating the eligible contingency cost.

(6) General Contractor Fee. General Contractor fees include general requirements, contractor overhead, and contractor profit. General requirements include, but are not limited to, on-site supervision or construction management, off-site supervision and overhead, jobsite security, equipment rental, storage, temporary utilities, and other indirect costs. General Contractor fees are limited to a total of 14% on Developments with Hard Costs of $3 million or greater, the lesser of $420,000 or 16% on Developments with Hard Costs less than $3 million and greater than $2 million, and the lesser of $320,000 or 18% on Developments with Hard Costs at $2 million or less. Any contractor fees to Affiliates or Related Party subcontractors regardless of the percentage of the contract sum in the construction contract (s) will be treated collectively with the General Contractor Fee limitations. For Housing Tax Credit Developments, the percentages are applied to the sum of the Eligible Hard Costs in calculating the eligible contractor fees. For Developments also receiving financing from USDA, the combination of builder's general requirements, builder's overhead, and builder's profit should not exceed the lower of TDHCA or USDA requirements. Additional fees for ineligible costs will be limited to the same percentage of ineligible Hard Costs but will not be included in Eligible Basis.

(7) Developer Fee.

(A) For Housing Tax Credit Developments, the Developer Fee included in Eligible Basis cannot exceed 15% of the project's eligible costs, less Developer Fee, for Developments proposing 50 Units or more and 20% of the project's eligible costs, less Developer Fee, for Developments proposing 49 Units or less.

(B) For Housing Tax Credit Developments, any additional Developer Fee claimed for ineligible costs will be limited to the same percentage but applied only to ineligible Hard Costs (15% for Developments with 50 or more Units, or 20% for Developments with 49 or fewer Units). Any Developer Fee above this limit will be excluded from Total Housing Development Costs. All fees to Affiliates and/or Related Parties for work or guarantees determined by the Underwriter to be typically completed or provided by the Developer or Principal(s) of the Developer will be considered part of Developer Fee.

(C) In the case of a transaction requesting acquisition Housing Tax Credits:

*(i)* the allocation of eligible Developer Fee in calculating Rehabilitation/New Construction Housing Tax Credits will not exceed 15% of the Rehabilitation/New Construction eligible costs less Developer Fee for Developments proposing 50 Units or more and 20% of the Rehabilitation/New Construction eligible costs less Developer Fee for Developments proposing 49 Units or less;

*(ii)* no Developer Fee attributable to an identity of interest acquisition of the Development will be included; and

*(iii)* if applicable for Developments meeting the requirements of 10 TAC §11.302(e)(1)(B)(iii)(V), the allocation of eligible Developer Fee in calculating Rehabilitation/New Construction Housing Tax Credits will not exceed 5 percent of the Rehabilitation/New Construction eligible costs less Developer Fee.

(D) For Housing Tax Credit Developments, Eligible Developer Fee is multiplied by the appropriate Applicable Percentage depending on whether it is attributable to acquisition or rehabilitation basis.

(E) For non-Housing Tax Credit Developments, the percentage can be up to 7.5%, but is based upon Total Housing Development Cost less the sum of the fee itself, land costs, the costs of permanent financing, excessive construction period financing described in paragraph (8) of this subsection, reserves, and any identity of interest acquisition cost.

(8) Financing Costs. All fees required by the construction lender, permanent lender and equity partner must be indicated in the term sheets. Eligible construction period interest is limited to the lesser of actual eligible construction period interest, or the interest on one year's fully drawn construction period loan funds at the construction period interest rate indicated in the term sheet(s). For tax-exempt bond transactions up to 24 months of interest may be included. Any excess over this amount will not be included in Eligible Basis. Construction period interest on Related Party or Affiliate construction loans is only included in Eligible Basis with documentation satisfactory to the Underwriter that the loan will be at a market interest rate, fees and loan terms and the Related Party lender can demonstrate that it is routinely engaged in construction financing to unrelated parties.

(9) Reserves. Except for the underwriting of a Housing Tax Credit Development at cost certification, the Underwriter will utilize the amount described in the Applicant's project cost schedule if it is within the range of two to six months of stabilized operating expenses plus debt service. Alternatively, the Underwriter may consider a greater amount proposed by the First Lien Lender or syndicator if the detail for such greater amount is found by the Underwriter to be both reasonable and well documented. Reserves do not include capitalized asset management fees, guaranty reserves, tenant services reserves or other similar costs. Lease up reserves, exclusive of initial start-up

costs, funding of other reserves and interim interest, may be considered with documentation showing sizing assumptions acceptable to the Underwriter. In no instance at initial underwriting will total reserves exceed 12 months of stabilized operating expenses plus debt service (and only for USDA or HUD financed rehabilitation transactions the initial deposits to replacement reserves and transferred replacement reserves for USDA or HUD financed rehabilitation transactions). Pursuant to §10.404(c) of this title (relating to Operative Reserve Accounts), and for the underwriting of a Housing Tax Credit Development at cost certification, operating reserves that will be maintained for a minimum period of five years and documented in the Owner's partnership agreement and/or the permanent lender's loan documents will be included as a development cost.

(10) Soft Costs. Eligible soft costs are generally costs that can be capitalized in the basis of the Development for tax purposes. The Underwriter will evaluate and apply the allocation of these soft costs in accordance with the Department's prevailing interpretation of the Code. Generally the Applicant's costs are used however the Underwriter will use comparative data and Third Party CPA certification as to the capitalization of the costs to determine the reasonableness of all soft costs.

(11) Additional Tenant Amenities. For Housing Tax Credit Developments and after submission of the cost certification package, the Underwriter may consider costs of additional building and site amenities (suitable for the Target Population being served) proposed by the Owner in an amount not to exceed 1.5% of the originally underwritten Hard Costs. The additional amenities must be included in the LURA.

(12) Special Reserve Account. For Housing Tax Credit Developments at cost certification, the Underwriter may include a deposit of up to $2,500 per Unit into a Special Reserve Account as a Development Cost.

(f) Development Team Capacity and Development Plan.

(1) The Underwriter will evaluate and report on the overall capacity of the Development Team by reviewing aspects, including but not limited to those identified in subparagraphs (A) - (D) of this paragraph:

(A) Personal credit reports for development sponsors, Developer Fee recipients and those individuals anticipated to provide guarantee(s) in cases when warranted. The Underwriter may evaluate the credit report and identify any bankruptcy, state or federal tax liens or other relevant credit risks for compliance with eligibility and debarment requirements as found in Chapter 2 of this title (relating to Enforcement);

(B) Quality of construction, Rehabilitation, and ongoing maintenance of previously awarded housing developments by review of construction inspection reports, compliance on-site visits, findings of UPCS violations and other information available to the Underwriter;

(C) For Housing Tax Credit Developments, repeated or ongoing failure to timely submit cost certifications, requests for and clearance of final inspections, and timely response to deficiencies in the cost certification process; and

(D) Adherence to obligations on existing or prior Department funded developments with respect to program rules and documentation.

(2) While all components of the Development plan may technically meet the other individual requirements of this section, a confluence of serious concerns and unmitigated risks identified during the underwriting process may result in an Application being determined to be infeasible by the Underwriter. Any recommendation made under this subsection to deny an Application for a Grant, Direct Loan and/or Housing Credit Allocation is subject to Appeal as further provided for in §11.902 of this chapter (relating to Appeals).

(g) Other Underwriting Considerations. The Underwriter will evaluate additional feasibility elements as described in paragraphs (1) - (4) of this subsection.

(1) Interim Operating Income. Interim operating income listed as a source of funds must be supported by a detailed lease-up schedule and analysis.

(2) Floodplains. The Underwriter evaluates the site plan, floodplain map, survey and other information provided to determine if any of the buildings, drives, or parking areas reside within the 100-year floodplain. If such a determination is made by the Underwriter, the Report will include a condition that:

(A) The Applicant must pursue and receive a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR-F); or

(B) The Applicant must identify the cost of flood insurance for the buildings and for the tenant's contents for buildings within the 100-year floodplain and certify that the flood insurance will be obtained; and

(C) The Development must be proposed to be designed to comply with the QAP, Program Rules and NOFA, and applicable Federal or state requirements.

(3) Proximity to Other Developments. The Underwriter will identify in the Report any Developments funded or known and anticipated to be eligible for funding within one linear mile of the subject. Distance is measured in a straight line from nearest boundary point to nearest boundary point.

(4) Supportive Housing. The unique development and operating characteristics of Supportive Housing Developments may require special consideration in these areas:

(A) Operating Income. The extremely-low-income tenant population typically targeted by a Supportive Housing Development may include deep-skewing of rents to below the 50% AMGI level or other maximum rent limits established by the Department. The Underwriter will utilize the Applicant's proposed rents in the Report as long as such rents are at or below the maximum rent limit proposed for the Units or equal to any project based rental subsidy rent to be utilized for the Development if higher than the maximum rent limits;

(B) Operating Expenses. A Supportive Housing Development may have significantly higher expenses for payroll, management fee, security, resident supportive services, or other items than typical affordable housing developments. The Underwriter will rely heavily upon the historical operating expenses of other Supportive Housing Developments Affiliated with the Applicant or otherwise available to the Underwriter. Expense estimates must be categorized as outlined in subsection (d)(2) of this section;

(C) DCR and Long Term Feasibility. Supportive Housing Developments may be exempted from the DCR requirements of subsection (d)(4)(D) of this section if the Development is anticipated to operate without conventional or "must-pay" debt. Applicants must provide evidence of sufficient financial resources to offset any projected 15-year cumulative negative Cash Flow. Such evidence will be evaluated by the Underwriter on a case-by-case basis to satisfy the Department's long term feasibility requirements and may take the form of one or a combination of: executed subsidy commitment(s); set-aside of Applicant's financial resources to be substantiated by current finan-

cial statements evidencing sufficient resources; and/or proof of annual fundraising success sufficient to fill anticipated operating losses. If either a set aside of financial resources or annual fundraising are used to evidence the long term feasibility of a Supportive Housing Development, a resolution from the Applicant's governing board must be provided confirming their irrevocable commitment to the provision of these funds and activities; and/or

(D) Total Housing Development Costs. For Supportive Housing Developments designed with only Efficiency Units, the Underwriter may use "Average Quality" dormitory costs, or costs of other appropriate design styles from the Marshall & Swift Valuation Service, with adjustments for amenities and/or quality as evidenced in the Application, as a base cost in evaluating the reasonableness of the Applicant's Building Cost estimate for New Construction Developments.

(h) Work Out Development. As also described in §11.302(h), Developments that are underwritten subsequent to Board approval in order to refinance or gain relief from restrictions may be considered infeasible based on the guidelines in this section, but may be characterized as "the best available option" or "acceptable available option" depending on the circumstances and subject to the discretion of the Underwriter as long as the option analyzed and recommended is more likely to achieve a better financial outcome for the property and the Department than the status quo.

(i) Feasibility Conclusion. An infeasible Development will not be recommended for a Grant, Direct Loan or Housing Credit Allocation unless the Underwriter can determine an alternative structure and/or conditions the recommendations of the Report upon receipt of documentation supporting an alternative structure. A Development will be characterized as infeasible if paragraph (1) or (2) of this subsection applies. The Development will be characterized as infeasible if one or more of paragraphs (3) - (5) of this subsection applies unless paragraph (6)(B) of this subsection also applies.

(1) Gross Capture Rate, AMGI Band Capture Rates, and Individual Unit Capture Rate. The method for determining capture rates for a Development is defined in §11.303 of this chapter. The Underwriter will independently verify all components and conclusions of the capture rates and may, at their discretion, use independently acquired demographic data to calculate demand and may make a determination of the capture rates based upon an analysis of the Sub-market. The Development:

(A) Is characterized as an Elderly Development and the Gross Capture Rate or any AMGI bad capture rate exceeds 10%; or

(B) Is outside a Rural Area and targets the general population, and the Gross Capture Rate or any AMGI band capture rate exceeds 10% (or 15% for Tax-Exempt Bond Developments located in an MSA (as defined in the HTC Site Demographics Characteristics Report) with a population greater than one million if the average physical occupancy is 92.5% or greater for all stabilized affordable housing developments located within a 20 minute drive time, as supported by the Market Analyst, from the subject Development); or

(C) Is in a Rural Area and targets the general population, and the Gross Capture Rate or any AMGI band capture rate exceeds 30%; or

(D) Is Supportive Housing and the Gross Capture Rate or any AMGI band capture rate exceeds 30%; or,

(E) Has an Individual Unit Capture Rate for any Unit Type greater than 65%.

(F) Developments meeting the requirements of subparagraph (A), (B), (C), (D) or (E) of this paragraph may avoid being characterized as infeasible if clause (i) or (ii) of this subparagraph apply.

*(i)* Replacement Housing. The proposed Development is comprised of affordable housing which replaces previously existing affordable housing within the Primary Market Area as defined in §11.303 of this chapter on a Unit for Unit basis, and gives the displaced tenants of the previously existing affordable housing a leasing preference.

*(ii)* Existing Housing. The proposed Development is comprised of existing affordable housing, whether defined by an existing land use and rent restriction agreement or if the subject rents are at or below 50% AMGI rents, which is at least 50% occupied and gives displaced existing tenants a leasing preference as stated in a relocation plan.

(2) Deferred Developer Fee. Applicants requesting an allocation of tax credits where the estimated Deferred Developer Fee, based on the underwritten capitalization structure, is not repayable from Cash Flow within the first 15 years of the long term pro forma as described in subsection (d)(5) of this section.

(3) Pro Forma Rent. The Pro Forma Rent for Units with rents restricted at 60% of AMGI, or above if the Applicant will make the Income Average election, is less than the Net Program Rent for Units with rents restricted at or below 50% of AMGI unless the Applicant accepts the Underwriter's recommendation, if any, that all restricted units have rents and incomes restricted at or below the 50% of AMGI level.

(4) Initial Feasibility.

(A) Except when underwritten at cost certification, the first year stabilized pro forma operating expense divided by the first year stabilized pro forma Effective Gross Income is greater than 68% for Rural Developments 36 Units or less, and 65% for all other Developments.

(B) The first year DCR is below 1.15 (1.00 for USDA Developments).

(5) Long Term Feasibility. The Long Term Pro forma at any time during years two through fifteen, as defined in subsection (d)(5) of this section, reflects:

(A) A Debt Coverage Ratio below 1.15; or,

(B) Negative Cash Flow (throughout the term of a Direct Loan).

(6) Exceptions. The infeasibility conclusions may be excepted when:

(A) Waived by the Executive Director of the Department or by the EARAC if documentation is submitted by the Applicant to support unique circumstances that would provide mitigation.

(B) Developments not meeting the requirements of one or more of paragraphs (3), (4)(A) or (5) of this subsection will be re-characterized as feasible if one or more of clauses (i) - (v) of this subparagraph apply. A Development financed with a Direct Loan will not be re-characterized as feasible with respect to (5)(B).

*(i)* the Development will receive Project-based Section 8 Rental Assistance or the HUD Rental Assistance Demonstration Program for at least 50% of the Units and a firm commitment, with terms including Contract Rent and number of Units, is submitted at Application,

*(ii)* the Development will receive rental assistance for at least 50% of the Units in association with USDA financing.

*(iii)* the Development will be characterized as public housing as defined by HUD for at least 50% of the Units.

*(iv)* the Development will be characterized as Supportive Housing that is not financed, except for construction financing, with any debt containing foreclosure provisions or debt that contains must-pay repayment provisions (including cash-flow debt) for all Units and evidence of adequate financial support for the long term viability of the Development is provided. Permanent foreclosable, cash-flow debt provided by an Affiliate is permissible if originally sourced from charitable contributions or pass-through local government non-federal funds; or

*(v)* the Development has other long term project based restrictions on rents for at least 50% of the Units that allow rents to increase based upon expenses and the Applicant's proposed rents are at least 10% lower than both the Net Program Rent and Market Rent.

*§11.303. Market Analysis Rules and Guidelines.*

(a) General Provision. A Market Analysis prepared for the Department must evaluate the need for decent, safe, and sanitary housing at rental rates or sales prices that eligible tenants can afford. The analysis must determine the feasibility of the subject Development rental rates or sales price, and state conclusions as to the impact of the Development with respect to the determined housing needs. The Market Analysis must include a statement that the report preparer has read and understood the requirements of this section. The Market Analysis must also include a statement that the person or company preparing the Market Analysis is a disinterested party and will not materially benefit from the Development in any other way than receiving a fee for performing the Market Analysis, and that the fee is in no way contingent upon the outcome of the Market Analysis. The report must also include the following statement, "any person signing this Report acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law."

(b) Self-Contained. A Market Analysis prepared for the Department must allow the reader to understand the market data presented, the analysis of the data, and the conclusions derived from such data. All data presented should reflect the most current information available and the report must provide a parenthetical (in-text) citation or footnote describing the data source. The analysis must clearly lead the reader to the same or similar conclusions reached by the Market Analyst. All steps leading to a calculated figure must be presented in the body of the report.

(c) Market Analyst Qualifications. A Market Analysis submitted to the Department must be prepared and certified by an approved Qualified Market Analyst. (§2306.67055) The Department will maintain an approved Market Analyst list based on the guidelines set forth in paragraphs (1) - (2) of this subsection.

(1) The approved Qualified Market Analyst list will be updated and published annually on or about November 1st. If not listed as an approved Qualified Market Analyst by the Department, a Market Analyst may request approval by submitting items in subparagraphs (A) - (F) of this paragraph at least 30 calendar days prior to the first day of the competitive tax credit Application Acceptance Period or 30 calendar days prior to submission of any other application for funding for which the Market Analyst must be approved. An already approved Qualified Market Analyst will remain on the list so long as at least one (1) Market Analysis has been submitted to the Department in the previous 12 months or items (A), (B), (C) and (E) are submitted prior to October 1st. Otherwise, the Market Analyst will automatically be removed from the list.

(A) Franchise Tax Account Status from the Texas Comptroller of Public Accounts (not applicable for sole proprietorships);

(B) A current organization chart or list reflecting all members of the firm who may author or sign the Market Analysis. A firm with multiple offices or locations must indicate all members expected to be providing Market Analysis;

(C) Resumes for all members of the firm or subcontractors who may author or sign the Market Analysis;

(D) General information regarding the firm's experience including references, the number of previous similar assignments and timeframes in which previous assignments were completed;

(E) Certification from an authorized representative of the firm that the services to be provided will conform to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the Application Round in which each Market Analysis is submitted; and

(F) A sample Market Analysis that conforms to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the year in which the sample Market Analysis is submitted.

(2) During the underwriting process each Market Analysis will be reviewed and any discrepancies with the rules and guidelines set forth in this section may be identified and require timely correction. Subsequent to the completion of the Application Round and as time permits, staff or a review appraiser will re-review a sample set of submitted market analyses to ensure that the Department's Market Analysis Rules and Guidelines are met. If it is found that a Market Analyst has not conformed to the Department's Market Analysis Rules and Guidelines, as certified to, the Market Analyst will be notified of the discrepancies in the Market Analysis and will be removed from the approved Qualified Market Analyst list.

(A) In and of itself, removal from the list of approved Market Analysts will not invalidate a Market Analysis commissioned prior to the removal date and at least 90 days prior to the first day of the applicable Application Acceptance Period.

(B) To be reinstated as an approved Qualified Market Analyst, the Market Analyst must amend the previous report to remove all discrepancies or submit a new sample Market Analysis that conforms to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the year in which the updated or new sample Market Analysis is submitted.

(d) Market Analysis Contents. A Market Analysis for a rental Development prepared for the Department must be organized in a format that follows a logical progression and must include, at minimum, items addressed in paragraphs (1) - (13) of this subsection.

(1) Title Page. Include Development address or location, effective date of analysis, date report completed, name and address of person authorizing report, and name and address of Market Analyst.

(2) Letter of Transmittal. The date of the letter must be the date the report was completed. Include Development's address or location, description of Development, statement as to purpose and scope of analysis, reference to accompanying Market Analysis report with effective date of analysis and summary of conclusions, date of Property inspection, name of persons inspecting subject Property, and signatures of all Market Analysts authorized to work on the assignment. Include a statement that the report preparer has read and understood the requirements of this section.

(3) Table of Contents. Number the exhibits included with the report for easy reference.

(4) Market Analysis Summary. Include the Department's Market Analysis Summary exhibit.

(5) Assumptions and Limiting Conditions. Include a description of all assumptions, both general and specific, made by the Market Analyst concerning the Property.

(6) Identification of the Real Estate. Provide a statement to acquaint the reader with the Development. Such information includes street address, tax assessor's parcel number(s), and Development characteristics.

(7) Statement of Ownership. Disclose the current owners of record and provide a three year history of ownership for the subject Development.

(8) Primary Market Area. A limited geographic area from which the Development is expected to draw most of its demand. The size and shape of the PMA should be reflective of proximity to employment centers, services and amenities and contain the most significant areas from which to draw demand. All of the Market Analyst's conclusions specific to the subject Development must be based on only one PMA definition. The Market Analyst must adhere to the methodology described in this paragraph when determining the market area. (§2306.67055)

(A) The PMA will be defined by the Market Analyst as:

*(i)* geographic size based on a base year population no larger than necessary to provide sufficient demand but no more than 100,000 people;

*(ii)* boundaries based on U.S. census tracts; and

*(iii)* the population of the PMA may exceed 100,000 if the amount over the limit is contained within a single census tract.

(B) The Market Analyst's definition of the PMA must include:

*(i)* a detailed narrative specific to the PMA explaining:

*(I)* How the boundaries of the PMA were determined with respect to census tracts chosen and factors for including or excluding certain census tracts in proximity to the Development;

*(II)* Whether a more logical market area within the PMA exists but is not definable by census tracts and how this subsection of the PMA supports the rationale for the defined PMA;

*(III)* What are the specific attributes of the Development's location within the PMA that would draw prospective tenants from other areas of the PMA to relocate to the Development;

*(IV)* What are the specific attributes, if known, of the Development itself that would draw prospective tenants currently residing in other areas of the PMA to relocate to the Development;

*(V)* If the PMA crosses county lines, discuss the different income and rent limits in each county and how these differing amounts would affect the demand for the Development;

*(VI)* For rural Developments, discuss the relative draw (services, jobs, medical facilities, recreation, schools, etc.) of the Development's immediate local area (city or populous area if no city) in comparison to its neighboring local areas (cities, or populous areas if no cities), in and around the PMA. A rural PMA should not include significantly larger more populous areas unless the analyst can provide substantiation and rationale that the tenants would migrate to the Development's location from the larger cities;

*(VII)* Discuss and quantify current and planned single-family and non-residential construction (include permit data if available); and

*(VIII)* Other housing issues in general, if pertinent;

*(ii)* a complete demographic report for the defined PMA;

*(iii)* a scaled distance map indicating the PMA boundaries showing relevant U.S. census tracts with complete 11-digit identification numbers in numerical order with labels as well as the location of the subject Development and all comparable Developments. The map must indicate the total square miles of PMA; and,

*(iv)* a proximity table indicating distance from the Development to employment centers, medical facilities, schools, entertainment and any other amenities relevant to the potential residents and include drive time estimates.

(C) Comparable Units. Identify developments in the PMA with Comparable Units. In PMAs lacking sufficient rent comparables, it may be necessary for the Market Analyst to collect data from markets with similar characteristics and make quantifiable and qualitative location adjustments. Provide a data sheet for each comparable development consisting of:

*(i)* development name;

*(ii)* address;

*(iii)* year of construction and year of Rehabilitation, if applicable;

*(iv)* property condition;

*(v)* Target Population;

*(vi)* unit mix specifying number of Bedrooms, number of baths, Net Rentable Area; and

*(I)* monthly rent and Utility Allowance; or

*(II)* sales price with terms, marketing period and date of sale;

*(vii)* description of concessions;

*(viii)* list of unit amenities;

*(ix)* utility structure;

*(x)* list of common amenities;

*(xi)* narrative comparison of its proximity to employment centers and services relative to targeted tenant population of the subject property; and

*(xii)* for rental developments only, the occupancy and turnover.

(9) Market Information.

(A) Identify the number of units for each of the categories in clauses (i) - (vi) of this subparagraph, if applicable:

*(i)* total housing;

*(ii)* all multi-family rental developments, including unrestricted and market-rate developments, whether existing, under construction or proposed;

*(iii)* Affordable housing;

*(iv)* Comparable Units;

*(v)* Unstabilized Comparable Units; and

*(vi)* proposed Comparable Units.

(B) Occupancy. The occupancy rate indicated in the Market Analysis may be used to support both the overall demand conclusion for the proposed Development and the vacancy rate assumption used in underwriting the Development described in §11.302(d)(1)(C) of this chapter (relating to Vacancy and Collection Loss). State the overall physical occupancy rate for the proposed housing tenure (renter or owner) within the defined market areas by:

*(i)* number of Bedrooms;

*(ii)* quality of construction (class);

*(iii)* Target Population; and

*(iv)* Comparable Units.

(C) Absorption. State the absorption trends by quality of construction (class) and absorption rates for Comparable Units.

(D) Demographic Reports.

*(i)* all demographic reports must include population and household data for a five year period with the year of Application submission as the base year;

*(ii)* all demographic reports must provide sufficient data to enable calculation of income-eligible, age-, size-, and tenure-appropriate household populations;

*(iii)* for Elderly Developments, all demographic reports must provide a detailed breakdown of households by age and by income; and

*(iv)* a complete copy of all demographic reports relied upon for the demand analysis, including the reference index that indicates the census tracts on which the report is based.

(E) Demand. Provide a comprehensive evaluation of the need for the proposed housing for the Development as a whole and each Unit Type by number of Bedrooms proposed and rent restriction category within the defined market areas using the most current census and demographic data available. A complete demand and capture rate analysis is required in every Market Study, regardless of the current occupancy level of an existing Development.

*(i)* Demographics. The Market Analyst should use demographic data specific to the characteristics of the households that will be living in the proposed Development. For example, the Market Analyst should use demographic data specific to the elderly populations (and any other qualifying residents for Elderly Developments) to be served by an Elderly Development, if available, and should avoid making adjustments from more general demographic data. If adjustment rates are used based on more general data for any of the criteria described in subclauses (I) - (V) of this clause, they should be clearly identified and documented as to their source in the report.

*(I)* Population. Provide population and household figures, supported by actual demographics, for a five year period with the year of Application submission as the base year.

*(II)* Target. If applicable, adjust the household projections for the qualifying demographic characteristics such as the minimum age of the population to be served by the proposed Development.

*(III)* Household Size-Appropriate. Adjust the household projections or target household projections, as applicable, for the appropriate household size for the proposed Unit Type by number of Bedrooms proposed and rent restriction category based on two persons per Bedroom or one person for Efficiency Units.

*(IV)* Income Eligible. Adjust the household size appropriate projections for income eligibility based on the income bands for the proposed Unit Type by number of Bedrooms proposed and rent restriction category with:

(-a-) the lower end of each income band calculated based on the lowest gross rent proposed divided by 40% for the general population and 50% for elderly households; and

(-b-) the upper end of each income band equal to the applicable gross median income limit for the largest appropriate household size based on two persons per Bedroom (round up) or one person for Efficiency Units.

*(V)* Tenure-Appropriate. Adjust the income-eligible household projections for tenure (renter or owner). If tenure appropriate income eligible target household data is available, a tenure appropriate adjustment is not necessary.

*(ii)* Gross Demand. Gross Demand is defined as the sum of Potential Demand from the PMA, Demand from Other Sources, and External Demand.

*(iii)* Potential Demand. Potential Demand is defined as the number of income-eligible, age-, size-, and tenure-appropriate target households in the designated market area at the proposed placed in service date.

*(I)* Maximum eligible income is equal to the applicable gross median income limit for the largest appropriate household size.

*(II)* For Developments targeting the general population:

(-a-) minimum eligible income is based on a 40% rent to income ratio;

(-b-) appropriate household size is defined as two persons per Bedroom (rounded up); and

(-c-) the tenure-appropriate population for a rental Development is limited to the population of renter households.

*(III)* For Developments consisting solely of single family residences on separate lots with all Units having three or more Bedrooms:

(-a-) minimum eligible income is based on a 40% rent to income ratio;

(-b-) appropriate household size is defined as two persons per Bedroom (rounded up); and

(-c-) Gross Demand includes both renter and owner households.

*(IV)* Elderly Developments:

(-a-) minimum eligible income is based on a 50% rent to income ratio; and

(-b-) Gross Demand includes all household sizes and both renter and owner households within the age range (and any other qualifying characteristics) to be served by the Elderly Development.

*(V)* Supportive Housing:

(-a-) minimum eligible income is $1; and

(-b-) households meeting the occupancy qualifications of the Development (data to quantify this demand may be based on statistics beyond the defined PMA but not outside the historical service area of the Applicant).

*(VI)* For Developments with rent assisted units (Project Based Vouchers, Project-Based Rental Assistance, Public Housing Units):

(-a-) minimum eligible income for the assisted units is $1; and

(-b-) maximum eligible income for the assisted units is the minimum eligible income of the corresponding affordable unit.

*(iv)* External Demand: Assume an additional 10% of Potential Demand from the PMA to represent demand coming from outside the PMA.

*(v)* Demand from Other Sources:

*(I)* the source of additional demand and the methodology used to calculate the additional demand must be clearly stated;

*(II)* consideration of Demand from Other Sources is at the discretion of the Underwriter;

*(III)* Demand from Other Sources must be limited to households that are not included in Potential Demand; and

*(IV)* if households with Section 8 vouchers are identified as a source of demand, the Market Study must include:

(-a-) documentation of the number of vouchers administered by the local Housing Authority; and

(-b-) a complete demographic report for the area in which the vouchers are distributed.

(F) Employment. Provide a comprehensive analysis of employment trends and forecasts in the Primary Market Area. Analysis must discuss existing or planned employment opportunities with qualifying income ranges.

(10) Conclusions. Include a comprehensive evaluation of the subject Property, separately addressing each housing type and specific population to be served by the Development in terms of items in subparagraphs (A) - (J) of this paragraph. All conclusions must be consistent with the data and analysis presented throughout the Market Analysis.

(A) Unit Mix. Provide a best possible unit mix conclusion based on the occupancy rates by Bedroom type within the PMA and target, income-eligible, size-appropriate and tenure-appropriate household demand by Unit Type and income type within the PMA.

(B) Rents. Provide a separate Market Rent conclusion for each proposed Unit Type by number of Bedrooms and rent restriction category. Conclusions of Market Rent below the maximum Net Program Rent limit must be well documented as the conclusions may impact the feasibility of the Development under §11.302(i) of this chapter (relating to Feasibility Conclusion). In support of the Market Rent conclusions, provide a separate attribute adjustment matrix for each proposed Unit Type by number of Bedrooms and rental restriction category.

*(i)* the Department recommends use of HUD Form 92273.

*(ii)* a minimum of three developments must be represented on each attribute adjustment matrix.

*(iii)* adjustments for concessions must be included, if applicable.

*(iv)* adjustments for proximity and drive times to employment centers and services narrated in the Comparable Unit description, and the rationale for the amount of the adjustments must be included.

*(v)* total adjustments in excess of 15% must be supported with additional narrative.

*(vi)* total adjustments in excess of 25% indicate the Units are not comparable for the purposes of determining Market Rent conclusions.

(C) Effective Gross Income. Provide rental income, secondary income, and vacancy and collection loss projections for the subject derived independent of the Applicant's estimates.

(D) Demand:

*(i)* state the Gross Demand for each Unit Type by number of Bedrooms proposed and rent restriction category (e.g. one-Bedroom Units restricted at 50% of AMGI; two-Bedroom Units restricted at 60% of AMGI); and

*(ii)* state the Gross Demand for the proposed Development as a whole. If some households are eligible for more than one Unit Type due to overlapping eligible ranges for income or household size, Gross Demand should be adjusted to avoid including households more than once.

*(iii)* state the Gross Demand generated from each AMGI band. If some household incomes are included in more than one AMGI band, Gross Demand should be adjusted to avoid including households more than once.

(E) Relevant Supply. The Relevant Supply of proposed and Unstabilized Comparable Units includes:

*(i)* the proposed subject Units to be absorbed;

*(ii)* Comparable Units in an Application with priority over the subject pursuant to §11.201(6) of this chapter; and

*(iii)* Comparable Units in previously approved Developments in the PMA that have not achieved 90% occupancy for a minimum of 90 days.

(F) Gross Capture Rate. The Gross Capture Rate is defined as the Relevant Supply divided by the Gross Demand. Refer to §11.302(i) of this chapter for feasibility criteria.

(G) Individual Unit Capture Rate. For each Unit Type by number of Bedrooms and rent restriction categories, the individual unit capture rate is defined as the Relevant Supply of proposed and Unstabilized Comparable Units divided by the eligible demand for that Unit. Some households are eligible for multiple Unit Types. In order to calculate individual unit capture rates, each household is included in the capture rate for only one Unit Type.

(H) Capture Rate by AMGI Band. For each AMGI band (30%, 40%, 50%, 60%, and also 20%, 70%, and 80% if the Applicant will make the Income Average election), the capture rate by AMGI band is defined as Relevant Supply of proposed and Unstabilized Comparable Units divided by the eligible demand from that AMGI band. Some households are qualified for multiple income bands. In order to calculate AMGI band rates, each household is included in the capture rate for only one AMGI band.

(I) Absorption. Project an absorption period for the subject Development to achieve Breakeven Occupancy. State the absorption rate.

(J) Market Impact. Provide an assessment of the impact the subject Development, as completed, will have on existing De-

velopments supported by Housing Tax Credits in the Primary Market. (§2306.67055)

(11) Photographs. Provide labeled color photographs of the subject Property, the neighborhood, street scenes, and comparables. An aerial photograph is desirable but not mandatory.

(12) Appendices. Any Third Party reports including demographics relied upon by the Market Analyst must be provided in appendix form. A list of works cited including personal communications also must be provided, and the Modern Language Association (MLA) format is suggested.

(13) Qualifications. Current Franchise Tax Account Status from the Texas Comptroller of Public Accounts (not applicable for sole proprietorships) and any changes to items listed in §11.303(c)(1)(B) and (C) of this chapter (relating to Market Analyst Qualifications).

(e) The Department reserves the right to require the Market Analyst to address such other issues as may be relevant to the Department's evaluation of the need for the subject Development and the provisions of the particular program guidelines.

(f) In the event that the PMA for a subject Development overlaps the PMA's of other proposed or Unstabilized comparable Developments, the Underwriter may perform an extended Sub-Market Analysis considering the combined PMA's and all proposed and Unstabilized Units in the extended Sub-Market Area; the Gross Capture Rate from such an extended Sub-Market Area analysis may be used by the Underwriter as the basis for a feasibility conclusion.

(g) All Applicants shall acknowledge, by virtue of filing an Application, that the Department shall not be bound by any such opinion or Market Analysis, and may substitute its own analysis and underwriting conclusions for those submitted by the Market Analyst.

*§11.304. Appraisal Rules and Guidelines.*

(a) General Provision. An appraisal prepared for the Department must conform to the Uniform Standards of Professional Appraisal Practice (USPAP) as adopted by the Appraisal Standards Board of the Appraisal Foundation. The appraisal must include a statement that the report preparer has read and understood the requirements of this section. The appraisal must include a statement that the person or company preparing the appraisal, or reviewing the appraisal, is a disinterested party and will not materially benefit from the Development in any other way than receiving a fee for performing the appraisal and that the fee is in no way contingent upon the outcome of the appraisal.

(b) Self-Contained. An appraisal prepared for the Department must describe sufficient and adequate data and analyses to support the final opinion of value. The final value(s) must be reasonable, based on the information included. Any Third Party reports relied upon by the appraiser must be verified by the appraiser as to the validity of the data and the conclusions.

(c) Appraiser Qualifications. The appraiser and reviewing appraiser must be appropriately certified or licensed by the Texas Appraiser Licensing and Certification Board.

(d) Appraisal Contents. An appraisal prepared for the Department must be organized in a format that follows a logical progression. In addition to the contents described in USPAP Standards Rule 2, the appraisal must include items addressed in paragraphs (1) - (12) of this subsection.

(1) Title Page. Include a statement identifying the Department as the client, acknowledging that the Department is granted full authority to rely on the findings of the report, and name and address of person authorizing report. The title page must also include the following statement, "any person signing this Report acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law."

(2) Letter of Transmittal. Include reference to accompanying appraisal report, reference to all person(s) that provided significant assistance in the preparation of the report, date of report, effective date of appraisal, date of property inspection, name of person(s) inspecting the property, tax assessor's parcel number(s) of the site, estimate of marketing period, and signatures of all appraisers authorized to work on the assignment including the appraiser who inspected the property. Include a statement indicating the report preparer has read and understood the requirements of this section.

(3) Table of Contents. Number the exhibits included with the report for easy reference.

(4) Disclosure of Competency. Include appraiser's qualifications, detailing education and experience.

(5) Statement of Ownership of the Subject Property. Discuss all prior sales of the subject Property which occurred within the past three years. Any pending agreements of sale, options to buy, or listing of the subject Property must be disclosed in the appraisal report.

(6) Property Rights Appraised. Include a statement as to the property rights (e.g., fee simple interest, leased fee interest, leasehold, etc.) being considered. The appropriate interest must be defined in terms of current appraisal terminology with the source cited.

(7) Site/Improvement Description. Discuss the site characteristics including subparagraphs (A) - (E) of this paragraph.

(A) Physical Site Characteristics. Describe dimensions, size (square footage, acreage, etc.), shape, topography, corner influence, frontage, access, ingress-egress, etc. associated with the Development Site. Include a plat map and/or survey.

(B) Floodplain. Discuss floodplain (including flood map panel number) and include a floodplain map with the subject Property clearly identified.

(C) Zoning. Report the current zoning and description of the zoning restrictions and/or deed restrictions, where applicable, and type of Development permitted. Any probability of change in zoning should be discussed. A statement as to whether or not the improvements conform to the current zoning should be included. A statement addressing whether or not the improvements could be rebuilt if damaged or destroyed, should be included. If current zoning is not consistent with the highest and best use, and zoning changes are reasonable to expect, time and expense associated with the proposed zoning change should be considered and documented. A zoning map should be included.

(D) Description of Improvements. Provide a thorough description and analysis of the improvements including size (Net Rentable Area, gross building area, etc.), use (whether vacant, occupied by owner, or being rented), number of residents, number of stories, number of buildings, type/quality of construction, condition, actual age, effective age, exterior and interior amenities, items of deferred maintenance, energy efficiency measures, etc. All applicable forms of depreciation should be addressed along with the remaining economic life.

(E) Environmental Hazards. It is recognized appraisers are not experts in such matters and the impact of such deficiencies may not be quantified; however, the report should disclose any potential environmental hazards (such as discolored vegetation, oil residue, asbestos-containing materials, lead-based paint etc.) noted during the inspection.

(8) Highest and Best Use. Market Analysis and feasibility study is required as part of the highest and best use. The highest and best use analysis should consider paragraph (7)(A) - (E) of this subsection as well as a supply and demand analysis.

(A) The appraisal must inform the reader of any positive or negative market trends which could influence the value of the appraised Property. Detailed data must be included to support the appraiser's estimate of stabilized income, absorption, and occupancy.

(B) The highest and best use section must contain a separate analysis "as if vacant" and "as improved" (or "as proposed to be improved/renovated"). All four elements (legally permissible, physically possible, feasible, and maximally productive) must be considered.

(9) Appraisal Process. It is mandatory that all three approaches, Cost Approach, Sales Comparison Approach and Income Approach, are considered in valuing the Property. If an approach is not applicable to a particular property an adequate explanation must be provided. A land value estimate must be provided if the Cost Approach is not applicable.

(A) Cost Approach. This approach should give a clear and concise estimate of the cost to construct the subject improvements. The source(s) of the cost data should be reported.

*(i)* cost comparables are desirable; however, alternative cost information may be obtained from Marshall & Swift Valuation Service or similar publications. The section, class, page, etc. should be referenced. All soft costs and entrepreneurial profit must be addressed and documented.

*(ii)* all applicable forms of depreciation must be discussed and analyzed. Such discussion must be consistent with the description of the improvements.

*(iii)* the land value estimate should include a sufficient number of sales which are current, comparable, and similar to the subject in terms of highest and best use. Comparable sales information should include address, legal description, tax assessor's parcel number(s), sales price, date of sale, grantor, grantee, three year sales history, and adequate description of property transferred. The final value estimate should fall within the adjusted and unadjusted value ranges. Consideration and appropriate cash equivalent adjustments to the comparable sales price for subclauses (I) - (VII) of this clause should be made when applicable.

*(I)* Property rights conveyed;

*(II)* Financing terms;

*(III)* Conditions of sale;

*(IV)* Location;

*(V)* Highest and best use;

*(VI)* Physical characteristics (e.g., topography, size, shape, etc.); and

*(VII)* Other characteristics (e.g., existing/proposed entitlements, special assessments, etc.).

(B) Sales Comparison Approach. This section should contain an adequate number of sales to provide the Underwriter with a description of the current market conditions concerning this property type. Sales data should be recent and specific for the property type being appraised. The sales must be confirmed with buyer, seller, or an individual knowledgeable of the transaction.

*(i)* sales information should include address, legal description, tax assessor's parcel number(s), sales price, financing considerations and adjustment for cash equivalency, date of sale, recordation of the instrument, parties to the transaction, three year sale history, complete description of the Property and property rights conveyed, and discussion of marketing time. A scaled distance map clearly identifying the subject and the comparable sales must be included.

*(ii)* the method(s) used in the Sales Comparison Approach must be reflective of actual market activity and market participants.

*(I)* Sale Price/Unit of Comparison. The analysis of the sale comparables must identify, relate, and evaluate the individual adjustments applicable for property rights, terms of sale, conditions of sale, market conditions, and physical features. Sufficient narrative must be included to permit the reader to understand the direction and magnitude of the individual adjustments, as well as a unit of comparison value indicator for each comparable.

*(II)* Net Operating Income/Unit of Comparison. The Net Operating Income statistics for the comparables must be calculated in the same manner. It should be disclosed if reserves for replacement have been included in this method of analysis. At least one other method should accompany this method of analysis.

(C) Income Approach. This section must contain an analysis of both the actual historical and projected income and expense aspects of the subject Property.

*(i)* Market Rent Estimate/Comparable Rental Analysis. This section of the report should include an adequate number of actual market transactions to inform the reader of current market conditions concerning rental Units. The comparables must indicate current research for this specific property type. The comparables must be confirmed with the landlord, tenant or agent and individual data sheets must be included. The individual data sheets should include property address, lease terms, description of the property (e.g., Unit Type, unit size, unit mix, interior amenities, exterior amenities, etc.), physical characteristics of the property, and location of the comparables. Analysis of the Market Rents should be sufficiently detailed to permit the reader to understand the appraiser's logic and rationale. Adjustment for lease rights, condition of the lease, location, physical characteristics of the property, etc. must be considered.

*(ii)* Comparison of Market Rent to Contract Rent. Actual income for the subject along with the owner's current budget projections must be reported, summarized, and analyzed. If such data is unavailable, a statement to this effect is required and appropriate assumptions and limiting conditions should be made. The Contract Rents should be compared to the market-derived rents. A determination should be made as to whether the Contract Rents are below, equal to, or in excess of market rates. If there is a difference, its impact on value must be qualified.

*(iii)* Vacancy/Collection Loss. Historical occupancy data and current occupancy level for the subject should be reported and compared to occupancy data from the rental comparables and overall occupancy data for the subject's Primary Market.

*(iv)* Expense Analysis. Actual expenses for the subject, along with the owner's projected budget, must be reported, summarized, and analyzed. If such data is unavailable, a statement to this effect is required and appropriate assumptions and limiting conditions should be made. Historical expenses should be compared to comparables expenses of similar property types or published survey data (such as IREM, BOMA, etc.). Any expense differences should be reconciled. Include historical data regarding the subject's assessment and tax rates and a statement as to whether or not any delinquent taxes exist.

*(v)* Capitalization. The appraiser should present the capitalization method(s) reflective of the subject market and explain the omission of any method not considered in the report.

*(I)* Direct Capitalization. The primary method of deriving an overall rate is through market extraction. If a band of investment or mortgage equity technique is utilized, the assumptions must be fully disclosed and discussed.

*(II)* Yield Capitalization (Discounted Cash Flow Analysis). This method of analysis should include a detailed and supportive discussion of the projected holding/investment period, income and income growth projections, occupancy projections, expense and expense growth projections, reversionary value and support for the discount rate.

(10) Value Estimates. Reconciliation of final value estimates is required. The Underwriter may request additional valuation information based on unique existing circumstances that are relevant for deriving the market value of the Property.

(A) All appraisals shall contain a separate estimate of the "as vacant" market value of the underlying land, based upon current sales comparables. The "as vacant" value assumes that there are no improvements on the property and therefore demolition costs should not be considered. The appraiser should consider the fee simple or leased fee interest as appropriate.

(B) For existing Developments with any project-based rental assistance that will remain with the property after the acquisition, the appraisal must include an "as-is as-currently-restricted value at current contract rents." For public housing converting to project-based rental assistance, the appraiser must provide a value based on the future restricted rents. The value used in the analysis may be based on the unrestricted market rents if supported by an appraisal. The Department may require that the appraisal be reviewed by a third-party appraiser acceptable to the Department but selected by the Applicant. Use of the restricted rents by the appraiser will not require an appraisal review. Regardless of the rents used in the valuation, the appraiser must consider any other on-going restrictions that will remain in place even if not affecting rents. If the rental assistance has an impact on the value, such as use of a lower capitalization rate due to the lower risk associated with rental rates and/or occupancy rates on project-based developments, this must be fully explained and supported to the satisfaction of the Underwriter.

(C) For existing Developments with rent restrictions, the appraisal must include the "as-is as-restricted" value. In particular, the value must be based on the proposed restricted rents when deriving the value based on the income approach.

(D) For all other existing Developments, the appraisal must include the "as-is" value.

(E) For any Development with favorable financing (generally below market debt) that will remain in place and transfer to the new owner, the appraisal must include a separate value for the existing favorable financing with supporting information.

(F) If required the appraiser must include a separate assessment of personal property, furniture, fixtures, and equipment (FF&E) and/or intangible items. If personal property, FF&E, or intangible items are not part of the transaction or value estimate, a statement to such effect should be included.

(11) Marketing Time. Given property characteristics and current market conditions, the appraiser(s) should employ a reasonable marketing period. The report should detail existing market conditions and assumptions considered relevant.

(12) Photographs. Provide good quality color photographs of the subject Property (front, rear, and side elevations, on-site amenities, interior of typical Units if available). Photographs should be properly labeled. Photographs of the neighborhood, street scenes, and comparables should be included. An aerial photograph is desirable but not mandatory.

(e) Additional Appraisal Concerns. The appraiser(s) must be aware of the Department program rules and guidelines and the appraisal must include analysis of any impact to the subject's value.

*§11.305. Environmental Site Assessment Rules and Guidelines.*

(a) General Provisions. The Environmental Site Assessments (ESA) prepared for the Department must be conducted and reported in conformity with the standards of the American Society for Testing and Materials (ASTM). The initial report must conform with the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E1527- 13 or any subsequent standards as published). Any subsequent reports should also conform to ASTM standards and such other recognized industry standards as a reasonable person would deem relevant in view of the Property's anticipated use for human habitation. The ESA shall be conducted by a Third Party environmental professional at the expense of the Applicant, and addressed to the Department as a User of the report (as defined by ASTM standards). Copies of reports provided to the Department which were commissioned by other financial institutions must either address Texas Department of Housing and Community Affairs as a co-recipient of the report or letters from both the provider and the recipient of the report may be submitted extending reliance on the report to the Department. The ESA report must also include a statement that the person or company preparing the ESA report will not materially benefit from the Development in any other way than receiving a fee for performing the ESA, and that the fee is in no way contingent upon the outcome of the assessment. The report must also include the following statement, "any person signing this Report acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law." The ESA report must contain a statement indicating the report preparer has read and understood the requirements of this section.

(b) In addition to ASTM requirements, the report must:

(1) State if a noise study is recommended for a property in accordance with current HUD guidelines and identify its proximity to industrial zones, major highways, active rail lines, civil and military airfields, or other potential sources of excessive noise;

(2) Provide a copy of a current survey, if available, or other drawing of the site reflecting the boundaries and adjacent streets, all improvements on the site, and any items of concern described in the body of the ESA or identified during the physical inspection;

(3) Provide a copy of the current FEMA Flood Insurance Rate Map showing the panel number and encompassing the site with the site boundaries precisely identified and superimposed on the map;

(4) If the subject Development Site includes any improvements or debris from pre-existing improvements, state if testing for Lead Based Paint and/or asbestos containing materials would be required pursuant to local, state, and federal laws, or recommended due to any other consideration;

(5) State if testing for lead in the drinking water would be required pursuant to local, state, and federal laws, or recommended due to any other consideration such as the age of pipes and solder in existing improvements. For all Rehabilitation Developments, the ESA

provider must state whether the on-site plumbing is a potential source of lead in drinking water;

(6) Assess the potential for the presence of Radon on the Development Site, and recommend specific testing if necessary;

(7) Identify and assess the presence of oil, gas or chemical pipelines, processing facilities, storage facilities or other potentially hazardous explosive activities on-site or in the general area of the site that could potentially adversely impact the Development. Location of these items must be shown on a drawing or map in relation to the Development Site and all existing or future improvements. The drawing must depict any blast zones (in accordance with HUD guidelines) and include HUD blast zone calculations; and

(8) Include a vapor encroachment screening in accordance with the ASTM "Standard Guide for Vapor Encroachment Screening on Property Involved in Real Estate Transactions" (E2600-10).

(c) If the report recommends further studies or establishes that environmental hazards currently exist on the Property, or are originating off-site, but would nonetheless affect the Property, the Development Owner must act on such a recommendation, or provide a plan for either the abatement or elimination of the hazard. Evidence of action or a plan for the abatement or elimination of the hazard must be presented upon Application submittal.

(d) For Developments in programs that allow a waiver of the Phase I ESA such as an existing USDA funded Development, the Development Owners are hereby notified that it is their responsibility to ensure that the Development is maintained in compliance with all state and federal environmental hazard requirements.

(e) Those Developments which have or are to receive first lien financing from HUD may submit HUD's environmental assessment report, provided that it conforms to the requirements of this section.

*§11.306. Scope and Cost Review Guidelines.*

(a) General Provisions. The objective of the Scope and Cost Review Report (SCR) required for Rehabilitation Developments (excluding Reconstruction) and Adaptive Reuse Developments is to provide a self-contained report that provides a comprehensive description and evaluation of the current conditions of the Development and identifies a scope of work for the proposed repairs, replacements and improvements to an existing multifamily property or identifies a scope of work for the conversion of a non-multifamily property to multifamily use. The SCR author must evaluate the sufficiency of the Applicant's scope of work and provide an independent review of the Applicant's proposed costs. The report must be in sufficient detail for the Underwriter to fully understand all current conditions, scope of work and cost estimates. It is the responsibility of the Applicant to ensure that the scope of work and cost estimates submitted in the Application is provided to the author. The SCR must include a copy of the Development Cost Schedule submitted in the Application. The report must also include the following statement, "any person signing this Report acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law."

(b) For Rehabilitation Developments, the SCR must include analysis in conformity with the ASTM "Standard Guide for Property Condition Assessments. Baseline Property Condition Assessment Process (ASTM Standard Designation: E 2018)" except as provided for in subsections (f) and (g) of this section.

(c) The SCR must include good quality color photographs of the subject Real Estate (front, rear, and side elevations, on-site amenities, interior of the structure). Photographs should be properly labeled. Photographs of the neighborhood, street scenes, and comparables should must be included.

(d) The SCR must also include discussion and analysis of:

(1) Description of Current Conditions. For both Rehabilitation and Adaptive Reuse, the SCR must contain a detailed description with good quality photographs of the current conditions of all major systems and components of the Development regardless of whether the system or component will be removed, repaired or replaced. For historic structures, the SCR must contain a description with photographs of each aspect of the building(s) that qualifies it as historic and must include a narrative explaining how the scope of work relates to maintaining the historic designation of the Development. Replacement or relocation of systems and components must be described;

(2) Description of Scope of Work. The SCR must provide a narrative of the consolidated scope of work either as a stand-alone section of the report or included with the description of the current conditions for each major system and components. Any New Construction must be described. Plans or drawings (that are in addition to any plans or drawings otherwise required by rule) and that relate to any part of the scope of work should be included, if available;

(3) Useful Life Estimates. For each system and component of the property the SCR must estimate its remaining useful life, citing the basis or the source from which such estimate is derived;

(4) Code Compliance. The SCR must document any known violations of any applicable federal, state, or local codes. In developing the cost estimates specified herein, it is the responsibility of the Applicant to ensure that the SCR adequately considers any and all applicable federal, state, and local laws and regulations which are applicable and govern any work. For Applications requesting Direct Loan funding from the Department, the SCR author must include a comparison between the local building code and the International Existing Building Code of the International Code Council.;

(5) Program Rules. The SCR must assess the extent to which any systems or components must be modified, repaired, or replaced in order to comply with any specific requirements of the housing program under which the Development is proposed to be financed, the Department's Uniform Physical Condition Standards, and any scoring criteria including amenities for which the Applicant may claim points; for Direct Loan Developments this includes, but is not limited to the requirements in the Lead-Based Paint Poisoning Prevention Act (42 USC §§4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 USC §§4851-4856), and implementing regulations, Title X of the 1992 Housing and Community Development Act at 24 CFR Part 35 (including subparts A, B, J, K, and R), and the Lead: Renovation, Repair, and Painting Program Final Rule and Response to Children with Environmental Intervention Blood Lead Levels (40 CFR Part 745);

(6) Accessibility Requirements. The SCR report must include an analysis of compliance with the Department's' accessibility requirements pursuant to Chapter 1, Subchapter B and §11.101(b)(8) of this title and identify the specific items in the scope of work and costs needed to ensure that the Development will meet these requirements upon Rehabilitation (including conversion and Adaptive Reuse);

(7) Reconciliation of Scope of Work and Costs. The SCR report must include the Department's Scope and Cost Review Supplement (SCR Supplement) with the signature of the SCR author. The SCR Supplement must reconcile the scope of work and costs of the immediate physical needs identified by the SCR author with the Applicant's scope of work and costs. The costs presented on the SCR Supplement must be consistent with both the scope of work and immediate

costs identified in the body of the SCR report and the Applicant's scope of work and costs as presented in the Application. Variations between the costs listed on the SCR Supplement and the costs listed in the body of the SCR report or on the Applicant's Development Cost Schedule must be reconciled in a narrative analysis from the SCR provider. The consolidated scope of work and costs shown on the SCR Supplement will be used by the Underwriter in the analysis to the extent adequately supported in the report; and

(8) Cost Estimates. The Development Cost Schedule and SCR Supplement must include all costs identified below:

(A) Immediately Necessary Repairs and Replacement. For all Rehabilitation developments, and Adaptive Reuse developments if applicable, immediately necessary repair and replacement should be identified for systems or components which are expected to have a remaining useful life of less than one year, which are found to be in violation of any applicable codes, which must be modified, repaired or replaced in order to satisfy program rules, or which are otherwise in a state of deferred maintenance or pose health and safety hazards. The SCR must provide a separate estimate of the costs associated with the repair, replacement, or maintenance of each system or component which is identified as being an immediate need, citing the basis or the source from which such cost estimate is derived.

(B) Proposed Repair, Replacement, or New Construction. If the development plan calls for additional scope of work above and beyond the immediate repair and replacement items described in subparagraph (A) of this paragraph, the additional scope of work must be evaluated and either the nature or source of obsolescence to be cured or improvement to the operations of the Property discussed. The SCR must provide a separate estimate of the costs associated with the additional scope of work, citing the basis or the source from which such cost estimate is derived.

(C) Reconciliation of Costs. The combined costs described in subparagraphs (A) and (B) of this paragraph should be consistent with the costs presented on the Applicant's Development Cost Schedule and the SCR Supplement.

(D) Expected Repair and Replacement Over Time. The term during which the SCR should estimate the cost of expected repair and replacement over time must equal the lesser of 30 years or the longest term of any land use or regulatory restrictions which are, or will be, associated with the provision of housing on the Property. The SCR must estimate the periodic costs which are expected to arise for repairing or replacing each system or component or the property, based on the estimated remaining useful life of such system or component as described in paragraph (1) of this subsection adjusted for completion of repair and replacement immediately necessary and proposed as described in subparagraphs (A) and (B) of this paragraph. The SCR must include a separate table of the estimated long term costs which identifies in each line the individual component of the property being examined, and in each column the year during the term in which the costs are estimated to be incurred for a period and no less than 30 years. The estimated costs for future years should be given in both present dollar values and anticipated future dollar values assuming a reasonable inflation factor of not less than 2.5% per annum.

(e) Any costs not identified and discussed in sufficient detail in the SCR as part of subsection (d)(6), (d)(8)(A) and (d)(8)(B) of this section will not be included in the underwritten Total Development Cost in the Report.

(f) If a copy of such standards or a sample report have been provided for the Department's review, if such standards are widely used, and if all other criteria and requirements described in this section are satisfied, the Department will also accept copies of reports commissioned or required by the primary lender for a proposed transaction, which have been prepared in accordance with:

(1) Fannie Mae's criteria for Physical Needs Assessments;

(2) Federal Housing Administration's criteria for Project Capital Needs Assessments;

(3) Freddie Mac's guidelines for Engineering and Property Condition Reports;

(4) USDA guidelines for Capital Needs Assessment.

(g) The Department may consider for acceptance reports prepared according to other standards which are not specifically named in subsection (g) of this section, if a copy of such standards or a sample report have been provided for the Department's review, if such standards are widely used, and if all other criteria and requirements described in this section are satisfied.

(h) The SCR shall be conducted by a Third Party at the expense of the Applicant, and addressed to Texas Department of Housing and Community Affairs as the client. Copies of reports provided to the Department which were commissioned by other financial institutions should address Texas Department of Housing and Community Affairs as a co-recipient of the report, or letters from both the provider and the recipient of the report should be submitted extending reliance on the report to Texas Department of Housing and Community Affairs.

(i) The SCR report must include a statement that the individual and/or company preparing the SCR report will not materially benefit from the Development in any other way than receiving a fee for performing the SCR. Because of the Department's heavy reliance on the independent cost information, the provider must not be a Related Party to or an Affiliate of any other Development Team member. The SCR report must contain a statement indicating the report preparer has read and understood the requirements of this section.

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 September 9, 2019.

TRD-201903184
Robert Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 20, 2019
For further information, please call: (512) 475-3929

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## SUBCHAPTER E. FEE SCHEDULE, APPEALS, AND OTHER PROVISIONS

### 10 TAC §§11.901 - 11.904

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

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

*§11.901. Fee Schedule.*

Any fees, as stated in this section, not paid will cause an Applicant to be ineligible to apply for Department funding, ineligible to receive additional Department funding associated with a Commitment, Determi-

nation Notice or Contract, and ineligible to submit extension requests, ownership transfers, and Application amendments until such time the Department receives payment. Payments of the fees shall be in the form of a check and to the extent there are insufficient funds available, it may cause the Application, Commitment, Determination Notice or Contract to be terminated or Allocation rescinded. Other forms of payment may be considered on a case-by-case basis. The Executive Director may extend the deadline for specific extenuating and extraordinary circumstances, provided the Applicant submits a written request for an extension to a fee deadline no later than five business days prior to the deadline associated with the particular fee.

(1) Competitive Housing Tax Credit Pre-Application Fee. A pre-application fee, in the amount of $10 per Unit, based on the total number of Units reflected in the pre-application, must be submitted with the pre-application in order for the pre-application to be considered accepted by the Department. Pre-applications in which a Community Housing Development Corporation (CHDO) or a private Qualified Nonprofit Organization intends to serve as the Managing General Partner of the Development Owner, or Control the Managing General Partner of the Development Owner, may be eligible to receive a discount of 10% off the calculated pre-application fee provided such documentation is submitted with the fee. (§2306.6716(d))

(2) Refunds of Pre-application Fees. (§2306.6716(c)) Upon written request from the Applicant, the Department shall refund the balance of the pre-application fee for a pre-application that is withdrawn by the Applicant and that is not fully processed by the Department. The amount of refund will be commensurate with the level of review completed. Initial processing will constitute 50% of the review, threshold review prior to a deficiency being issued will constitute 30% of the review, and review after deficiencies are submitted and reviewed will constitute 20% of the review. In no instance will a refund of the pre-application fee be made after the Full Application Delivery Date.

(3) Application Fee. Each Application must be accompanied by an Application fee.

(A) Housing Tax Credit Applications. For Applicants having submitted a Competitive Housing Tax Credit pre-application which met the pre-application threshold requirements, and for which a pre-application fee was paid, the Application fee will be $20 per Unit based on the total number of Units in the full Application. Otherwise, the Application fee will be $30 per Unit based on the total number of Units in the full Application. Applications in which a CHDO or Qualified Nonprofit Organization intends to serve as the Managing General Partner of the Development Owner, or Control the Managing General Partner of the Development Owner, may be eligible to receive a discount of 10% off the calculated Application fee, provided such documentation is submitted with the fee. (§2306.6716(d))

(B) Direct Loan Applications. The fee will be $1,000 per Application except for those Applications that are layered with Housing Tax Credits and submitted simultaneously with the Housing Tax Credit Application. Pursuant to Tex. Gov't Code §2306.147(b), the Department is required to waive Application fees for private nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services and if HOME funds are awarded. In lieu of the Application fee, these organizations must include proof of their exempt status and a description of their supportive services as part of the Application. The Application fee is not a reimbursable cost under the HOME Program.

(4) Refunds of Application Fees. Upon written request from the Applicant, the Department shall refund the balance of the Application fee for an Application that is withdrawn by the Applicant and that is not fully processed by the Department. The withdrawal must occur prior to any Board action regarding eligibility or appeal. The amount of refund will be commensurate with the level of review completed. Initial processing will constitute 10% of the review, the site visit will constitute 10% of the review, program evaluation review will constitute 40% of the review, and the underwriting review will constitute 40% of the review. In no instance will a refund of the Application fee be made after final awards are made in July.

(5) Third Party Underwriting Fee. Applicants will be notified in writing prior to the evaluation in whole or in part of a Development by an independent external underwriter if such a review is required. The fee must be received by the Department prior to the engagement of the underwriter. The fees paid by the Development Owner to the Department for the external underwriting will be credited against the Commitment or Determination Notice Fee, as applicable, established in paragraphs (8) and (9) of this section, in the event that a Commitment or Determination Notice is issued by the Department to the Development Owner.

(6) Housing Tax Credit Commitment Fee. No later than the expiration date in the Commitment, a fee equal to 4% of the annual Housing Credit Allocation amount must be submitted; however, this amount is reduced to 2% in 2020 only. If the Development Owner has paid the fee and returns the credits by November 1 of the current Application Round, then a refund of 50% of the Commitment Fee may be issued upon request.

(7) Tax Exempt Bond Development Determination Notice Fee. No later than the expiration date in the Determination Notice, a fee equal to 4% of the annual Housing Credit Allocation amount, unless otherwise modified by a specific program NOFA, must be submitted; however, this amount is reduced to 2% in 2020 only. If the Development Owner has paid the fee and is not able close on the bonds, then a refund of 50% of the Determination Notice Fee may be issued upon request. The refund must be requested no later than 60 days after the bond closing date described in the Board action approving the Determination Notice.

(8) Tax-Exempt Bond Credit Increase Request Fee. Requests for increases to the credit amounts to be issued on IRS Forms 8609 for Tax-Exempt Bond Developments must be submitted with a request fee equal to 4% of the amount of the credit increase for one year.

(9) Extension Fees. All extension requests for deadlines relating to the Carryover, 10% Test (submission and expenditure), Construction Status Reports, or Cost Certification requirements submitted at least 30 calendar days in advance of the applicable original deadline will not be required to submit an extension fee. Any extension request submitted fewer than 30 days in advance or after the original deadline must be accompanied by an extension fee of $2,500. Fees for each subsequent extension request on the same activity will increase by increments of $500, regardless of whether the first request was submitted thirty (30) calendar days in advance of the applicable deadline. An extension fee will not be required for extensions requested on Developments that involve Rehabilitation when the Department or U.S. Department of Agriculture (USDA) is the primary lender, if USDA or the Department is the cause for the Applicant not meeting the deadline. For each Construction Status Report received after the applicable deadline, extension fees will be automatically due (regardless of whether an extension request is submitted). Unpaid extension fees related to Construction Status Reports will be accrued and must be paid prior to issuance of IRS Forms 8609. For purposes of Construction Status Reports, each report will be considered a separate activity.

(10) Amendment Fees. An amendment request for a non-material change that has not been implemented will not be required to pay an amendment fee. Material amendment requests (whether implemented or not), or non-material amendment requests that have already been implemented will be required to submit an amendment fee of $2,500 in order for the request to be processed. Fees for each subsequent amendment request related to the same Application will increase by increments of $500. A subsequent request, related to the same Application, regardless of whether the first request was non-material and did not require a fee, must include a fee of $3,000. Amendment fees and fee increases are not required for the Direct Loan programs.

(11) Right of First Refusal Fee. Requests for approval of the satisfaction of the Right of First Refusal provision of the Land Use Restriction Agreement (LURA) must be accompanied by a non-refundable fee of $2,500.

(12) Qualified Contract Pre-Request Fee. A Development Owner must file a preliminary Qualified Contract Request to confirm eligibility to submit a Qualified Contract request. The Pre-Request must be accompanied by a non-refundable processing fee of $250.

(13) Qualified Contract Fee. Upon eligibility approval of the Qualified Contract Pre-Request, the Development Owner may file a Qualified Contract Request. Such request must be accompanied by a non-refundable processing fee of $3,000.

(14) Ownership Transfer Fee. Requests to approve an ownership transfer must be accompanied by a non-refundable processing fee of $1,000.

(15) Unused Credit or Penalty Fee. Development Owners who have more tax credits allocated to them than they can substantiate through Cost Certification will return those excess tax credits prior to issuance of IRS Form 8609. For Competitive Housing Tax Credit Developments, a penalty fee equal to the one year credit amount of the lost credits (10% of the total unused tax credit amount) will be required to be paid by the Owner prior to the issuance of IRS Form 8609 if the tax credits are not returned, and 8609's issued, within 180 days of the end of the first year of the credit period. This penalty fee may be waived without further Board action if the Department recaptures and re-issues the returned tax credits in accordance with Code, §42. If an Applicant returns a full credit allocation after the Carryover Allocation deadline required for that allocation, the Executive Director may recommend to the Board the imposition of a penalty on the score for any Competitive Housing Tax Credit Applications submitted by that Applicant or any Affiliate for any Application in an Application Round occurring concurrent to the return of credits as further provided for in §11.9(f) of this chapter (relating to Factors Affecting Scoring and Eligibility in current and future Application Rounds), or if no Application Round is pending, the Application Round immediately following the return of credits. If any such point penalty is recommended to be assessed and presented for final determination by the Board, it must include notice from the Department to the affected party not less than 14 calendar days prior to the scheduled Board meeting. The Executive Director may, but is not required to, issue a formal notice after disclosure if it is determined that the matter does not warrant point penalties.

(16) Compliance Monitoring Fee. Upon receipt of the cost certification for HTC Developments or HTC Developments that are layered with Direct Loan funds, or upon the completion of the 24-month development period and the beginning of the repayment period for Direct Loan only Developments, the Department will invoice the Development Owner for compliance monitoring fees. For HTC only the amount due will equal $40 per low-income unit. For Direct Loan Only Developments the fee will be $34 per Direct Loan Designated Units. Developments with both HTCs and Direct Loan will only pay one fee equal to $40 per low income unit. Existing HTC developments with a Land Use Restriction Agreement that require payment of a compliance monitoring fee that receive a second allocation of credit will pay only one fee; the fee required by the original Land Use Restriction Agreement will be disregarded. For HTC Developments, the fee will be collected, retroactively if applicable, beginning with the first year of the credit period. For Direct Loan only Developments, the fee will be collected beginning with the first year of the repayment period. The invoice must be paid prior to the issuance of IRS Form 8609 for HTC properties. For Direct Loan only developments, the fee must be paid prior to the release of final retainage. Subsequent anniversary dates on which the compliance monitoring fee payments are due shall be determined by the month the first building is placed in service. Compliance fees may be adjusted from time to time by the Department.

(17) Public Information Request Fee. Public information requests are processed by the Department in accordance with the provisions of Tex. Gov't Code, Chapter 552. The Department uses the guidelines promulgated by the Office of the Attorney General to determine the cost of copying and other costs of production.

(18) Adjustment of Fees by the Department and Notification of Fees. (§2306.6716(b)) All fees charged by the Department in the administration of the tax credit and Direct Loan programs may be revised by the Department from time to time as necessary to ensure that such fees compensate the Department for its administrative costs and expenses. Unless otherwise determined by the Department, all revised fees shall apply to all Applications in process and all Developments in operation at the time of such revisions.

*§11.902. Appeals Process.*

(a) For Competitive HTC Applications, an Applicant or Development Owner may appeal decisions made by the Department pursuant to Tex. Gov't Code §2306.0321 and §2306.6715 using the process identified in this section. For Tax-Exempt Bond Developments and Direct Loan Developments (not contemporaneously submitted with a Competitive HTC Application), an Applicant or Development Owner may appeal decisions made by the Department pursuant to §1.7 of this title (relating to Appeals Process). Matters that can be appealed include:

(1) A determination regarding the Application's satisfaction of applicable requirements, Subchapter B of this chapter (relating to Site and Development Requirements and Restrictions) and Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules), pre-application threshold criteria, and underwriting criteria;

(2) The scoring of the Application under the applicable selection criteria;

(3) A recommendation as to the amount of Department funding to be allocated to the Application;

(4) Misplacement of an Application or parts of an Application, mathematical errors in scoring an Application, or procedural errors resulting in unequal consideration of the Applicant's proposal;

(5) Denial of a requested change to a Commitment or Determination Notice;

(6) Denial of a requested change to a loan agreement;

(7) Denial of a requested change to a LURA;

(8) Any Department decision that results in the termination or change in set-aside of an Application; and

(9) Any other matter for which an appeal is permitted under this chapter.

(b) An Applicant or Development Owner may not appeal a decision made regarding an Application filed by or an issue related to another Applicant or Development Owner.

(c) An Applicant or Development Owner must file its appeal in writing with the Department not later than the seventh calendar day after the date the Department publishes the results of any stage of the Application evaluation or otherwise notifies the Applicant or Development Owner of a decision subject to appeal. The appeal must be made by a Person designated to act on behalf of the Applicant or an attorney that represents the Applicant. For Application related appeals, the Applicant must specifically identify the Applicant's grounds for appeal, based on the original Application and additional documentation filed with the original Application as supplemented in accordance with the limitations and requirements of this chapter.

(d) The Executive Director may respond in writing not later than 14 calendar days after the date of actual receipt of the appeal by the Department. If the Applicant is not satisfied with the Executive Director's response to the appeal or the Executive Director does not respond, the Applicant may appeal directly in writing to the Board. While information can be provided in accordance with any rules related to public comment before the Board, full and complete explanation of the grounds for appeal and circumstances warranting the granting of an appeal must be disclosed in the appeal documentation filed with the Executive Director.

(e) An appeal filed with the Board must be received in accordance with Tex. Gov't Code §2306.6715(d).

(f) Board review of an Application related appeal will be based on the original Application. A witness in an appeal may not present or refer to any document, instrument, or writing not already contained within the Application as reflected in the Department's records.

(g) The decision of the Board regarding an appeal is the final decision of the Department.

(h) The Department will post to its website an appeal filed with the Department or Board and any other document relating to the processing of an Application related appeal. (§2306.6717(a)(5))

*§11.903. Adherence to Obligations (§2306.6720).*

Any Applicant, Development Owner, or other Person that fails to adhere to its obligations with regard to the programs of the Department, whether contractual or otherwise, made false or misleading representations to the Department with regard to an Application, request for funding, or compliance requirements, or otherwise violated a provision of Tex. Gov't Code, Chapter 2306 or a rule adopted under that chapter, may be subject to:

(1) Assessment of administrative penalties in accordance with Chapter 2, Subchapter C of this title (relating to Administrative Penalties) the Department's rules regarding the assessment of such penalties. Each day the violation continues or occurs is a separate violation for purposes of imposing a penalty; and/or

(2) In the case of the competitive Low Income Housing Tax Credit Program, a point reduction for any Application involving that Applicant over the next two Application Rounds succeeding the date on which the Department first gives written notice of any such failure to adhere to obligations or false or misleading representations. Point reductions under this section may be appealed to the Board.

*§11.904. Alternative Dispute Resolution (ADR) Policy.*

In accordance with Tex. Gov't Code, §2306.082, it is the Department's policy to encourage the use of appropriate ADR procedures under the Governmental Dispute Resolution Act, Tex. Gov't Code, Chapter 2010, to assist in resolving disputes under the Department's jurisdiction, as provided for in §1.17 of this title (relating to Alternative Dispute Resolution).

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 September 9, 2019.

TRD-201903185
Robert Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 20, 2019
For further information, please call: (512) 475-3929

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# CHAPTER 12. MULTIFAMILY HOUSING REVENUE BOND RULES

## 10 TAC §§12.1 - 12.10

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules (Bond Rules). 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.

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

1. Mr. Robert 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. Related to the repeal, a simultaneous proposal is making changes to an existing activity, the issuance of Private Activity Bonds (PAB).

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

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

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

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

6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the issuance of PABs.

7. The proposed repeal will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The proposed repeal will not negatively nor positively affect this state's economy.

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

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

TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043.

The proposed repeal does not contemplate nor authorize a takings by the Department; therefore, no Takings Impact Assessment is required.

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

The Department has evaluated the 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.

PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5).

Mr. Wilkinson has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repealed section would be an updated and more germane rule for administering the issuance of PAB. There will not be economic costs to individuals required to comply with the repealed section.

FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4).

Mr. Wilkinson also has determined that for each year of the first five years the 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 SEPTEMBER 20, 2019, to OCTOBER 11, 2019, to receive stakeholder comment on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Shannon Roth, Bond Rule Public Comment, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-1895, attn: Shannon Roth, Bond Rule Public Comments, or by email to shannon.roth@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time OCTOBER 11, 2019.

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

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

*§12.1. General.*

*§12.2. Definitions.*

*§12.3. Bond Rating and Investment Letter.*

*§12.4. Pre-Application Process and Evaluation.*

*§12.5. Pre-Application Threshold Requirements.*

*§12.6. Pre-Application Scoring Criteria.*

*§12.7. Full Application Process.*

*§12.8. Refunding Application Process.*

*§12.9. Occupancy Requirements.*

*§12.10. Fees.*

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 September 9, 2019.

TRD-201903122

Robert Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: October 20, 2019

For further information, please call: (512) 475-1762

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## 10 TAC §§12.1 - 12.10

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules (Bond Rule) §§12.1 - 12.10. The purpose of the proposed new sections are to provide compliance with Tex. Gov't Code §2306.67022 and to update the rule to make minor administrative revisions, and to ensure that it is reflective of changes made in the Department's Qualified Allocation Plan.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action pursuant to item (9), which excepts rule changes necessary to implement legislation. The proposed rule provides compliance with Tex. Gov't Code §2306.359, which requires the Department to provide for specific scoring criteria and underwriting considerations for multifamily private activity bond activities.

The Department has analyzed this 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. Robert Wilkinson, Executive Director, has determined that, for the first five years the proposed new rule would be in effect:

1. The proposed rule does not create or eliminate a government program, but relates to the corresponding repeal as this rulemaking is a simultaneous proposal making changes to an existing activity, the issuance of Private Activity Bonds (PAB).

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

3. The proposed rule changes do not require additional future legislative appropriations.

4. The proposed rule changes will not result in an increase in fees paid to the Department, but may, under certain circumstances, result in a decrease in fees paid to the Department regarding Tax-Exempt Bond Developments.

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

6. The proposed rule will not limit, expand or repeal an existing regulation but merely revises a rule.

7. The proposed rule will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The proposed rule will not negatively nor positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this proposed rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.359. Although the rule mostly pertains to the filing of a bond pre-application, some stakeholders have reported that their average cost of filing a full Application is between $50,000 and $60,000, which may vary depending on the specific type of Application, location of the Development Site, and other non-state of Texas funding sources utilized. The proposed rule does not, on average, result in an increased cost of filing an application as compared to the existing program rule.

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

2. This rule relates to the procedures in place for entities applying for multifamily PAB. Only those small or micro-businesses that participate in this program are subject to this rule. There are approximately 100 to 150 businesses, which could possibly be considered small or micro-businesses, subject to the proposed rule for which the economic impact of the rule would be a flat fee of $8,500, which includes the filing fees associated with submitting a bond pre-application.

The Department bases this estimate on the potential number of Applicants and their related parties who may submit applications to TDHCA for PAB (and accompanying housing tax credits). There could be additional costs associated with pre-applications depending on whether the small or micro-businesses outsource how the application materials are compiled. The fee for submitting an Application for PAB layered with LIHTC is may range from $480 to $2,400, which is based on $30 per unit, and all Applicants are required to propose constructing, at a minimum, 16 Units. The rule places a limit on the maximum number of Units that can be proposed at 120 Units.

These Application Fee costs are not inclusive of external costs required by the basic business necessities underlying any real estate transaction, from placing earnest money on land, conducting an Environmental Site Assessment, conducting a market study, potentially retaining counsel, hiring an architect and an engineer to construct basic site designs and elevations, and paying any other related, third-party fees for securing the necessary financing to construct multifamily housing. Nor does this estimate include fees from the Department for Applications that successfully attain an award.

There are 1,296 rural communities potentially subject to the proposed rule for which the economic impact of the rule is projected to be $0. 10 TAC Chapter 12 places no financial burdens on rural communities, as the costs associated with submitting an Application are borne entirely by private parties. In an average year the volume of applications for PAB that are located in rural areas is not more than 20% of all PAB applications received. In those cases, a rural community securing a PAB Development will experience an economic benefit, not least among which is the potential increased property tax revenue from a large multifamily Development.

3. The Department has determined that because there are rural PAB awardees, this program helps promote construction activities and long term tax base in rural areas of Texas. Aside from the fees and costs associated with submitting an Application, there is a probable positive economic effect on small or micro-businesses or rural communities that receive PAB awards and successfully use those awards to construct multifamily housing, although the specific impact is not able to be quantified in advance.

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

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the proposed rule may provide a possible positive economic effect on local employment in association with this rule since PAB Developments, layered with housing tax credits, often involve a total input of, typically at a minimum, $5 million in capital, but often an input of $10 million - $30 million. Such a capital investment has concrete direct, indirect, and induced effects on the local and regional economies and local employment. However, because the exact location of where program funds or developments are directed is not determined in rule, and is driven by real estate demand, there is no way to determine during rulemaking where the positive effects may occur. Furthermore, while the Department knows that any and all impacts are positive, that impact is not able to be quantified for any given community until PABs and LIHTCs are actually awarded to a proposed Development, given the unique characteristics of each proposed multifamily Development and region in which it is being developed.

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 significant construction activity is associated with any PAB Development layered with LIHTC and each apartment community significantly increases the property value of the land being developed, there are no probable negative effects of the new rule on particular geographic regions. If anything, positive effects will ensue in those communities where developers receive PAB awards.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be an updated and more germane rule for administering the issuances of PABs and corresponding allocation of housing tax credits. There is no change to the economic cost to any individuals required to comply with the new sections because the same processes described by the rule have already been in place through the rule found at these sections being repealed. The average cost of filing a pre-application and application remain unchanged based on these rule changes. The proposed

rule does not, on average, result in an increased cost of filing an application as compared to the existing program rule.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new sections are in effect, enforcing or administering the new sections do not have any foreseeable implications related to costs or revenues of the state or local governments because the same processes described by the rule have already been in place through the rule found at these sections being repealed.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held SEPTEMBER 20, 2019, to OCTOBER 11, 2019, to receive stakeholder comment on the proposed new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Shannon Roth, Bond Rule Public Comment, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-1895, attn: Shannon Roth, Bond Rule Public Comments, or by email to shannon.roth@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time OCTOBER 11, 2019.

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

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

*§12.1. General.*

(a) Authority. The rules in this chapter apply to the issuance of multifamily housing revenue bonds (Bonds) by the Texas Department of Housing and Community Affairs (Department). The Department is authorized to issue Bonds pursuant to Tex. Gov't Code, Chapter 2306. Notwithstanding anything in this chapter to the contrary, Bonds which are issued to finance the Development of multifamily rental housing are subject to the requirements of the laws of the State of Texas, including but not limited to Tex. Gov't Code, Chapters 1372 and 2306, and federal law pursuant to the requirements of Internal Revenue Code (Code), §142.

(b) General. The purpose of this chapter is to state the Department's requirements for issuing Bonds, the procedures for applying for Bonds and the regulatory and land use restrictions imposed upon Bond financed Developments. The provisions contained in this chapter are separate from the rules relating to the Department's administration of the Housing Tax Credit program. Applicants seeking a Housing Tax Credit Allocation should consult Chapter 11 of this title (relating to Qualified Allocation Plan (QAP)) for the current program year. In general, the Applicant will be required to satisfy the eligibility and threshold requirements of the Qualified Allocation Plan (QAP) in effect at the time the Certificate of Reservation is issued by the Texas Bond Review Board (TBRB). If the applicable QAP contradicts rules set forth in this chapter, the applicable QAP will take precedence over the rules in this chapter except in an instance of a conflicting statutory requirement, which shall always take precedence.

(c) Costs of Issuance. The Applicant shall be responsible for payment of all costs related to the preparation and submission of the pre-application and Application, including but not limited to, costs associated with the publication and posting of required public notices and all costs and expenses associated with the issuance of the Bonds, regardless of whether the Application is ultimately approved or whether Bonds are ultimately issued. At any point during the process, the Applicant is solely responsible for determining whether to proceed with the Application and the Department disclaims any and all responsibility and liability in this regard.

(d) Taxable Bonds. The Department may issue taxable Bonds and the requirements associated with such Bonds, including occupancy requirements, shall be determined by the Department on a case by case basis. Taxable bonds will not be eligible for an allocation of tax credits.

(e) Waivers. Requests for any permitted waivers of program rules must be made in accordance with §11.207 of this title (relating to Waiver of Rules).

*§12.2. Definitions.*

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Any capitalized terms not specifically mentioned in this section shall have the meaning as defined in Tex. Gov't Code, Chapter 2306, §§141, 142, and 145 of the Internal Revenue Code, and Chapter 11 of this title (relating to Qualified Allocation Plan (QAP)).

(1) Institutional Buyer--Shall have the meaning prescribed under 17 CFR §230.501(a), but excluding any natural person or any director or executive officer of the Department (17 CFR §230.501(a)(4) - (6)), or as defined by 17 CFR §230.144(a), promulgated under the Securities Act of 1933, as amended.

(2) Persons with Special Needs--Shall have the meaning prescribed under Tex. Gov't Code, §2306.511.

(3) Bond Trustee--A financial institution, usually a trust company or the trust department in a commercial bank, that holds collateral for the benefit of the holders of municipal securities. The Bond Trustee's obligations and responsibilities are set forth in the Indenture.

*§12.3. Bond Rating and Investment Letter.*

(a) Bond Ratings. All publicly offered Bonds issued by the Department to finance Developments shall have a debt rating the equivalent of at least an "A" rating assigned to long-term obligations by Standard & Poor's Ratings Services, or Moody's Investors Service, Inc. If such rating is based upon credit enhancement provided by an institution other than the Applicant or Development Owner, the form and substance of such credit enhancement shall be subject to approval by the Board, evidenced by a resolution authorizing the issuance of the credit enhanced Bonds.

(b) Investment Letters. Bonds rated less than "A" or Bonds which are unrated must be placed with one or more Institutional Buyers and must be accompanied by an investor letter acceptable to the Department. Subsequent purchasers of such Bonds must also be qualified as Institutional Buyers and must execute and deliver to the Department an investor letter in a form satisfactory to the Department. Bonds rated less than "A" and Bonds which are unrated shall be issued in physical form, in minimum denominations of one hundred thousand dollars ($100,000), and must carry a legend requiring any purchasers of the Bonds to be Institutional Buyers and sign and deliver to the Department an investor letter in a form acceptable to the Department.

*§12.4. Pre-Application Process and Evaluation.*

(a) Pre-Inducement Questionnaire. Prior to the filing of a pre-application, the Applicant shall submit the Pre-Inducement Questionnaire, in the form prescribed by the Department, so the Department can have a preliminary understanding of the proposed Development plan before a pre-application and corresponding fees are submitted. After reviewing the pre-inducement questionnaire, Department staff will follow-up with the Applicant to discuss the next steps in the process and may schedule a pre-inducement conference call or meeting. Prior to the submission of a pre-application, it is essential that the Department and Applicant communicate regarding the Department's objectives and policies in the development of affordable housing throughout the State using Bond financing. The acceptance of the questionnaire by the Department does not constitute a pre-application or Application and does

not bind the Department to any formal action regarding an inducement resolution.

(b) Neighborhood Risk Factors. If the Development Site has any of the characteristics described in §11.101(a)(3)(B) of this title (relating to Site and Development Requirements and Restrictions), the Applicant must disclose the presence of such characteristics to the Department. Disclosure may be done at time of pre-application and handled in connection with the inducement or it can be addressed at the time of Application submission. The Applicant understands that any determination made by staff or the Board at the time of bond inducement regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information related to any of the Neighborhood Risk Factors become available while the Tax-Exempt Bond Development Application is under review, or the information by which the original determination was made changes in a way that could affect eligibility, then such information will be re-evaluated and presented to the Board. The Application may be subject to termination should staff conclude that the Development Site has any characteristics found in §11.101(a)(3)(B) of this title (relating to Site and Development Requirements and Restrictions) and the Applicant failed to disclose.

(c) Pre-Application Process. An Applicant who intends to pursue Bond financing from the Department shall submit a pre-application by the corresponding pre-application submission deadline, as set forth by the Department. The required pre-application fee as described in §12.10 of this chapter (relating to Fees) must be submitted with the pre-application in order for the pre-application to be considered accepted by the Department. Department review at the time of the pre-application is limited and not all issues of eligibility, fulfillment of threshold requirements in connection with the full Application, and documentation submission requirements pursuant to Chapter 11 of this title (relating to Qualified Allocation Plan (QAP)) are reviewed. The Department is not responsible for notifying an Applicant of potential areas of ineligibility or other deficiencies at the time of pre-application. If the Development meets the criteria as described in §12.5 of this chapter (relating to Pre-Application Threshold Requirements), the pre-application will be scored and ranked according to the selection criteria as described in §12.6 of this chapter (relating to Pre-Application Scoring Criteria).

(d) Scoring and Ranking. The Department will rank the pre-application according to score within each priority defined by Tex. Gov't Code, §1372.0321. All Priority 1 pre-applications will be ranked above all Priority 2 pre-applications which will be ranked above all Priority 3 pre-applications. This priority ranking will be used throughout the calendar year. The selection criteria, as further described in §12.6 of this chapter, reflect a structure which gives priority consideration to specific criteria as outlined in Tex. Gov't Code, §2306.359. Should two or more pre-applications receive the same score, the tie breaker will go to the pre-application with the highest number of points achieved under §12.6(8) of this chapter (relating to Underserved Area) to determine which pre-application will receive preference in consideration of a Certificate of Reservation.

(e) Inducement Resolution. After the pre-applications have been scored and ranked, the pre-application will be presented to the Department's Board for consideration of an inducement resolution declaring the Department's initial intent to issue Bonds with respect to the Development. Approval of the inducement resolution does not guarantee final Board approval of the Bond Application. Department staff may recommend that the Board not approve an inducement resolution for a pre-application or that an inducement resolution be approved despite the presence of neighborhood risk factors not fully evaluated by staff. The Applicant recognizes the risk involved in moving forward should this be the case and the Department assumes no responsibility or liability in that regard. Each Development is unique, and therefore, making the final determination to issue Bonds is often dependent on the issues presented at the time the full Application is considered by the Board.

*§12.5. Pre-Application Threshold Requirements.*

The threshold requirements of a pre-application include the criteria listed in paragraphs (1) - (8) of this subsection. As the Department reviews the pre-application the assumptions as reflected in Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy) will be utilized even if not reflected by the Applicant in the pre-application.

(1) Submission of the required tabs of the Uniform Application as prescribed by the Department in the Multifamily Bond Pre-Application Procedures Manual;

(2) Submission of the completed Bond Pre-Application Supplement in the form prescribed by the Department;

(3) Completed Bond Review Board Residential Rental Attachment for the current program year;

(4) Site Control, evidenced by the documentation required under §11.204(10) of this title (relating to Required Documentation for Application Submission). The Site Control must be valid through the date of the Board meeting at which the inducement resolution is considered and must meet the requirements of §11.204(10) of this title at the time of Application;

(5) Boundary survey or plat clearly identifying the location and boundaries of the subject Property;

(6) Organizational Chart showing the structure of the Development Owner and of any Developer and Guarantor, providing the names and ownership percentages of all Persons having an ownership interest in the Development Owner, Developer and Guarantor, as applicable. The List of Organizations form, as provided in the pre-application, must include all Persons identified on the organizational charts, and further identify which of those Persons listed exercise Control of the Development;

(7) Evidence of Entity Registration or Reservation with the Texas Office of the Secretary of State; and

(8) A certification, as provided in the pre-application, that the Applicant met the requirements and deadlines for public notifications as identified in §11.203 of this title (relating to Public Notifications (§2306.6705(9)). Notifications must not be older than three months prior to the date of Application submission. Re-notification will be required by Applicants who have submitted a change from pre-application to Application that reflects a total Unit increase of greater than 10% or a 5% increase in density (calculated as Units per acre) as a result of a change in the size of the Development Site. In addition, should the person holding any position or role described in §11.203 of this title change between the submission of a pre-application and the submission of an Application, Applicants are required to notify the new person no later than the Full Application Delivery Date.

*§12.6. Pre-Application Scoring Criteria.*

This section identifies the scoring criteria used in evaluating and ranking pre-applications. The criteria includes those items required under Tex. Gov't Code, §2306.359 and other criteria considered important by the Department. Any scoring items that require supplemental information to substantiate points must be submitted in the pre-application, as further outlined in the Multifamily Bond Pre-Application Procedures Manual. Applicants proposing multiple sites will be required to submit

a separate pre-application for each Development Site. Each Development Site will be scored on its own merits and the final score will be determined based on an average of all of the individual scores.

(1) Income and Rent Levels of the Tenants. Pre-applications may qualify for up to (10 points) for this item.

(A) Priority 1 designation includes one of clauses (i) - (iii) of this subparagraph. (10 points)

*(i)* set aside 50% of Units rent capped at 50% AMGI and the remaining 50% of Units rent capped at 60% AMGI; or

*(ii)* set aside 15% of Units rent capped at 30% AMGI and the remaining 85% of Units rent capped at 60% AMGI; or

*(iii)* set aside 100% of Units rent capped at 60% AMGI for Developments located in a census tract with a median income that is higher than the median income of the county, MSA or PMSA in which the census tract is located.

(B) Priority 2 designation requires the set aside of at least 80% of the Units capped at 60% AMGI (7 points).

(C) Priority 3 designation. Includes any qualified residential rental development. Market rate Units can be included under this priority (5 points).

(2) Cost of Development per Square Foot. (1 point) For this item, costs shall be defined as either the Building Cost or the Hard Costs voluntarily included in Eligible Basis, as represented in the Development Cost Schedule, as originally provided in the pre-application. This calculation does not include indirect construction costs. Pre-applications that do not exceed $95 per square foot of Net Rentable Area will receive one point. Rehabilitation will automatically receive (1 point).

(3) Unit Sizes. (5 points) The Development must meet the minimum requirements identified in this subparagraph to qualify for points. Points for this item will be automatically granted for Applications involving Rehabilitation (excluding Reconstruction).

(A) Five-hundred-fifty (550) square feet for an Efficiency Unit;

(B) Six-hundred-fifty (650) square feet for a one Bedroom Unit;

(C) Eight-hundred-fifty (850) square feet for a two Bedroom Unit;

(D) One-thousand-fifty (1,050) square feet for a three Bedroom Unit; and

(E) One-thousand, two-hundred-fifty (1,250) square feet for a four Bedroom Unit.

(4) Extended Affordability. (2 points) A pre-application may qualify for points under this item for Development Owners that are willing to extend the State Restrictive Period for a Development to a total of 35 years.

(5) Unit and Development Construction Features. A minimum of (9 points) must be selected, as certified in the pre-application, for providing specific amenity and quality features in every Unit at no extra charge to the tenant. The amenities and corresponding point structure is provided in §11.101(b)(6)(B) of this title (relating to Site and Development Requirements and Restrictions). The points selected at pre-application and/or Application will be required to be identified in the LURA and the points selected must be maintained throughout the State Restrictive Period. Applications involving scattered site Developments must have a specific amenity located within each Unit to count for points. Rehabilitation Developments will start with a base score of (3 points).

(6) Common Amenities. All Developments must provide at least the minimum threshold of points for common amenities based on the total number of Units in the Development as provided in subparagraphs (A) - (F) of this paragraph. The common amenities include those listed in §11.101(b)(5) of this title (relating to Site and Development Requirements and Restrictions) and must meet the requirements as stated therein. The Owner may change, from time to time, the amenities offered; however, the overall points as selected at Application must remain the same.

(A) Developments with 16 to 40 Units must qualify for (4 points);

(B) Developments with 41 to 76 Units must qualify for (7 points);

(C) Developments with 77 to 99 Units must qualify for (10 points);

(D) Developments with 100 to 149 Units must qualify for (14 points);

(E) Developments with 150 to 199 Units must qualify for (18 points); or

(F) Developments with 200 or more Units must qualify for (22 points).

(7) Resident Supportive Services. (8 points) By electing points, the Applicant certifies that the Development will provide supportive services, which are listed in §11.101(b)(7) of this title, appropriate for the residents and that there will be adequate space for the intended services. The provision and complete list of supportive services will be included in the LURA and must be maintained throughout the State Restrictive Period. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. Should the QAP in subsequent years provide different services that those listed in §11.101(b)(7)(A) - (E), the Development Owner may be allowed to select services listed therein as provided in §10.405(a)(2) of this title (related to Amendments) and will be required to substantiate such service(s) at the time of compliance monitoring, if requested by staff. The services provided should be those that will directly benefit the Target Population of the Development and be accessible to all. No fees may be charged to the residents for any of the services. Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item. These services are intended to be provided by a qualified and reputable provider in the specified industry such that the experience and background of the provider demonstrates sufficient knowledge to be providing the service. In general, on-site leasing staff or property maintenance staff would not be considered a qualified provider. Where applicable, the services must be documented by a written agreement with the provider.

(8) Underserved Area. An Application may qualify to receive up to (2 points) if the Development Site meets the criteria described in §11.9(c)(5)(A) - (H) of this title (relating to Competitive HTC Selection Criteria). The pre-application must include evidence that the Development Site meets this requirement.

(9) Development Support/Opposition. (Maximum +24 to -24 points) Each letter will receive a maximum of +3 to -3 points and must be received 10 business days prior to the Board's consideration of the pre-application. Letters must clearly state support or opposition to the specific Development. State Representatives or Senators as well

as local elected officials must be in office when the pre-application is submitted and represent the district containing the proposed Development Site. Letters of support from State or local elected officials that do not represent the district containing the proposed Development Site will not qualify for points. Neutral letters that do not specifically refer to the Development or do not explicitly state support will receive (zero points). A letter that does not directly express support but expresses it indirectly by inference (i.e., "the local jurisdiction supports the Development and I support the local jurisdiction") counts as a neutral letter except in the case of State elected officials. A letter from a State elected official that does not directly indicate support by the official, but expresses support on behalf of the official's constituents or community (i.e., "My constituents support the Development and I am relaying their support") counts as a support letter.

(A) State Senator and State Representative of the districts whose boundaries include the proposed Development Site;

(B) Mayor of the municipality (if the Development is within a municipality or its extraterritorial jurisdiction);

(C) All elected members of the Governing Body of the municipality (if the Development is within a municipality or its extraterritorial jurisdiction);

(D) Presiding officer of the Governing Body of the county in which the Development Site is located;

(E) All elected members of the Governing Body of the county in which the Development Site is located;

(F) Superintendent of the school district in which the Development Site is located; and

(G) Presiding officer of the board of trustees of the school district in which the Development Site is located.

(10) Preservation Initiative. (10 points) Preservation Developments, including Rehabilitation proposals on Properties which are nearing expiration of an existing affordability requirement within the next two years or for which there has been a rent restriction requirement in the past 10 years may qualify for points under this item. Evidence must be submitted in the pre-application.

(11) Declared Disaster Areas. (7 points) A pre-application may receive points if the Development Site is located in an area declared a disaster area under Tex. Gov't Code §418.014 at the time of submission, or at any time within the two-year period preceding the date of submission.

*§12.7. Full Application Process.*

(a) Application Submission. Once the inducement resolution has been approved by the Board, an Applicant who elects to proceed with submitting a full Application to the Department must submit the complete tax credit Application pursuant to §11.201 of this title (relating to Procedural Requirements for Application Submission).

(b) Eligibility Criteria. The Department will evaluate the Application for eligibility and threshold at the time of full Application pursuant to Chapter 11 of this title (relating to Qualified Allocation Plan (QAP)). If there are changes to the Application at any point prior to closing that have an adverse affect on the score and ranking order and that would have resulted in the pre-application being placed below another pre-application in the ranking, the Department will terminate the Application and withdraw the Certificate of Reservation from the Bond Review Board (with the exception of changes to deferred developer's fees and support or opposition points). The Development and the Applicant must satisfy the requirements set forth in Chapter 11 of this title in addition to Tex. Gov't Code, Chapter 1372, the applicable requirements of Tex. Gov't Code Chapter 2306, and the Code. The Applicant will also be required to select a Bond Trustee from the Department's approved list as published on its website.

(c) Bond Documents. Once the Application has been submitted and the Applicant has deposited funds to pay initial costs, the Department's bond counsel shall draft Bond documents.

(d) Public Hearings. The Department will hold a public hearing to receive comments pertaining to the Development and the issuance of the Bonds. A representative of the Applicant or member of the Development Team must be present at the public hearing and will be responsible for conducting a brief presentation on the proposed Development and providing handouts at the hearing that should include at minimum, a description of the Development, maximum rents and income restrictions. If the proposed Development is Rehabilitation, the presentation should include the proposed scope of work that is planned for the Development. The handouts must be submitted to the Department for review at least two days prior to the public hearing. Publication of all notices required for the public hearing shall be at the sole expense of the Applicant, as well as any facility rental fees or required deposits.

(e) Approval of the Bonds. Subject to the timely receipt and approval of commitments for financing, an acceptable evaluation for eligibility, the satisfactory negotiation of Bond documents, and the completion of a public hearing, the Board, upon presentation by Department staff, will consider the approval of the final Bond resolution relating to the issuance, final Bond documents and in the instance of privately placed Bonds, the pricing, terms and interest rate of the Bonds. The process for appeals and grounds for appeals may be found under §1.7 of this title (relating to Appeals Process). To the extent applicable to each specific Bond issuance, the Department's conduit multifamily Bond transactions will be processed in accordance with 34 TAC Part 9, Chapter 181, Subchapter A (relating to Bond Review Rules) and Tex. Gov't Code, Chapter 1372.

(f) Local Permits. Prior to closing on the Bond financing, all necessary approvals, including building permits from local municipalities, counties, or other jurisdictions with authority over the Development Site must have been obtained or evidence that the permits are obtainable subject only to payment of certain fees. For Rehabilitation Developments, in instances where such permits will be not received prior to bond closing, the Department may, on a limited and case-by-case basis allow for the closing to occur, subject to receipt of confirmation, acceptable to the Department, by the lender and/or equity investor that they are comfortable proceeding with closing.

*§12.8. Refunding Application Process.*

(a) Application Submission. Owners who wish to refund or modify tax-exempt bonds that were previously issued by the Department must submit to the Department a summary of the proposed refunding plan or modifications. To the extent such modifications constitute a re-issuance under state law the Applicant shall then be required to submit a refunding Application in the form prescribed by the Department pursuant to the Bond Refunding Application Procedures Manual.

(b) Bond Documents. Once the Department has received the refunding Application and the Applicant has deposited funds to pay initial costs, the Department's bond counsel will draft the necessary Bond documents.

(c) Public Hearings. Depending on the proposed modifications to existing Bond covenants a public hearing may be required. Such hearing must take place prior to obtaining Board approval and must meet the requirements pursuant to §12.7(d) of this chapter (relating to Full Application Process) regarding the presence of a member of the Development Team and providing a summary of proposed Development changes.

(d) Rule Applicability. Refunding Applications must meet the applicable requirements pursuant to Chapter 11 of this title (relating to Qualified Allocation Plan (QAP)). At the time of the original award the Application would have been subject to eligibility and threshold requirements under the QAP in effect the year the Application was awarded. Therefore, it is anticipated the Refunding Application would not be subject to the site and development requirements and restrictions pursuant to §11.101 of this title (relating to Site and Development Requirements and Restrictions). The circumstances surrounding a refunding Application are unique to each Development; therefore, upon evaluation of the refunding Application, the Department is authorized to utilize its discretion in the applicability of the Department's rules as it deems appropriate.

*§12.9. Occupancy Requirements.*

(a) Filing and Term of Regulatory Agreement. A Bond Regulatory and Land Use Restriction Agreement will be filed in the property records of the county in which the Development is located for each Development financed from the proceeds of Bonds issued by the Department. The term of the Regulatory Agreement will be based on the criteria as described in paragraphs (1) - (3) of this subsection, as applicable:

(1) The longer of 30 years, from the date the Development Owner takes legal possession of the Development;

(2) The end of the remaining term of the existing federal government assistance pursuant to Tex. Gov't Code, §2306.185; or

(3) The period required by the Code.

(b) Federal Set Aside Requirements.

(1) Developments which are financed from the proceeds of Private Activity Bonds must be restricted under one of the two minimum set-asides as described in subparagraphs (A) and (B) of this paragraph. Regardless of an election that may be made under Section 42 of the Code relating to income averaging, a Development will be required under the Bond Regulatory and Land Use Restriction Agreement to meet one of the two minimum set-asides described in subparagraphs (A) and (B) of this paragraph.

(A) At least 20% of the Units within the Development shall be occupied or held vacant and available for occupancy at all times by persons or families whose income does not exceed 50% of the area median income; or

(B) At least 40% of the Units within the Development shall be occupied or held vacant and available for occupancy at all times by persons or families whose income does not exceed 60% of the area median income.

(2) The Development Owner must, at the time of Application, indicate which of the two federal set-asides will apply to the Development and must also designate the selected priority for the Development in accordance with Tex. Gov't Code, §1372.0321. Units intended to satisfy set-aside requirements must be distributed equally throughout the Development, and must include a reasonably proportionate amount of each type of Unit available in the Development.

(3) No tenant qualifying under either of the minimum federal set-asides shall be denied continued occupancy of a Unit in the Development because, after commencement of such occupancy, such tenant's income increases to exceed the qualifying limit. However, should a tenant's income, as of the most recent determination thereof, exceed 140% of the applicable federal set-aside income limit and such tenant constitutes a portion of the set-aside requirement of this section, then such tenant shall only continue to qualify for so long as no Unit of comparable or smaller size is rented to a tenant that does not qualify as a Low-Income Tenant.

*§12.10. Fees.*

(a) Pre-Application Fees. The Applicant is required to submit, at the time of pre-application, the following fees: $1,000 (payable to TDHCA), $2,500 (payable to the Department's bond counsel) and $5,000 (payable to the Texas Bond Review Board (TBRB) pursuant to Tex. Gov't Code, §1372.006(a)). These fees cover the costs of pre-application review by the Department, its bond counsel and filing fees associated with the Certificate of Reservation to the TBRB.

(b) Application Fees. At the time of Application the Applicant is required to submit a tax credit application fee of $30 per Unit based on the total number of Units and a bond application fee of $20 per Unit based on the total number of Units, unless otherwise modified by a specific program NOFA. Such fees cover the costs associated with Application review and the Department's expenses in connection with providing financing for a Development. For Developments proposed to be structured as a portfolio the bond application fees may be reduced on a case by case basis at the discretion of Department staff.

(c) Closing Fees. The closing fee for Bonds, other than refunding Bonds, is equal to 50 basis points (0.005) of the issued principal amount of the Bonds, unless otherwise modified by a specific program NOFA. The Applicant will also be required to pay at closing of the Bonds the first two years of the administration fee equal to 20 basis points (0.002) of the issued principal amount of the Bonds, with the first year prorated based on the actual closing date, and a Bond compliance fee equal to $25/Unit (excludes market rate Units). Such compliance fee shall be applied to the third year following closing.

(d) Application and Issuance Fees for Refunding Applications. For refunding an Application the application fee will be $10,000 unless the refunding is not required to have a public hearing, in which case the fee will be $5,000. The closing fee for refunding Bonds is equal to 25 basis points (0.0025) of the issued principal amount of the refunding Bonds. If applicable, administration and compliance fees due at closing may be prorated based on the current billing period of such fees. If additional volume cap is being requested other fees may be required as further described in the Bond Refunding Applications Procedures Manual.

(e) Administration Fee. The annual administration fee is equal to 10 basis points (0.001) of the outstanding bond amount at the inception of each payment period and is paid as long as the Bonds are outstanding, unless otherwise modified by a specific program NOFA.

(f) Bond Compliance Fee. The Bond compliance monitoring fee is equal to $25/Unit (excludes market rate Units), and is paid for the duration of the State Restrictive Period under the Regulatory Agreement.

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 September 9, 2019.

TRD-201903123
Robert Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 20, 2019
For further information, please call: (512) 475-1762

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## CHAPTER 25. COLONIA SELF-HELP CENTER PROGRAM RULE

### 10 TAC §§25.1 - 25.9

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 25, §§25.1 - 25.9, Colonia Self-Help Center Program Rule. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

The Department has analyzed this 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.

Robert Wilkinson, Executive Director, has determined that, for the first five years the repeal will be in effect:

1. The repeal does not create or eliminate a government program. Related to the repeal, a simultaneous proposal is making changes to the rule governing the Colonia Self-Help Center Program.

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

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

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

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

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to the existing procedures for the Colonia Self-Help Center Program.

7. The repeal will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively nor positively affect the state's economy.

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

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

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

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an elimination of an outdated rule while adopting a new updated rule under separate action. There will be no economic costs to individuals required to comply with the repealed section.

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

g. REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 20, 2019, to October 21, 2019, to receive input on the repealed rule. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Raul Gonzales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email htf@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, October 21, 2019.

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

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

*§25.1. Purpose and Services.*

*§25.2. Definitions.*

*§25.3. Eligible and Ineligible Activities.*

*§25.4. Colonia Self-Help Centers Establishment.*

*§25.5. Allocation and the Colonia Self-Help Center Application Requirements.*

*§25.6. Colonia Residents Advisory Committee Duties and Award of Contracts.*

*§25.7. Colonia Self-Help Center Contract Operation and Implementation.*

*§25.8. Administrative Thresholds.*

*§25.9. Expenditure Thresholds and Closeout 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 September 9, 2019.

TRD-201903124
Robert Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 20, 2019
For further information, please call: (512) 475-1762

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### 10 TAC §§25.1 - 25.10

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 25, §§25.1 - 25.10, Colonia Self-Help Center Program Rule. The purpose of the

new rules is to detail processes for addressing Administrator failure to meet Expenditure Thresholds; allow the Department to issue one-time contract extensions; remove the requirement that the Department impose liens upon certain participating households; increase the maximum assistance amounts for certain program activities; outline inspection requirements for all activity types; and improve readability and consistency throughout with the re-ordering of phrases and updating of terms.

Tex. Gov't Code §2001.0045(b) does apply to the rule being adopted because no exceptions apply, however it should be noted that no costs are associated with this action that would have prompted a need to be offset.

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

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

Robert Wilkinson, Executive Director, has determined that, for the first five years the proposed rules will be in effect:

1. The new rules do not create or eliminate a government program, but relate to the corresponding repeals as this rulemaking is a simultaneous proposal which makes changes governing the Colonia Self-Help Center Program.

2. The new rules do not require a change in work that will require the creation of new employee positions, nor will the new rules reduce workload to a degree that any existing employee positions are eliminated.

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

4. The new rules do not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.

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

6. The new rules will not limit, expand or repeal an existing regulation but merely revise rules.

7. The new rules will not increase nor decrease the number of individuals subject to the rules' applicability.

8. The new rules will not negatively nor positively affect the state's economy.

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

The Department has evaluated these new rules and determined that they will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new 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 new rules as to their possible effects on local economies and has determined that for the first five years the new rules will be in effect there will be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new rules are in effect, the public benefit anticipated as a result of the new rules would be to further clarify the Colonia Self-Help Center Program. The purpose of the new rules is to further clarify aspects of program administration and to improve readability. There will be no economic costs to individuals required to comply with the new rules.

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

g. REQUEST FOR PUBLIC COMMENT. The public comment period will be held SEPTEMBER 20, 2019, to OCTOBER 21, 2019, to receive input on the new rules. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Raul Gonzales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email htf@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, OCTOBER 21, 2019.

STATUTORY AUTHORITY. The new rules 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.

*§25.1. Purpose and Services.*

The purpose of this chapter is to establish the requirements governing the Colonia Self-Help Centers, created pursuant to Subchapter Z of Chapter 2306 of the Tex. Gov't Code, Chapter 1 of this title (relating to Administration), Chapter 2 of this title (relating to Enforcement), Chapter 20 of this title (relating to Single Family Programs Umbrella Rule), Chapter 21 of this title (relating to Minimum Energy Efficiency Requirements for Single Family Construction Activities), and including the use and administration of all funds provided to the Texas Department of Housing and Community Affairs (the Department) by the legislature of the annual Texas Community Development Block Grant (CDBG) allocation from the U.S. Department of Housing and Urban Development (HUD). Colonia Self-Help Centers are designed to assist individuals and families of low-income and very low-income to finance, refinance, construct, improve, or maintain a safe, suitable home in the designated Colonia service areas or in another area the Department has determined is suitable.

*§25.2. Definitions.*

The following words and terms, when used in this chapter, shall have the following meanings unless the context or the Notice of Funding Availability (NOFA) indicates otherwise. Other definitions may be found in Chapter 2306 of the Tex. Gov't Code, Chapter 1 of this title (relating to Administration), Chapter 2 of this title (relating to Enforcement), Chapter 20 of this title (relating to Single Family Programs Umbrella Rule), and Chapter 21 of this title (relating to Minimum Energy Efficiency Requirements for Single Family Construction Activities). Common definitions used under the CDBG Program are incorporated herein by reference.

(1) Beneficiary--A person or family benefiting from the Activities of a Colonia Self-Help Center Contract.

(2) Colonia Resident Advisory Committee (C-RAC)--As established by Tex. Gov't Code §2306.584, advises the Department's Governing Board regarding the needs of Colonia residents, appropriate and effective programs that are proposed or operated through the CSHCs, and activities that may be undertaken through the CSHCs to better serve the needs of Colonia residents.

(3) Colonia Self-Help Center (CSHC)--Those centers established by the Department through its authority under Tex. Gov't Code §2306.582.

(4) Colonia Self-Help Center Provider--An organization with which the Administrator has an executed Contract to administer Colonia Self-Help Center Activities.

(5) Community Action Agency--A political subdivision, combination of political subdivisions, or nonprofit organization that qualifies as an eligible entity under 42 U.S.C. §9902.

(6) Contract Budget--An exhibit in the Contract which specifies in detail the Contract funds by budget category, which is used in the Draw process. The budget also includes all other funds involved that are necessary to complete the Performance Statement specifics of the Contract.

(7) Direct Delivery Costs--Soft costs related to and identified with a specific housing unit. Eligible Direct Delivery Costs include:

(A) Preparation of work write-ups, work specifications, and cost estimates;

(B) Legal fees, recording fees, architectural, engineering, or professional services required to prepare plans, drawings or specifications directly attributable to a particular housing unit;

(C) Home inspections, inspections for lead-based paint, asbestos, termites, and interim inspections; and

(D) Other costs as approved in writing by the Department.

(8) Housing Assistance Guidelines (HAG)--The guidelines provided by the Unit of General Local Government that outline the process and procedures used to administer and implement the Colonia Self-Help Center Program. These guidelines cannot conflict with state statute, program rules, regulations and/or contract requirements.

(9) Implementation Manual--A set of guidelines designed by the Department as an implementation tool for the Administrator and/or Colonia Self-Help Center Subawardee that have been awarded Community Development Block Grant Funds, which provides terms, regulations, procedures, forms, and attachments.

(10) Income Eligible Household--

(A) Low-income households--Households whose annual incomes do not exceed 80% of the median income of the area as determined by HUD Fair Market Rent Limits;

(B) Very low-income households--Households whose annual incomes do not exceed 60% of the median family income for the area, as determined by HUD Fair Market Rent Limits; and

(C) Extremely low-income households--Households whose annual incomes do not exceed 30% of the median family income for the area, as determined by HUD Fair Market Rent Limits.

(11) M Number--A several digit identification number, preceded by the letter "M" and assigned by the Texas Water Development Board to colonias that have been identified by the Office of the Attorney General of Texas.

(12) New Construction--A Single Family Housing Unit that is newly built by certified Community Housing Development Organizations (CHDOs) or Community Based Development Organizations (CBDOs) on a previously vacant lot that will be occupied by an Income Eligible Household.

(13) Performance Statement--An exhibit in the Contract which specifies in detail the scope of work to be performed.

(14) Public Service Activities--Activities other than New Construction, Reconstruction, and Rehabilitation activities that are provided by a Colonia Self-Help Center to benefit Colonia residents. These include, but are not limited to, construction skills classes, solid waste removal, tool lending library, technology classes, home ownership classes and technology access.

(15) Qualified Inspector--An individual that has been certified by the Administrator as having professional certifications, relevant education or a minimum of three years' experience in a field directly related to home inspection, which may include but is not limited to installing, servicing, repairing or maintaining the structural, mechanical, plumbing or electrical systems found in Single Family Housing Units, as evidenced by inspection logs, certifications, training courses or other documentation.

(16) Reconstruction--The demolition and rebuilding of a Single Family Housing Unit on the same lot in substantially the same manner. The number of housing units may not be increased; however, the number of rooms may be increased or decreased dependent on the number of Household members living in the Single Family Housing Unit at the time of Application. Reconstruction of residential structures also permits replacing an existing substandard Manufactured Housing Unit with a new, site-built housing unit or a new ENERGY STAR Certified Manufactured Housing Unit.

(17) Rehabilitation--The improvement or modification of an existing Single Family Housing Unit through an alteration, addition, or enhancement on the same lot.

(18) Unit of General Local Government (UGLG)--A city, town, county, or other general purpose political subdivision of the state.

*§25.3. Eligible and Ineligible Activities.*

(a) A CSHC may only serve Income Eligible Households in the targeted Colonias by:

(1) Providing assistance in obtaining Loans or grants to build a home;

(2) Teaching construction skills necessary to repair or build a home;

(3) Providing model home plans;

(4) Operating a program to rent or provide tools for home construction and improvement for the benefit of property owners in Colonias who are building or repairing a residence or installing necessary residential infrastructure;

(5) Assisting to obtain, construct, access, or improve the service and utility infrastructure designed to service residences in a Colonia, including potable water, wastewater disposal, drainage, streets, and utilities;

(6) Surveying or platting residential property that an individual purchased without the benefit of a legal survey, plat, or record;

(7) Providing credit and debt counseling, which if related to home purchase or finance that will take place on or after August 1, 2020, must satisfy HUD's Counseling Requirements;

(8) Applying for Grants and Loans to provide housing and other needed community improvements;

(9) Providing other services that the CSHC, with the approval of the Department, determines are necessary to assist Colonia residents in improving their physical living conditions such as Rehabilitation, Reconstruction, and New Construction, including help in obtaining suitable alternative housing outside of a Colonia area;

(10) Providing assistance in obtaining Loans or grants to enable an Income Eligible Household to acquire fee simple title to property that originally was purchased under a Contract for Deed, contract for sale, or other executory contract;

(11) Provide title-related services for unrecorded Contracts for Deed, clouded titles, property transfers, intestate estates, and other title ownership matters;

(12) Providing access to computers, the internet and computer training; and

(13) Providing monthly programs to educate Income Eligible Households on their rights and responsibilities as property owners.

(b) Ineligible Activities. Any Activity not allowed by the Housing and Community Development Act of 1974 (42 U.S.C. §§5301, et seq.) is ineligible for funding.

(c) A CSHC will only provide grants, financing, or Mortgage Loan services for New Construction, Reconstruction, and Rehabilitation of a home in a Colonia that is connected to a Department-approved source of potable water and wastewater disposal.

*§25.4. Colonia Self-Help Centers Establishment.*

(a) Pursuant to §2306.582 of the Tex. Gov't Code, the Department has established CSHCs in El Paso, Hidalgo, Starr, Webb, Cameron (also serves Willacy), Maverick, and Val Verde Counties.

(b) The Department has designated:

(1) Appropriate staff in the Department whom are designated to assist the CSHCs in understanding the requirements of the Program, provide training, and access CDBG funding to enable the CSHCs to carry out Programs;

(2) Five Colonias in each service area are to be identified by the UGLG to receive concentrated attention from the CSHCs in consultation with the C-RAC; and

(3) A geographic area for the services provided by each CSHC.

(c) The Department shall make a reasonable effort to secure:

(1) Contributions, services, facilities, or operating support from the county commissioner's court of the county in which a CSHC is located which it serves to support the operation of that CSHC; and

(2) An adequate level of CDBG funds to provide each CSHC with funds for low interest Mortgage financing, Grants for Self-Help Programs, a revolving loan fund for septic tanks, a tool lending program, and other Activities the Department determines are necessary.

(d) Consistent with federal rules and regulations, as provided for in the General Appropriations Act, the CSHC in El Paso shall provide technology and computer access to residents of targeted colonias. Any CSHC may establish a technology center to provide internet access to Colonia residents.

*§25.5. Allocation, Deobligation and Termination, and Reobligation.*

(a) Allocation.

(1) The Department distributes CSHC funds to UGLGs from the 2.5% set-aside appropriated to the Department from the annual CDBG allocation to the state of Texas.

(2) The Department shall allocate no more than $1 million per CSHC award except as provided by this chapter. If there are insufficient funds available from any specific program year to fully fund an Application, the awarded Administrator may accept the amount available at that time and wait for the remaining funds to be committed upon the Department's receipt of the CDBG set-aside allocation from the next program year.

(3) A baseline award will first be calculated for a CSHC beginning at $500,000 (or a lesser amount as provided for in paragraph (2) of this subsection). The Department will add to the baseline award up to an additional $100,000 for each Expenditure Threshold that has been met on the current CSHC Contract, as defined in §25.10 of this chapter (relating to Expenditure Thresholds and Closeout Requirements). An additional amount up to $100,000 may be added for an accepted Application submitted by the deadline. An Administrator may request that the Board add additional funds to a baseline award, despite the failure to meet one or more Expenditure Thresholds. To add funds to a CSHC Contract being considered for award, the Board must find that the failure to meet each Expenditure Threshold requirement was principally related to factors beyond the control of the Administrator. If the Board decides to award these additional funds in whole or in part, it must also determine that the award of these funds to the Administrator does not create a substantial risk to the State of recapture of CDBG funds by HUD.

(b) Deobligation and Termination.

(1) At any point in which an Administrator has missed one of the Expenditure Thresholds required in §25.10 of this chapter, the Department will send a notification of possible deobligation. An Administrator will have the opportunity to submit a mitigation plan that outlines how it will bring the Contract back into compliance, and how it will ensure that subsequent Expenditure Thresholds can be achieved. If the Department approves the mitigation plan, it will take no further action on deobligation at that time. If the Department receives no response, or if the mitigation plan is insufficient to be approved by the Department, the Department will send notice to the Administrator and the UGLG official to announce the initiation of deobligation proceedings and to identify the Administrator's rights under Tex. Gov't Code, Chapter 2105 and 10 TAC §1.411 (relating to Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code). Approval of such action will be presented to the Department's Board.

(2) At any point in which the Department has determined that a Contract should be terminated for violation of program requirements, the Department will send a notification of possible termination of Contract. A Subrecipient will have the opportunity to submit a mitigation plan that outlines how it will bring the Contract back into compliance. If the Department approves the mitigation plan, it will take no further action on termination at that time. If the Department receives no response, or if the mitigation plan is insufficient to be approved by the Department, the Department will send notice to the Administrator and the UGLG official to announce the initiation of deobligation proceedings and to identify the Administrator's rights under Tex. Gov't Code, Chapter 2105 and 10 TAC §1.411. Approval of such action will be presented to the Department's Board.

(3) During the time that a deobligation or termination process is pending, the Department may reduce an Administrator's Contract by up to 24.99% of the Contract and may publish a Request

for Administrators (RFA) to identify another UGLG to implement the CSHC Program in the affected service area. No award to a respondent of an RFA will be made in an amount greater than 24.99% of the original Administrator's Contract until the process provided by Tex. Gov't Code, Chapter 2105 has been completed. Once that process is completed, an Administrator awarded a Contract through the RFA may receive up to the maximum award available, subject to funding availability.

(c) Reobligation.

(1) When funds become available from the proceedings of subsection (b) of this section, they will be held for a period of at least 90 days while an RFA for the service area is initiated. Unless debarred by HUD or the Department, a prior Administrator is not precluded from applying under an RFA for this service area.

(2) In all cases, funds for a given service area will continue to be allocated to that service area unless no acceptable respondents are identified. Only in such cases that no qualified provider can be identified for a given service area will funds available for that area be reissued to other CSHC Contracts for other service areas.

*§25.6. Colonia Self-Help Center Application Requirements.*

(a) At least three months prior to the expiration of its current Contract, or when 90% of the funds under the current Contract have been expended, whichever comes first, the current Administrator may submit its Application to the Department.

(b) If an Application is received from a CSHC that is requesting additional funds, at approximately the same time that an application is received from a CSHC whose Contract is reaching expiration, the Department will prioritize funds first to ensure continuity to a CSHC whose Contract is reaching expiration. Among all other non-expiring Applications, the Department shall review Applications on a first-come, first-served basis. Recommendations for award will be made until all CSHC funds for the current program year and deobligated CSHC funds are committed.

(c) Each Application must utilize the Department's forms and documents where applicable, and include:

(1) Evidence of the submission of the Administrator's current Single Audit, if applicable;

(2) A Colonia identification form and the M number assigned by the Texas Water Development Board for each Colonia to be served, including all required documentation as identified on the form;

(3) A boundary map for each of the five designated Colonias;

(4) A description of the method of implementation. For each Colonia to be served by the CSHC, the Administrator shall describe the services and Activities to be delivered.

(5) A proposed Performance Statement which must include the number of Colonia residents estimated to be assisted from each Activity, the Activities to be performed (including all Sub-Activities under each budget line item), and the corresponding budget;

(6) A proposed Contract Budget which must adhere to the following limitations:

(A) The Administration line item may not exceed 15% of the total Contract;

(B) At least 8% but not more than 10% of the total Contract must be used for the Public Service Activities;

(C) For UGLGs self-administering the Program, Direct Delivery Costs for all New Construction and Reconstruction Activities cannot exceed 10% per unit provided by the CSHC Program. Direct Delivery Costs for Rehabilitation are limited to 15% per unit provided by the CSHC Program.

(7) The CSHC's Proposed Housing Assistance Guidelines, which must include an Affirmative Fair Housing Marketing Plan as described under Chapter 20 of this title (relating to Single Family Programs Umbrella Rule) and all program parameters for Rehabilitation, Reconstruction, or New Construction;

(8) Evidence of model subdivision rules adopted by the County;

(9) Written policies and procedures, as applicable, for:

(A) Solid waste removal;

(B) Construction skill classes;

(C) Homeownership classes;

(D) Technology access, including any technology hardware inventory purchased with CSHC funds;

(E) Homeownership assistance; and/or

(F) Tool lending library, including any library inventory purchased with CSHC funds. All CSHCs are required to operate a tool lending library;

(10) Authorized signatory form and direct deposit authorization;

(11) UGLG resolution authorizing the submission of the Application and appointing the primary signatory for all Contract documents;

(12) Acquisition report (even if there is no acquisition activity);

(13) Certification of exemption for HUD funded projects;

(14) Initial disclosure report for the Texas Department of Agriculture;

(15) All required forms needed for a Previous Participation Review under §1.302 of this title (relating to Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of this Subchapter); and

(16) All required forms required by §20.9 of this title, (relating to Fair Housing, Affirmative Marketing and Reasonable Accommodations).

(d) Upon receipt of the Application, the Department will perform an initial review to determine whether the Application is complete and that each Activity meets a national objective as required by §104(b)(3) of the Housing and Community Development Act of 1974 (42 U.S.C. 5304(b)(3)).

(e) The Department may reduce the funding amount requested in the Application in accordance to §25.5(a) of this chapter (relating to Allocation, Deobligation and Termination, and Reobiligation). Should this occur, the Department shall notify the appropriate Administrator before the Application is submitted to C-RAC for review, comments and approval. The Department and the Administrator will work together to jointly agree on the performance measures and proposed funding amounts for each Activity.

(f) The Department shall execute a four-year Contract with the Administrator. If the Administrator requirements are completed prior to the end of the four-year Contract period, the Administrator may submit a new Application. Contract extensions may be granted for up to six months by the Department.

(g) The Department may decline to fund any Application if the Activities do not, in the Department's sole determination, represent a prudent use of CSHC funds. The Department is not obligated to proceed with any action pertaining to any Application which is received, and may decide it is in the Department's best interest to refrain from pursuing any selection process.

*§25.7. Colonia Residents Advisory Committee Duties and Award of Contracts.*

(a) The Board shall appoint one committee member to represent each of the counties in which a CSHC is located to serve on the C-RAC. The members of the C-RAC shall be selected from lists of candidates submitted to the Department by local nonprofit organizations and the Commissioners Court of the county in which a CSHC is located. Each committee member:

(1) Must be a resident of a Colonia in the county the member represents;

(2) May not be a board member, contractor, or employee of the Administrator;

(3) May not have any ownership interest in an entity that is awarded a Contract under this chapter; and

(4) Must undergo the Department's previous participation review and cannot be in default on any Department obligation.

(b) The C-RAC members' terms will expire every four years. C-RAC members may be reappointed by the Board; however, the Board shall review and reappoint members at least once every four years. In the event that a C-RAC member is unable to complete the four-year term, Counties may propose an eligible candidate to be appointed by the Board to fulfill the remainder of the term.

(c) The Department may also select to have an alternate member from the list for each county in the event that the primary member is unable to attend meetings.

(d) The C-RAC shall advise the Board regarding:

(1) The housing needs of Colonia residents;

(2) Appropriate and effective programs that are proposed or are operated through the CSHCs; and

(3) Activities that might be undertaken through the CSHCs to serve the needs of Colonia residents.

(e) The C-RAC shall advise the Colonia initiatives coordinator as provided by §775.005 of the Tex. Gov't Code.

(f) Award of Contracts.

(1) The Department will schedule C-RAC meetings for the review of satisfactorily completed CSHC applications from Administrators. The C-RAC shall meet no less than 30 days prior to the board meeting at which the Board is scheduled to award a CSHC Contract, and may meet at other times as needed.

(2) Any Administrator whose Application is being considered at the C-RAC meeting must be present to answer questions that C-RAC may have.

(3) After the C-RAC makes a recommendation on an Application, the recommendation will then proceed through the Department's award process.

(g) Reimbursement to C-RAC members for their reasonable travel expenses in the manner provided by §25.9(1) of this chapter (relating to Administrative Thresholds) is allowable and shall be paid by the Administrator or Administrators whose Applications were considered at the meeting.

*§25.8. Colonia Self-Help Center Contract Operation and Implementation.*

(a) The Department shall contract with an UGLG for the operation of a CSHC. The UGLG may subaward the activity to a Nonprofit Organization, Community Action Agency, or Housing Authority that has demonstrated the ability to carry out all or part of the functions of a CSHC.

(b) The Administrator is required to complete an environmental review in accordance with 24 CFR Part 58, and receive the Authority to Use Grant Funds from the Department before:

(1) Any commitment of CDBG funds (i.e., execution of a legally binding Agreement and expenditure of CDBG funds) for Activities other than those that are specifically exempt from environmental review; and

(2) Any commitment of non-CDBG funds associated with the scope of work in the Contract that would have an adverse environmental impact (i.e., demolition, excavating, etc.) or limit the choice of alternatives (i.e., acquisition of real property, Rehabilitation of buildings or structures, etc.).

(c) Request for Payments. The Administrator shall submit a properly completed request for reimbursement, as specified by the Department, at a minimum on a quarterly basis; however, the Department reserves the right to request more frequent reimbursement requests as it deems appropriate. The Department shall determine the reasonableness of each amount requested and shall not make disbursement of any such payment request until the Department has reviewed and approved such request. Payments under the Contract are contingent upon the Administrator's full and satisfactory performance of its obligations under the Contract. The Department may reduce a request for payment if documentation is insufficient or the performance is unsatisfactory.

(1) $2,500 is the minimum amount for a Draw to be processed, unless it is the final Draw request. If an Administrator fails to submit a draw for 12 consecutive months the Contract may be subject to termination for failure to meet the Contract obligations.

(2) Draw requests will be reviewed to comply with all applicable laws, rules and regulations. The Administrator is responsible for maintaining a complete record of all costs incurred in carrying out the Activities of the Contract.

(3) Draw requests for all housing Activities will only be reimbursed upon satisfactory completion of types of Activities (e.g., all plumbing completed, entire roof is completed, etc.), consistent with the construction contract.

(4) The Administrator will be the principal contact responsible for reporting to the Department and submitting Draw requests.

(d) Reporting. The Administrator shall submit to the Department reports on the operation and performance of the Contract on forms as prescribed by the Department. Quarterly Reports shall be due no later than the tenth calendar day of the month after the end of each calendar quarter. The Administrator shall maintain and submit to the Department up-to-date accomplishments in quarterly reports identifying quantity and cumulative data including the expended funds, Activities completed and total number of Beneficiaries. Processing of draws may be suspended until the Administrator's quarterly reports are submitted and approved by the Department. If an Administrator fails to submit Activity data within a 24-consecutive-month period, the Contract may be subject to termination for failure to meet the Contract obligations.

(e) Amendments. The Department's executive director or its designee, may authorize, execute, and deliver amendments to any Contract.

(1) One Contract Extension of no more than six months may be granted beyond the four-year Contract period.

(2) Changes in beneficiaries. Any changes in contractual deliverables and beneficiaries shall require a Contract amendment.

(3) The Department, at its discretion and in coordination with an Administrator, may increase a Contract Budget amount and the number of Activities and beneficiaries to be assisted based on the availability of CSHC funds, the exemplary performance in the implementation of an Administrator's current Contract, and the time available in the four-year Contract period. Upon Board approval, the cap on the maximum Contract amount may be exceeded if the terms of this paragraph are met by the Administrator.

(f) Participating Households must provide at least 15% of the labor necessary to construct or Rehabilitate the Single Family Housing Unit by contributing the labor personally and/or through non-contract labor assistance from family, friends, or volunteers. Volunteer hours at the CSHC may also fulfill the 15% labor requirement.

(g) Program funds can be used for Rehabilitation, Reconstruction or New Construction. Assistance may be provided in the form of a grant or a forgivable loan to the household. Additional funds from other sources may be leveraged with Program funds. Program funds cannot exceed the following limits:

(1) Program funds for Rehabilitation cannot exceed $60,000 in Program funds per unit per Income Eligible Household.

(2) Program funds for Reconstruction or New Construction cannot exceed $75,000 in Program funds per unit per Income Eligible Household.

(3) An additional $5,000 in Program funds is available for properties with non-functioning and/or unpermitted cesspools or septic tanks that need replacement with an appropriately sized on-site sewage facility, or connection to a Department-approved source of potable water and wastewater disposal.

(h) All Direct Delivery Costs must be eligible and based on actual expenses for the specific housing unit. Subawardees acting on behalf of an UGLG shall incorporate Direct Delivery Costs into its bid proposals.

(i) Prior to Department approval of CSHC construction activity, the CSHC must document that existing on-site sewage facilities (septic systems) have been inspected by a Texas Commission on Environmental Quality-authorized agent to determine if the system is in substantial compliance with Health & Safety Code, Chapter 366 and the rules adopted under that chapter. Cesspools that have not been previously permitted are unacceptable and must be replaced by an appropriately sized on-site sewage facility or the home must be connected to a Department-approved source of potable water and wastewater disposal.

(j) New Construction, Reconstruction, and Rehabilitation activities under the CSHC Program must adhere to TDHCA's Minimum Energy Efficiency Requirements for Single Family Construction Activities under Chapter 21 of this title.

(k) Inspections. A Qualified Inspector shall conduct all inspections with respect to applicable construction standards and documentation protocol prescribed by the Department.

(1) New Construction Requirements.

(A) No initial inspection is required; however, building construction plans must be submitted to the Department for approval.

(B) A Certificate of Occupancy is acceptable confirmation of meeting construction requirements. If the activity occurs in a jurisdiction that does not issue Certificates of Occupancy, a Qualified Inspector shall inspect the property applying all applicable construction standards and forms prescribed by the Department.

(2) Reconstruction Requirements.

(A) The initial inspection must identify all substandard conditions as described by Texas Minimum Construction Standards (TMCS) and any health or safety concerns that are beyond repair; confirm that a governmental entity has condemned the unit; or identify the unit as an MHU that will not be rehabilitated. The work write-up and cost estimate shall address all substandard conditions in sufficient detail to justify the need for reconstruction.

(B) A Certificate of Occupancy is acceptable confirmation of meeting construction requirements. If the activity occurs in a jurisdiction that does not issue Certificates of Occupancy, a Qualified Inspector shall inspect the property applying all applicable construction standards and forms prescribed by the Department.

(C) Administrator must demonstrate compliance with §2306.514 Tex. Gov't Code, "Construction Requirements for Single Family Affordable Housing".

(3) Rehabilitation Requirements.

(A) The initial inspection must identify all substandard conditions as described by TMCS and any health or safety concerns. The work write-up and cost estimate shall address all substandard conditions in sufficient detail.

(B) The final inspection shall document that all elements incorporated into the contracted work-write up have been addressed satisfactorily prior to the final draw request.

(l) The Administrator's initial HAG, as well as any amendments to the HAG, shall be approved by commissioners' court and the Department prior to implementation.

(m) Residents shall have access to all Public Service Activities identified in the Contract at least two Saturdays a month during hours preferable to Colonia residents. In addition, residents shall have access at least one day during the workweek after hours for a period long enough to allow Colonia residents to utilize the services.

(n) The purchase of new tools, new computers and computer equipment, if included in the approved budget, shall only occur within the first 24 months of the Contract Term. Any purchases of these items after 24 months must be approved by the Department in writing prior to purchase.

*§25.9. Administrative Thresholds.*

Administrative Draw request. Administrative Draw requests are funded out of the portion of the Contract budget specified for administrative cost (administration line item of the Contract budget). These costs are not directly associated with an Activity. The administration line item will be disbursed as described in paragraphs (1) - (8) of this section:

(1) Threshold 1. The initial administrative Draw request allows up to 10% of the administration line item may be drawn down prior to the start of any project Activity included in the Performance Statement of the Contract (provided that all Pre-Draw requirements, as described in the Contract, for administration have been met). Subsequent administrative funds will be reimbursed in proportion to the percentage of the work that has been completed as identified in paragraphs (2) - (8) of this section.

(2) Threshold 2. Up to an additional 15% (25% of the total) of the administration line item to be drawn down after a start of project Activity has been demonstrated. For the purposes of this threshold, if Davis-Bacon labor standards are required for a given Program Activity, the "start of project Activity" is evidenced by the submission of a start of construction form. If labor standards are not required on a given project Activity that has commenced (and for which reimbursement is being sought), the submission of a Draw request that includes sufficient back-up documentation for expenses of non-administrative project Activities evidences a start of project Activity. Direct Delivery Costs charges will not constitute a start of project Activity.

(3) Threshold 3. Up to an additional 25% (50% of the total) of the administration line item may be drawn down after compliance with the 20-month threshold requirement has been demonstrated as described in §25.10 of this chapter (relating to Expenditure Thresholds and Closeout Requirements).

(4) Threshold 4. Up to an additional 25% (75% of the total) of the administration line item may be drawn down after compliance with the 32-month threshold requirement has been demonstrated as described in §25.10 of this chapter.

(5) Threshold 5. Up to an additional 15% (90% of the total) of the administration line item may be drawn down after compliance with the 44-month threshold requirement has been demonstrated as described in §25.10 of this chapter.

(6) Threshold 6. Up to an additional 5% (95% of the total) of the administration line item may be drawn down upon receipt of all required close-out documentation.

(7) Threshold 7. The final 5% (100% of the total), less any administrative funds reserved for audit costs as noted on the Project Completion Report of the administration line item, may be drawn down following receipt of the programmatic close-out letter issued by Department.

(8) Threshold 8. Any funds reserved for audit costs will be released upon completion and submission of an acceptable audit. Only the portion of audit expenses reasonably attributable to the Contract is eligible.

*§25.10. Expenditure Thresholds and Closeout Requirements.*

(a) Administrators must meet the expenditure threshold requirements described in paragraphs (1) - (4) of this subsection. If an Administrator fails to expend and submit expenditure documentation by the due date, the deobligation process outlined in §25.5 of this chapter (relating to Allocation, Deobligation and Termination, and Reobiligation) may be initiated. A Contract may also be subject to termination for failure to meet the Contract obligations, and the Department may elect not to provide future funds to the Administrator. In such cases, the Administrator will be notified in writing of the processes described in Tex. Gov't Code, Chapter 2105 and §1.411 of this title (relating to Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code).

(1) Six-Month Threshold. An Environmental Assessment that meets the requirements outlined in the environmental clearance requirements of the Contract must be approved by the Department within six months from the start date of the Contract;

(2) Twenty-Month Threshold. The Administrator must have expended and submitted for reimbursement to the Department at least 30% of the total CSHC funds awarded within 20 months from the start date of the Contract;

(3) Thirty-two-Month Threshold. The Administrator must have expended and submitted for reimbursement to the Department at least 60% of the total CSHC funds awarded within 32 months from the start date of the Contract; and

(4) Forty-four-Month Threshold. The Administrator must have expended and submitted for reimbursement to the Department at least 90% of the total CSHC funds awarded within 44 months from the start date of the Contract.

(b) For purposes of meeting a threshold in this section, "expended and submitted" means that a Draw request was received by the Department, is complete, and all costs needed to meet a threshold are adequately supported. The Department will not be liable for a threshold violation if a Draw request is not received by the threshold date.

(c) The final Draw request and complete closeout documents must be submitted no later than 60 days after the Contract end date. If closeout documents are not received by this deadline, the remaining Contract balance may be subject to Deobligation as the Department's liability for such costs will have expired. If an Administrator has reserved funds in the project completion report for a final Draw request, the Administrator has 90 days after the Contract end date to submit the final Draw request, with the exception of the Department's portion of audit costs which may be reimbursed upon submission of the final Single Audit.

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 September 9, 2019.

TRD-201903125
Robert Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 20, 2019
For further information, please call: (512) 475-1762

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# TITLE 19. EDUCATION

## PART 2. TEXAS EDUCATION AGENCY

### CHAPTER 97. PLANNING AND ACCOUNTABILITY

### SUBCHAPTER EE. ACCREDITATION STATUS, STANDARDS, AND SANCTIONS

### DIVISION 1. STATUS, STANDARDS, AND SANCTIONS

**19 TAC §§97.1061, 97.1063, 97.1064**

The Texas Education Agency (TEA) proposes amendments to §§97.1061, 97.1063, and §97.1064, concerning interventions and sanctions for campuses, campus intervention teams, and campus turnaround plans. The proposed amendments would implement the statutory provisions in accordance with Senate Bill (SB) 1488, SB 1566, and House Bill (HB) 2263, 85th Texas Legislature, 2017. The proposed amendments would also clarify intervention activities required in Texas Education Code (TEC), Chapter 39A, Accountability Interventions and Sanctions.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 97.1061, Interventions and Sanctions for Campuses, establishes the required interventions for campuses that receive an unacceptable rating and describes some of the duties of the campus intervention team (CIT). The proposed amendment to this section would align with the agency's current intervention framework and changes from the 85th Texas Legislature, 2017, as follows.

Subsection (a) would be modified to remove the requirement to engage in the Texas Accountability Intervention System (TAIS), as this framework is no longer used by the agency.

Subsection (b) would be modified to update the reference to the TEC. SB 1488, 85th Texas Legislature, 2017, moved provisions of TEC, Chapter 39, to TEC, Chapter 39A.

Subsection (h) would be replaced to align with HB 2236, 85th Texas Legislature, 2017, which removed the requirement for a CIT for campuses that receive an acceptable performance rating the year immediately after receiving an unacceptable performance rating.

Section 97.1063, Campus Intervention Team, defines the members of the CIT and their responsibilities. The proposed amendment to this section would include adding the principal's direct supervisor as a member of the CIT, incorporating a conforming rule change for the external CIT member (the professional service provider was removed in a rule change under §97.1051), and updating TEC references due to changes from the 85th Texas Legislature, 2017, as follows.

Subsection (a) would be modified to update references to the TEC. SB 1488, 85th Texas Legislature, 2017, moved provisions of TEC, Chapter 39, to TEC, Chapter 39A.

Subsection (b) would be modified to update the required members of the CIT. Current paragraph (1) would be deleted to remove the requirement for a professional service provider (PSP) to conform to rules changes in §97.1051. The agency's updated school improvement framework and processes no longer include a PSP. The agency will still require a CIT member who is not employed by the district, and this CIT member will be vetted by the agency or its technical assistance provider. Proposed new paragraph (2) would add the requirement for the campus principal's direct supervisor to be a member of the CIT, if the district coordinator of school improvement (DCSI) is not the principal's direct supervisor. Proposed new subsection (c) would add the requirement for an education professional who is not employed by the campus or district to assist in conducting the needs assessment.

Section 97.1064, Campus Turnaround Plan, describes who must develop a campus turnaround plan, what the plan should include, and timelines for submission of the plan. The proposed amendment to this section would include alignment to changes in TEC from the 85th Texas Legislature, 2017, timeline clarifications, and a general description of the methodology used by the agency to approve or reject turnaround plans, as follows.

Subsection (a) would be modified to update the reference to the TEC. SB 1488, 85th Texas Legislature, 2017, moved elements of TEC, Chapter 39, to TEC, Chapter 39A.

Subsection (d) would be modified to move the statements regarding stakeholder input on a completed turnaround plan as part of subsections (d) and (e) to make it clearer that stakeholder input on the completed plan is separate from the requirement to solicit stakeholder input in plan development. Subsection (e) would also be modified to update the reference to the TEC. SB 1488, 85th Texas Legislature, 2017, moved provisions of TEC, Chapter 39, to TEC, Chapter 39A.

Subsection (f) would be modified to align the required components of the Campus Turnaround Plan to the required components stated in TEC, §39A.105. It would also add the requirement that the plan include how the board of trustees will support the oversight of academic achievement and student performance, per SB 1566, 85th Texas Legislature, 2017.

Proposed new subsection (h) would implement the timeline requirements per TEC, §39.107(b-10). Proposed new paragraph (3) would describe the methodology used to make a determination on the approval of a turnaround plan.

Proposed new subsection (i) would implement the timeline requirements for submitting modified turnaround plans created per TEC, §39.107(b-11).

Proposed new subsection (k) would clarify the requirement, per TEC, §39A.106, that the commissioner-approved turnaround plan must be implemented once the campus receives a third consecutive unacceptable performance rating.

Proposed new subsection (l) would specify that the commissioner may appoint a conservator, monitor, management team, or board of managers per TEC, §39A.102.

The proposed amendments to 19 TAC §§97.1061, 97.1063, and 97.1064 also include technical edits to conform to *Texas Register* style and formatting requirements.

FISCAL IMPACT: Tim Regal, associate commissioner for instructional support, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would limit an existing regulation. A campus would no longer be required to work with a professional service provider throughout the year. A campus would only work with a non-district person during the need assessment.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or

decrease in fees paid to the agency; would not create a new regulation; would not expand or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Regal has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be ensuring appropriate interventions and sanctions for districts and campuses. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

PUBLIC COMMENTS: The public comment period on the proposal begins September 20, 2019, and ends October 21, 2019. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on September 20, 2019. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/. Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §39.107(b-10), which requires the commissioner to approve or reject turnaround plans by June 15 of each year and outline concerns with rejected turnaround plans in writing; TEC, §39.107(b-11), which requires the district to modify a rejected turnaround plan with assistance from agency staff. The modified plan must be submitted within 60 days of its rejection. The commissioner must approve or reject the modified plan within 15 days of its submission; TEC, §39A.051, which requires the commissioner to assign a campus intervention team to campuses whose performance is below any standard under TEC, §39.054(e); TEC, §39A.052, which defines the education professionals that may be included on the campus intervention team; TEC, §39A.053, which requires the campus intervention team to conduct an onsite needs assessment and describes the requirements of that needs assessment; TEC, §39A.054, which requires the campus intervention team to make recommendations based on the needs assessment; TEC, §39A.055, which requires the campus intervention team to assist the campus in developing, submitting to the commissioner, and monitoring a targeted improvement plan; TEC, §39A.056, which requires the campus intervention team to provide notice of the public meeting regarding the development of the targeted improvement plan; TEC, §39A.058, which requires the board of trustees, assisted by the campus intervention team, to submit the targeted improvement plan to the commissioner for approval; TEC, §39A.059, which describes the campus intervention team's responsibilities in assisting the campus in implementing the targeted improvement plan; TEC, §39A.060, which describes the continuing duties of the Campus Intervention Team; TEC, §39A.101, which requires the commissioner to order a campus that has received two consecutive unacceptable ratings to develop a campus turnaround plan; TEC, §39A.115, which authorizes the commissioner to adopt rules necessary to implement TEC, Chapter 39A, Subchapter C, Campus Turnaround Plan; TEC, §39A.251, which applies the interventions and sanctions to charters in the same manner as they apply to school districts and campuses; TEC, §39A.252, which requires the commissioner to adopt rules applying the interventions and sanctions to open enrollment charter schools; and TEC, §39A.902, which requires the commissioner to annually review performance of public schools and determine the appropriate levels of sanctions or interventions. It prohibits the commissioner from raising the accreditation or performance rating unless the district has demonstrated improved student performance. It also requires the commissioner to increase the level of sanction or intervention due to lack of improvement.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§39.107(b-10) and (b-11), 39A.051, 39A.052, 39A.053, 39A.054, 39A.055, 39A.056, 39A.058, 39A.059, 39A.060, 39A.101, 39A.115, 39A.251, 39A.252 and 39A.902.

*§97.1061. Interventions and Sanctions for Campuses.*

(a) If a campus's performance is below any standard under Texas Education Code (TEC), §39.054(e), the campus shall engage in interventions as described by the Texas Education Agency (TEA) [~~the Texas Accountability Intervention System (TAIS) continuous improvement process~~].

(b) The commissioner shall assign members to a campus intervention team (CIT) as outlined in §97.1063 of this title (relating to Campus Intervention Team) and TEC, §39A.052 [~~§39.106~~].

(c) The campus shall establish a campus leadership team (CLT) that includes the campus principal and other campus leaders responsible for the development, implementation, and monitoring of the targeted improvement plan.

(d) The campus intervention team shall:

(1) conduct a data analysis related to areas of low performance;

(2) conduct a needs assessment based on the results of the data analysis, as follows.

(A) The needs assessment shall include a root cause analysis.

(B) Root causes identified through the needs assessment will be addressed in the targeted improvement plan and, if applicable, campus turnaround plan;

(3) assist in the creation of a targeted improvement plan, as follows.

(A) Input must be gathered from the principal; campus-level committee established under TEC, §11.251; parents; and community members, prior to the development of the targeted improvement plan, using the following steps.

*(i)* The campus must hold a public meeting at the campus. The campus shall take reasonable steps to conduct the meeting at a time and in a manner that would allow a majority of stakeholders to attend and participate. The campus may hold more than one meeting if necessary.

*(ii)* The public must be notified of the meeting 15 days prior to the meeting by way of the district and campus website,

local newspapers or other media that reach the general public, and the parent liaison, if present on the campus.

*(iii)* All input provided by family and community members should be considered in the development of the final targeted improvement plan submitted to the TEA [~~Texas Education Agency (TEA)~~].

(B) The completed targeted improvement plan must be presented at a public hearing and approved by the board of trustees.

(C) The targeted improvement plan must be submitted to the commissioner of education for approval according to TEA procedures and guidance; and

(4) assist the commissioner in monitoring the implementation of the targeted improvement plan. The campus will submit updates to the TEA as requested that include:

(A) a description of how elements of the targeted improvement plan are being implemented and monitored; and

(B) data demonstrating the results of interventions from the targeted improvement plan.

(e) If a campus is assigned an unacceptable rating under TEC, §39.054(e), for a second consecutive year, the campus must engage in the processes outlined in subsections (a), (b), (c), and (d) of this section, and the campus must develop a campus turnaround plan to be approved by the commissioner as described in §97.1064 of this title (relating to Campus Turnaround Plan).

(f) If a campus is assigned an unacceptable rating under TEC, §39.054(e), for a third or fourth consecutive year, the campus must engage in the processes outlined in subsections (a), (b), (c), and (d) of this section, and the campus must implement the commissioner-approved campus turnaround plan as described in §97.1064 of this title (relating to Campus Turnaround Plan).

(g) If a campus is assigned an unacceptable rating under TEC, §39.054(e), for a fifth consecutive year, the commissioner shall order the appointment of a board of managers to govern the district or closure of the campus.

(h) If a campus was assigned an unacceptable rating in the prior year but met standard in the current year, the CIT will continue to work with the campus until the campus meets all the performance standards under TEC, §39.054(e), for a two-year period.

[~~(h) If a campus was assigned an unacceptable rating in the prior year but met standard in the current year, the campus will continue to engage in TAIS activities outlined in subsection (a) of this section with the following exceptions:~~]

[~~(1) the campus may release its CIT based on criteria set annually by the TEA; and~~]

[~~(2) the campus that developed a turnaround plan may modify that plan as described in §97.1064 of this title.~~]

(i) Based on a campus's progress toward improvement, the commissioner may order a hearing if a campus's performance is below any standard under TEC, §39.054(e).

(j) Interventions and sanctions listed under this section begin upon release of preliminary ratings and may be adjusted based on final accountability ratings.

*§97.1063. Campus Intervention Team.*

(a) The campus intervention team (CIT) shall perform the duties outlined in Texas Education Code (TEC), §§39A.053, 39A.054, 39A.055, 39A.056, 39A.058, 39A.059, 39A.060, and 39A.101 [~~§39.106 and §39.107~~], and oversee the activities outlined in §97.1061(a) of this title (relating to Interventions and Sanctions for Campuses) and §97.1064 of this title (relating to Campus Turnaround Plan).

(b) The CIT must include:

[~~(1) a professional service provider (PSP); and~~]

(1) [~~(2)~~] a district coordinator of school improvement (DCSI). The DCSI must submit qualifications to the Texas Education Agency (TEA) for approval; and [~~.~~]

(2) the campus principal's direct supervisor, if the DCSI is not the campus principal's direct supervisor.

(c) An education professional, approved through an application either by the Texas Education Agency (TEA) or the TEA's technical assistance provider, who is not an employee of the campus or district, shall assist with the needs assessment as described in TEC, §39A.053.

(d) [~~(c)~~] The CIT shall perform the duties referenced in subsection (a) of this section in collaboration with the campus leadership team (CLT) as outlined in §97.1061(c) [~~§97.1061(a)~~] of this title and §97.1064 of this title.

(e) [~~(d)~~] CIT members as defined in subsection (b) of this section and the campus principal shall attend TEA-sponsored trainings on interventions and sanctions.

*§97.1064. Campus Turnaround Plan.*

(a) If a campus is assigned an unacceptable rating under Texas Education Code (TEC), §39.054(e), for two consecutive years, the campus must develop a campus turnaround plan to be approved by the commissioner of education in accordance with TEC, §§39A.103-39A.107 [~~§39.107~~].

(b) A charter campus subject to this section must revise its charter in accordance with §100.1033 of this title (relating to Charter Amendment). The governing board of the charter performs the function of the board of trustees for this section.

(c) The district may request assistance from a regional education service center or partner with an institution of higher education in developing and implementing a campus turnaround plan.

(d) Within 60 days of receiving a campus's preliminary accountability rating the district must notify parents, community members, and stakeholders that the campus received an unacceptable rating for two consecutive years and request assistance in developing the campus turnaround plan. All input provided by family, community members, and stakeholders must be considered in the development of the final campus turnaround plan submitted to the Texas Education Agency (TEA).

[~~(1) The district shall notify stakeholders of their ability to review the completed plan on the district website at least 30 days before the final plan is submitted to the board of trustees as described in TEC, §39.107(b-3).~~]

[~~(2) All input provided by family, community members, and stakeholders must be considered in the development of the final campus turnaround plan submitted to the Texas Education Agency (TEA).~~]

(e) The district shall notify stakeholders of their ability to review the completed plan and post the completed plan on the district website at least 30 days before the final plan is submitted to the board of trustees as described in TEC, §39A.104. The district shall provide the

following groups an opportunity to review and comment on the completed plan before it is submitted for approval to the board of trustees:

(1) the campus-level committee established under TEC, §11.251. If the campus is not required to have a campus-level committee under TEC, §11.251, the district shall provide an opportunity for professional staff at the campus to review and comment on the campus turnaround plan;

(2) teachers at the campus;

(3) parents; and

(4) community members.

(f) A campus turnaround plan must include:

(1) a detailed description of the method for restructuring, reforming, or reconstituting the campus;

(2) [~~(1)~~] a detailed description of the academic programs to be offered at the campus, including instructional methods, length of school day and school year, academic credit and promotion criteria, and programs to serve special student populations;

(3) [~~(2)~~] a detailed description of the budget, staffing, and financial resources required to implement the plan, including any supplemental resources to be provided by the district or other identified sources;

(4) [~~(3)~~] written comments received from stakeholders described in subsection (e) of this section; [~~and~~]

(5) [~~(4)~~] the term of the charter, if a district charter is to be granted for the campus under TEC, §12.0522; and [~~.~~]

(6) a detailed description for developing and supporting the oversight of academic achievement and student performance at the campus, approved by the board of trustees under TEC, §11.1515.

(g) Upon approval of the board of trustees, the district must submit the campus turnaround plan electronically to the TEA by March 1 unless otherwise specified.

(h) Not later than June 15 of each year, the commissioner must either approve or reject any campus turnaround plan prepared and submitted by a district.

(1) The commissioner's approval or rejection of the campus turnaround plan must be in writing.

(2) If the commissioner rejects a campus turnaround plan, the commissioner must also send the district an outline of the specific concerns regarding the turnaround plan that resulted in the rejection.

(3) In accordance with TEC, §39A.107(a), the commissioner may approve a campus turnaround plan if the commissioner determines that the campus will satisfy all student performance standards required under TEC, §39.054(e), not later than the second year the campus receives a performance rating following the implementation of the campus turnaround plan. In order to make that determination, the commissioner will consider the following:

(A) an analysis of the campus and district's longitudinal performance data, which may be used to measure the expected outcomes for the campus;

(B) the district's success rate in turning around low-performing campuses, if applicable; and

(C) evaluation of the efficacy of the plan, with consideration given to whether the turnaround plan is sufficient to address the specific and expected needs of the campus.

(i) A district must submit a modified campus turnaround plan if the commissioner rejected the district's initial submission.

(1) The modified plan must be created with assistance from TEA staff, as requested by the district.

(2) The modified plan must be made available for stakeholder comment prior to board approval and be approved by the board prior to submission to the TEA.

(3) The district must submit the plan no later than the 60th day from the date the commissioner rejected the initial campus turnaround plan.

(4) The commissioner's decision regarding the modified plan must be given in writing no later than the 15th day after the commissioner receives the plan.

(j) [~~(h)~~] A campus may implement, modify, or withdraw its campus turnaround plan with board approval if the campus receives an academically acceptable rating for the school year following the development of the campus turnaround plan.

(k) A campus that has not received an academically acceptable rating for the school year following the development of the campus turnaround plan must implement its commissioner-approved campus turnaround plan with fidelity until the campus receives an acceptable performance rating for two consecutive school years.

(l) The commissioner may appoint a monitor, conservator, management team, or board of managers for a school district that has a campus that has been ordered to implement an updated targeted improvement plan. The commissioner may order any of the interventions as necessary to ensure district-level support for the low-performing campus and the implementation of the updated targeted improvement plan. The commissioner may make the appointment at any time during which the campus is required to implement the updated targeted improvement plan.

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 September 5, 2019.

TRD-201903102
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: October 20, 2019
For further information, please call: (512) 475-1497

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# CHAPTER 153. SCHOOL DISTRICT PERSONNEL

## SUBCHAPTER EE. COMMISSIONER'S RULES CONCERNING REGISTRY OF PERSONS NOT ELIGIBLE FOR EMPLOYMENT IN PUBLIC SCHOOLS

**19 TAC §§153.1201, 153.1203, 153.1205, 153.1207, 153.1209, 153.1211, 153.1213, 153.1215, 153.1217, 153.1219, 153.1221, 153.1223, 153.1225, 153.1227, 153.1229, 153.1231,**

**153.1233, 153.1235, 153.1237, 153.1239, 153.1241, 153.1243, 153.1245, 153.1247, 153.1249, 153.1251**

The Texas Education Agency (TEA) proposes new §§153.1201, 153.1203, 153.1205, 153.1207, 153.1209, 153.1211, 153.1213, 153.1215, 153.1217, 153.1219, 153.1221, 153.1223, 153.1225, 153.1227, 153.1229, 153.1231, 153.1233, 153.1235, 153.1237, 153.1239, 153.1241, 153.1243, 153.1245, 153.1247, 153.1249, and 153.1251, concerning registry of persons not eligible for employment in public schools. The proposed new sections would implement the requirement for the registry created by House Bill (HB) 3, 86th Texas Legislature, 2019.

BACKGROUND INFORMATION AND JUSTIFICATION: Proposed new 19 TAC Chapter 153, Subchapter EE, would implement the registry of persons not eligible for employment in public schools mandated by HB 3, 86th Texas Legislature, 2019. HB 3 requires a superintendent or director of a school district, district of innovation, charter school, regional education service center, or shared services arrangement to notify the commissioner if an employee is terminated or resigns and there is evidence that the employee abused or otherwise committed an unlawful act with a student or minor, or was involved in a romantic relationship with or solicited or engaged in sexual contact with a student or minor. HB 3 gives the commissioner authority to investigate the allegations brought by the school district and to list the person under investigation publicly on the TEA website. It allows the person under investigation to request a contested case hearing before the State Office of Administrative Hearings (SOAH). HB 3 grants the commissioner authority to issue final orders determining whether the person committed the alleged misconduct and to place the person's name on the registry of persons ineligible to work in public schools available on the TEA website.

Proposed new §153.1201, Definitions, would define "solicitation of a romantic relationship" to match the definition implemented by the State Board for Educator Certification (SBEC) in 19 TAC §249.3(51), reflecting that the statutory language in Texas Education Code (TEC), §22.093, requiring reporting uncertified employees regarding inappropriate relationships with students or minors, matches that in TEC, §21.006, requiring reporting of certified educators. The proposed rule would define "abuse" to match the Texas Family Code definition of abuse, in keeping with the statutory requirements of TEC, §22.093. The proposed rule would also create a definition of "private school," limited to accredited private schools or licensed preschools, to ensure that the entities accessing the registry of persons not eligible for employment in public schools in accordance with TEC, §22.092(d), are only educational institutions accessing the information for legitimate employment needs.

Proposed new §153.1203, Required Reporting by Administrators, would set out for clarity and ease of reference the reporting requirements for principals, directors, and superintendents under TEC, §22.093, and the specific information that must be reported in order to make investigation of the allegations as efficient and accurate as possible. The required information would be the same as the information the SBEC requires for reports regarding certified educators under 19 TAC §249.14(f). The proposed rule would also allow a report a superintendent or director makes to the SBEC regarding a certified educator to be considered a report to the commissioner if the educator's certification expires before the case against him or her is completed, to prevent educators avoiding placement on the registry of persons ineligible to teach in public schools by simply allowing his or her educator certification to expire.

Proposed new §153.1205, Persons Under Investigation, would set out the procedures for notifying a person that they are under investigation and for identifying persons under investigation on the TEA website. The proposed rule would require TEA staff to send notice via U.S. mail and certified mail to the person's address as provided in the report made under §153.1203. The individuals reported under §153.1203 are not required to keep updated addresses on file with TEA as are certified educators. The proposed rule would set a presumption that a notice mailed is received within five days and would add that five-day timeline to the statutory 10-day notice period required under TEC, §22.094(c). This would require TEA staff to send the notice of investigation at least 15 days prior to identifying the person as under investigation on the TEA website. Proposed new §153.1205(b) would also give a 30-day deadline for TEA staff to send a person notice that the person has been the subject of a report of misconduct, interpreting the statutory term "promptly" in TEC, §22.094(b).

Proposed new §153.1207, Request for Hearing, would set out for clarity and ease of reference the requirements for requesting a hearing and the repercussions for not requesting one, as described in TEC, §22.094(c) and (e).

Proposed new §§153.1209, 153.1211, 153.1213, 153.1215, 153.1217, 153.1219, 153.1221, 153.1223, 153.1225, 153.1227, 153.1229, 153.1231, 153.1233, 153.1235, 153.1237, 153.1239, 153.1241, 153.1243, 153.1245, 153.1247, 153.1249, and 153.1251 would be procedural rules for the contested case hearing process before SOAH. The proposed new rules are derived from and closely parallel the procedural rules for contested cases in educator discipline and licensure matters codified in 19 TAC Chapter 249, Disciplinary Proceedings, Subchapter C, Prehearing Matters, Subchapter D, Hearing Procedures, and Subchapter E, Post-Hearing Matters.

Proposed new §153.1209, Jurisdiction, would describe the start of the contested case process, including the duty of TEA staff to refer the case to SOAH for a hearing when the person requests it timely as required by TEC, §22.094(c), and the onset of SOAH's jurisdiction over the case after it is referred.

Proposed new §§153.1211, 153.1213, and 153.1215 (Powers and Duties of Administrative Law Judge, Recusal and Disqualification of Administrative Law Judge, and Substitution of Administrative Law Judge respectively) would defer to the rules of SOAH for the powers, duties, recusal, disqualification, and substitution of an administrative law judge (ALJ) to allow consistency and predictability for SOAH ALJs, attorneys, and parties and allow SOAH to make consistent, uniform rules for all parties in contested cases.

Proposed new §153.1217, Classification of Parties; Current Addresses, would clarify the roles of the parties, regardless of how they are described in the pleadings; set the burden of proof at a preponderance of the evidence; and require parties to inform TEA staff if their addresses change. The proposed new rule would parallel the burden, roles, and requirements that the SBEC uses for certified educators in contested cases.

Proposed new §153.1219, Representation of Parties, would require parties in contested cases to notify SOAH and other parties if they are represented by counsel and would allow parties to represent themselves. The proposed rule would not allow parties to be represented by persons who are not attorneys licensed to practice in Texas. The proposed rule is intended to make par-

ties' representation before SOAH as effective as possible, while still allowing individuals who do not want to hire an attorney to represent themselves.

Proposed new §153.1221, Filing or Serving Documents on the Texas Education Agency Staff or the Administrative Law Judge, would set out service requirements for requests for contested case hearings, exceptions and replies to proposals for decision and motions for rehearing. The proposed new rule would defer to the SOAH rules on service, which currently allow service by hand-delivery; by regular, certified, or registered mail; by email, upon agreement of the parties; or by fax. Limiting service to these particular methods would ensure that TEA staff will receive the request timely and predictably, while still allowing several possible delivery methods.

Proposed new §153.1223, Pleadings, would define pleadings and defer to SOAH rules on pleadings for the specific requirements on formatting, content, and filing. This proposed rule would be similar to that which the SBEC uses for certified educators in contested cases; would allow consistency and predictability for SOAH ALJs, attorneys, and parties; and would make consistent, uniform rules for all parties in contested cases.

Proposed new §153.1225, Stipulations, would defer to SOAH rules regarding stipulations between parties, to allow consistency and predictability for SOAH ALJs, attorneys, and parties.

Proposed new §153.1227, Discovery, would state that discovery in contested cases will be governed by the Administrative Procedure Act, the SOAH rules, and the Texas Rules of Civil Procedure. This would parallel the rule for discovery in educator discipline cases, creating predictability for parties and SOAH ALJs, and would encompass all the sources of authority for discovery in administrative contested cases before SOAH.

Proposed new §153.1229, Notice of Hearing, would set out the requirements for a notice of hearing, which is required to initiate a contested case proceeding under Texas Government Code, §2001.051. The proposed rule would incorporate by reference the requirements of the Administrative Procedure Act and the SOAH rules to allow consistency and predictability for SOAH ALJs, attorneys, and parties. It would parallel the SBEC rules regarding contested cases for certified educators regarding service of the notice of hearing to ensure that the respondent will receive the notice timely and predictably. With regard to what address the notice of hearing is sent, the proposed rule would allow it to be sent to the party's authorized representative, an address the respondent provided when responding to the initial notice under §153.1205, the address provided in the report under §153.1203 if the person has not provided a different address, or any other address known to TEA staff at the time notice is sent. This would allow flexibility to ensure that the address to which the notice is sent is as accurate as practicable while also providing efficiency for TEA staff.

Proposed new §153.1231, Venue, would set venue for hearings in Austin, Texas, at SOAH. This would ensure that staff will not have to use state resources travelling the state to go to hearings and that both TEA and SOAH will be able to accurately and consistently budget resources based only on docket size, without having to factor in the diverse locations of potential future respondents. It will also give respondents an incentive to settle prior to hearing in order to avoid the expense involved. It is important to note that SOAH rules allow respondents to appear telephonically, eliminating the need for travel expenses.

Proposed new §153.1233, Conduct and Record of Hearings, would defer to the SOAH rules regarding the procedure and record for a hearing, to allow consistency and predictability for SOAH ALJs, attorneys, and parties.

Proposed new §153.1235, Use of Deposition Transcripts in Contested Case Hearings, would incorporate Rule 203 of the Texas Rules of Civil Procedure to govern the use of deposition transcripts in hearings, to make the use of deposition transcripts congruent with their use in other Texas state court litigation, and to allow consistency and predictability for SOAH ALJs, attorneys, and parties.

Proposed new §153.1237, Consolidated Proceedings, would allow parties to consolidate proceedings if the proceedings involve common questions of law and fact and if combining the proceedings would reduce delay, expense, or substantial injustice. This proposed rule would parallel the SBEC rule regarding consolidation of contested cases for certified educators and allow efficiency in hearings when the conditions are right.

Proposed new §153.1239, Disposition Prior to Hearing; Default, would set out the procedures for settlements and defaults of contested cases. The proposed rule would incorporate by reference the SOAH rules regarding procedure to allow consistency and predictability for SOAH ALJs, attorneys, and parties. This proposed rule would parallel the SBEC rule regarding settlements and defaults at a SOAH hearing for contested cases for certified educators.

Proposed new §153.1241, Proposal for Decision, would describe the procedures and content for the proposal for decision, which the SOAH ALJ issues at the conclusion of a contested case hearing. This proposed rule would parallel the SBEC rule regarding proposals for decision in contested cases for certified educators.

Proposed new §153.1243, Exceptions and Replies, would set out the procedure for parties to file exceptions to the ALJ's proposal for decision. This proposed rule would parallel the SBEC rule regarding exceptions in contested cases for certified educators and accord with the requirements of Texas Government Code, §2001.062, that allow parties to file exceptions for consideration by the ALJ.

Proposed new §153.1245, Review of Proposal by Commissioner of Education, would set out the procedure for the commissioner's review of a proposal for decision issued by an ALJ following a contested case hearing at SOAH. This proposed rule would parallel the SBEC rule regarding the SBEC's review of proposals for decision and would set out the specific information that the commissioner may consider when reviewing a proposal for decision. In keeping with the requirements of Texas law, it does not allow the commissioner to review information outside the record developed in the contested case proceeding.

Proposed new §153.1247, Final Decisions and Orders, would set out procedures and content requirements for final orders issued by the commissioner following a contested case. This proposed rule would parallel the SBEC rule regarding the content of SBEC's final orders and comport with the requirements of Texas Government Code, §§2001.058(e), 2001.141, and 2001.142, regarding procedures for reviewing, changing, and sending notice for final decisions resulting from a proposal for decision.

Proposed new §153.1249, Motion for Rehearing; Administrative Finality; Appeals, would set out the procedures for motions for rehearing and appeals from commissioner's decisions resulting

from a proposal for decision. The proposed rule would invoke and comport with the requirements of Texas Government Code, Chapter 2001, which governs the timelines and requirements for final orders and appeals under the Administrative Procedure Act. This proposed rule would parallel the SBEC rule regarding final SBEC decisions. It requires the appealing party to pay transcription costs and other costs of preparing the administrative record for appeal as required by Texas Government Code, §2001.175 and §2001.177, to ensure that the TEA is not left to pay the bill to create administrative records for respondents' specious appeals.

Proposed new §153.1251, Notice of Placement on Registry, would create the procedures for adding a person's name to the registry of persons not eligible for employment in Texas public schools following a commissioner's final order. The procedures would require TEA staff to send notice of the commissioner's final order to the person's last known school district to ensure that word gets out as efficiently as possible that the person is no longer eligible for employment in a public school. It would also enact TEC, §22.092(d), which requires that both public and private schools have equal access to the registry, using the term "public school" as defined in §153.1201(c), so as to limit the scope of individuals with access to the personally identifiable information in the registry to legitimate educational institutions seeking information about their employees.

FISCAL IMPACT: Ryan Franklin, associate commissioner for educator leadership and quality, has determined that for the first five-year period the proposal is in effect there would be costs to state government required to comply with the proposal, specifically, an increase of approximately $9,000 per year for fiscal years (FY) 2020-2024 in postage expenses caused by the requirements to serve documents via certified mail. The proposal would require the TEA to serve documents on persons under investigation and respondents in contested cases through certified mail or first-class U.S. mail at three different points in the process. This is similar to the mailings the SBEC currently sends to certified educators during its process of investigation and contested case proceedings. Currently, TEA spends about $36,000 on mailings to certified educators in SBEC investigations and contested cases. The volume of cases resulting from the proposal is estimated to be about 25% of the volume of educator discipline cases currently on the SBEC docket. Accordingly, the estimated mailing cost resulting from the proposal would be about 25% of $36,000, or $9,000 per year.

There would be no fiscal impact to other state agencies or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

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

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

COST INCREASE TO REGULATED PERSONS: The proposal does impose a cost on regulated persons. The costs are associated with the travel funds required to attend SOAH hearings in Austin, Texas, and the costs of creating an administrative record if the respondent chooses to appeal the final commissioner's decision. However, these costs are necessary to implement legislation (HB 3, Texas Legislature, 2019) and to protect the health, safety and welfare of Texas school children, so Texas Government Code, §2001.0045, does not apply.

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create new regulations and create a government program, specifically, the registry of persons ineligible for employment in public schools and the commissioner's hearing process attendant thereto, although that program was already created directly by HB 3, 86th Texas Legislature, 2019.

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

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Franklin has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be the protection of Texas school children from individuals working in schools who have significant, relevant criminal history; individuals who have abused children; or individuals who have had inappropriate relationships with students or minors.

There is an estimated total cost of $5,892 per year for FYs 2020-2024 for persons required to comply with the proposal. The estimated costs are based on a total of $4,092 for travel costs plus $1,800 for transcription costs per year for FYs 2020-2024.

The proposal would require respondents to come to Austin, Texas, for contested case hearings, causing them to incur travel costs to attend a hearing at SOAH in Austin, Texas. The costs to regulated persons will vary depending on how far away the respondent lives and how long the hearing is. Based on the hearings that SBEC currently conducts at SOAH for certified educators confronting allegations similar to those that will be raised in reports to the commissioner under this proposal, most hearings last only one day. Assuming the average educator lives 240 miles from Austin, Texas, and would have to stay overnight one night prior to the hearing, the travel costs at state reimbursement rates associated with a hearing would be approximately $278 for driving mileage and $94 for hotel for a total of $372. SBEC has approximately 44 hearings before SOAH each year, and the volume of cases resulting from the proposal is expected to be approximately 25% of the current SBEC docket, yielding an expected 11 cases going to SOAH hearings as a result of these proposed rules. Multiplying the 11 cases by the $372 expected travel cost per case yields $4,092 total expected costs per year for persons required to comply with the proposal.

The proposal would also provide that if a person chooses to appeal a final decision in accordance with proposed new 19 TAC §153.1229, the appellant must bear the cost of transcription of a one-day hearing to create the administrative record the Administrative Procedure Act requires. The cost of transcription of a

one-day hearing is approximately $1,800. It is rare that a transcript of the hearing is required for the administrative record; the SBEC has not assessed transcription costs against any appealing party within the past five years. To be conservative, the TEA has estimated that one appellant per year will have to pay transcription costs.

DATA AND REPORTING IMPACT: The proposal would require superintendents and directors to report specific information regarding employees who have been terminated or resigned when there is evidence that the employee abused or otherwise committed an unlawful act with a student or minor, or was involved in a romantic relationship with or solicited or engaged in sexual contact with a student or minor. This data collection is allowed under TEC, §22.093(f) and (m).

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

PUBLIC COMMENTS: The public comment period on the proposal begins September 20, 2019, and ends October 21, 2019. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on September 20, 2019. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/. Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

STATUTORY AUTHORITY. The new sections are proposed under Texas Education Code (TEC), §22.0825, as added by House Bill (HB) 3, 86th Texas Legislature, 2019, which requires the Texas Education Agency (TEA) to subscribe to the criminal history clearinghouse and allows TEA access to any closed criminal investigation file that relates to a specific applicant for employment or a current or former employee of a public school, regional education service center, or shared services arrangement; TEC, §22.091, as added by HB 3, 86th Texas Legislature, 2019, which defines "other charter entity," causing the subchapter to apply to all forms of charter schools in Texas; TEC, §22.092, as added by HB 3, 86th Texas Legislature, 2019, which creates a registry of persons not eligible for employment in public schools, requires that TEA provide private schools and public schools equivalent access to the registry, and gives TEA authority to adopt rules as necessary to implement the section; TEC, §22.093, as added by HB 3, 86th Texas Legislature, 2019, which requires superintendents or directors of school districts, districts of innovation, charter schools, regional education service centers, or shared services arrangements to notify the commissioner within seven business days of when an employee resigns or is terminated and there is evidence that the employee abused or otherwise committed an unlawful act with a student or minor or was involved in a romantic relationship or solicited or engaged in sexual contact with a student or minor. It requires that the notification to the commissioner be in writing and in a form prescribed by the commissioner. It also gives the commissioner rulemaking authority to adopt rules as necessary to implement the section; TEC, §22.094, as added by HB 3, 86th Texas Legislature, 2019, which requires the commissioner to send notice promptly to a person who is the subject of a report under TEC, §22.093, to inform the person that they have the right to request a hearing on the merits, and requesting that the person show cause as to why the commissioner should not pursue an investigation. The person must respond to show cause and request a hearing within 10 days of receiving the notice. If the person does not show cause, the commissioner will identify the person as under investigation on the agency's website. If the person requests a hearing, the hearing will be governed by Texas Government Code, Chapter 2001. If the commissioner determines the person engaged in the alleged misconduct, the commissioner will instruct TEA to add the person's name to the registry of persons not eligible for employment in public schools. If the commissioner determines after the hearing that the person did not commit the misconduct, the commissioner will instruct TEA staff to no longer identify the person as under investigation on the TEA website. This provision gives the commissioner rulemaking authority to adopt rules necessary to implement it; TEC, §22.095, as added by HB 3, 86th Texas Legislature, 2019, which requires the TEA to develop an internet portal through which reports required under TEC, §22.093, can be confidentially and securely filed with the agency; Texas Government Code, §411.0901, which gives TEA authority to obtain criminal history record information for employees or applicants at school districts, charter schools, and shared services arrangements; Texas Government Code, Chapter 2001, Subchapter C, which sets out the rights and procedures for contested case hearings; Texas Government Code, Chapter 2001, Subchapter F, which sets out the procedures for final decisions, orders, and motions for rehearing following a contested case hearing; and Texas Government Code, Chapter 2001, Subchapter G, which sets out the procedure for judicial review on appeal of a final decision resulting from a contested case hearing.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§22.0825, 22.091-22.095; Texas Government Code, §411.0901, and Chapter 2001, Subchapters C, F, and G.

*§153.1201. Definitions.*

(a) Solicitation of a romantic relationship--Deliberate or repeated acts that can be reasonably interpreted as the solicitation by an educator of a relationship with a student that is romantic in nature. A romantic relationship is often characterized by a strong emotional or sexual attachment and/or by patterns of exclusivity but does not include appropriate educator-student relationships that arise out of legitimate contexts such as familial connections or longtime acquaintance. The following acts, considered in context, may constitute prima facie evidence of the solicitation by an educator of a romantic relationship with a student:

(1) behavior, gestures, expressions, or communications with a student that are unrelated to the educator's job duties and evidence a romantic intent or interest in the student, including statements of love, affection, or attraction. Factors that may be considered in determining the romantic intent of such communications or behavior, include, without limitation:

(A) the nature of the communications;

(B) the timing of the communications;

(C) the extent of the communications;

(D) whether the communications were made openly or secretly;

(E) the extent that the educator attempts to conceal the communications;

(F) if the educator claims to be counseling a student, the State Board for Educator Certification may consider whether the educator's job duties included counseling, whether the educator reported the subject of the counseling to the student's guardians or to the appropriate school personnel, or, in the case of alleged abuse or neglect, whether the educator reported the abuse or neglect to the appropriate authorities; and

(G) any other evidence tending to show the context of the communications between educator and student;

(2) making inappropriate comments about a student's body, creating or transmitting sexually suggestive photographs or images, or encouraging the student to transmit sexually suggestive photographs or images;

(3) making sexually demeaning comments to a student;

(4) making comments about a student's potential sexual performance;

(5) requesting details of a student's sexual history;

(6) requesting a date, sexual contact, or any activity intended for the sexual gratification of the educator;

(7) engaging in conversations regarding the sexual problems, preferences, or fantasies of either party;

(8) inappropriate hugging, kissing, or excessive touching;

(9) providing the student with drugs or alcohol;

(10) violating written directives from school administrators regarding the educator's behavior toward a student;

(11) suggestions that a romantic relationship is desired after the student graduates, including post-graduation plans for dating or marriage; and

(12) any other acts tending to show that the educator solicited a romantic relationship with a student.

(b) Abuse--This term has the meaning assigned by Texas Family Code, §261.001(1).

(c) Private school--A non-public school that offers a course of instruction for students in one or more grades from Prekindergarten-Grade 12 and is either:

(1) accredited by an organization that is monitored and approved by the Texas Private School Accreditation Commission; or

(2) a child care provider that is licensed by the Texas Health and Human Services Commission.

*§153.1203. Required Reporting by Administrators.*

(a) A person who serves as the superintendent of a school district or district of innovation or the director of a charter school, regional education service center, or shared services arrangement shall notify the commissioner of education in writing by filing a report within seven business days of the date the person either receives a report from a principal under subsection (b) of this section or knew that an employee of the school district, district of innovation, charter school, service center, or shared services arrangement was terminated or resigned from employment and there is evidence that he or she committed any of the following acts:

(1) sexually or physically abused a student or minor or engaged in any other illegal conduct with a student or minor; or

(2) solicited or engaged in sexual conduct or a romantic relationship with a student or minor.

(b) A person who serves as principal in a school district, district of innovation, or charter school must notify the superintendent or director of the school district, district of innovation, or charter school no later than seven business days after an employee of the school district, district of innovation, or charter school resigns or is terminated following an alleged incident of misconduct involving the conduct described in subsection (a)(1) and (2) of this section.

(c) A superintendent or director of a school district shall complete an investigation of an educator if there is reasonable cause to believe the educator may have engaged in misconduct described in subsection (a)(1) and (2) of this section despite the educator's resignation from district employment before completion of the investigation.

(d) A report filed under subsection (a) of this section must include:

(1) the name or names of any student or minor who is the victim of abuse or unlawful conduct by an educator; and

(2) the factual circumstances requiring the report and the subject of the report by providing the following available information:

(A) name and any aliases and certificate number, if any, or social security number;

(B) last known mailing address and home and daytime phone numbers;

(C) all available contact information for any alleged victim or victims;

(D) name or names and any available contact information of any relevant witnesses to the circumstances requiring the report;

(E) current employment status of the subject, including any information about proposed termination, notice of resignation, or pending employment actions; and

(F) involvement by a law enforcement or other agency, including the name of the agency.

(e) A report filed with the State Board for Educator Certification in compliance with Texas Education Code (TEC), §21.006, regarding a certified educator will be considered to have been filed with the commissioner as a report under this section on the date that the certification of the educator expires before the case is closed.

*§153.1205. Persons Under Investigation.*

(a) Persons under investigation for misconduct following a report under §153.1203 of this title (relating to Required Reporting by Administrators) are identified by name on the Texas Education Agency (TEA) website.

(b) Within 30 days of receiving a report under §153.1203 of this title and at least 15 calendar days before identifying a person on the TEA website as under investigation, the commissioner of education shall send the person who is the subject of the report a notice by both first-class U.S. mail and certified mail, return receipt requested, to the person's address in the report:

(1) notifying the person of the report, including a statement of the alleged conduct that forms the basis for the report;

(2) stating that the person must request a State Office of Administrative Hearings (SOAH) hearing within 10 days after the date the person receives the notice; and

(3) providing the person with the opportunity to show cause in a written response sent within 10 days of receiving the notice, explaining why the commissioner should not pursue an investigation.

(c) For purposes of this section and §153.1207 of this title (relating to Request for Hearing), it is a rebuttable presumption that a person receives the notice no later than five calendar days after mailing. The 10-day deadline to request a hearing before SOAH is not tolled during any attempts to show cause.

(d) If the commissioner does not determine that the person who is the subject of the report has shown cause why the commissioner should not pursue an investigation, the person will be identified on the TEA website as a person under investigation.

(e) The person will no longer be identified on the TEA website as a person under investigation after the commissioner issues a final order determining whether the person committed the alleged conduct.

*§153.1207. Request for Hearing.*

(a) A person must submit a written request for a hearing before State Office of Administrative Hearings (SOAH) to Texas Education Agency (TEA) staff in accordance with §153.1221 of this title (relating to Filing or Serving Documents on the Texas Education Agency Staff or the Administrative Law Judge) within ten days after the person receives notice as described in §153.1205 of this title (relating to Persons Under Investigation).

(b) If a person does not timely request a hearing, the commissioner of education will issue a final order with a determination as to whether a preponderance of the evidence supports a conclusion that the person:

(1) sexually or physically abused a student or minor or engaged in any other illegal conduct with a student or minor; or

(2) solicited or engaged in sexual conduct or a romantic relationship with a student or minor.

*§153.1209. Jurisdiction.*

(a) A contested case commences under this subchapter when a notice of hearing in accordance with §153.1229 of this title (relating to Notice of Hearing ) is properly served by the Texas Education Agency (TEA) staff on the person at the address included in the report under §153.1203 of this title (relating to Required Reporting by Administration).

(b) The TEA staff shall refer the case to the State Office of Administrative Hearings (SOAH) if the TEA staff determines a person has timely requested a hearing pursuant to §153.1205 of this title (relating to Persons Under Investigation) and Texas Education Code (TEC), §22.094(c).

(c) Jurisdiction of the SOAH is determined by the administrative law judge under Texas Administrative Code, Title 1, Part 7, Chapter 155 (relating to Rules of Procedure) and this subchapter after the TEA staff have referred the case to the SOAH.

*§153.1211. Powers and Duties of Administrative Law Judge.*

The powers and duties of an administrative law judge are determined by Texas Administrative Code, Title 1, Part 7, Chapter 155 (relating to Rules of Procedure).

*§153.1213. Recusal and Disqualification of Administrative Law Judge.*

The recusal or disqualification of an administrative law judge shall be governed by Texas Administrative Code, Title 1, Part 7, Chapter 155 (relating to Rules of Procedure).

*§153.1215. Substitution of Administrative Law Judge.*

Substitution of an administrative law judge shall be governed by Texas Administrative Code, Title 1, Part 7, Chapter 155 (relating to Rules of Procedure).

*§153.1217. Classification of Parties; Current Addresses.*

(a) Regardless of errors as to designation of a party, parties shall be accorded their true status in the proceeding.

(b) The petitioner in a contested case proceeding under this subchapter and Texas Administrative Code, Title 1, Part 7, Chapter 155 (relating to Rules of Procedure) is the party in a contested case seeking relief from the decision maker and requesting an adjudicative hearing with the State Office of Administrative Hearings. The petitioner shall have the burden of proof to show, by a preponderance of the evidence, entitlement to such relief.

(c) Parties shall keep the Texas Education Agency (TEA) staff apprised of their current addresses and shall notify the TEA staff of a change of address within five calendar days of the effective date of such change.

*§153.1219. Representation of Parties.*

(a) Representatives of parties shall notify the State Office of Administrative Hearings (SOAH) and other parties of the representation.

(b) Parties in contested cases before the SOAH may represent themselves or be represented by an attorney licensed to practice law in the State of Texas.

*§153.1221. Filing or Serving Documents on the Texas Education Agency Staff or the Administrative Law Judge.*

(a) The following original papers shall be served upon the Texas Education Agency (TEA) staff:

(1) request for a contested case hearing under this subchapter;

(2) exceptions and replies to the proposal for decision of the administrative law judge (ALJ); and

(3) motions for rehearing.

(b) It is a rebuttable presumption that the date of service is the file stamp date affixed by the TEA staff.

(c) All papers may be served upon the TEA staff by any method allowed by the State Office of Administrative Hearings (SOAH) rules or any electronic transmission agreed to by the parties.

(d) The filing of papers with the SOAH or service of documents on the ALJ in contested cases shall be governed by Texas Administrative Code, Title 1, Part 7, Chapter 155 (relating to Rules of Procedure), unless modified by order of the ALJ as allowed by law.

*§153.1223. Pleadings.*

(a) Pleadings include notices of hearing, motions, and exceptions. Regardless of any error in its designation, a pleading shall be accorded its true status in the proceeding in which it is filed.

(b) Amended and supplemental pleadings may be filed at such time so as not to operate as a surprise on the opposing party.

(c) The administrative law judge may allow a pleading to be amended during the contested case evidentiary hearing on the merits and shall do so freely when the trial amendment will facilitate determining the merits of the case but will not unduly prejudice the objecting party.

(d) In addition to this subchapter, Texas Administrative Code, Title 1, Part 7, Chapter 155 (relating to Rules of Procedure) shall also govern the following matters related to pleadings:

(1) content generally of pleadings;

(2) purpose and effect of motions;

(3) general requirements for motions;

(4) responses to motions generally;

(5) motions to intervene;

(6) motions for continuance;

(7) responses to written motions for continuance; and

(8) amendment of pleadings.

*§153.1225. Stipulations.*

Stipulations shall be governed by Texas Administrative Code, Title 1, Part 7, Chapter 155 (relating to Rules of Procedure).

*§153.1227. Discovery.*

The Texas Government Code, Chapter 2001; Texas Administrative Code, Title 1, Part 7, Chapter 155 (relating to Rules of Procedure); this subchapter; and the Texas Rules of Civil Procedure, as applicable, shall govern discovery.

*§153.1229. Notice of Hearing.*

(a) The notice of hearing is governed by the Texas Government Code, Chapter 2001; Texas Administrative Code, Title 1, Part 7, Chapter 155 (relating to Rules of Procedure); and this subchapter.

(b) The Texas Education Agency (TEA) staff may serve the notice of hearing by sending it certified, return receipt requested, and regular first-class U.S. mail to the party's last known address.

(c) For purposes of this subsection, the last known address is:

(1) the address of record of the party or the party's authorized representative in the contested case, if any; or

(2) if the party has not made an appearance in the contested case, the last address provided in any response to the notice sent in accordance with §153.1205 of this title (relating to Persons Under Investigation) or the proposed action that is the subject of the contested case, if any; or

(3) if the party has not provided an address in response to the proposed action, the address for the person included in the report made in accordance with §153.1203 of this title (relating to Required Reporting by Administrators).

(d) While notice to the last known address is legally sufficient, notice may also be given by regular first-class U.S. mail, facsimile, email, or any other means to any other possible address that is known to the TEA staff at the time that the notice is sent.

*§153.1231. Venue.*

Hearings shall be conducted in Austin, Texas, at a site designated by the State Office of Administrative Hearings in accordance with applicable law and Texas Administrative Code, Title 1, Part 7, Chapter 155 (relating to Rules of Procedure).

*§153.1233. Conduct and Record of Hearings.*

The rules of the State Office of Administrative Hearings under Texas Administrative Code, Title 1, Part 7, Chapter 155 (relating to Rules of Procedure) shall govern the procedure at the hearing and the making of a record of a contested case.

*§153.1235. Use of Deposition Transcripts in Contested Case Hearings.*

The use of deposition transcripts in contested case hearings shall be governed by Rule 203 of the Texas Rules of Civil Procedure. The terms "court proceedings" and "trial" used in Rule 203 are deemed to refer to "contested case hearing(s)" for purposes of applying this section and Rule 203 to contested case hearings before the State Office of Administrative Hearings.

*§153.1237. Consolidated Proceedings.*

A party may move to consolidate two or more proceedings under this subchapter if:

(1) the proceedings involve common questions of law and fact; and

(2) separate proceedings would result in unwarranted expense, delay, or substantial injustice.

*§153.1239. Disposition Prior to Hearing; Default.*

(a) This subchapter and Texas Administrative Code (TAC), Title 1, Part 7, Chapter 155 (relating to Rules of Procedure) shall govern disposition prior to hearing, default, and attendant relief.

(b) The commissioner of education may issue and sign orders resolving a case prior to the issuance of a proposal for decision by the presiding administrative law judge (ALJ) at the State Office of Administrative Hearings (SOAH) by waiver, stipulation, compromise, agreed settlement, consent order, agreed statement of facts, or any other informal or alternative resolution agreed to by the parties and not precluded by law.

(c) The commissioner or the SOAH may dispose of a case through dismissal, partial or final summary disposition, or any other procedure authorized by SOAH rules of procedure prior to a contested case hearing on the merits on the following grounds: unnecessary duplication of proceedings; res judicata; withdrawal; mootness; lack of jurisdiction; failure of a party requesting relief to timely file or file in proper form a pleading that would support an order or decision in that party's favor; failure to comply with an applicable order, deadline, rule, or other requirement issued by the commissioner, the TEA staff, or the presiding ALJ; failure to state a claim for which relief can be granted; or failure to prosecute.

(d) A party's failure to appear in person or by authorized representative on the day and at the time set for hearing shall constitute a default in a contested case, and the commissioner may enter a default judgment, as authorized by the Texas Government Code, §2001.056, or 1 TAC §155.501 (relating to Default Proceedings). If the case is dismissed and remanded to the commissioner by the SOAH after a party failed to appear in person or by authorized representative on the day and at the time set for hearing in a contested case, the TEA staff attorney shall present to the commissioner a motion for default. After consideration of the petition and the motion for default, the commissioner may then issue a default order deeming the allegations in the petition as true.

*§153.1241. Proposal for Decision.*

(a) As appropriate, the presiding administrative law judge (ALJ) shall prepare a proposal for decision containing separately stated findings of fact and conclusions of law.

(b) The ALJ may amend the proposal for decision pursuant to exceptions, replies to exceptions, and briefs.

(c) The ALJ shall submit the proposal for decision to the commissioner of education, with a copy to each party.

*§153.1243. Exceptions and Replies.*

(a) A party may file any exceptions to the proposal for decision within 15 calendar days of the date of the proposal for decision. Any replies to the exceptions shall be filed by other parties within 15 calendar days of the filing of exceptions. These time limits may be extended by agreement of the parties and the administrative law judge (ALJ). Exceptions and replies shall be:

(1) served upon the other party by mail, hand-delivery, facsimile, any method allowed by the State Office of Administrative Hearings rules, or any electronic transmission agreed to by the parties; and

(2) filed with the ALJ in accordance with Texas Administrative Code, Title 1, Part 7, Chapter 155 (relating to Rules of Procedure).

(b) Any disagreement with a factual finding or conclusion of law in the proposal for decision not contained in an exception to the proposal shall be waived.

(c) Each exception or reply to a finding of fact or conclusion of law shall be concisely stated and shall summarize the evidence in support of each exception.

(1) Any evidence or arguments relied upon shall be grouped under the exceptions to which they relate.

(2) In summarizing evidence, the parties shall include a specific citation to the hearing record where such evidence appears or shall attach the relevant excerpts from the hearing record.

(3) Arguments shall be logical and coherent and citations to authorities shall be complete.

(d) Exceptions to the proposal for decision may be based on the following:

(1) the ALJ has made an incorrect conclusion of law;

(2) the ALJ has failed to make an essential fact finding;

(3) the ALJ applied the incorrect burden or standard of proof;

(4) the findings of fact do not support the conclusions of law; or

(5) the ALJ has made a finding of fact that is not supported by the preponderance of the evidence.

*§153.1245. Review of Proposal by Commissioner of Education.*

The commissioner of education shall review the proposal for decision and any amended proposals for decision, the exceptions and any replies to exceptions, and the relevant excerpts from the record of the hearing conducted by the State Office of Administrative Hearings before making a final decision or issuing an order in a case.

*§153.1247. Final Decisions and Orders.*

(a) Unless a party or the party's authorized representative, as appropriate, agrees in writing to receive it via facsimile or email, a copy of the commissioner of education's decision or order shall be delivered by certified mail to the parties or to their authorized representatives, as appropriate. Texas Education Agency staff shall send the copy by facsimile or email to the State Office of Administrative Hearings (SOAH) if SOAH has issued a proposal for decision in the case.

(b) All final decisions and orders of the commissioner under this subchapter shall be in writing and signed. A final decision or order shall include findings of fact and conclusions of law separately stated. The findings of fact or conclusions of law may be adopted by reference to another document.

(c) The commissioner may adopt an order modifying findings of fact or conclusions of law in a proposal for decision submitted by the administrative law judge (ALJ) in accordance with the Texas Government Code, Chapter 2001. The commissioner may remand the matter back to the ALJ with specific instructions for the ALJ to determine an essential finding of fact or to apply the correct burden or standard of proof.

*§153.1249. Motion for Rehearing; Administrative Finality; Appeals.*

(a) A motion for rehearing of the commissioner of education's decision in a contested case and the determination of administrative finality shall be governed by the Texas Government Code, Chapter 2001; applicable case law; and this section.

(b) A motion for rehearing unsupported by satisfactory evidence shall be overruled. This subsection does not limit the overruling of a motion for rehearing on other grounds or by operation of law.

(c) Appeals from a final order of the commissioner shall be under the substantial evidence standard of review and governed by the Texas Government Code, Chapter 2001; applicable case law; and this section.

(d) The costs of transcribing the testimony and preparing the record for an appeal by judicial review shall be paid by the party who appeals. Texas Education Agency's services in preparing a record for appeal at the request of another party shall be reimbursed on the same basis as the charges for providing public information pursuant to Texas Administrative Code, Title 1, Part 3, Chapter 70 (relating to Cost of Copies of Public Information).

*§153.1251. Notice of Placement on Registry.*

(a) The person's name will be added to the registry of persons not eligible for employment in Texas public schools, in accordance with Texas Education Code, §22.092(c)(5), if the commissioner of education determines in a final order that the person:

(1) sexually or physically abused a student or minor or engaged in any other illegal conduct with a student or minor; or

(2) solicited or engaged in sexual conduct or a romantic relationship with a student or minor.

(b) If known, the Texas Education Agency staff shall notify the employing school district of the commissioner's final order placing the person's name to the registry of persons not eligible for employment in public schools.

(c) Both public and private schools in Texas may request access to search the registry of persons not eligible for employment in public schools.

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 September 5, 2019.

TRD-201903101
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: October 20, 2019
For further information, please call: (512) 475-1497

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# TITLE 22. EXAMINING BOARDS

## PART 23. TEXAS REAL ESTATE COMMISSION

### CHAPTER 535. GENERAL PROVISIONS
### SUBCHAPTER F. REQUIREMENTS FOR EDUCATION PROVIDERS, COURSES

AND INSTRUCTORS FOR QUALIFYING EDUCATION

**22 TAC §535.61**

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.61, Approval of Providers of Qualifying Courses. The proposed amendments implement statutory changes enacted by the 86th Legislature in SB 624 as part of the Sunset Review process. The proposed amendments to §535.61 change "subsequent approval" to "renewal" and authorize the Commission to deny an application for renewal as an approved provider if the provider is in violation of a Commission order.

Chelsea Buchholtz, 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. Buchholtz also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the sections will be increased efficiency within the Commission, improved clarity and greater transparency for members of the public and education providers, as well as requirements that are consistent with the statute, and easier to understand, apply and process.

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.

For each year of the first five years the proposed amendments are in effect, the amendments in §535.67 will, however, decrease the number of individuals subject to the rule's applicability by eliminating the requirement of providers to use instructors approved by the Commission.

Comments on the proposal may be submitted to Chelsea Buchholtz, 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.

*§535.61. Approval of Providers of Qualifying Courses.*

(a) - (j) (No change.)

(k) Renewal [~~Subsequent Approval~~].

(1) A provider may not enroll a student in a course during the 60-day period immediately before the expiration of the provider's current approval unless the provider has submitted an application for renewal [~~subsequent approval~~] for another four year period not later than the 60th day before the date of expiration of its current approval.

(2) Approval or disapproval of a renewal [~~subsequent application~~] shall be subject to:

(A) the standards for initial applications for approval set out in this section; and

(B) whether the approved provider has met or exceeded the exam passage rate benchmark established by the Commission under subsection (l) of this section.

(3) The Commission will not require a financial review for renewal [~~subsequent approval~~] if the applicant has provided a statutory bond or other security acceptable to the Commission under §1101.302 of the Act, and there are no unsatisfied final money judgments against the applicant.

(4) The Commission may deny an application for renewal if the provider is in violation of a Commission order.

(l) Exam passage rates and benchmark.

(1) The exam passage rate for an approved provider shall be:

(A) calculated for each license category for which the provider offers courses; and

(B) displayed on the Commission website by license category.

(2) A student is affiliated with a provider under this subsection if the student took the majority of his or her qualifying education with the provider in the two year period prior to taking the exam for the first time.

(3) The Commission will calculate the exam passage rate of an approved provider on a monthly basis, rounded to two decimal places on the final calculated figure, by:

(A) determining the number of students affiliated with that approved provider who passed the examination on their first attempt in the two-year period ending on the last day of the previous month; and

(B) dividing that number by the total number of students affiliated with that provider who took the exam for the first time during that same period.

(4) For purposes of approving a renewal [~~subsequent~~] application under subsection (j), the established exam passage rate benchmark for each license category is 80% of the average percentage of the total examinees for that license category who passed the examination on the first attempt in the two year period ending on the last day of the previous month.

(5) If at the time the Commission receives a renewal [~~subsequent~~] application from the provider requesting approval for another four year term, the provider's exam passage rate does not meet the established benchmark for a license category the provider will be:

(A) denied approval to continue offering courses for that license category if the provider's exam passage rate is less than 50% of the average percentage of the total examinees for that license category who passed the examination on the first attempt in the two year period ending on the last day of the previous month; or

(B) placed on probation by the Commission if the provider's exam passage rate is greater than 50% but less than 80% of the average percentage of the total examinees for that license category who passed the examination on the first attempt in the two year period ending on the last day of the previous month.

(6) The exam passage rate of a provider on probation will be reviewed annually at the time the annual operating fee is due to determine if the provider can be removed from probation, remain on probation or have its license revoked, based on the criteria set out in paragraph (5) of this subsection.

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 September 3, 2019.

TRD-201903060
Chelsea Buchholtz
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: October 20, 2019
For further information, please call: (512) 936-3177

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# TITLE 25. HEALTH SERVICES

## PART 1. DEPARTMENT OF STATE HEALTH SERVICES

### CHAPTER 157. EMERGENCY MEDICAL CARE

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 §157.33, concerning Certification, §157.34, concerning Recertification, and §157.125, concerning Requirements for Trauma Facility Designation.

BACKGROUND AND PURPOSE

The proposal is necessary to comply with House Bill (H.B.) 871 and H.B. 1418, 86th Legislature, Regular Session, 2019, which requires the adoption of rules to implement the legislation.

H.B. 871, 86th Legislature, Regular Session, 2019, amended Texas Health and Safety Code, §773.1151, which authorizes a hospital located in a county with a population of less than 30,000 to utilize telemedicine medical services to comply with the physician requirement for Level IV Trauma Designation. DSHS is directed to adopt rules not later than December 1, 2019.

H.B. 1418, 86th Legislature, Regular Session, 2019, amended Texas Health and Safety Code, §773.0551, which requires emergency services personnel receive their immunization status during certification or recertification. H.B. 1418 also requires that emergency personnel be provided information about certain risks of exposure to serious or deadly communicable disease when responding to an emergency that an immunization may prevent.

During Hurricane Harvey, lack of clarity for first responders concerning their vaccine history caused certain individuals to either duplicate previous vaccinations or be required to wait for vaccinations due to high demand for the vaccines in the disaster-declared region. DSHS is directed to adopt rules as soon as practicable.

SECTION-BY-SECTION SUMMARY

The proposed amendments to §157.33(l) and §157.34(d) add the applicant's immunization history, which require DSHS to provide the emergency services personnel their immunization status during certification or recertification. The proposed amendments add that DSHS will provide information about certain vaccine preventable diseases when responding to an emergency that an immunization may prevent. The rule references in §157.33 and §157.34 are also revised to reflect the addition of new text.

The proposed amendment to §157.125 adds text for a hospital located in a county with a population of less than 30,000 to utilize telemedicine medical services to comply with the physician requirement for a Level IV trauma facility designation. The new text is added to the basic Level IV trauma facility criteria in the Figure for §157.125(y).

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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 rule;

(6) the proposed rules will not expand existing rules;

(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

Donna Sheppard, 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 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. Sections 157.33 and 157.34 are being adopted in response to a natural disaster.

PUBLIC BENEFIT AND COSTS

Stephen Pahl, Associate Commissioner, Consumer Protection Division, has determined that for each year of the first five years that the amended §157.33 and §157.34 are in effect, the public benefit will be the opportunity for emergency medical service personnel to know their immunization status at certification and recertification and also information about certain risks posed when responding to an emergency. For each year of the first five years that the amended §157.125 is in effect, the public benefits by continuing to receive quality trauma patient care directed by a physician who has special competence in the care of critically injured patients in the rural areas of Texas. The rural hospitals may seek or maintain trauma designation and participate in the trauma system to improve patient care and outcomes.

Donna Sheppard, has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules. The amendments to §157.33 and §157.34 require DSHS to provide the emergency services personnel their immunization status during certification or recertification and the cost of certification or recertification is not impacted by these amendments. There also would not be any additional costs based on the amendment to §157.125, as participation in trauma facility designation is voluntary and is not required or mandated.

REGULATORY ANALYSIS

DSHS has determined this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Christina Coleman, Program Specialist, Mail Code 1876, P.O. Box 149347, Austin, Texas 78714-9347, by fax to (512) 834-6736 or by email to EMSInfo@dshs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period to the Exchange Building, EMS/Trauma Systems, 8407 Wall Street, Austin, Texas 78754; or (3) faxed or emailed before midnight on the last day of the comment period. If 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 faxing or emailing comments, please indicate "Comments on Proposed Rules 19R056" in the subject line.

## SUBCHAPTER C. EMERGENCY MEDICAL SERVICES TRAINING AND COURSE APPROVAL

### 25 TAC §157.33, §157.34

STATUTORY AUTHORITY

The amendments are authorized by Texas Health and Safety Code, Chapter 773; and 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 system, including by DSHS. Under Texas Health and Safety Code, Chapter 1001, the DSHS Commissioner is authorized to assist the Executive Commissioner in the development of rules relating to the matters within DSHS jurisdiction.

The amendments implement Texas Health and Safety Code, Chapter 773.

*§157.33. Certification.*

(a) Certification requirements. A candidate for emergency medical services (EMS) certification shall:

(1) be at least 18 years of age;

(2) have a high school diploma or GED certificate:

(A) the high school diploma must be from a school accredited by the Texas Education Agency (TEA) or a corresponding agency from another state. Candidates who received a high school education in another country must have their transcript evaluated by a foreign credentials evaluation service that attests to its equivalency. A home school diploma is acceptable;

(B) an emergency care attendant (ECA) who provides emergency medical care exclusively as a volunteer for a licensed provider or registered FRO is exempt from paragraph (2) of this subsection.

(3) have successfully completed a Department of State Health Services (department)-approved course; and

(4) The candidate has completed a state approved jurisprudence examination to determine the knowledge on state EMS laws, rules, and policies.

(5) submit an application, meeting the requirements in §157.3 of this title (relating to Processing EMS Provider Licenses and Applications for EMS Personnel Certification and Licensing), and the following nonrefundable fees as applicable:

(A) $60 for emergency care attendant (ECA) or emergency medical technician (EMT);

(B) $90 for AEMT or EMT-paramedic (EMT-P); and

(C) EMS volunteer--no fee. However, if such an individual receives compensation during the certification period, the exemption ceases and the individual shall pay a prorated fee to the department based on the number of years remaining in the certification period when employment begins. The nonrefundable fee for ECA or EMT certification shall be $15 per each year remaining in the certification. The nonrefundable fee for AEMT or EMT-P shall be $22.50 per each year remaining in the certification. Any portion of a year will count as a full year;

(6) provide evidence of current active or inactive National Registry certification at the appropriate level. National Registry First Responder certification is considered the appropriate corresponding certification level for an ECA; and

(7) submit fingerprints through the state approved fingerprinting service to undergo an FBI fingerprint criminal history check.

(b) Length of certification. A candidate who meets the requirements of subsection (a) of this section shall be certified for four years beginning on the date of issuance of a certificate and wallet-size certificate. A candidate must verify current certification before staffing an EMS vehicle. Certification may be verified by the applicant's receipt of the official department identification card, by using the department's certification website.

(c) Scheduling authority for certification examinations.

(1) Examinations shall be administered at regularly scheduled times in various locations across the state.

(2) The candidate shall be responsible for making appropriate arrangements for the examination.

(3) The department is not required to set special examination schedules for a single candidate or for a specific group of candidates.

(d) Time limits for completing requirements.

(1) An initial candidate for certification shall complete all requirements for certification no later than two years after the candidate's course completion date. The application will expire two years from the date the mailed application is postmarked, or the date a faxed, online submission or hand- delivered application is received at the department.

(A) The National Registry certification described in subsection (a)(5) of this section must remain current until the final requirement for state certification is met.

(B) The applicant shall update the application if any changes occur between the time of original submission and the time the final requirement for certification is met.

(2) A candidate who does not complete all requirements for certification within two years of the candidate's initial course completion date must meet the requirements of subsection (a) of this section, including the completion of another initial course to achieve certification.

(e) Non-transferability of certificate. A certificate is not transferable. A duplicate certificate may be issued if requested with a nonrefundable fee of $10.

(f) A candidate may apply for a lower level than the level of National Registry certification held.

(g) Voluntary downgrades.

(1) An individual who holds a current Texas EMS certification or paramedic license may be certified at a lower level voluntarily for the remainder of the certification period by submitting an application for the lower level certification and the applicable nonrefundable fee as required in subsection (a)(4) of this section.

(2) On the date the downgrade is final, the previous higher level of certification/license shall be surrendered. To regain the original higher level of certification, the candidate shall follow late recertification procedures according to §157.34(e) [~~§157.34(d)~~] of this title (relating to Recertification), within one year after the surrender date.

(h) Inactive certification. A certified EMT, AEMT, or EMT-P may make application to the department for inactive certification at any time during the certification period or within one year after the certificate expiration date.

(1) The request for inactive certification shall be accompanied by a nonrefundable fee of $30 in addition to the regular nonrefundable fee in subsection (a)(4)(A) and (B) of this section. If the final requirement is completed during the one-year period after expiration, the application fees listed in §157.34(e) [~~§157.34(d)~~] of this title will be required. Volunteers are not exempt from inactive fees.

(2) Period of inactive certification.

(A) The inactive certification period shall begin upon date of issuance of the notice of inactive certification and remain in effect until the end of the original active certification period for those candidates who are currently certified. The candidate's active certification is surrendered upon issuance of the notice of inactive certification.

(B) If the candidate is within the final year of active certification and chooses to renew with inactive certification, the inactive certification begins on the first day after the expiration of the current active certificate and shall remain in effect for four years.

(C) If the candidate applies during and/or completes the final requirement for inactive certification within one year after the expiration of active certification, the inactive certification period shall remain in effect for four years from the date of issuance of the notice of inactive certification.

(3) While on inactive certification, a person shall not practice other than to act as a bystander rendering first aid or cardiopulmonary resuscitation (CPR) or the use of an Automated External Defibrillator in the capacity of a layperson. Practicing in any other capacity for compensation or as a volunteer shall be cause for denial of reentry and decertification.

(4) An individual shall not simultaneously hold inactive and active certification.

(i) Reciprocity.

(1) A person who is currently certified by the National Registry but did not complete a department-approved course may apply for the equal or lower level Texas certification by submitting a reciprocity application and a nonrefundable fee of $120.

(A) Applicants holding National Registry AEMT certification may be required to submit written verification of proficiency of AEMT skills from an approved education program.

(B) National Registry first responder certification is not eligible for reciprocity at the ECA level.

(C) A candidate will not be eligible for reciprocity if the National Registry certification expires prior to the completion of all requirements for certification as listed in this section.

(D) A candidate who meets the requirements of this section shall be certified for four years beginning on the date of issuance of a certificate and wallet-size certificate.

(E) The candidate has completed a state approved jurisprudence examination to determine the knowledge on state EMS laws, rules, and policies.

(2) A person currently certified by another state may apply for equal or lower level Texas certification by submitting a reciprocity application and a nonrefundable fee of $120.

(A) The candidate must pass the National Registry assessment exam.

(B) Applicants holding AEMT out-of-state certification must submit written proof of proficiency on all of the AEMT skills signed by a Texas certified EMS coordinator or instructor.

(C) All applicants shall submit fingerprints through the state approved fingerprinting service to undergo an FBI fingerprint criminal history check.

(D) The applicant has completed a state approved jurisprudence examination to determine the knowledge on state EMS laws, rules, and policies.

(E) Reciprocity is not allowed for the ECA level.

(F) A candidate will not be eligible for reciprocity if the out-of-state certification expires prior to the completion of all requirements for certification as listed in this section.

(G) A candidate who meets the requirements of this section shall be certified for four years beginning on the date of issuance of a certificate and wallet-size certificate.

(3) Personnel receiving department issued certification through reciprocity must recertify prior to the expiration of the certificate by following the requirements in §157.34 of this title.

(j) Equivalency.

(1) Candidates meeting the following criteria may apply for certification only through the equivalency process as described in this subsection:

(A) an individual who completed EMS training outside the United States or its possessions;

(B) an individual who is certified or licensed in another healthcare discipline;

(C) an individual whose department issued EMS certification or license has been expired for more than one year; or

(D) an individual who has held department issued inactive certification for more than four years.

(2) A candidate applying for certification by equivalency shall:

(A) submit a copy of the curriculum and work history completed by the candidate to a regionally accredited post-secondary institution approved by the department to sponsor an EMS education program for its review;

(B) obtain a course completion document that verifies that the program is satisfied that all curriculum requirements have been met. Evaluations of curricula conducted by post-secondary educational institutions under this subsection shall be consistent with the institution's established policies and procedures for awarding credit by transfer or advanced placement;

(C) the candidate may then apply for initial certification with the department as described in subsection (a) of this section; and

(D) The applicant has completed a state approved jurisprudence examination to determine the knowledge on state EMS laws, rules, and policies.

(k) For all applications and renewal applications, the department is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.

(l) Applicant immunization history.

(1) If the applicant's immunization history is included in the immunization registry as defined by Health and Safety Code §161.007, the department shall provide the applicant notice of the applicant's immunization history using information from the immunization registry.

(2) If the applicant's immunization history is not included in the immunization registry, the department shall provide:

(A) details about the program developed under Health and Safety Code, §161.00707; and

(B) the specific risks to emergency medical services personnel when responding rapidly to an emergency of exposure to and infection by a potentially serious or deadly communicable disease that an immunization may prevent.

(m) [~~(l)~~] Responsibilities of the EMS personnel. During the license period, the EMS Personnel responsibilities shall include:

(1) making accurate, complete and/or clearly written patient care reports including documenting a patient's condition upon the EMS personnel's arrival at the scene and patient's status during transport, including signs, symptoms, and responses during duration of transport as per EMS provider's approved policy;

(2) reporting to the employer, appropriate legal authority or the department, of abuse or injury to a patient or the public within 24 hours or the next business day after the event;

(3) following the approved medical director's protocol and policies;

(4) taking precautions to prevent the misappropriation of medications, supplies, equipment, personal items, or money belonging to the patient, employer or any person or entity;

(5) maintaining skill and knowledge to perform the duties or meet the responsibilities required of current level of EMS certification; and

(6) notifying the department of a current and/or valid mailing address within 30 days of any changes.

*§157.34. Recertification.*

(a) Recertification requirements.

(1) Not later than the 30th day before the date a person's certificate is scheduled to expire, the Department of State Health Services (department) may send to the person a notice of expiration at the address shown in the current records of the department.

(2) If a certificant has not received a notice of expiration from the department 30 days prior to the expiration, it is the duty of the certificant to notify the department and to request an application for recertification or download an application from the Internet.

(3) To maintain certification status without a lapse, an applicant shall submit a completed application for recertification and shall meet all requirements for renewal of the current certification prior to

the expiration date of the current certificate, but no earlier than one year prior to the expiration date.

(4) The certificant shall submit the following non-refundable fees as applicable:

(A) $60 for Emergency Care Attendant (ECA) or Emergency Medical Technician (EMT);

(B) $90 for Advanced EMT (AEMT), EMT-Intermediate (EMT-I), or EMT-Paramedic (EMT-P); and

(C) EMS volunteer--no fee. However, if such an individual receives compensation during the certification period, the exemption ceases and the individual shall pay a prorated fee to the department based on the number of years remaining in the certification period when employment begins. The non-refundable fee for ECA or EMT certification shall be $15 per each year remaining in the certification. The non-refundable fee for AEMT or EMT-P shall be $22.50 per each year remaining in the certification. Any portion of a year will count as a full year.

(5) Recertification by voluntary downgrade. An individual who holds a Texas EMS certification or paramedic license may renew at a lower level by meeting the requirements of this subsection. The applicant must meet the requirements for the lower level of certification requested as described in subsection (b) or (f) or (g) [~~(e) or (f)~~] of this section. On the date the downgrade is final, the previous higher level of certification becomes invalid. To regain the original higher level of certification, the candidate shall meet the late recertification requirements outlined in subsection (g) [~~(f)~~] of this section, within one year after the expiration date.

(6) A certificate is not transferable.

(7) Military personnel. A person certified by the department who is deployed in support of military, security, or other action by the United Nations Security Council, a national emergency declared by the President of the United States, or a declaration of war by the United States Congress is eligible for recertification under timely recertification requirements from the person's date of demobilization until one calendar year after the date of demobilization but will not be certified during that period.

(A) In addition to requirements described in this subsection, the candidate shall submit a copy of deployment and demobilization orders.

(B) The four-year certification will commence on issue date of the certificate.

(b) Recertification options. Upon submission of a completed application for recertification, the applicant shall commit to, and recertify through one of the options described in paragraphs (1) - (5) of this subsection.

(1) Option 1--Written Examination Recertification Process.

(A) The applicant shall pass the National Registry assessment exam. An overall score of 70 is considered to be passing.

(B) If the applicant fails the examination for recertification, the applicant may attempt two retests of the examination after:

*(i)* submitting a retest application for each attempt at any eligible level; and

*(ii)* submitting a non-refundable retest fee of $30 for each attempt.

(C) For each subsequent retest attempt, an applicant may apply for and retest at a lower level by complying with paragraph (1)(B) of this subsection, if applicable.

(D) An applicant who selects option 1 and attempts the exam but does not pass the National Registry assessment examination may not gain recertification by any other option and shall not qualify for inactive certification addressed in §157.33(h) of this title (relating to Certification) or subsection (f) or (g) [~~(e) or (f)~~] of this section.

(E) An applicant who does not pass the third attempt at the National Registry assessment examination:

*(i)* shall successfully complete a Formal Recertification Course as described in paragraph (4) of this subsection; and

*(ii)* shall submit a course completion certificate of the Formal recertification course, reflecting that the course was completed after the 2nd retest failure; and

*(iii)* shall pass the National Registry assessment examination in accordance with the provisions in subparagraphs (A) - (D) of this paragraph.

*(iv)* shall not qualify for more than a total of six attempts at the exam, in any combination of levels attempted.

(F) The certification status of an applicant who does not successfully complete the examination recertification process as described in paragraph (1)(A) - (E) of this subsection shall expire on the date of the current certificate.

(G) The applicant has completed a state approved jurisprudence examination to determine the knowledge on state EMS laws, rules, and policies.

(2) Option 2--Continuing Education Recertification Process.

(A) The certificant shall attest to accrual of department approved EMS continuing education as specified in §157.38 of this title (relating to Continuing Education); and

(B) the applicant has completed a state approved jurisprudence examination to determine the knowledge on state EMS laws, rules, and policies.

(3) Option 3--National Registry Recertification Process.

(A) The applicant shall attest to and hold current National Registry certification at the time of applying for recertification; and

(B) the applicant has completed a state approved jurisprudence examination to determine the knowledge on state EMS laws, rules, and policies.

(4) Option 4--Formal Course Recertification Process. The applicant shall attest to successful completion of a department approved recertification course.

(A) The recertification course shall be a formal structured interactive training course as approved by the department and conducted within the four-year certification period.

(B) The minimum contact hours required for recertification courses are:
Figure: 25 TAC §157.34(b)(4)(B) (No change.)

(C) The applicant has completed a state approved jurisprudence examination to determine the knowledge on state EMS laws, rules, and policies.

(5) Option 5--CCMP Recertification Process. An applicant affiliated with an EMS provider that has a department-approved Comprehensive Clinical Management Program (CCMP) may be recertified if:

(A) the applicant is currently credentialed in the provider's CCMP;

(B) the applicant has been enrolled in the provider's CCMP for at least six continuous months;

(C) the applicant submits to the department a signed written statement by the CCMP's medical director, attesting to the applicant's successful participation in and completion of the provider's CCMP; and

(D) The applicant has completed a state approved jurisprudence examination to determine the knowledge that the applicant has on state EMS laws, rules, and policies.

(6) If a candidate wishes to change options (other than option 1), another application form must be submitted. An additional fee is not required if the candidate completes all requirements within the same time period of the original submission.

(c) After verification by the department of the information submitted by the applicant, that the information is true, correct and complete with regard to the applicant meeting recertification requirements by the certification expiration date, the department shall recertify the applicant for four years, commencing on the day following the expiration date of the most recent certificate. A candidate must verify current certification before staffing an EMS vehicle. Certification may be verified by the applicant's receipt of the official department identification card, by using the department's certification website, or by contacting the department directly.

(d) Applicant immunization history.

(1) If the applicant's immunization history is included in the immunization registry as defined by Health and Safety Code, §161.007, the department shall provide notice of the applicant's immunization history using information from the immunization registry.

(2) If the applicant's immunization history is not included in the immunization registry, the department shall provide:

(A) details about the program developed under Health and Safety Code §161.00707; and

(B) the specific risks to emergency medical services personnel when responding rapidly to an emergency of exposure to and infection by a potentially serious or deadly communicable disease that an immunization may prevent.

(e) [~~(d)~~] Late recertification.

(1) The candidate whose certification has expired shall be considered late, non-certified and shall not function in the capacity of an EMS certificant or represent that he is EMS certified until recertification is issued.

(2) A candidate whose certificate has been expired for 90 days or less may renew the certificate by submitting an application accompanied by a non-refundable renewal fee that is equal to 1-1/2 times the normally required application renewal fee for that level as listed in subsection (a)(4) of this section. Applicant shall meet one of the recertification options described in subsection (b)(1) - (5) of this section and submit verification of skills proficiency from an approved education program. If the applicant has already submitted an application and fee, but has not met all of the requirements prior to expiration, another application will not be required, but a total of 1-1/2 times the normally required application renewal fee shall be necessary. The applicant shall be recertified for a period of four years beginning on the date of issuance.

(3) A candidate whose certificate has been expired for more than 90 days but less than one year may renew the certificate by submitting an application accompanied by a non-refundable renewal fee that is equal to two times the normally required application renewal fee as listed in subsection (a)(4) of this section. Applicant shall meet one of the recertification options described in subsection (b)(2) - (6) of this section and submit verification of skills proficiency from an approved education program. If the applicant has already submitted an application and fee, but has not met all of the requirements prior to the 90th day after expiration, another application will not be required, but a total of two times the fee shall be necessary.

(4) The applicant shall be recertified for a period of four years beginning on the date of issuance.

(5) A candidate whose certificate has been expired for one year or more may not renew the certificate. The candidate may become certified by complying with the requirements of §157.33(a) or (j) of this title.

(6) A candidate who was certified in this state, moved to another state, and is currently certified or licensed and has been in practice in the other state for two years preceding the date of application may become certified without reexamination. The candidate may gain recertification by:

(A) submitting to the department a non-refundable fee that is equal to two times the normally required renewal fee for certification as listed in subsection (a)(4) of this section; and

(B) attesting to regular practice of emergency medical care in the other state for the two years preceding the date of application.

(f) [~~(e)~~] Renewal of inactive certification.

(1) To renew inactive certification, an applicant holding inactive certification shall submit an application and the non-refundable fee as described in §157.33(a)(4) of this title. The $30 inactive fee is not required for renewal when renewing inactive certification. A candidate who meets requirements for inactive renewal shall be awarded inactive certification for a period of four years beginning on the first day after the expiration of the previous inactive certification.

(2) A candidate whose inactive certification has been expired for 90 days or less may renew the inactive certification during the 90 day period after expiration of the certification upon submitting a fee of 1-1/2 times the normally required renewal fee as described in subsection (a)(4) of this section. If the applicant has already submitted an application and fee, but has not met all of the requirements prior to expiration, another application will not be required, but a total of 1-1/2 times the fee shall be necessary. The applicant shall be recertified for a period of four years beginning on the date of issuance.

(3) A candidate whose inactive certification has been expired more than 90 days but less than one year may renew the inactive certification upon submitting a fee of two times the normally required renewal fee as described in subsection (a)(4) of this section. If the applicant has already submitted an application and fee, but has not met all of the requirements prior to the 90th day after expiration, another application will not be required, but a total of two times the fee shall be necessary. The applicant shall be recertified for a period of four years beginning on the date of issuance.

(4) A candidate whose inactive certificate has been expired more than one year must regain active certification before reapplying

for inactive certification as described in subsection (g) [(f)] of this section.

(g) [(f)] Inactive to active certification.

(1) An inactive certificant prior to the expiration of the first four-year inactive certification period may obtain active certification by submitting an application and the non-refundable fee to the department, as described in subsection (a)(4) of this section and by completing one of the following options:

(A) Option 1--meet the normal four year continuing education requirement for certification renewal as listed in subsection (b)(2) of this section, submit verification of skills proficiency from an approved education program or recognized physician by the department, and pass the National Registry EMT cognitive assessment exam.

(B) Option 2--complete a department approved recertification course, and pass the National Registry EMT psychomotor (practical) exam and cognitive assessment exam.

(2) A certificant who has held inactive certification for more than four years may return to active certification only by completing requirements described in §157.33(a) or (j) of this title.

(h) [(g)] For all applications and renewal applications, the department is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.

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 September 9, 2019.

TRD-201903170
Barbara L. Klein
General Counsel
Department of State Health Services
Earliest possible date of adoption: October 20, 2019
For further information, please call: (512) 834-6748

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# SUBCHAPTER G. EMERGENCY MEDICAL SERVICES TRAUMA SYSTEMS

## 25 TAC §157.125

STATUTORY AUTHORITY

The amendment is authorized by Texas Health and Safety Code, Chapter 773; and 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 system, including by DSHS. Under Texas Health and Safety Code, Chapter 1001, the DSHS Commissioner is authorized to assist the Executive Commissioner in the development of rules relating to the matters within DSHS jurisdiction.

The amendment implements Texas Health and Safety Code, Chapter 773.

*§157.125. Requirements for Trauma Facility Designation.*

(a) The Office of Emergency Medical Services (EMS)/Trauma Systems Coordination (office) shall recommend to the Commissioner of the Department of State Health Services (commissioner) the designation of an applicant/healthcare facility (facility) as a trauma facility at the level(s) for each location of a facility the office deems appropriate.

(1) Comprehensive (Level I) trauma facility designation--The facility, including a free-standing children's facility, meets the current American College of Surgeons (ACS) essential criteria for a verified Level I trauma center; meets the "Advanced Trauma Facility Criteria" in subsection (x) of this section; actively participates on the appropriate Regional Advisory Council (RAC); has appropriate services for dealing with stressful events available to emergency/trauma care providers; and submits data to the Texas EMS/Trauma Registry.

(2) Major (Level II) trauma facility designation--The facility, including a free-standing children's facility, meets the current ACS essential criteria for a verified Level II trauma center; meets the "Advanced Trauma Facility Criteria" in subsection (x) of this section; actively participates on the appropriate RAC; has appropriate services for dealing with stressful events available to emergency/trauma care providers; and submits data to the Texas EMS/Trauma Registry.

(3) Advanced (Level III) trauma facility designation--The facility meets the "Advanced Trauma Facility Criteria" in subsection (x) of this section; actively participates on the appropriate RAC; has appropriate services for dealing with stressful events available to emergency/trauma care providers; and submits data to the Texas EMS/Trauma Registry. A free-standing children's facility, in addition to meeting the requirements listed in this section, must meet the current ACS essential criteria for a verified Level III trauma center.

(4) Basic (Level IV) trauma facility designation--The facility meets the "Basic Trauma Facility Criteria" in subsection (y) of this section; actively participates on the appropriate RAC; has appropriate services for dealing with stressful events available to emergency/trauma care providers; and submits data to the Texas EMS/Trauma Registry.

(b) A healthcare facility is defined under these rules as a single location where inpatients receive hospital services or each location if there are multiple buildings where inpatients receive hospital services and are covered under a single hospital license.

(1) Each location shall be considered separately for designation and the Department of State Health Services (department) will determine the designation level for that location, based on, but not limited to, the location's own resources and levels of care capabilities; Trauma Service Area (TSA) capabilities; and the essential criteria and requirements outlined in subsection (a)(1) - (4) of this section. The final determination of the level(s) of designation may not be the level(s) requested by the facility.

(2) A facility with multiple locations that is applying for designation at one location shall be required to apply for designation at each of its other locations where there are buildings where inpatients receive hospital services and such buildings are collectively covered under a single hospital's license.

(c) The designation process shall consist of three phases.

(1) First phase--The application phase begins with submitting to the office a timely and sufficient application for designation as a trauma facility and ends when the survey report is received by the office.

(2) Second phase--The review phase begins with the office's review of the survey report and ends with its recommendation to the commissioner whether or not to designate the facility and at what level(s). This phase also includes an appeal procedure governed by

the department's rules for a contested case hearing and by Government Code, Chapter 2001.

(3) Third phase--The final phase begins with the commissioner reviewing the recommendation and ends with his/her final decision.

(d) For a facility seeking initial designation, a timely and sufficient application shall include:

(1) the department's current "Complete Application" form for the appropriate level, with all fields correctly and legibly filled-in and all requested documents attached, hand-delivered or sent by postal services to the office;

(2) full payment of the designation fee enclosed with the submitted "Complete Application" form;

(3) any subsequent documents submitted by the date requested by the office;

(4) a trauma designation survey completed within one year of the date of the receipt of the application by the office; and

(5) a complete survey report, including patient care reviews, that is within 180 days of the date of the survey and is hand-delivered or sent by postal services to the office.

(e) If a hospital seeking initial designation fails to meet the requirements in subsection (d)(1) - (5) of this section, the application shall be denied.

(f) For a facility seeking re-designation, a timely and sufficient application shall include:

(1) the department's current "Complete Application" form for the appropriate level, with all fields correctly and legibly filled-in and all requested documents attached, hand-delivered or sent by postal services to the office one year or greater from the designation expiration date;

(2) full payment of the designation fee enclosed with the submitted "Complete Application" form;

(3) any subsequent documents submitted by the date requested by the office; and

(4) a complete survey report, including patient care reviews, that is within 180 days of the date of the survey and is hand-delivered or sent by postal services to the office no less than 60 days prior to the designation expiration date.

(g) If a healthcare facility seeking re-designation fails to meet the requirements outlined in subsection (f)(1) - (4) of this section, the original designation will expire on its expiration date.

(h) The office's analysis of the submitted "Complete Application" form may result in recommendations for corrective action when deficiencies are noted and shall also include a review of:

(1) the evidence of current participation in RAC/regional system planning; and

(2) the completeness and appropriateness of the application materials submitted, including the submission of a non-refundable application fee as follows:

(A) for Level I and Level II trauma facility applicants, the fee will be no more than $10 per licensed bed with an upper limit of $5,000 and a lower limit of $4,000;

(B) for Level III trauma facility applicants, the fee will be no more than $10 per licensed bed with an upper limit of $2,500 and a lower limit of $1,500; and

(C) for Level IV trauma facility applicants, the fee will be no more than $10 per licensed bed with an upper limit of $1000 and a lower limit of $500.

(i) When a "Complete Application" form for initial designation or re-designation from a facility is received, the office will determine the level it deems appropriate for pursuit of designation or re-designation for each of the facility's locations based on, but not limited to: the facility's resources and levels of care capabilities at each location, TSA resources, and the essential criteria for Levels I, II, III, and IV trauma facilities. In general, physician services capabilities described in the application must be in place 24 hours a day/7 days a week. In determining whether a physician services capability is present, the department may use the concept of substantial compliance that is defined as having said physician services capability at least 90% of the time.

(1) If a facility disagrees with the level(s) determined by the office to be appropriate for pursuit of designation or re-designation, it may make an appeal in writing within 60 days to the director of the office. The written appeal must include a signed letter from the facility's governing board with an explanation as to why designation at the level determined by the office would not be in the best interest of the citizens of the affected TSA or the citizens of the State of Texas.

(2) The written appeal may include a signed letter (s) from the executive board of its RAC or individual healthcare facilities and/or EMS providers within the affected TSA with an explanation as to why designation at the level determined by the office would not be in the best interest of the citizens of the affected TSA or the citizens of the State of Texas.

(3) If the office upholds its original determination, the director of the office will give written notice of such to the facility within 30 days of its receipt of the applicant's complete written appeal.

(4) The facility may, within 30 days of the office's sending written notification of its denial, submit a written request for further review. Such written appeal shall then go to the Assistant Commissioner, Division for Regulatory Services (assistant commissioner).

(j) When the analysis of the "Complete Application" form results in acknowledgement by the office that the facility is seeking an appropriate level of designation or re-designation, the facility may then contract for the survey, as follows.

(1) Level I and II facilities and all free-standing children's facilities shall request a survey through the ACS trauma verification program.

(2) Level III facilities shall request a survey through the ACS trauma verification program or through a comparable organization approved by the department.

(3) Level IV facilities shall request a survey through the ACS trauma verification program, through a comparable organization approved by the department, or by a department-credentialed surveyor(s) active in the management of trauma patients.

(4) The facility shall notify the office of the date of the planned survey and the composition of the survey team.

(5) The facility shall be responsible for any expenses associated with the survey.

(6) The office, at its discretion, may appoint an observer to accompany the survey team. In this event, the cost for the observer shall be borne by the office.

(k) The survey team composition shall be as follows.

(1) Level I or Level II facilities shall be surveyed by a team that is multi-disciplinary and includes at a minimum: 2 general surgeons, an emergency physician, and a trauma nurse all active in the management of trauma patients.

(2) Free-standing children's facilities of all levels shall be surveyed by a team consistent with current ACS policy and includes at a minimum: a pediatric surgeon; a general surgeon; a pediatric emergency physician; and a pediatric trauma nurse coordinator or a trauma nurse coordinator with pediatric experience.

(3) Level III facilities shall be surveyed by a team that is multi-disciplinary and includes at a minimum: a trauma surgeon and a trauma nurse (ACS or department-credentialed), both active in the management of trauma patients.

(4) Level IV facilities shall be surveyed by a department-credentialed representative, registered nurse or licensed physician. A second surveyor may be requested by the facility or by the department.

(5) Department-credentialed surveyors must meet the following criteria:

(A) have at least 3 years experience in the care of trauma patients;

(B) be currently employed in the coordination of care for trauma patients;

(C) have direct experience in the preparation for and successful completion of trauma facility verification/designation;

(D) have successfully completed a department-approved trauma facility site surveyor course and be successfully re-credentialed every 4 years; and

(E) have current credentials as follows:

*(i)* for nurses: Trauma Nurses Core Course (TNCC) or Advanced Trauma Course for Nurses (ATCN); and Pediatric Advanced Life Support (PALS) or Emergency Nurses Pediatric Course (ENPC);

*(ii)* for physicians: Advanced Trauma Life Support (ATLS); and

*(iii)* have successfully completed a site survey internship.

(6) All members of the survey team, except department staff, shall come from a TSA outside the facility's location and at least 100 miles from the facility. There shall be no business or patient care relationship or any potential conflict of interest between the surveyor or the surveyor's place of employment and the facility being surveyed.

(l) The survey team shall evaluate the facility's compliance with the designation criteria, by:

(1) reviewing medical records; staff rosters and schedules; process improvement committee meeting minutes; and other documents relevant to trauma care;

(2) reviewing equipment and the physical plant;

(3) conducting interviews with facility personnel;

(4) evaluating compliance with participation in the Texas EMS/Trauma Registry; and

(5) evaluating appropriate use of telemedicine capabilities where applicable.

(m) The site survey report in its entirety shall be part of a facility's performance improvement program and subject to confidentiality as articulated in the Health and Safety Code, §773.095.

(n) The surveyor(s) shall provide the facility with a written, signed survey report regarding their evaluation of the facility's compliance with trauma facility criteria. This survey report shall be forwarded to the facility within 30 calendar days of the completion date of the survey. The facility is responsible for forwarding a copy of this report to the office if it intends to continue the designation process.

(o) The office shall review the findings of the survey report for compliance with trauma facility criteria.

(1) A recommendation for designation shall be made to the commissioner based on compliance with the criteria.

(2) If a facility does not meet the criteria for the level of designation deemed appropriate by the office, the office shall notify the facility of the requirements it must meet to achieve the appropriate level of designation.

(3) If a facility does not comply with criteria, the office shall notify the facility of deficiencies and recommend corrective action.

(A) The facility shall submit to the office a report that outlines the corrective action(s) taken. The office may require a second survey to ensure compliance with the criteria. If the office substantiates action that brings the facility into compliance with the criteria, the Office shall recommend designation to the commissioner.

(B) If a facility disagrees with the office's decision regarding its designation application or status, it may request a secondary review by a designation review committee. Membership on a designation review committee will:

*(i)* be voluntary;

*(ii)* be appointed by the office director;

*(iii)* be representative of trauma care providers and appropriate levels of designated trauma facilities; and

*(iv)* include representation from the department and the Trauma Systems Committee of the Governor's EMS and Trauma Advisory Council (GETAC).

(C) If a designation review committee disagrees with the office's recommendation for corrective action, the records shall be referred to the assistant commissioner for recommendation to the commissioner.

(D) If a facility disagrees with the office's recommendation at the end of the secondary review, the facility has a right to a hearing, in accordance with the department's rules for contested cases, and Government Code, Chapter 2001.

(p) The facility shall have the right to withdraw its application at any time prior to being recommended for trauma facility designation by the office.

(q) If the commissioner concurs with the recommendation to designate, the facility shall receive a letter and a certificate of designation valid for 3 years. Additional actions, such as a site review or submission of information/reports to maintain designation, may be required by the department.

(r) It shall be necessary to repeat the designation process as described in this section prior to expiration of a facility's designation or the designation expires.

(s) A designated trauma facility shall:

(1) comply with the provisions within these sections; all current state and system standards as described in this chapter; and all policies, protocols, and procedures as set forth in the system plan;

(2) continue its commitment to provide the resources, personnel, equipment, and response as required by its designation level;

(3) participate in the Texas EMS/Trauma Registry. Data submission requirements for designation purposes are as follows.

(A) Initial designation--Six months of data prior to the initial designation survey must be uploaded. Subsequent to initial designation, data should be uploaded to the Texas EMS/Trauma Registry on at least a quarterly basis (with monthly submissions recommended) as indicated in §103.19 of this title (relating to Electronic Reporting).

(B) Re-designation--The facility's trauma registry should be current with at least quarterly uploads of data to the Texas EMS/Trauma Registry (monthly submissions recommended) as indicated in §103.19 of this title;

(4) notify the office, its RAC plus other affected RACs of all changes that affect air medical access to designated landing sites.

(A) Non-emergent changes shall be implemented no earlier than 120 days after a written notification process.

(B) Emergency changes related to safety may be implemented immediately along with immediate notification to department, the RAC, and appropriate Air Medical Providers.

(C) Conflicts relating to helipad air medical access changes shall be negotiated between the facility and the EMS provider.

(D) Any unresolved issues shall be handled utilizing the nonbinding alternative dispute resolution (ADR) process of the RAC in which the helipad is located;

(5) within 5 days, notify the office; its RAC plus other affected RACs; and the healthcare facilities to which it customarily transfers-out trauma patients or from which it customarily receives trauma transfers-in if temporarily unable to comply with a designation criterion. If the healthcare facility intends to comply with the criterion and maintain current designation status, it must also submit to the office a plan for corrective action and a request for a temporary exception to criteria within 5 days.

(A) If the requested essential criterion exception is not critical to the operations of the healthcare facility's trauma program and the office determines that the facility has intent to comply, a 30-day to 90-day exception period from the onset date of the deficiency may be granted for the facility to achieve compliancy.

(B) If the requested essential criterion exception is critical to the operations of the healthcare facility's trauma program and the office determines that the facility has intent to comply, no greater than a 30-day exception period from the onset date of the deficiency may be granted for the facility to achieve compliancy. Essential criteria that are critical include such things as:

*(i)* neurological surgery capabilities (Level I, II);

*(ii)* orthopedic surgery capabilities (Level I, II, III);

*(iii)* general/trauma surgery capabilities (Level I, II, III);

*(iv)* anesthesiology (Levels I, II, III);

*(v)* emergency physicians (all levels);

*(vi)* trauma medical director (all levels);

*(vii)* trauma nurse coordinator/program manager (all levels); and

*(viii)* trauma registry (all levels).

(C) If the healthcare facility has not come into compliance at the end of the exception period, the office may at its discretion elect one of the following:

*(i)* allow the facility to request designation at the level appropriate to its revised capabilities;

*(ii)* propose to re-designate the facility at the level appropriate to its revised capabilities;

*(iii)* propose to suspend the facility's designation status. If the facility is amenable to this action, the office will develop a plan for corrective action for the facility and a specific timeline for compliance by the facility; or

*(iv)* propose to extend the facility's temporary exception to criteria for an additional period not to exceed 90 days. The department will develop a plan for corrective action for the facility and a specific timeline for compliance by the facility.

*(I)* Suspensions of a facility's designation status and exceptions to criteria for facilities will be documented on the office website.

*(II)* If the facility disagrees with a proposal by the office, or is unable or unwilling to meet the office-imposed timelines for completion of specific actions plans, it may request a secondary review by a designation review committee as defined in subsection (o)(3)(B) of this section.

*(III)* The office may at its discretion choose to activate a designation review committee at any time to solicit technical advice regarding criteria deficiencies.

*(IV)* If the designation review committee disagrees with the office's recommendation for corrective actions, the case shall be referred to the assistant commissioner for recommendation to the commissioner.

*(V)* If a facility disagrees with the office's recommendation at the end of the secondary review process, the facility has a right to a hearing, in accordance with the department's rules for contested cases and Government Code, Chapter 2001.

*(VI)* Designated trauma facilities seeking exceptions to essential criteria shall have the right to withdraw the request at any time prior to resolution of the final appeal process;

(6) notify the office; its RAC plus other affected RACs; and the healthcare facilities to which it customarily transfers-out trauma patients or from which it customarily receives trauma transfers-in, if it no longer provides trauma services commensurate with its designation level.

(A) If the facility chooses to apply for a lower level of trauma designation, it may do so at any time; however, it shall be necessary to repeat the designation process. There shall be a paper review by the office to determine if and when a full survey shall be required.

(B) If the facility chooses to relinquish its trauma designation, it shall provide at least 30 days notice to the RAC and the office; and

(7) within 30 days, notify the office; its RAC plus other affected RACs; and the healthcare facilities to which it customarily transfers-out trauma patients or from which it customarily receives trauma

transfers-in, of the change(s) if it adds capabilities beyond those that define its existing trauma designation level.

(A) It shall be necessary to repeat the trauma designation process.

(B) There shall then be a paper review by the office to determine if and when a full survey shall be required.

(t) Any facility seeking trauma designation shall have measures in place that define the trauma patient population evaluated at the facility and/or at each of its locations, and the ability to track trauma patients throughout the course of their care within the facility and/or at each of its locations in order to maximize funding opportunities for uncompensated care.

(u) A healthcare facility may not use the terms "trauma facility", "trauma hospital", "trauma center", or similar terminology in its signs or advertisements or in the printed materials and information it provides to the public unless the healthcare facility is currently designated as a trauma facility according to the process described in this section.

(v) The office shall have the right to review, inspect, evaluate, and audit all trauma patient records, trauma performance improvement committee minutes, and other documents relevant to trauma care in any designated trauma facility or applicant/healthcare facility at any time to verify compliance with the statute and this rule, including the designation criteria. The office shall maintain confidentiality of such records to the extent authorized by the Texas Public Information Act, Government Code, Chapter 552, and consistent with current laws and regulations related to the Health Insurance Portability and Accountability Act of 1996. Such inspections shall be scheduled by the office when deemed appropriate. The office shall provide a copy of the survey report, for surveys conducted by or contracted for the department, and the results to the healthcare facility.

(w) The office may grant an exception to this section if it finds that compliance with this section would not be in the best interests of the persons served in the affected local system.

(x) Advanced (Level III) Trauma Facility Criteria.
Figure: 25 TAC §157.125(x) (No change.)

(1) Advanced (Level III) Trauma Facility Criteria Standards.
Figure: 25 TAC §157.125(x)(1) (No change.)

(2) Advanced (Level III) Trauma Facility Criteria Audit Filters.
Figure: 25 TAC §157.125(x)(2) (No change.)

(y) Basic (Level IV) Trauma Facility Criteria.
Figure: 25 TAC §157.125(y)
[~~Figure: 25 TAC §157.125(y)~~]

(1) Basic (Level IV) Trauma Facility Criteria Standards.
Figure: 25 TAC §157.125(y)(1) (No change.)

(2) Basic (Level IV) Trauma Facility Criteria Audit Filters.
Figure: 25 TAC §157.125(y)(2) (No change.)

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

Filed with the Office of the Secretary of State on September 9, 2019.

TRD-201903172

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Earliest possible date of adoption: October 20, 2019
For further information, please call: (512) 834-6748

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# TITLE 31. NATURAL RESOURCES AND CONSERVATION

## PART 1. GENERAL LAND OFFICE

### CHAPTER 3. GENERAL PROVISIONS
### SUBCHAPTER F. NEGOTIATION AND MEDIATION OF CERTAIN CONTRACT DISPUTES

**31 TAC §§3.60 - 3.78**

EXPLANATION

The Commissioner of the General Land Office ("Commissioner" and "GLO," respectively) proposes to adopt new rules comprising Subchapter F to Title 31, Part 1, Chapter 3. The proposed new Subchapter F contains rules §§3.60 - 3.78, regarding negotiation and mediation of certain contract disputes. The GLO must adopt the proposed rules to comply with Texas Government Code section 2260.052(c).

FISCAL NOTE

Jeff Gordon, General Counsel of the GLO, has determined for each year of the first five years the rules will be in effect: there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering the rules; there is no estimated reduction in costs to the state and to local governments as a result of enforcing or administering the rules; there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rules; and enforcing or administering the rules does not have foreseeable implications relating to cost or revenues of the state or local governments.

SMALL BUSINESS, MICRO BUSINESS AND RURAL COMMUNITY ANALYSIS

The GLO has determined that for each year of the first five years the proposed new rules will be in effect, there will be minimal economic cost to small businesses, micro-businesses, rural communities and individuals based on the proposed new rules.

PUBLIC BENEFITS AND COSTS

Jeff Gordon, General Counsel of the GLO, has determined for each year of the first five years the rules will be in effect: the public will benefit from the rules because they will provide orderly and efficient administration of contract claims covered by Texas Government Code Chapter 2260; and there is no probable economic cost to persons required to comply with the rules.

GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years the proposed rules would be in effect: the proposed rules do not create or eliminate a government program; implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; implementation of the proposed rules does

not require an increase or decrease in future legislative appropriations to the agency; the proposed rules do not require an increase or decrease in fees paid to the agency; the proposed rule creates a new regulation; the proposed rules do not expand, limit, or repeal an existing regulation; the proposed rules do not increase or decrease the number of individuals subject to the rule's applicability; and the proposed rules do not affect this state's economy.

LOCAL EMPLOYMENT IMPACT

The GLO has determined the proposed rules will not affect a local economy.

REQUEST FOR COMMENTS

The GLO requests comments on the proposed rules from any interested person. To comment on the proposed rulemaking, please send written comments to Mr. Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711-2873, facsimile number (512) 463-6311 or e-mail to Walter.Talley@glo.texas.gov. Written comments must be received no later than 5:00 p.m., 30 days from the date of publication of this proposal.

STATUTORY AUTHORITY

The new rules are proposed to comply with Texas Government Code section 2260.052(c), which requires units of state government with rulemaking authority to develop rules to govern the negotiation and mediation of a claim under Texas Government Code Chapter 2260.

The proposed rules affect Title 31, Part 1, Chapter 3, of the Texas Administrative Code.

*§3.60. Purpose and Application.*

(a) This subchapter is adopted pursuant to Texas Government Code, §2260.052 and governs the negotiation and mediation of a claim of breach of contract asserted by a contractor against the Land Office under Texas Government Code, Chapter 2260.

(b) This subchapter does not apply to:

(1) claims or contracts to which Texas Government Code, Chapter 2260 does not apply;

(2) an action of the Land Office that entitles a contractor to a specific remedy pursuant to state or federal law;

(3) a contract action proposed or taken by the Land Office for which a contractor receiving Medicaid funds under that contract is entitled by state law or regulation to a hearing conducted in accordance with Texas Government Code, Chapter 2001;

(4) a contract that is solely and entirely funded by federal grant monies other than for a project defined in Texas Government Code, §2166.001;

(5) a contract between the Land Office and the federal government or its agencies, another state, or another nation;

(6) a contract between the Land Office and another unit of state government;

(7) a contract between the Land Office and a local governmental body or a political subdivision of this or another state;

(8) a contract between a contractor and a subcontractor, officer, employee, agent, or other person furnishing goods or services to a contractor;

(9) a contract within the exclusive jurisdiction of: federal courts or regulatory bodies; or state or local regulatory bodies;

(10) a claim of a purported third-party beneficiary to a contract; or

(11) a claim based on a contract obligation that is within the GLO's sole discretion to perform.

*§3.61. Definitions.*

(a) The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

(1) Chief administrative officer--Chief Clerk of the Land Office or his or her designee.

(2) Commissioner--Commissioner of the General Land Office of Texas or the Commissioner's designee not below the level of division director.

(3) Contract--a written contract between the Land Office and a contractor by which the contractor agrees either: to provide goods or services, by sale or lease, to or for a unit of state government; or to perform a project as defined by Government Code, §2166.001.

(4) Contractor--independent contractor who has entered into a contract directly with the Land Office, but does not include:

(A) a contractor's subcontractor, officer, employee, agent, or other person furnishing goods or services to a contractor;

(B) an employee of the Land Office; or

(C) a student at an institution of higher education.

(5) Day--calendar day. Acts required to occur on a Saturday, Sunday, or holiday, shall take place on the next following working day.

(6) Governmental body shall be construed as that term is defined under Texas Government Code Section 552.003.

(7) Land Office--General Land Office of Texas.

(8) Parties--collectively, the contractor and the Land Office.

(9) Political subdivision--a municipality, county, parish, borough, public school district, levee improvement district, municipal utility district, or any other special purpose district authorized by the law of the State of Texas or another state.

(10) SOAH--State Office of Administrative Hearings.

(11) Unit of state government--the State of Texas or an agency, department, commission, bureau, board, office, council, court, or other entity that is in any branch of the government of the State of Texas and is created by the constitution or a statute of the State of Texas, including a university system or institution of higher education, but does not include a county, municipality, court of a county or municipality, special purpose district, or other political subdivision of this state.

(b) Words or terms not defined in this subchapter have the meanings defined in Texas Government Code, Chapter 2260, or, if no meaning is defined therein, shall be read in context and construed according to the rules of grammar and common usage.

*§3.62. Prerequisites to Suit.*

The procedures in this subchapter are exclusive and required prerequisites to suit under the Civil Practice & Remedies Code, Chapter 107, and Texas Government Code, Chapter 2260.

*§3.63. Sovereign Immunity.*

This subchapter does not waive the Land Office's sovereign immunity to suit or liability.

*§3.64. Notice of Claim of Breach of Contract.*

(a) A contractor asserting a claim of breach of contract under Texas Government Code, Chapter 2260, must file notice of the claim as provided by this section.

(b) The notice of claim must:

(1) be in writing and signed by the contractor or the contractor's authorized representative;

(2) be delivered by hand, certified mail return receipt requested, or other verifiable delivery service, to the officer of the Land Office designated in the contract to receive a notice of claim of breach of contract under Texas Government Code, Chapter 2260, or, if no person is designated in the contract, to the chief administrative officer; and

(3) state in detail:

(A) the Land Office contract number or other information sufficient to identify the contract at issue;

(B) the nature of the alleged breach of contract, including the date of the act or omission upon which contractor's claim is based, and each contractual provision allegedly breached;

(C) a description of damages that resulted from the alleged breach, including the amount and method of calculation;

(D) the legal theory of recovery, including the relationship between the alleged breach and the claimed damages; and

(E) the address to which the Land Office must direct correspondence regarding the claim, if such address differs from the address for notices specified in the contract.

(c) With its notice of claim, the contractor may submit supporting documentation or other tangible evidence to facilitate the Land Office's evaluation of the contractor's claim.

(d) Contractor must deliver the notice of claim no later than 180 days after the date of the act or omission upon which contractor's claim is based.

*§3.65. Counterclaim.*

(a) If the Land Office asserts a counterclaim under Texas Government Code, Chapter 2260, it must file notice of the counterclaim as provided by this section.

(b) The notice of counterclaim must:

(1) be in writing;

(2) be delivered by hand, certified mail return receipt requested, or other verifiable delivery service to the contractor or representative of the contractor who signed the notice of claim of breach of contract; and

(3) state in detail:

(A) the nature of the counterclaim;

(B) a description of damages or offsets sought, including the amount and method used to calculate those damages or offsets; and

(C) the legal theory supporting the counterclaim.

(c) With its notice of counterclaim, the Land Office may submit supporting documentation or other tangible evidence to facilitate the contractor's evaluation of the Land Office's counterclaim.

(d) The Land Office must deliver the notice of counterclaim to the contractor no later than 60 days after the Land Office's receipt of the contractor's notice of claim.

(e) Nothing herein precludes the Land Office from initiating a lawsuit for damages against the contractor in a court of competent jurisdiction.

*§3.66. Duty to Negotiate.*

The parties must negotiate in accordance with the timetable set forth in §3.67 of this subchapter (relating to Timetable) to attempt to resolve all claims and counterclaims filed under this subchapter. No party is obligated to settle with the other party as a result of the negotiation.

*§3.67. Timetable.*

(a) Following receipt of a contractor's notice of claim, the chief administrative officer must review the contractor's claim and the Land Office's counterclaim, if any, and initiate negotiations with the contractor to attempt to resolve the claim and counterclaim.

(b) Subject to subsection (c) of this section, the parties must begin negotiations within a reasonable period of time, not to exceed 60 days following the later of:

(1) the date of termination of the contract;

(2) the completion date, or substantial completion date in the case of construction projects, in the original contract; or

(3) the date the Land Office receives the contractor's notice of claim.

(c) The Land Office may delay negotiations until after the 180th day after the date of the act or omission giving rise to the claim of breach of contract by:

(1) delivering written notice to the contractor that the commencement of negotiations will be delayed; and

(2) delivering written notice to the contractor when the Land Office is ready to begin negotiations.

(d) The parties may conduct negotiations according to an agreed schedule as long as they begin negotiations no later than the applicable deadlines set forth in subsections (b) or (c) of this section, whichever is applicable.

(e) Subject to subsection (f) of this section, the parties must complete the negotiations that are required by this subchapter as a prerequisite to a contractor's request for contested case hearing no later than 270 days after the Land Office receives the contractor's notice of claim.

(f) The parties may agree in writing to extend the time for negotiations on or before the 270th day after the Land Office receives the contractor's notice of claim. The agreement must be signed by the authorized representatives of the parties. The parties may enter into multiple consecutive agreements to extend the time for negotiations.

(g) The contractor may request a contested case hearing before SOAH pursuant to §3.72 of this subchapter (relating to Request for Contested Case Hearing) after the 270th day after the Land Office receives the contractor's notice of claim, or the expiration of any extension agreed to under subsection (f) of this section.

(h) The parties may agree to mediate the dispute at any time before the 270th day after the Land Office receives the contractor's notice of claim or before the expiration of any extension agreed to by the parties pursuant to subsection (f) of this section. The mediation shall be governed by §§3.73 - 3.80 of this subchapter (relating to Negotiation and Mediation of Certain Contract Disputes).

(i) Nothing in this section is intended to prevent the parties from commencing negotiations earlier than the deadlines established in subsections (b) and (c) of this section, or from continuing or resuming negotiations after the contractor requests a contested case hearing before SOAH.

*§3.68. Conduct of Negotiation.*

(a) Negotiation is a consensual bargaining process in which the parties attempt to resolve a claim and counterclaim. The parties may conduct a negotiation under this subchapter by any means authorized under the contract or agreed upon by the parties. The parties may conduct negotiations with the assistance of one or more neutral third parties. The parties may agree to mediate their dispute in accordance with §§3.73 - 3.80 of this subchapter (relating to Negotiation and Mediation of Certain Contract Disputes) or may agree to use an assisted negotiation process other than mediation.

(b) To facilitate meaningful evaluation and negotiation of the claims and any counterclaims, the parties may exchange relevant documents supporting their respective claims, defenses, counterclaims, or positions. To the extent possible, the parties must select representatives who know the subject matter of the dispute, are in a position to reach agreement, and can credibly recommend approval of an agreement.

*§3.69. Settlement Approval Procedures for Negotiation and Mediation.*

(a) The parties must disclose their settlement approval procedures before, or at the beginning of, a negotiation or mediation.

(b) A settlement agreement pertaining to a claim based on a contract of the Veterans Land Board or School Land Board must be approved by the Veterans Land Board or School Land Board, respectively, in a public meeting convened in accordance with Texas Government Code, Chapter 551.

*§3.70. Settlement Agreement.*

(a) The parties may, at any time during a negotiation or mediation conducted pursuant to this subchapter, reach a settlement agreement to resolve an entire claim or any designated and severable portion of a claim. A settlement agreement must identify any unresolved portion of the claim.

(b) To be enforceable, a settlement agreement must be in writing and signed by representatives of the contractor and the Land Office authorized to bind each respective party.

(c) A partial settlement does not waive a contractor's rights under Texas Government Code, Chapter 2260, as to unresolved parts of the claim.

*§3.71. Costs of Negotiation.*

Unless the parties agree otherwise, each party shall be responsible for its own negotiation costs, including, without limitation, fees of attorneys, consultants, and experts.

*§3.72. Request for Contested Case Hearing.*

(a) If the parties do not resolve a claim of breach of contract in its entirety through negotiation or mediation in accordance with this subchapter on or before the 270th day after the Land Office receives the notice of claim, or after the expiration of any extension agreed to by the parties pursuant to §3.67(f) of this subchapter (relating to Timetable), the contractor may file a request with the Land Office for a contested case hearing before SOAH.

(b) A request for a contested case hearing must.

(1) state the legal and factual basis for the claim.

(2) be delivered to the chief administrative officer within a reasonable time after the 270th day after the Land Office receives the notice of claim or the expiration of any written extension agreed to pursuant to §3.67(f) of this subchapter; and

(3) request that the claim be referred to SOAH for a contested case hearing.

(c) The Land Office must, within a reasonable period of time not to exceed thirty days after receipt of the request, refer the claim to SOAH for a contested case hearing under Chapter 2001, Texas Government Code, as to the issues raised in the request.

(d) The parties may agree to submit the case to the SOAH before the 270th day after the notice of claim is received by the Land Office if they have achieved a partial resolution of the claim or if they have reached an impasse in the negotiations and proceeding to a contested case hearing would serve the interests of justice.

*§3.73. Agreement to Mediate; Conduct of Mediation.*

(a) The parties may agree to mediate a claim through an impartial third party at any time. For purposes of this subchapter, "mediation" has the meaning set forth in the Civil Practice and Remedies Code, §154.023. The mediation is subject to the provisions of the Governmental Dispute Resolution Act, Texas Government Code, Chapter 2009. The parties may be assisted in the mediation by legal counsel or other individual.

(b) Mediation is a consensual process in which an impartial third party, the mediator, facilitates communication between the parties to promote reconciliation, settlement, or understanding among them. A mediator may not impose his or her own judgment on the issues for that of the parties. The mediator must be acceptable to both parties.

(c) To facilitate a meaningful opportunity for mediated settlement, the parties shall, to the extent possible, select representatives who know the subject matter of the dispute, are in a position to reach agreement, and can credibly recommend approval of an agreement.

*§3.74. Qualifications and Immunity of the Mediator.*

The mediator must possess the qualifications required under the Civil Practice and Remedies Code, §154.052, be subject to the standards and duties prescribed by the Civil Practice and Remedies Code, §154.053 and have the qualified immunity prescribed by the Civil Practice and Remedies Code, §154.055, if applicable.

*§3.75. Confidentiality of Mediation and Final Settlement Agreement.*

(a) A mediation conducted under this subchapter is confidential in accordance with Texas Government Code, §2009.054.

(b) The confidentiality of a final settlement agreement to which the Land Office is a party is governed by the Public Information Act, Texas Government Code, Chapter 552.

*§3.76. Costs of Mediation.*

Unless the parties agree otherwise in writing, each party is responsible for its own mediation costs, including without limitation, document reproduction costs and fees of attorney, consultants, or experts. The mediator's fees and associated costs shall be divided equally between the parties.

*§3.77. Initial Settlement Agreement.*

Any settlement agreement reached during a mediation must be signed by the Parties' authorized representatives and must describe any procedures the parties must follow to obtain final and binding approval of the agreement.

*§3.78. Final Settlement Agreement.*

A final settlement agreement reached during or through mediation that resolves an entire claim or counterclaim, or any designated and severable portion of a claim or counterclaim, must comply with §3.70 of this subchapter (relating to Settlement Agreement).

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 September 4, 2019.

TRD-201903075
Mark Havens
Chief Clerk, Deputy Land Commissioner
General Land Office
Earliest possible date of adoption: October 20, 2019
For further information, please call: (512) 475-1859

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# PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

## CHAPTER 65. WILDLIFE

## SUBCHAPTER G. THREATENED AND ENDANGERED NONGAME SPECIES

### 31 TAC §65.175, §65.176

The Texas Parks and Wildlife Department (the department) proposes amendments to §65.175 and §65.176, concerning Threatened and Endangered Nongame Species.

The proposed amendment to §65.175, concerning Threatened Species, would remove the Bald Eagle, Reticulate collared lizard, Reticulated gecko, Southern yellow bat, Chihuahuan Desert lyre snake, Smooth green snake, Texas indigo snake, Timber (Canebrake) rattlesnake, Opossum pipefish, and four species of mussels (Golden orb, Smooth pimpleback, Texas hornshell, Triangle pigtoe) from the list of threatened species, and add four species of salamander (the Georgetown salamander, Jollyville Plateau salamander, Salado Springs salamander, Texas salamander), eight species of freshwater gastropods (an unnamed cave snail (*Phreatodrobia* coronae), Carolinae tryonia, Caroline's Springs pyrg, Clear Creek amphipod, Limpia Creek Spring snail, Metcalf's tryonia, Presidio County Spring snail, Texas troglobitic water slater), four species of mussels (Trinity pigtoe, Guadalupe orb, Guadalupe fatmucket, Brazos heelsplitter), three species of birds (Black rail, Red-crowned parrot, Rufa red knot), 13 species of freshwater fishes (Tamaulipas Shiner, Rio Grande Shiner, Headwater Catfish, Speckled Chub, Prairie Chub, Arkansas River Speckled Chub, Chub Shiner, Red River Pupfish, Plateau Shiner, Roundnose Minnow, Medina Roundnose Minnow, Nueces Roundnose Minnow, Guadalupe Darter), three species of saltwater fishes (Oceanic whitetip, Great hammerhead, Shortfin mako), two species of mammals (Tawny-bellied cotton rat, West Indian manatee), and two species of reptiles (Concho water snake, Dunes sagebrush lizard). The proposed amendment would also rename one category of organisms, replacing "molluscs" with "aquatic invertebrates," which is taxonomically more accurate.

Under Parks and Wildlife Code, Chapter 67, the commission is authorized to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species. Until recently, there has been no standardized method for listing, down-listing, or de-listing native animal and plant species on the department's lists of threatened species. The Conservation Status Assessment protocol developed by NatureServe (Faber-Langendoen et al., 2012) is widely used across North America by the network of state Natural Heritage Programs, many state and federal agencies, and non-governmental organizations (Master, 1991). These status ranks are used to define conservation priorities, influence development activities, and shape land management efforts by governmental agencies, conservation groups, industry, and private landowners. The department has begun using this protocol to denote Species of Greatest Conservation Need (SGCN) for the department's Texas Conservation Action Plan. The NatureServe protocol assesses species according to a set of 10 biological and external factors that may affect their persistence, including Population Size, Range Extent, Area of Occupancy, Number of Occurrences, Number of Occurrences or Percent of Area Occupied with Good Viability/Ecological Integrity, Environmental Specificity, Assigned Overall Threat Impact, Intrinsic Vulnerability, and Long-term and Short-term Trends in population size or area. On the basis of this protocol, staff have determined that the species being proposed for listing as threatened species are species likely to become endangered in the future. With respect to the four species of mussels being removed, one species (the Texas hornshell) is being removed from the list of threatened species because it has been listed by the federal government as endangered. The other three are being removed because from time to time the scientific community reclassifies an organism in light of consensus and/or emerging science. The Golden orb, Smooth pimpleback, and Texas pigtoe mussel have been reclassified as members of other protected taxa.

The proposed amendment to §65.176, concerning Endangered Species, would remove the Black-capped vireo, Humpback whale and West Indian manatee from the list of endangered species while adding three species of fish, five species of whales, and one species of mussel. The proposed amendment also would add language to clarify that a species automatically receives state protection as an endangered species under state law in Texas if it is indigenous to Texas and listed by the federal government as endangered and would place three categories of organisms (molluscs, crustacea, aquatic animals) under a single heading ("aquatic invertebrates"), which is taxonomically more accurate.

Under Parks and Wildlife Code, Chapter 68, a species is endangered under state law if it is (1) indigenous to Texas and listed by the federal government as endangered; or (2) designated by the executive director of the Texas Parks and Wildlife Department as "threatened with statewide extinction." At the current time, the department maintains a single list of endangered species that consists only of those species indigenous to Texas listed by the federal government as endangered. The only species considered as "threatened with statewide extinction" under state law are those species listed as endangered by the federal government.

Under Chapter 68, the department is not required to list federally endangered species by rule; however, whenever the federal government modifies the list of endangered species, the executive director is required to file an order with the secretary of state regarding the modification. Similarly, the executive director may amend the list of species threatened with statewide extinction by filing an order with the secretary of state, but must provide notice of intent to file such an order at least 60 days prior to filing the order. This rulemaking constitutes the department's notice of intent to modify the endangered species list.

The Black-capped vireo was removed from the federal list of endangered species effective May 16, 2018 (83 FR 16228). Nearly extinct by 1990, it has experienced significant population rebound as a result of an intensive multi-state restoration and recovery effort.

The West Indian manatee was removed from the federal list of endangered species effective May 5, 2017 (82 FR 16668) and simultaneously placed on the federal list of threatened species. Texas does not have permanent populations of this species, but individuals have been documented in Texas with increasing frequency during summer migrations; therefore, staff recommends that in addition to removing this species from the state endangered list that it be added to the state threatened list in order to afford protection to individuals that may appear in Texas as well as to prevent possible conflict and confusion with respect to its federal status as threatened.

The Gulf of Mexico population of Humpback whale was removed from the federal list of endangered species, effective October 11, 2016 (81 FR 93639 96341).

The Mexican blindcat was listed as endangered by the U.S. Fish and Wildlife Service effective June 2, 1970 (35 FR 8491 8498) but has recently been documented to occur in Texas (within a deep cave at Amistad National Recreational Area).

The Sharpnose and Smalleye shiners were listed as endangered by the U.S. Fish and Wildlife Service effective September 3, 2014 (79 FR 45274). They are minnows native to streams in the upper reaches of the Brazos River basin in northwestern Texas whose historical ranges have been reduced by more than 50 percent.

The Blue whale was listed as endangered by the U.S. Fish and Wildlife Service effective December 2, 1970 (35 FR 18319) and has been documented as occurring in the Gulf of Mexico.

The Gulf of Mexico population of Bryde's whale was listed as endangered by the U.S. Fish and Wildlife Service effective May 15, 2019 (84 FR 15446).

The North Atlantic right whale was listed as endangered by the U.S. Fish and Wildlife Service effective April 7, 2008 (73 FR 12024) and has been documented as occurring in the Gulf of Mexico.

The Sei whale was listed as endangered by the U.S. Fish and Wildlife Service effective December 2, 1970 (35 FR 12222) and has been documented as occurring in the Gulf of Mexico.

The Sperm whale was listed as endangered by the U.S. Fish and Wildlife Service effective December 2, 1970 (35 FR 18319) and has been documented as occurring in the Gulf of Mexico.

The Texas hornshell mussel was listed as endangered by the U.S. Fish and Wildlife Service effective March 12, 2018 (83 FR 5720). This mussel is known to exist in the Devils River, the Pecos River, and the Rio Grande.

Meredith Longoria, Nongame and Rare Species Program Leader, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Longoria also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be the protection of vulnerable species of indigenous fish and wildlife, as well as regulations that are accurate and informative.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, or rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small and microbusinesses and rural communities. Those guidelines state that an agency need only consider a proposed rule's direct adverse economic impacts to determine if any further analysis is required. The department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. The department has determined that the proposed rules prohibit the intentional take of other species that are of no known commercial value and therefore do not directly affect small businesses, micro-businesses, or rural communities. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

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

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

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

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

Comments on the proposed rules may be submitted to Ms. Meredith Longoria, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4410, e-mail: meredith.longoria@tpwd.texas.gov or on the department website at www.tpwd.texas.gov.

The amendments are proposed under Parks and Wildlife Code, Chapter 67, which authorizes the commission to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species, and Chapter 68, which authorizes regulations necessary to administer the provisions of Chapter 68 and to attain

its objectives, including regulations to govern the publication and distribution of lists of species and subspecies of endangered fish or wildlife and their products and limitations on the capture, trapping, taking, or killing, or attempting to capture, trap, take, or kill, and the possession, transportation, exportation, sale, and offering for sale of endangered species.

The proposed amendments affect Parks and Wildlife Code, Chapters 67 and 68.

*§65.175. Threatened Species.*

A threatened species is any species that the department has determined is likely to become endangered in the future. The following species are hereby designated as threatened species:
~~[Figure: 31 TAC §65.175]~~
Figure: 31 TAC §65.175

*§65.176. Endangered Species.*

A species that is indigenous to the state of Texas and listed by the federal government as endangered automatically receives state protection as an endangered species under Parks and Wildlife Code, Chapter 68, and the presence or absence of that species in this section does not affect that status. The following species are endangered species.
~~[Figure: 31 TAC §65.176]~~
Figure: 31 TAC §65.176

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 August 30, 2019.

TRD-201903055
Robert D. Sweeney, Jr.
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: October 20, 2019
For further information, please call: (512) 389-4329

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# CHAPTER 69. RESOURCE PROTECTION
# SUBCHAPTER A. ENDANGERED, THREATENED, AND PROTECTED NATIVE PLANTS

## 31 TAC §69.8

The Texas Parks and Wildlife Department (the department) proposes an amendment to §69.8, concerning Endangered and Threatened Plants. The proposed amendment would add one species to the list of endangered species of plants and eight species to the list of threatened plants.

Under Parks and Wildlife Code, Chapter 88, a species of plant is endangered, threatened, or protected if it is indigenous to Texas and (1) listed by the federal government as endangered, or (2) designated by the executive director of the Texas Parks and Wildlife Department as endangered, threatened or protected. At the current time, the department maintains a single list of endangered plants that contains only those plants indigenous to Texas listed by the federal government as endangered.

Under Chapter 88, the department is not required to list federally endangered plants by rule; however, whenever the federal government modifies the list of endangered plants, the executive director is required to file an order with the secretary of state regarding the modification. Similarly, the executive director may amend the list of endangered, threatened, and protected species by filing an order with the secretary of state, but must provide notice of intent to file such an order at least 60 days prior to filing the order. This rulemaking constitutes the department's notice of intent to modify the list of endangered, threatened, and protected native plants.

Until recently, there has been no standardized method for listing, down-listing, or de-listing native animal and plant species on the department's lists of threatened species. The Conservation Status Assessment protocol developed by NatureServe (Faber-Langendoen et al., 2012) is widely used across North America by the network of state Natural Heritage Programs, many state and federal agencies, and non-governmental organizations (Master, 1991). These status ranks are used to define conservation priorities, influence development activities, and shape land management efforts by governmental agencies, conservation groups, industry, and private landowners. The department has begun using this protocol to denote Species of Greatest Conservation Need (SGCN) for the department's Texas Conservation Action Plan. The NatureServe protocol assesses species according to a set of 10 biological and external factors that may affect their persistence, including Population Size, Range Extent, Area of Occupancy, Number of Occurrences, Number of Occurrences or Percent of Area Occupied with Good Viability/Ecological Integrity, Environmental Specificity, Assigned Overall Threat Impact, Intrinsic Vulnerability, and Long-term and Short-term Trends in population size or area. On the basis of this protocol, staff have determined that the species being proposed for listing as threatened species are species likely to become endangered in the future.

The Guadalupe Fescue (*Festuca ligulata*) was listed as endangered by the U.S. Fish and Wildlife Service effective October 10, 2017 (82 FR 422245).

The proposed amendment also eliminates the subcategories of endangered and threatened plants and replaces them with a single list of endangered plants and a single list of threatened plants

Meredith Longoria, Nongame and Rare Species Program Leader, has determined that for each of the first five years the amendment as proposed is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Ms. Longoria also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be the protection of vulnerable species of indigenous plants, as well as regulations that are accurate and informative.

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

impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. The department has determined that the proposed rule prohibits the intentional take of a species of no known commercial value and therefore does not directly affect small businesses, microbusinesses, or rural communities. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

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

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

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

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

Comments on the proposed rule may be submitted to Ms. Meredith Longoria, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4410, email: *meredith.longoria@tpwd.texas.gov* or on the department website at *www.tpwd.texas.gov.*

The amendment is proposed under Parks and Wildlife Code, Chapter 88, which requires the department to adopt regulations to provide for the identification and publication of lists of endangered, threatened, or protected plants.

The proposed amendment affects Parks and Wildlife Code, Chapter 88.

*§69.8. Endangered and Threatened Plants.*

(a) The following plants are endangered:
[~~Figure: 31 TAC §69.8(a)~~]
Figure: 31 TAC §69.8(a)

(b) The following plants are threatened:
[~~Figure: 31 TAC §69.8(b)~~]
Figure: 31 TAC §69.8(b)

(c) (No change.)

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

Filed with the Office of the Secretary of State on August 30, 2019.

TRD-201903056

Robert D. Sweeney, Jr.
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: October 20, 2019
For further information, please call: (512) 389-4329

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# TITLE 37. PUBLIC SAFETY AND CORRECTIONS

## PART 9. TEXAS COMMISSION ON JAIL STANDARDS

### CHAPTER 267. RELEASE

**37 TAC §267.6**

The Texas Commission on Jail Standards proposes new rule 37 TAC §267.6, related to the time of day that county jail inmates must be released from custody. Legislative hearings during the 86th Legislature found that nighttime release from jail of inmates increases opportunities for traffickers to prey on this population. That places the released inmates in danger. SB 1700 created Code of Criminal Procedure Article 43.13(c)-(d) to address this problem and permit the Commission to monitor compliance.

Brandon S. Wood, Executive Director, has determined that for each year of the first five years the rule is in effect, the public will benefit from the adoption of the rule. The Commission anticipates that releasing inmates during the daylight hours reduces their risk of being preyed upon by human traffickers.

Mr. Wood has determined that for the first five-year period of this rule there is no foreseeable implication to the costs or revenues of state or local governments as a result of enforcing or administering the rule.

Mr. Wood has determined that this rule during the first five years of its effect will neither create nor eliminate a government program, will not require the creation of new employee positions or the elimination of existing employee positions, will not require an increase or decrease in future legislative appropriations to the agency, will not require an increase or decrease in fees paid to the agency, and will not increase or decrease the number of individuals subject to the rule's applicability. However, the new rule will expand existing regulation, which currently requires defendants to be discharged upon completing the term of their sentence and also requires that a misdemeanant sentenced to a term of confinement of more than 30 days must be discharged at any time between the hours of 6:00 a.m. a nd 7:00 p.m. This rule will create a new regulation by requiring that jails release inmates within a specified time frame and will permit flexibility in that time frame under specified conditions and with the inmate's agreement. Mr. Wood does not anticipate any cost to individuals, small businesses/micro-businesses, or rural communities as a result of this new rule for each year of the first five years of its effect.

Comments on the proposed rule may be submitted to William Turner, P.O. Box 12985, Austin, Texas 78711, Fax (512) 463-3185, or e-mail at will.turner@tcjs.state.tx.us.

The new rule is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the

authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The proposed rule implements Code of Criminal Procedure Article 43.13(c)-(d).

*§267.6. Inmate Release Times.*

(a) A facility shall release an inmate at any time beginning at 6:00 a.m. and ending at 5:00 p.m. on the day the inmate discharges the inmate's sentence.

(b) A facility may credit an inmate with no more than 18 hours of time served and release the inmate at any time beginning at 6:00 a.m. and ending at 5:00 p.m. on the day preceding the day on which the inmate discharges the inmate's sentence.

(c) A facility may release an inmate from county jail after 5:00 p.m. and before 6:00 a.m. if the inmate:

(1) posts a bond;

(2) agrees to or requests a release after 5:00 p.m. and before 6:00 a.m.;

(3) is subject to an arrest warrant issued by another county and is being released for purposes of executing that arrest warrant;

(4) is being transferred to the custody of another state, a unit of the federal government, or a facility operated by or under contract with the Texas Department of Criminal Justice; or

(5) is being admitted to an inpatient mental health facility or a state supported living center for court-ordered mental health or intellectual disability services.

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 September 6, 2019.

TRD-201903116
Brandon Wood
Executive Director
Texas Commission on Jail Standards
Earliest possible date of adoption: October 20, 2019
For further information, please call: (512) 463-2690

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# CHAPTER 269. RECORDS AND PROCEDURES

## SUBCHAPTER A. GENERAL

### 37 TAC §269.1

The Texas Commission on Jail Standards proposes amendments to Title 37 TAC §269.1, relating to the submission of county jail reports. Legislative hearings during the 86th Legislature identified the need to promote efficiency in county jails reporting to the Commission by requiring it to establish a system for the electronic submission of forms, data, and documents. For that purpose, HB3440 added Government Code §511.1404 to require county jails to submit their monthly reports to the Commission in electronic format and by electronic means. It also permits the Commission to set and collect a reasonable fee from those jails that do not submit their documents in accordance with this rule.

Brandon S. Wood, Executive Director, has determined that for each year of the first five years the rules are in effect, the public will benefit from the adoption of the rules. The Commission anticipates that the electronic submission of jail reports in electronic format will improve the efficiency of the Commission and allow staff resources to be redirected to other functions.

Mr. Wood has determined that for each year of the first five years the rules are in effect, the public will benefit from the adoption of the rules. The Commission anticipates that the electronic submission of jail reports in electronic format will improve the efficiency of the Commission and allow staff resources to be redirected to other functions.

Mr. Wood has determined that for each year of the first five years the proposed rule is in effect there will be no economic cost to persons or small businesses to comply with the rule as proposed and no foreseeable impact on rural communities.

Mr. Wood has determined that this rule during the first five years it is in effect neither creates nor eliminates a government program, does not require the creation of new employee positions or the elimination of existing employee positions, does not require an increase or decrease in fees paid to the agency, does not expand, limit, or repeal an existing regulation, and does not increase or decrease the number of individuals subject to the rule's applicability. However, Mr. Wood has determined that this rule during the first five years may permit a decrease in potential future legislative appropriations to the agency by reducing the current report processing workload. The proposed rule does create a new regulation by changing the format and process of submitting jail reports. Mr. Wood does not anticipate any cost to individuals, small businesses/micro-businesses, or rural communities as a result of this rule for each year of the first five years of its effect.

Comments on the proposed rule may be submitted to William Turner, P.O. Box 12985, Austin, Texas 78711, Fax (512) 463-3185, or e-mail at will.turner@tcjs.state.tx.us.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The proposed rule implements Government Code §511.1404.

*§269.1. Record System.*

The sheriff/operator shall maintain the following records:

(1) a daily record of the number of inmates in the facility;

(2) a record on each inmate including:

(A) intake;

(B) identification;

(C) classification;

(D) property;

(E) discipline;

(F) grievance;

(G) commissary;

(H) medical;

(I) incidents or unusual occurrences;

(J) release;

(K) documentation relating to the continued custody of inmates; and

(L) receipts and expenditures of inmate accounts.

(3) a separate written record of all incidents which result in physical harm or serious threat of physical harm to an employee, visitor, or inmate in a facility. Such record shall include the names of the persons involved, a description of the incident, the actions taken, and the date and time of the occurrence. Such a written record shall be prepared and submitted to the sheriff/operator within 24 hours of the incident.

(4) Escape From Custody Report.

(A) The Texas Commission on Jail Standards shall be notified of all escapes from a facility within 24 hours of the escape.

(B) A report of the escape shall be made available for review by Commission staff upon request.

(5) Deaths in Custody.

(A) The Texas Commission on Jail Standards shall be notified of all deaths of inmates while in the custody of sheriff/operator within 24 hours of the death.

(B) The Commission shall appoint a law enforcement agency, other than the local law enforcement agency that operates the county jail, to investigate the death.

(C) Upon conclusion of the investigation by the designated law enforcement agency, the report shall be submitted to the Texas Commission on Jail Standards.

(6) Information on Licensed Jailer Turnover Report. On or before the fifth day of each month, each jail under the Commission's purview shall submit a report, on a form prescribed by the Commission, the number of licensed jailers who left employment at the jail during the previous month.

(7) Serious Incidents Report. Information on Serious Incidents Report. On or before the fifth day of each month, the sheriff/operator of each county jail shall report to the Commission, on a form prescribed by the Commission, regarding the occurrence during the preceding month any incidents involving an inmate in the county jail as required by §511.020.

(8) The sheriff/operator shall submit the following reports in electronic format as prescribed by the Commission:

(A) Population Report;

(B) Immigration/Detainer Report;

(C) Paper-ready Report;

(D) Licensed Jailer Turnover Rate Report;

(E) Pregnant inmates Report;

(F) Death in custody Report;

(G) Escape Report; and

(H) Serious Incident Report.

(9) A sheriff/operator may submit the reports listed under paragraph (8) of this subsection in non-electronic format; however, the Commission will charge an administrative processing fee in accordance with the fee schedule established for 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 September 6, 2019.

TRD-201903110
Brandon Wood
Executive Director
Texas Commission on Jail Standards
Earliest possible date of adoption: October 20, 2019
For further information, please call: (512) 463-2690

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## SUBCHAPTER E. REPORT ON RESTRAINT OF PREGNANT INMATES

### 37 TAC §§269.50 - 269.53

The Texas Commission on Jail Standards proposes new Texas Administrative Code, Title 37, Subchapter E, §§269.50-269.53, related to the use of restraints on pregnant inmates in county jails. The 86th Legislature heard testimony that the use of restraints on a pregnant prisoner poses indirect health risks to pregnant prisoners and new mothers. HB1651 added Government Code §511.0104 to address that need by expanding the documentation of the use of restraints on pregnant inmates in county jails.

Brandon S. Wood, Executive Director, has determined that for each year of the first five years the rules are in effect, the public will benefit from the adoption of the rules. The Commission anticipates that designing, collecting, and reviewing annual reports on the use of restraints on pregnant inmates will enable the Commission to provide adequate oversight on the use of restraints on such inmates.

Mr. Wood has determined that for the first five-year period of these rules there is no foreseeable implication to the costs or revenues of state or local governments as a result of enforcing or administering the rules.

Mr. Wood has determined that these rules during the first five years of their effect will neither create nor eliminate a government program, will not require the creation of new employee positions or the elimination of existing employee positions, will not require an increase or decrease in future legislative appropriations to the agency, will not require an increase or decrease in fees paid to the agency, and will not increase or decrease the number of individuals subject to the rules' applicability. However, the new rules will expand existing rules, which currently require only the specified documentation of the use of restraints on pregnant female inmates. The rules will redefine the documentation and its frequency, require the jails to submit and the Commission to collect the documentation, and require the Commission to prescribe the form for documenting the use of restraints on pregnant inmates.

Mr. Wood does not anticipate any cost to individuals, small businesses/micro-businesses, or rural communities as a result of these rules for each year of the first five years of their effect.

Comments on the proposed rules may be submitted to William Turner, P.O. Box 12985, Austin, Texas 78711, Fax (512) 463-3185, or e-mail at will.turner@tcjs.state.tx.us.

The new rules are proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The proposed rules implement Government Code §511.0104.

*§269.50. Review.*

The Commission is required by Government Code, Chapter 511, §511.0105 to collect and review reports on the use of restraints on pregnant inmates.

*§269.51. Submission.*

No later than February 1 of each year, each facility under the Commission's purview shall submit a report regarding the facility's use, during the preceding calendar year, of any type of restraints to control or restrict the movement of an inmate, including a limb or other part of the inmate, who is confirmed to be pregnant or who gave birth in the preceding 12 weeks.

*§269.52. Content.*

The report shall include the circumstances of each use of restraints, including:

(1) the specific type of restraints used;

(2) what activity the inmate was engaged in immediately before being restrained;

(3) whether the inmate was restrained during or after delivery;

(4) whether the inmate was restrained while being transported to a local hospital; and

(5) the reasons supporting the determination to use the restraints, a description of the process by which the determination was made, and the name and title of the person or persons making the determination.

*§269.53. Form.*

The commission shall prescribe a form for the report required for 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 September 6, 2019.

TRD-201903114
Brandon Wood
Executive Director
Texas Commission on Jail Standards
Earliest possible date of adoption: October 20, 2019
For further information, please call: (512) 463-2690

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## CHAPTER 273. HEALTH SERVICES

### 37 TAC §273.2

The Texas Commission on Jail Standards proposes amendments to Title 37 TAC §273.2, related to OBGYN care in county jails. During the 85th Legislative Session, SB1849 added Government Code §511.009(a)(23), which provided that county jails must give prisoners 24/7 access to mental health services at the jail or via telemental health. The 86th Legislative Session identified a need to amend this prior law. HB4468 adds the requirement that jails otherwise give prisoners access to a mental health professional within a reasonable time. HB1651 amended Government Code §511.009(a)(18)(B) and added (C), requiring the Commission to adopt rules and procedures establishing minimum jail standards for including the provision of obstetrical and gynecological care for pregnant inmates in the jail health services plan, identifying when a pregnant prisoner is in labor, providing appropriate care, and transporting the prisoner to a local hospital. Amendments are proposed to §273.2(13), related to access to mental health services in county jails; and to add §273.2(15), related to OBGYN care in county jails.

Brandon S. Wood, Executive Director, has determined that for each year of the first five years the rules are in effect, the public will benefit from the adoption of the rules. Including procedures for OBGYN care in each jail's health service plan will increase the likelihood of female inmates receiving OBGYN care. The Commission anticipates that allowing jails to provide in person mental health treatment in lieu of telemental health treatment will permit jails the needed flexibility in the way in which they provide mental health treatment while avoiding the unnecessary cost of providing both in-person treatment and telemental treatment. Jail staff trained in the identification of pregnant inmate labor will be better able to identify such inmates for prompt transport to a local hospital.

Mr. Wood has determined that for the first five-year period of this rule there is no foreseeable implication to the costs or revenues of state or local governments as a result of enforcing or administering the rule.

Mr. Wood has determined that this rule during the first five years of its effect will neither create nor eliminate a government program, will not require the creation of new employee positions or the elimination of existing employee positions, will not require an increase or decrease in future legislative appropriations to the agency, will not require an increase or decrease in fees paid to the agency, will not increase or decrease the number of individuals subject to the rule's applicability, and will not create a new regulation. However, the proposed rule will expand an existing regulation, which currently requires that jails must give prisoners 24/7 access to mental health services at the jail or via telemental health. This rule will require jails to use all reasonable efforts to arrange for the inmate to have access to a mental health professional within a reasonable time when a mental health professional is not at the county jail at the time. Mr. Wood does not anticipate any cost to individuals, small businesses/micro-businesses, or rural communities as a result of this rule for each year of the first five years of its effect.

Comments on the proposed rule may be submitted to William Turner, P.O. Box 12985, Austin, Texas 78711, Fax (512) 463-3185, or e-mail at will.turner@tcjs.state.tx.us.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The proposed rule implements Government Code §511.009(a)(18)(B) and (C).

*§273.2. Health Services Plan.*

Each facility shall have and implement a written plan, approved by the Commission, for inmate medical, mental, and dental services. The plan shall:

(1) provide procedures for regularly scheduled sick calls;

(2) provide procedures for referral for medical, mental, and dental services;

(3) provide procedures for efficient and prompt care for acute and emergency situations;

(4) provide procedures for long-term, convalescent, and care necessary for disabled inmates;

(5) provide procedures for medical, to include obstetrical and gynecological care, mental, nutritional requirements, special housing and appropriate work assignments and the documented use of restraints during labor, delivery and recovery for known pregnant inmates. A sheriff/operator shall notify the commission of any changes in policies and procedures in the provision of health care to pregnant prisoners. A sheriff/operator shall notify the commission of any changes in policies and procedures in the placement of a pregnant prisoner in administrative separation;

(6) provide procedures for the control, distribution, secured storage, inventory, and disposal of prescriptions, syringes, needles, and hazardous waste containers;

(7) provide procedures for the distribution of prescriptions in accordance with written instructions from a physician by an appropriate person designated by the sheriff/operator;

(8) provide procedures for the control, distribution, and secured storage of over-the-counter medications;

(9) provide procedures for the rights of inmates to refuse health care in accordance with informed consent standards for certain treatments and procedures (in the case of minors, the informed consent of a parent, guardian, or legal custodian, when required, shall be sufficient);

(10) provide procedures for all examinations, treatments, and other procedures to be performed in a reasonable and dignified manner and place;

(11) provide that adequate first aid equipment and patient evacuation equipment be on hand at all times;

(12) provide procedures that shall require that a qualified medical professional shall review as soon as possible any prescription medication a prisoner is taking when the prisoner is taken into custody;

(13) provide procedures that shall give inmates the ability to access a mental health professional at the jail through a telemental health service 24 hours a day, or if a mental health professional is not at the county jail at the time, then require the jail to use all reasonable efforts to arrange for the inmate to have access to a mental health professional within a reasonable time; [~~and approved by the Commission by August 31, 2020;~~ ~~and~~]

(14) provide procedures that shall give prisoners the ability to access a health professional at the jail or through a telehealth service 24 hours a day or, if a health professional is unavailable at the jail or through a telehealth service, provide for a prisoner to be transported to access a health professional and approved by the Commission by August 31, 2020; and [~~.~~]

(15) provide procedures to train staff in the identification of when a pregnant inmate is in labor. Upon determination that the inmate is in labor, the inmate shall be promptly transported to a local hospital.

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 September 6, 2019.

TRD-201903112
Brandon Wood
Executive Director
Texas Commission on Jail Standards
Earliest possible date of adoption: October 20, 2019
For further information, please call: (512) 463-2690

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## 37 TAC §273.6

The Texas Commission on Jail Standards proposes amendments to Title 37 TAC §273.6, related to the use of restraints on pregnant inmates in county jails. The 86th Legislature heard testimony that the use of restraints on a pregnant prisoner poses indirect health risks to pregnant prisoners and new mothers. HB1651 added Government Code §511.0104 to address that need by limiting the use of restraints on pregnant inmates in county jails.

Brandon S. Wood, Executive Director, has determined that for each year of the first five years the rules are in effect, the public will benefit from the adoption of the rules. The Commission anticipates that limiting the use of restraints on pregnant inmates in county jails will improve the health care outcomes of such inmates while still ensuring their safety and the safety of the jail and its occupants.

Mr. Wood has determined that for the first five-year period of this rule there is no foreseeable implication to the costs or revenues of state or local governments as a result of enforcing or administering the rule.

Mr. Wood has determined that this rule during the first five years of its effect will neither create nor eliminate a government program, will not require the creation of new employee positions or the elimination of existing employee positions, will not require an increase or decrease in future legislative appropriations to the agency, will not require an increase or decrease in fees paid to the agency, and will not increase or decrease the number of individuals subject to the rule's applicability. However, the new rule will expand existing rules, which currently require only the specified documentation of the use of restraints on pregnant female inmates. The rule will repeal that rule and create new rules that limit the use of restraints on pregnant inmates. Mr. Wood does not anticipate any cost to individuals, small businesses/micro-businesses, or rural communities as a result of this rule for each year of the first five years of their effect.

Comments on the proposed rule may be submitted to William Turner, P.O. Box 12985, Austin, Texas 78711, Fax (512) 463-3185, or e-mail at will.turner@tcjs.state.tx.us.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The proposed rule implements Government Code §511.0104.

*§273.6. Restraints.*

Inmates exhibiting behavior indicating that they are a danger to themselves or others shall be managed in such a way as to minimize the threat of injury or harm. If restraints are determined to be necessary, they shall be used in a humane manner, only for the prevention of injury, and not as a punitive measure.

(1) The decision to apply restraints shall be made by supervisory or medical personnel. Appropriate staff should assess the inmate's medical condition.

(2) Restraints should restrict movement of an inmate only to the degree necessary to avoid injurious behavior. Soft or padded restraints should be used when feasible. Inmates shall not be restrained in a position or manner that would exacerbate any physical infirmities.

(3) A documented observation of the inmate shall be conducted every 15 minutes, at a minimum. The observations should include an assessment of the security of the restraints and the circulation to the extremities.

(4) The inmate should receive medical care a minimum of every 2 hours, to include changing position, exercising extremities, offering nourishment and liquids, offering toilet facilities, checking for medication needs, and taking vital signs. These checks shall be documented.

(5) Documentation of use of restraints shall include, but not be limited to the following: the events leading up to the need for restraints, the time the restraints were applied, the justification for their use, observations of the inmate's behavior and condition, the 15-minute checks and the time the restraints were removed.

(6) A jail shall not use restraints on a inmate confirmed to be pregnant or who gave birth in the preceding 12 weeks for the duration of the pregnancy and for a period of not less than 12 weeks after the inmate gives birth:

(A) unless supervisory personnel determines that the use of restraints is necessary to prevent an immediate and credible risk that the inmate will attempt to escape; or the inmate poses an immediate and serious threat to the health and safety of the inmate, staff, or any member of the public; or

(B) unless a health care professional responsible for the health and safety of the inmate determines that the use of restraints is appropriate for the health and safety of the inmate and, if applicable, the unborn child of the inmate.

(7) If the determination to utilize restraints in accordance with paragraph (6)(A) or (B) of this subsection is made, a jail shall use the least restrictive restraints necessary to prevent escape or to ensure health and safety; and at the request of a health care professional responsible for the health and safety of the inmate, jail staff shall refrain from using restraints on the inmate or shall remove the restraints.

(8) Use of restraints on pregnant inmates shall be documented and submitted as required by §269.50 of this title (relating to Restraints on Pregnant Inmates).

~~(6) Documentation of use of restraints during labor, delivery and recovery for known pregnant inmates shall include, but not be limited to the following: the events leading up to the need for restraints, the time the restraints were applied, the justification for their use, observations of the inmate's behavior and condition and the time the restraints were removed.~~

(9) [~~(7)~~] Restraints shall be removed from an inmate at the earliest possible time that the inmate no longer exhibits behavior necessitating restraint. In no case shall an inmate be kept in restraints longer than 24 hours.

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 September 6, 2019.

TRD-201903115
Brandon Wood
Executive Director
Texas Commission on Jail Standards
Earliest possible date of adoption: October 20, 2019
For further information, please call: (512) 463-2690

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## CHAPTER 277. CLOTHING, PERSONAL HYGIENE AND BEDDING

### 37 TAC §277.11

The Texas Commission on Jail Standards proposes new rule 37 TAC §277.11, related to feminine hygiene products. Legislative hearings during the 86th Legislature heard concerns that female inmates in county jails are not sufficiently supplied with feminine hygiene products, and that this creates health care risks and humiliation. HB2169 added Government Code §511.009(a)(24) to require the Commission to establish minimum standards related to feminine hygiene products.

Brandon S. Wood, Executive Director, has determined that for each year of the first five years the rules are in effect, the public will benefit from the adoption of the rules. The Commission anticipates that providing adequate supplies of feminine hygiene products will improve inmate health care and morale outcomes.

Mr. Wood has determined that for the first five-year period of this rule there is no foreseeable implication to the costs or revenues of state or local governments as a result of enforcing or administering the rule.

Mr. Wood has determined that this rule during the first five years of its effect will neither create nor eliminate a government program, will not require the creation of new employee positions or the elimination of existing employee positions, will not require an increase or decrease in future legislative appropriations to the agency, will not require an increase or decrease in fees paid to the agency, and will not increase or decrease the number of individuals subject to the rule's applicability. However, the rule will expand existing regulations, which currently require all county jails to provide specified products for personal hygiene but which do not include feminine hygiene products. The new rule creates a new regulation by requiring that the Commission adopt rules and procedures that establish minimum jail standards for the provision of feminine hygiene products in county jails. Mr. Wood does not anticipate any cost to individuals, small businesses/micro-businesses, or rural communities as a result of this rule for each year of the first five years of its effect.

Comments on the proposed rule may be submitted to William Turner, P.O. Box 12985, Austin, Texas 78711, Fax (512) 463-3185, or e-mail at will.turner@tcjs.state.tx.us.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards

with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The proposed rule implements Government Code §511.009(a)(24).

*§277.11. Feminine Hygiene Products.*

Jails shall provide quality feminine hygiene products to female inmates, to include tampons in regular and large sizes and menstrual pads with wings in regular and large sizes. These products shall be available at all times and upon 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.

Filed with the Office of the Secretary of State on September 6, 2019

TRD-201903111
Brandon Wood
Executive Director
Texas Commission on Jail Standards
Earliest possible date of adoption: October 20, 2019
For further information, please call: (512) 463-2690

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## CHAPTER 297. COMPLIANCE AND ENFORCEMENT

**37 TAC §297.7**

The Texas Commission on Jail Standards proposes amendments to Title 37 TAC §297.7, relating to Commission review of private county jails that are non-compliant. Legislative hearings during the 86th Legislature identified the need to give additional scrutiny to private jail compliance with Minimum Jail Standards. HB4468 added Gov. Code 511.011(b) to require TCJS to adopt rules that require the Commission to review non-compliant private county jails at the Commission meeting that occurs subsequent to the private county jails being found in non-compliance.

Brandon S. Wood, Executive Director, has determined that for each year of the first five years the rule is in effect, the public will benefit from the adoption of the rule. The Commission anticipates that closer scrutiny of privately-operated jails will improve inmate outcomes in those jails.

Mr. Wood has determined that for the first five year period of this rule there is no foreseeable implication to the costs or revenues of state or local governments as a result of enforcing or administering the rule.

Mr. Wood has determined that this rule during the first five years of its effect will neither create nor eliminate a government program, will not require the creation of new employee positions or the elimination of existing employee positions, will not require an increase or decrease in future legislative appropriations to the agency, will not require an increase or decrease in fees paid to the agency, and will not increase or decrease the number of individuals subject to the rule's applicability. However, the rule will expand existing regulations, which currently require all county jails to be inspected at least annually for compliance with Minimum Jail Standards. The rule will require that, when the Texas Commission on Jail Standards determines that a privately operated county jail is in non-compliance, the Commission must review the compliance status of that jail at the subsequent quarterly Commission meeting. Mr. Wood does not anticipate any cost to individuals, small businesses/micro-businesses, or rural communities as a result of this rule for each year of the first five years of its effect.

Comments on the proposed rule may be submitted to William Turner, P.O. Box 12985, Austin, Texas 78711, Fax (512) 463-3185, or e-mail at will.turner@tcjs.state.tx.us.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The proposed rule implements Government Code 511.011(b).

*§297.7. Commission Review of Compliance.*

(a) If a response is not received from the responsible officials or if a response does not offer remedies addressing all the items of noncompliance or an administrative order, the Commission commission may request that officials appear at a regular or special meeting of the commission to present evidence of corrective action to be taken. Following the officials' presentation, the commission may require the officials to appear before the commission at a future date to report on compliance progress, may issue a remedial order, or may deem that no further action is required.

(b) If a notice of noncompliance is issued to a facility operated by a private entity under Section 351.101 or 361.061, Local Government Code, the compliance status of the facility shall be reviewed at the next meeting of 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.

Filed with the Office of the Secretary of State on September 6, 2019.

TRD-201903109
Brandon Wood
Executive Director
Texas Commission on Jail Standards
Earliest possible date of adoption: October 20, 2019
For further information, please call: (512) 463-2690

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# PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

## CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES
## SUBCHAPTER G. GENERAL PROVISIONS
## DIVISION 3. JUVENILE CORRECTIONAL OFFICERS

**37 TAC §380.9955**

The Texas Juvenile Justice Department (TJJD) proposes to amend §380.9955, concerning Staffing Requirements for Juvenile Correctional Officers.

SUMMARY OF CHANGES

The amendment to §380.9955 will replace the term *juvenile correctional officer (JCO)* with the term *youth development coach.*

The amendment to §380.9955 will also remove: (1) the definitions for *extended period of time, station,* and *regular interval;* (2) the provision that defined when a wing or pod of a dormitory may be considered a station; and (3) the provision that prohibited a youth development coach from returning to a previously assigned station until that coach has served at least one regular interval at another station or unless given approval by the division director over residential facilities or designee.

In addition, the amendment to §380.9955 will add that the executive director or designee ensures assignments are rotated such that youth development coaches do not supervise the same youth for an extended period of time.

FISCAL NOTE

Emily Anderson, Chief Financial Officer, has determined that, for each year of the first five years the amended sections are in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the sections.

PUBLIC BENEFITS/COSTS

Shandra Carter, Deputy Executive Director for State Services, has determined that, for each year of the first five years the amended sections are in effect, the public benefit anticipated as a result of administering the sections will be to allow healthy and appropriate relationships to be formed between youth and direct care staff. Such relationships can further youth rehabilitation, thereby benefiting the public when youth are released.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. No private real property rights are affected by adoption of these sections.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the proposed rules are in effect, the rules will have the following impacts.

(1) The proposed rule does not create or eliminate a government program.

(2) The proposed rule does not require the creation or elimination of employee positions at TJJD.

(3) The proposed rule does not require an increase or decrease in future legislative appropriations to TJJD.

(4) The proposed rule does not impact fees paid to TJJD.

(5) The proposed rule does not create a new regulation.

(6) The proposed rule does not expand, limit, or repeal an existing regulation.

(7) The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule will not positively or adversely affect this state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Josh Bauermeister, Policy Writer, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711, or e-mail to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The amended section is proposed under Section 242.003, Human Resources Code, which requires TJJD to adopt rules appropriate to the proper accomplishment of TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs. The amended section is also proposed under Section 242.009, Human Resources Code, which establishes staffing requirements for juvenile correctional officers and requires TJJD to adopt rules to administer these requirements.

No other statute, code, or article is affected by this proposal.

*§380.9955. Staffing Requirements for* Youth Development Coaches *[~~Juvenile Correctional Officers~~].*

(a) Purpose. This rule establishes requirements for scheduling station assignments for youth development coaches [~~juvenile correctional officers (JCOs)~~] employed by the Texas Juvenile Justice Department (TJJD).

(b) Applicability. This rule applies to high-restriction facilities operated by TJJD.

~~[(c) Definitions.]~~

~~[(1) Extended Period of Time--more than 24 months.]~~

~~[(2) Station--any JCO duty assignment at a facility.]~~

~~[(3) Regular Interval-- 12 months, or other interval less than an extended period of time if approved by the division director over residential facilities or his/her designee.]~~

(c) [~~(d)~~] General Provisions.

(1) [~~JCO~~] Rotation of Youth Development Coaches.

(A) The executive director or designee ensures that assignments are rotated such that coaches do not supervise [~~JCOs rotate station assignments at regular intervals so that a JCO is not assigned to the same custodial supervision of~~] the same youth for an extended period of time.

(B) The rotation of staff is scheduled to ensure continuity in the delivery of specialized treatment programs.

~~[(C) A wing or pod of a dormitory may be considered a station if the population of that wing or pod does not routinely interact with the population of the other wings or pods during activities occurring at the dormitory.]~~

~~[(D) Except as approved by the division director over residential facilities or his/her designee, a JCO must not return to a previously assigned station until he/she has served at least one regular interval at another station.]~~

(2) [~~JCO~~] Three-Year Age Differential for Youth Development Coaches. Youth development coaches [~~JCOs~~] are assigned to dormitory stations in a manner that provides for at least a three-year age differential between the staff and the youth they supervise. When it is not practical to meet the three-year age differential for an individual youth development coach [~~JCO~~] station assignment, justification for the assignment must be documented and approved in accordance with agency policy and procedures.

(3) [~~JCO~~] Staffing Schedules for Youth Development Coaches.

(A) Staffing [~~JCO staffing~~] schedules provide for at least one youth development coach [~~JCO~~] to be stationed to supervise in or near any classroom or other location in which youth receive education services or training at the time the youth are receiving the education services or training.

(B) Staffing [~~JCO staffing~~] schedules for each facility provide for a ratio of at least one youth development coach [~~JCO~~] performing direct supervisory duties for every 12 youth committed to the facility.

(C) A youth development coach [~~JCO~~] who does not meet the requirements for sole supervision as defined in §380.9951 of this title may be included in the ratio described in subparagraph (B) of this paragraph if he/she has completed the following minimum training requirements:

*(i)* appropriate restraint techniques; and

*(ii)* first aid and cardiopulmonary resuscitation.

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 September 3, 2019.

TRD-201903061
Christian von Wupperfeld
General Counsel
Texas Juvenile Justice Department
Earliest possible date of adoption: October 20, 2019
For further information, please call: (512) 490-7278

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# WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

## TITLE 43. TRANSPORTATION

### PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

### CHAPTER 223. COMPLIANCE AND INVESTIGATIONS DIVISION

### SUBCHAPTER A. FRAUD, WASTE, OR ABUSE

**43 TAC §§223.1 - 223.3**

Proposed new §§223.1 - 223.3, published in the March 1, 2019, issue of the *Texas Register* (44 TexReg 1114), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Published by the Office of the Secretary of State on September 5, 2019.

TRD-201903104

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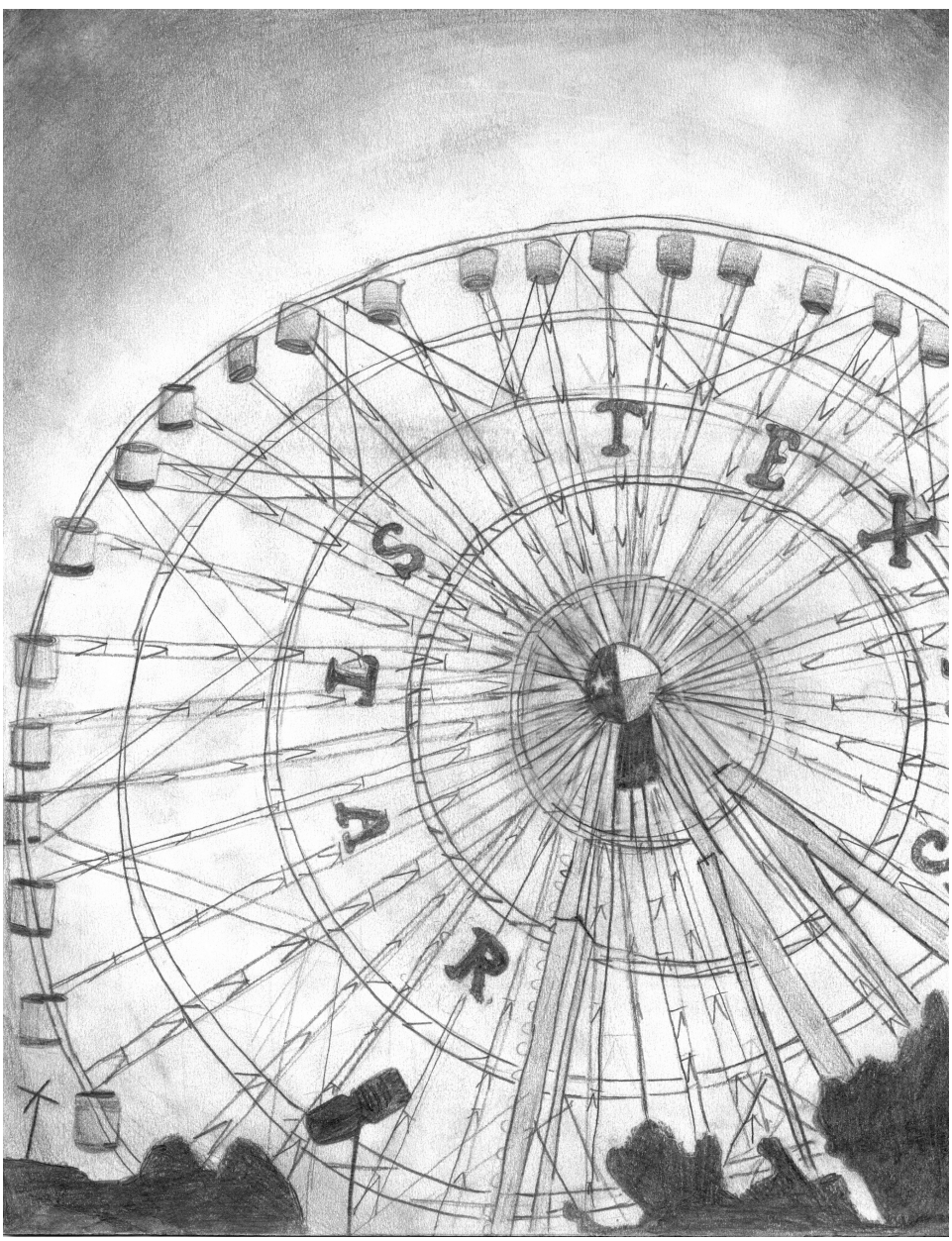
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# ADOPTED RULES

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

## TITLE 1. ADMINISTRATION

## PART 10. DEPARTMENT OF INFORMATION RESOURCES

### CHAPTER 206. STATE WEBSITES

The Texas Department of Information Resources (department) adopts amendments to 1 TAC §206.54 and §206.74, to ensure the rules accurately reference current law, with changes to the text as published in the May 24, 2019, issue of the *Texas Register* (44 TexReg 2563); therefore, the rules will be republished.

In §206.54(a), the department approves amendments to correct an outdated rule reference.

In §206.74(a), the department approves amendments to correct an outdated rule reference.

The department received a comment from staff, requesting the inclusion of the referenced section title in addition to the numeric rule reference. DIR has incorporated this change.

The adopted amendment applies to both state agencies and institutions of higher education and was submitted to the Information Technology Council for Higher Education (ITCHE) for review. ITCHE determined that there was no impact upon institutions of higher education as a result of the amendment.

### SUBCHAPTER B. STATE AGENCY WEBSITES

**1 TAC §206.54**

The amendment is adopted pursuant to Texas Government Code §2054.052(a), which authorizes the department to adopt rules as necessary to implement its responsibilities under Texas Government Code, Chapter 2054. DIR has specific statutory authority to establish rules pertaining to state websites found in Texas Government Code §2054.261(b).

No other code, article or statute is affected by this adoption.

*§206.54. Indexing.*

(a) All new or changed documents on a state agency website that meet the criteria of a "state publication" as defined by the Texas State Library and Archives Commission must include the meta tags required by 13 TAC §3.3, Standard Deposit and Reporting Requirement, when technically feasible.

(b) The home page of a state agency website must incorporate TRAIL meta data and must include links to the following State of Texas resources:

(1) State electronic Internet portal, Texas.gov;

(2) Texas Homeland Security website;

(3) TRAIL, statewide search website; and

(4) State Auditor's Office Fraud, Waste, or Abuse Hotline, and agency fraud policy, if applicable.

(c) The home page or site policies page of a state agency website must include links to the following agency resources:

(1) Agency linking notice;

(2) Agency privacy notice;

(3) Contact information;

(4) Agency policy and procedures relating to Open Records/Public Information Act;

(5) Compact with Texans; and

(6) Agency electronic and information resources accessibility:

(A) Policy; and

(B) Coordinator contact information.

(d) Key public entry points must include links to the following agency resources:

(1) Home page;

(2) Site policies page or contact information;

(3) Site policies page or linking notice;

(4) Site policies page or privacy notice; and

(5) Agency electronic and information resources accessibility:

(A) Policy; and

(B) Coordinator contact information.

(e) A state agency must post on the agency's Internet website:

(1) For agency-awarded state grants in an amount greater than $25,000, the purposes for which the grant was awarded, as specified in Texas Government Code, §403.0245.

(2) Agency information regarding accepted gifts, grants, donations or other consideration for any salary supplement for an agency employee, as specified in Texas Government Code, §659.0201.

(3) Agency information regarding staff compensation, as specified in Texas Government Code, §659.026.

(4) The agency's approved internal audit plan and agency annual report, including any required updates, as specified in Texas Government Code, §2102.015.

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

Filed with the Office of the Secretary of State on September 9, 2019.

TRD-201903174
Amanda Crawford
Executive Director
Department of Information Resources
Effective date: September 29, 2019
Proposal publication date: May 24, 2019
For further information, please call: (512) 475-4552

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## SUBCHAPTER C. INSTITUTION OF HIGHER EDUCATION WEBSITES

### 1 TAC §206.74

The amendment is adopted pursuant to Texas Government Code §2054.052(a), which authorizes the department to adopt rules as necessary to implement its responsibilities under Texas Government Code, Chapter 2054. DIR has specific statutory authority to establish rules pertaining to state websites found in Texas Government Code §2054.261(b).

No other code, article or statute is affected by this adoption.

*§206.74. Indexing.*

(a) All new or changed documents on an institution of higher education website that meet the criteria of a "state publication" as defined by the Texas State Library and Archives Commission must include the meta tags required by 13 TAC §3.3, Standard Deposit and Reporting Requirement, when technically feasible.

(b) The home page of an institution of higher education website must incorporate TRAIL meta data and must include links to the following State of Texas resources:

(1) State electronic Internet portal, Texas.gov;

(2) Texas Homeland Security website;

(3) TRAIL, statewide search website; and

(4) State Auditor's Office Fraud, Waste, or Abuse Hotline, and agency fraud policy, if applicable.

(c) The home page or site policies page of an institution of higher education website must include links to the following institution of higher education resources:

(1) Institution of higher education linking notice;

(2) Institution of higher education privacy notice;

(3) Contact information;

(4) Institution of higher education policy and procedures relating to Open Records/Public Information Act;

(5) Compact with Texans; and

(6) Institution of higher education electronic and information resources accessibility:

(A) Policy; and

(B) Coordinator contact information.

(d) Key public entry points must include links to the following institution of higher education resources:

(1) Home page;

(2) Site policies page or contact information;

(3) Site policies page or linking notice;

(4) Site policies page or privacy notice; and

(5) Institution of higher education electronic and information resources accessibility:

(A) Policy; and

(B) Coordinator contact information.

(e) An institution of higher education must post on the institution's Internet website:

(1) For institution-awarded state grants in an amount greater than $25,000, the purposes for which the grant was awarded, as specified in Texas Government Code, §403.0245.

(2) Institution information regarding accepted gifts, grants, donations or other consideration for any salary supplement for an institution employee, as specified in Texas Government Code, §659.0201.

(3) Institution information regarding staff compensation, as specified in Texas Government Code, §659.026.

(4) The institution's approved internal audit plan and agency annual report, including any required updates, as specified in Texas Government Code, §2102.015.

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

Filed with the Office of the Secretary of State on September 9, 2019.

TRD-201903175
Amanda Crawford
Executive Director
Department of Information Resources
Effective date: September 29, 2019
Proposal publication date: May 24, 2019
For further information, please call: (512) 475-4552

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# PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

## CHAPTER 355. REIMBURSEMENT RATES

## SUBCHAPTER J. PURCHASED HEALTH SERVICES

## DIVISION 5. GENERAL ADMINISTRATION

### 1 TAC §355.8097

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §355.8097, concerning Reimbursement Methodology for Physical, Occupational, and Speech Therapy Services, with changes to the proposed text as published in the July 12, 2019, issue of the *Texas Register* (44 TexReg 3489). The commission updated a section title that is referenced in subsection (f), and therefore the rule will be republished.

BACKGROUND AND JUSTIFICATION

The adopted amendment is necessary to comply with House Bill (H.B.) 1, General Appropriations Act, 86th Legislature, Regular Session, 2019 (Article II, HHSC, Rider 47).

The amendment to §355.8097 sets the reimbursement percentage for services provided by therapy assistants at 80 percent of the rate paid to a licensed therapist. Medicaid currently reimburses 70 percent of the rate paid to a licensed therapist for services provided by physical, occupational, and speech therapy assistants.

COMMENTS

The 31-day comment period ended August 12, 2019.

During this period, HHSC received comments in support of the rule as proposed from 43 commenters, including Texas Association of Home Care and Hospice, Texas Council of Community Centers, Texas Speech-Language-Hearing Association and 40 individuals.

Comment: The three organizations commented in favor of the proposed change. Texas Association of Home Care and Hospice indicated that the increase would help stabilize the workforce. Texas Council of Community Centers commented that Early Childhood Intervention providers would now be able to hire additional staff, as well as retain staff more consistently. They also communicated that a sizeable amount of therapy assistants are bilingual and serve to bridge a communication gap with a large share of clients. Texas Speech-Language-Hearing Association thanked HHSC for implementing the rate increases and doing so in such an efficient manner.

Response: HHSC appreciates the comments and makes no changes to the rule text as a result.

Comment: Of the 40 individual providers that commented, 35 indicated they would have an easier time recruiting workers, 34 said they would be able to better retain staff, 31 commented that waitlists and wait times would be reduced for clients waiting to receive services, two indicated they would be able to serve a larger geographic area, and three provided general comments stating their support of the increase.

Response: HHSC appreciates the comments and makes no changes to the rule text as a result.

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; 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; and Texas Government Code §531.021(b), 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.

*§355.8097. Reimbursement Methodology for Physical, Occupational, and Speech Therapy Services.*

(a) Introduction. This section describes the Texas Medicaid reimbursement methodology that the Texas Health and Human Services Commission (HHSC) uses to calculate payments for covered therapy services provided by home health agencies, comprehensive outpatient rehabilitation facilities or outpatient rehabilitation facilities, independent therapists (including Early Childhood Intervention) and physicians and other practitioners.

(b) HHSC reviews the fees for individual services at least every two years based upon:

(1) analysis of Medicare fees for the same or similar item or service;

(2) analysis of Medicaid fees for the same or similar item or service in other states; and

(3) analysis of fees paid under commercial insurance for the same or similar item or service.

(c) HHSC may use data sources or methodologies other than those listed in subsection (b) of this section to establish Medicaid fees for physical, occupational, and speech therapy services when HHSC determines that those methodologies are unreasonable or insufficient.

(d) Medicaid reimbursement methodologies for other applicable provider types are as follows:

(1) freestanding psychiatric facilities, under §355.8060 of this subchapter (relating to Reimbursement Methodology for Freestanding Psychiatric Facilities); and

(2) outpatient hospitals, under §355.8061 of this subchapter (relating to Outpatient Hospital Reimbursement).

(e) Reimbursement for services provided under the supervision of a licensed physical therapist, licensed occupational therapist, or licensed speech language pathologist. Reimbursement for services provided by a physical therapy assistant, occupational therapy assistant, or speech language pathologist assistant under the supervision of a licensed physical therapist, licensed occupational therapist, or licensed speech language pathologist is reimbursed at 80 percent of the fee paid to a licensed therapist for the same service.

(f) Fees for physical, occupational, and speech therapy services are adjusted within available funding as described in §355.201 of this title (relating to Establishment and Adjustment of Reimbursement Rates for Medicaid).

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

Filed with the Office of the Secretary of State on September 4, 2019.

TRD-201903074
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: October 1, 2019
Proposal publication date: July 12, 2019
For further information, please call: (512) 707-6071

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# TITLE 10. COMMUNITY DEVELOPMENT

## PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

### CHAPTER 23. SINGLE FAMILY HOME PROGRAM

## SUBCHAPTER H. HOMEBUYER ASSISTANCE WITH NEW CONSTRUCTION (HANC) OR REHABILITATION

**10 TAC §§23.80 - 23.82**

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 23, Single Family HOME Program, Subchapter H, Homebuyer Assistance with New Construction (HANC) or Rehabilitation, §§23.80 - 23.82, with changes to the proposed text as published in the June 7, 2019, issue of the *Texas Register* (44 TexReg 2823). The rules will be republished.

The purpose of the new sections is to provide a new program activity to address the shortage of quality affordable housing available in rural communities by allowing homeownership through new construction or rehabilitation of single-family housing on acquired or owned real property.

Tex. Gov't Code §2001.0045(b) does apply to the rule being adopted; however, the costs associated with the new activity created by this rule are only those typical and customary costs associated with an administrator voluntarily electing to participate in a single family activity similar to those in other sections of this chapter related to homebuyer and reconstruction/rehabilitation activities.

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

1. The new rule does not create a new government program but does establish another eligible activity type within the existing HOME Program. This new activity type provides for increased opportunities for rural Texans to access quality affordable housing opportunities.

2. The new rule does not require a change in work that would require the creation of new employee positions. While some additional work by the Department will be required associated with underwriting and loan processing applications under the new activity, the Department anticipates handling this additional work with existing staff resources; the new rule does not reduce work load such that any existing employee positions could be eliminated.

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

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

5. The new rule is creating a new regulation to address an identified need for a household driven option for prospective low-income homeowners in rural communities.

6. The new rule will not limit or repeal an existing regulation, but can be considered to "expand" the existing regulations because the proposed rule adds a new category of homebuyer assistance under the HOME Program. However, this new rule is necessary to establish regulations for access to and implementation of the new activity which will serve to increase the opportunity for eligible low income rural families to access affordable homes for purchase.

7. The new rule will increase the number of individuals subject to the rule's applicability but only so far as administrators voluntarily elect to participate in this new Department activity.

8. The new rule will not negatively affect the state's economy, and may be considered to have a positive effect on the state's economy because the proposed rule enables homebuyers to access new or rehabilitated homes at a lower cost and provides communities with a tool to increase and update their housing stock.

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 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, §2306.002.

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

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

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the rule may provide a possible positive economic effect on local employment in association with this rule because the construction activities associated with the program will allow local contractors to bid on jobs in their area; however, because the work would be bid on a project-by-project basis, and because it is unknown what communities will end up pursuing this activity, a local impact is not able to be quantified for any given community.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has also determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be increased opportunity to access affordable housing for homeownership. There will not be any economic cost to any individuals required to comply with the new sections because the costs associated with this activity and that are incurred to administer the activity are allowable and payable under the grant though which the activity is offered.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new sections are in effect, enforcing or administering the new sections do not have any foreseeable implications related to costs or revenues of the state or local governments. The costs incurred to comply with the rule are reimbursable by the federal funding source under which the activity is offered.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between June 7, 2019, and July 12, 2019. Comments regarding

the proposed new rule were accepted in writing and by e-mail and no comments were received.

The Board adopted the final order adopting the new rule on September 5, 2019.

STATUTORY AUTHORITY. The new sections are adopted pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the new sections affect no other code, article, or statute.

*§23.80. Homebuyer Assistance with New Construction (HANC) or Rehabilitation Threshold and Selection Criteria.*

(a) Threshold Match requirement. The Department shall use population figures from the most recently available U.S. Census Bureau's American Community Survey (ACS) as of the date that an Application is first submitted under the NOFA to determine the applicable Threshold Match requirement. The Department may incentivize or provide preference to Applicants committing to provide additional Threshold Match above the requirement of this subsection. Such incentives may be established as selection criteria in the NOFA. Excluding Applications under the disaster relief and persons with disabilities set asides, Threshold Match shall be required based on the tiers described in paragraphs (1) and (2) of this subsection:

(1) No Threshold Match is required when:

(A) 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

(B) 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.

(2) One percent of Direct Activity Costs, exclusive of Match, is required as Match for every 1,000 in population up to a maximum of 15%.

(b) Cash Reserve Threshold Requirement. When HOME funds will be utilized for construction activities, documentation, as described in paragraph (1) - (2) of this subsection, must be submitted at the time of Application that demonstrates that the Applicant has at least $40,000 in cash reserves. 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:

(1) 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

(2) Evidence of an available line of credit or equivalent in an amount equal to or exceeding the requirement in this subsection.

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

*§23.81. Homebuyer with New Construction or Rehabilitation (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 or Rehabilitation 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). Rehabilitation of an MHU is not an eligible Activity.

(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) 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. Compliance with the post-improvement value limitation must be evidenced with a final appraisal of the completed project prior to release of retainage.

(e) Activity Costs. Total Activity Costs, exclusive of Match funds, are limited to an amount not to exceed the federal subsidy limitations defined in 24 CFR §92.250. Direct Activity Costs, exclusive of Match and leverage, for construction are limited to:

(1) Construction of new site-built housing: The Direct Activity Costs are not restricted beyond the Total Activity Costs as identified in this subsection;

(2) Placement of an energy efficient MHU: $75,000; and

(3) Rehabilitation that is not Reconstruction: $60,000, or up to $100,000 for properties listed in or identified as eligible for listing in the National Register of Historic Places.

(f) In addition to the Direct Activity Costs allowable under subsection (e) of this section, a sum not to exceed $10,000 and not causing the total subsidy to exceed the limitations set forth by 24 CFR §92.250 may be requested and, if approved, used to pay for any of the following as applicable:

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

(2) Installation of an aerobic septic system; or

(3) Homebuyer requests for accessibility features.

(g) Activity soft costs eligible for reimbursement are limited to:

(1) New Construction: no more than $11,500 per housing unit; or

(2) Replacement with an MHU: no more than $5,000 per housing unit;

(3) Rehabilitation: $8,500 per housing unit. This limit may be exceeded for lead-based remediation and only upon prior approval of the Division Director. The costs of testing and assessments for lead-based paint are not eligible Activity soft costs for housing units that are

reconstructed or if the existing housing unit was built after December 31, 1977.

(h) Funds for administrative costs are limited to no more than 4% of the Direct Activity Costs, exclusive of Match funds.

(i) 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).

(j) 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 5% 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% AMFI, the minimum required housing payment shall be no less than 15% of the household's gross income. For homebuyers whose income exceeds 50% AMFI, the minimum required housing payment shall be no less than 20% of the household's gross income.

(k) 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.

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

(m) For New Construction, site-built housing units must meet or exceed the 2000 International Residential Code and all applicable local codes, standards, ordinances, and zoning requirements. In addition, New Construction housing is required to meet 24 CFR §92.251(a)(2) as applicable. Housing that is Rehabilitated under this Chapter must meet the Texas Minimum Construction Standards (TMCS) and all other applicable local codes, Rehabilitation standards, ordinances, and zoning ordinances in accordance with the HOME Final Rule. MHUs must be installed according to the manufacturer's instructions and in accordance with Federal and State laws and regulations.

(n) Housing proposed to be constructed under this subchapter must meet the requirements of Chapters 20 and 21 of this title (relating to Single Family Programs Umbrella Rule and Minimum Energy Efficiency Requirements for Single Family Construction Activities, respectively) and must be certified by a licensed architect or engineer.

(1) To the extent that a set of architectural plans are generated and used by an Applicant for more than one home site, 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 a licensed engineer for the reuse of the plans on that subsequent specific site.

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

*§23.82. Homebuyer 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) - (14) 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 5% 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 30 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 30 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 for the Rehabilitation or New Construction Activities;

(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 Rehabilitation or New 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) - (10) 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) - (10) 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 calendar days, whichever is later, is required. For release of retainage, the down date endorsement must be dated at least 40 calendar days after the Construction Completion Date.

(2) If applicable, a maximum of 50% 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 and side elevation of the housing unit and at least one picture of the kitchen, family room, one of the bedrooms and one of the bathrooms 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 Rules.

(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 10% of hard construction costs for retainage. Retainage will be held until at least 40 calendar 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 occurred for Newly Constructed or Rehabilitated housing unit;

(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 calendar 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.

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

Filed with the Office of the Secretary of State on September 9, 2019.

TRD-201903126
Robert Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: September 29, 2019
Proposal publication date: June 7, 2019
For further information, please call: (512) 475-0908

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# TITLE 19. EDUCATION

## PART 2. TEXAS EDUCATION AGENCY

### CHAPTER 100. CHARTERS

### SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING OPEN-ENROLLMENT CHARTER SCHOOLS

### DIVISION 1. GENERAL PROVISIONS

**19 TAC §100.1002**

The Texas Education Agency (TEA) adopts an amendment to §100.1002, concerning open-enrollment charter school application and selection procedures and criteria. The amendment is adopted without changes to the proposed text as published in the June 21, 2019 issue of the *Texas Register* (44 TexReg 3048) and will not be republished. The adopted amendment revises the current rule concerning procedures for application review and criteria for advancement in the application process.

REASONED JUSTIFICATION: Section 100.1002 sets forth the procedures pertaining to the application for an open-enrollment charter school. It describes the process by which the commissioner shall review applications initially, how the applications shall be evaluated both within TEA and by external reviewers, and procedures to be followed related to the award of a charter.

The adopted amendment to §100.1002(b) clarifies current TEA procedures for review of applications for charter. The adopted amendment draws a clear distinction between TEA procedure when an application is incomplete and TEA procedure when an application contains a fundamental deficiency. If an application is not complete, the TEA will notify the applicant and allow five business days for missing documents to be submitted. If an application does not meet the standards in TEC, §12.101, and 19 TAC §100.1015, the TEA will remove the application without further processing.

The adopted amendment to §100.1002(h) adds fiscal soundness to the commissioner's criteria for application review. Prospects for the school's long-term financial health are an important consideration in keeping with TEA's mission to improve outcomes for all public school students.

The adopted amendment to §100.1002(j) clarifies statutory authority regarding a school's unacceptable performance rating.

The adopted amendment to §100.1002(q) removes the term "forfeited" and instead states that if a charter does not open and serve students within the timeline established in the rule, the charter is automatically considered void and returned to the commissioner. This change parallels language in 19 TAC §100.1015(a) and clarifies that that subsection is applicable to a charter returned under the circumstances of 19 TAC §100.1002(q).

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began June 21, 2019, and ended July 22, 2019. Following is a summary of public comment received and agency response.

Comment: The Texas American Federation of Teachers (Texas AFT) commented on the proposed amendment to 19 TAC §100.1002(j), which states priority will be given to a charter applicant proposing a school in the attendance zone of a school district campus with an unacceptable rating for the two preceding years. Texas AFT requested the addition of language to the effect that a charter applicant should be restricted from proposing a school in the attendance zone of a school district campus rated A or B in the two preceding years.

Response: The agency disagrees. The purposes of TEC, Chapter 12, include increasing the choice of learning opportunities within the public school system and establishing a new form of accountability for public schools. Prioritizing applicants who propose to locate in areas with schools rated unacceptable is consistent with these goals; but the commenter's suggested restriction from opening schools in certain areas is not consistent with these goals.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §12.101, which authorizes the commissioner to grant a charter for an open-enrollment charter school to an eligible entity, describing procedures the commissioner must follow to thoroughly investigate and evaluate such applicants; TEC, §12.1011, which describes criteria by which the commissioner may grant charters for open-enrollment charter schools to certain high-performing entities; TEC, §12.110, which requires the commissioner to adopt an application form and procedures around application for a charter for an open-enrollment charter school; TEC, §12.113, which sets forth the standards to be met by each charter the commissioner grants for an open-enrollment charter school; TEC, §12.152, which authorizes the commissioner to grant a charter for an open-enrollment charter school on the application of a public senior college or university or public junior college; TEC, §12.153, which authorizes the commissioner to adopt rules to implement TEC, Chapter 12, Subchapter E, College or University or Junior College Charter School; and TEC, §12.154, which specifies the content of an application for charter from a public senior college or university or a public junior college.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§12.101, 12.1011, 12.110, 12.113, 12.152, 12.153, and 12.154.

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

Filed with the Office of the Secretary of State on September 5, 2019.

TRD-201903099

Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: September 25, 2019
Proposal publication date: June 21, 2019
For further information, please call: (512) 475-1497

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## 19 TAC §100.1015

The Texas Education Agency (TEA) adopts an amendment to §100.1015, concerning applicants for an open-enrollment charter, public senior college or university charter, or public junior college charter. The amendment is adopted with changes to the proposed text as published in the June 21, 2019 issue of the *Texas Register* (44 TexReg 3051) and will be republished. The adopted amendment clarifies terminology; removes the exception to the minimum school size requirement; establishes an exception to the minimum qualification requirements for schools that serve youth referred to or placed in a residential trade center by a local or state agency; amends the timeframe for charter schools to have at least 50% of their students in tested grades; and modifies the list of content that, if included, would cause an application to be removed from consideration.

REASONED JUSTIFICATION: Section 100.1015 describes requirements of an application for open-enrollment charter, public senior college or university charter, or public junior college charter. It sets forth requirements for an entity to be eligible to apply, and it details financial, governing, educational, and operational standards that must be thoroughly addressed in the application in order for it to be considered by the commissioner.

The adopted amendment to §100.1015 clarifies the commissioner's criteria for review of an application for charter by adding language to help explain what is meant by the term *financial standards* in subsection (b)(1), *governing standards* in subsection (b)(2), and *educational and operational standards* in subsection (b)(3).

In subsection (b)(1)(C)(iii), the proposed amendment would have paralleled a statutory change involving minutes of instruction rather than days. In response to public comment, subsection (b)(1)(C)(iii) was revised at adoption to define funded days of operation in terms of the number of days that may be approved for a given school.

In subsection (b)(1)(D), the adopted amendment removes an allowance for a lower-than-prescribed number of students. The rule had stated that an entity applying for a charter must commit to serving a minimum of 100 students at all times to ensure financial viability but allowed the entity to provide an explanation if that number is not optimum and/or attainable. Removal of the allowance in the adopted amendment helps eliminate ambiguity with regard to the commissioner's criteria for financial viability.

The adopted amendment sets forth an exception in adopted subsection (b)(3)(F)(i), which previously mandated that all teachers at the school have a baccalaureate degree regardless of subject matter taught. The adopted amendment adds the exception as new subsection (b)(3)(F)(iv), which states that in an open-enrollment charter school that serves youth referred to or placed in a residential trade center by a local or state agency, a person may be employed as a teacher for a noncore vocational course without holding a baccalaureate degree subject to the requirements described in 19 TAC §100.1212, Personnel. This change aligns the rule with House Bill 1469, 85th Texas Legislature, Regular Session, 2017.

The adopted amendment modifies subsection (b)(3)(G) to require that a school have at least 50% of its students in tested grades by the start of the charter school's third year of operation rather than the fifth year of operation, which was previously specified in the rule. Requiring that at least 50% of students be in tested grades by a school's third year will accelerate progress toward TEA's goal to increase transparency, fairness, and rigor in academic performance.

Finally, the adopted amendment to subsection (b)(4)(E) adds items to the list of improper content in an application that, if included, would cause the application to be removed from consideration. This clarifies TEA's procedure in response to an applicant's plagiarism infractions or other unauthorized use of third parties' work product, in addition to its procedure regarding violations of state or federal law.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began June 21, 2019, and ended July 22, 2019. Following is a summary of public comment received and agency response.

Comment: Regarding proposed 19 TAC §100.1015(b)(1)(C)(iii), Schulman, Lopez, Hoffer & Adelstein, LLP commented that specifying 75,600 in the rule as the number of minutes to be used for calculation of a school's funded operations would result in inaccurate financial statements by schools with programs approved to provide fewer than 75,600 minutes per year.

Response: The agency partially agrees and offers the following clarification. State funding is calculated in terms of days of instruction. Public schools across the state, not just those with special programs referenced by the commenter, might vary in the number of days of instruction they offer. Therefore, the agency has revised 19 TAC §100.1015(b)(1)(C)(iii) at adoption to account for such variance.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §12.101, which authorizes the commissioner to grant a charter for an open-enrollment charter school to an eligible entity, describing procedures the commissioner must follow to thoroughly investigate and evaluate such applicants; TEC, §12.110, which requires the commissioner to adopt an application form and procedures around application for a charter for an open-enrollment charter school; TEC, §12.129, which describes minimum qualifications for principals and teachers in an open-enrollment charter school; TEC, §12.152, which authorizes the commissioner to grant a charter for an open-enrollment charter school on the application of a public senior college or university or public junior college; TEC, §12.153, which authorizes the commissioner to adopt rules to implement TEC, Chapter 12, Subchapter E, College or University or Junior College Charter School; TEC, §12.154, which specifies the content of an application for charter from a public senior college or university or a public junior college; and TEC, §12.156, which provides that TEC, Chapter 12, Subchapter D, Open-Enrollment Charter School, applies to a college or university charter school or junior college charter school except where otherwise indicated in TEC, Chapter 12, Subchapter E.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§12.101, 12.110, 12.129, 12.152, 12.153, 12.154, 12.156.

*§100.1015. Applicants for an Open-Enrollment Charter, Public Senior College or University Charter, or Public Junior College Charter.*

(a) No applicant will be considered that has, within the preceding ten years, had a charter under Texas law or similar charter under the laws of another state surrendered under a settlement agreement, revoked, denied renewal, or returned or that is considered to be a corporate affiliate of, or substantially related to, an entity that, within the preceding ten years, had a charter under Texas law or similar charter under the laws of another state surrendered under a settlement agreement, revoked, denied renewal, or returned. The commissioner of education may not grant more than one charter for an open-enrollment charter school to any charter holder.

(b) Notwithstanding any other provisions in this chapter, the following provisions apply to open-enrollment charter applicants and successful charter awardees authorized by the commissioner under requests for applications adopted after November 1, 2012.

(1) Financial standards. An applicant for an open-enrollment charter, a public senior college or university charter, or a public junior college charter shall meet each of the following financial standards to demonstrate the financial viability of the charter, as determined by the commissioner or the commissioner's designee, prior to being considered for award of a charter and must understand that any failure to maintain ongoing compliance with these requirements, if awarded a charter, will be considered a material violation of the charter contract and may be grounds for revocation.

(A) Any existing entity applying for the charter must be in good standing with the Internal Revenue Service (IRS), the Texas Secretary of State, and the Texas Comptroller of Public Accounts. An existing entity must also be in good standing with all regulatory agencies in its home state.

(B) Each entity must provide evidence of financial competency and sustainability by providing evidence of an appropriate business plan that includes each of the following:

*(i)* a succinct long-term vision for the proposed school;

*(ii)* three to five core values or beliefs, with succinct explanations, for the operation of the proposed school;

*(iii)* a brief analysis of the target location(s) for the proposed school with a succinct explanation of the reasons for choosing the location(s);

*(iv)* a brief analysis of the competition in the area(s) for the same students and the methods that the proposed school will use to recruit and retain students;

*(v)* a brief narrative of the growth plan for the first five years of operation of the proposed school that matches all projections included in the budget and considers the potential expansion of competition in the area for the same student population;

*(vi)* a list of risk factors, with brief explanations, that could jeopardize the viability of the proposed school;

*(vii)* a list of success factors, with brief explanations, that the proposed school founders have analyzed and determined will outweigh the risks;

*(viii)* an unqualified opinion as provided in the most recent audited financial statements of the applicant if the entity has been in existence at least a year;

*(ix)* a five-year budget projection of revenue and expenditures for the proposed charter using the template that will be provided in the request for applications (RFA);

*(x)* a narrative response, based on the revenue and expenditures provided in the template that will be provided in the RFA, detailing the ways in which the budget projections were derived, including any assumptions used; and

*(xi)* support documentation for budget projections as detailed in the budget template that will be provided with the RFA.

(C) Loans and lines of credit are liabilities that must be repaid and will be considered as available funding. Loans or lines of credit may be characterized as assets and as cash on hand. The applicant must identify in the template provided in the RFA available funding for start-up costs, as documented by current assets listed in the balance sheet and/or pledges for donations that do not require repayment, meeting or exceeding the following amounts:

*(i)* the total amount of funds available;

*(ii)* the amount per student proposed to be served in the first year of operation; and

*(iii)* the number of days of operation funded by the amount in this subparagraph, defined by the total annual budget divided by the number of approved instructional days.

(D) To ensure financial viability, the entity must commit to serving a minimum of 100 students at all times.

(E) The entity applying for the charter must have liabilities that are less than 80% of its assets.

(F) The aggregate of projected budgeted expenses must be less than the aggregate of projected total revenues by the end of the first year of operation provided that:

*(i)* projected revenues are documented and use the amount per student designated in the RFA when calculating Foundation School Program (FSP) funding that will begin during the first year of operation, or the applicant provides compelling evidence as to the reasons that its FSP will be higher than the rate designated in the RFA; and

*(ii)* all reasonable start-up and first-year expenditures are included in the budgets or an explanation for not needing to include them is included in the budget narratives.

(G) No more than 27% of the budget may be allocated for administrative costs for charters with an anticipated first-year enrollment of 500 or fewer students, or no more than 16% of the budget may be allocated for administrative costs for charters with an anticipated first-year enrollment of more than 500 students. Administrative costs are those costs identified as such in Texas Education Agency (TEA) financial publications for charter schools.

(2) Governing standards. An applicant for an open-enrollment charter, a public senior college or university charter, or a public junior college charter shall meet each of the following governing standards to demonstrate sound establishment and oversight of the charter's educational mission, as determined by the commissioner or the commissioner's designee, prior to being considered for award of a charter and must understand that any failure to maintain ongoing compliance with these requirements, if awarded a charter, will be considered a material violation of the charter contract and may be grounds for revocation, except as provided by Texas Education Code (TEC), §12.1054(a)(2).

(A) To qualify as an eligible entity in accordance with TEC, §12.101(a)(3), as an organization that is exempt under 26 United States Code (USC), §501(c)(3), the applicant must have its own 501(c)(3) exemption in its own name, as evidenced by a 501(c)(3) letter of determination issued by the IRS. Thus, an applicant

cannot attain status as an eligible entity that is exempt under 26 USC, §501(c)(3), as a disregarded entity, a supporting organization, or a member of a group exemption of a currently recognized 501(c)(3) tax-exempt organization. A religious organization, sectarian school, or religious institution that applies must have an established separate non-sectarian entity that is exempt under 26 USC, §501(c)(3), to be considered an eligible entity. Entities that have applied for 501(c)(3) status, but have yet to receive the exemption from the IRS, must provide the letter of determination of the 501(c)(3) status issued by the IRS prior to consideration for interview. Failure to secure 501(c)(3) status deems an entity ineligible.

(B) The articles of incorporation, the Certificate of Filing, the Certificate of Formation, and the bylaws of the applicant must vest the management of the corporate affairs in the board of directors. The management of the corporate affairs shall not be vested in any member or members nor shall the corporate charter or bylaws confer on or reserve to any other entity the ability to overrule, remove, replace, or name the members of the board of the charter holder during the duration of the charter's existence. However, if the applicant or its affiliate is a high performing entity, then it may vest management in a member provided that the entity may change the members of the governing body of the charter holder prior to the expiration of a member's term only with commissioner's written approval. An academic performance rating that is below acceptable in another state, as determined by the commissioner, does not satisfy this section. Any other change in the aforementioned governance documents pursuant to the management of the corporate affairs of the nonprofit entity may only occur with the approval of the commissioner in accordance with §100.1033(b) of this title (relating to Charter Amendment) or in accordance with any other power granted to the commissioner in state law or rule.

(C) If the sponsoring entity is a 501(c)(3) nonprofit corporation, its bylaws must clearly state that the charter holder and charter school will comply with the Texas Open Meetings Act and will appropriately respond to Texas Public Information Act requests.

(D) No family members within the third degree of consanguinity or second degree of affinity shall serve on the charter holder or charter school board.

(E) No family member within the third degree of consanguinity or third degree of affinity of any charter holder board member, charter school board member, or superintendent shall receive compensation in any form from the charter school, the charter holder, or any management company that operates the charter school.

(F) The applicant shall specify that the governing body accepts and will not delegate ultimate responsibility for the school, including academic performance and financial and operational viability, and is responsible for overseeing any management company providing management services for the school.

(3) Educational and operational standards. An applicant for an open-enrollment charter, a public senior college or university charter, or a public junior college charter shall successfully meet each of the following educational and operational standards to ensure careful alignment of curricula to the Texas Essential Knowledge and Skills, as determined by the commissioner or the commissioner's designee, prior to being considered for award of a charter and must understand that any failure to maintain ongoing compliance with these requirements, if awarded a charter, will be considered a material violation of the charter contract and may be grounds for revocation.

(A) The charter applicant must clearly explain the overall educational philosophy to be promoted at the school, if authorized.

(B) The charter applicant must clearly explain in succinct terms the specific curricular programs that the school, if authorized, will provide to students and the ways in which the charter staff, board members, and others will use these programs to maintain high expectations for and the continuous improvement of student performance.

(C) The charter applicant must clearly explain in succinct terms the ways in which the school, if authorized, will differ from the traditional neighborhood schools or charter schools that currently operate in the area where the school or schools would be located.

(D) The charter applicant must clearly explain how classroom practices will reflect the connections among curriculum, instruction, and assessment.

(E) The charter applicant must describe in succinct terms the specific ways in which the school, if authorized, will:

*(i)* address the instructional needs of students performing both below and above grade levels in major content areas;

*(ii)* differentiate instruction to meet the needs of diverse learners;

*(iii)* provide a continuum of services in the least restrictive environment for students with special needs as required by state and federal law;

*(iv)* provide bilingual and/or English as a second language instruction to English language learners as required by state law; and

*(v)* implement an educational program that supports the enrichment curriculum, including fine arts, health education, physical education, technology applications, and, to the extent possible, languages other than English.

(F) As evidenced in required documentation, the charter applicant must commit to hiring personnel with appropriate qualifications as follows.

*(i)* Except as provided in clause (iv) of this subparagraph, all teachers, regardless of subject matter taught, must have a baccalaureate degree.

*(ii)* Special education teachers, bilingual teachers, and teachers of English as a second language must be certified in the fields in which they are assigned to teach as required in state and/or federal law.

*(iii)* Paraprofessionals must be certified as required to meet state and/or federal law.

*(iv)* In an open-enrollment charter school that serves youth referred to or placed in a residential trade center by a local or state agency, a person may be employed as a teacher for a noncore vocational course without holding a baccalaureate degree, subject to the requirements described in §100.1212 of this title (relating to Personnel).

(G) The charter applicant must commit to serving, by its third year of operation, at least as many students in grades assessed for state accountability purposes as those served in grades not assessed for state accountability purposes.

(H) The charter applicant must provide a final copy of any management contract, if applicable, that will be entered into by the charter holder that will provide any management services, including the monetary amount that will be paid to the management company for providing school services.

(4) Additional requirements. An applicant for a competitive open-enrollment charter to be considered for award, as authorized by TEC, Chapter 12, Subchapter D, must ensure that each of the following occur or the application will be disqualified.

(A) The application is complete and meets all of the requirements set forth in paragraphs (1)-(3) of this subsection, as determined by the commissioner or the commissioner's designee.

*(i)* The commissioner or the commissioner's designee may conclude the review of an application once it is apparent that the application is incomplete or that the application fails to meet one or more of the requirements set forth in paragraphs (1)-(3) of this subsection.

*(ii)* Any applicant who submits an incomplete application, an application that fails to meet one or more of the requirements as set forth in paragraphs (1)-(3) of this subsection, or an application that contains information referenced in subparagraph (D)(i)-(iii) of this paragraph will be notified pursuant to §100.1002(b) of this title (relating to Application and Selection Procedures and Criteria) by the TEA division responsible for charter schools that the application has been removed from consideration of award and will not be sent forward for scoring by the external review panel.

*(I)* An applicant that is notified that the application has been removed from consideration of award by the commissioner or the commissioner's designee will have five business days to respond in writing and direct TEA staff responsible for charter schools to the specific parts of the application, which was received by the application deadline, that address the identified issue or issues, or to submit missing attachments.

*(II)* Once any additional review is complete, the decision of the commissioner or the commissioner's designee is final and may not be appealed.

(B) A representative of any applicant must not initiate contact with any employee of the TEA, other than the commissioner or commissioner's designee, regarding the content of its application from the time the application is submitted until the time of the commissioner award of charters in the applicable application cycle is final, following the 90-day State Board of Education (SBOE) veto period.

(C) An applicant or person or entity acting on behalf of the applicant may not provide any item of value, directly or indirectly, to the commissioner, any employee of the TEA, or member of the SBOE during the no-contact period as defined in §100.1002(k) of this title.

(D) All parts of the application are releasable to the public under the Texas Public Information Act and will be posted to the TEA website. Therefore, the following must be excluded from all applications:

*(i)* personal email addresses;

*(ii)* proprietary material;

*(iii)* copyrighted material;

*(iv)* documents that could violate the Family Educational Rights and Privacy Act (FERPA) by identifying potential students of the charter school, including, but not limited to, sign-in lists at public meetings about the school, photographs of existing students if the school is currently operating or photographs of prospective students, and/or letters of support from potential charter school parents and/or students; and

*(v)* any other information or documentation that cannot be released in accordance with Texas Government Code, Chapter 552.

(E) Any application that includes material referenced in subparagraph (D)(ii)-(v) of this paragraph will be removed from consideration without any further opportunity for review.

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

Filed with the Office of the Secretary of State on September 5, 2019.

TRD-201903100
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: September 25, 2019
Proposal publication date: June 21, 2019
For further information, please call: (512) 475-1497

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# TITLE 31. NATURAL RESOURCES AND CONSERVATION

## PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

### CHAPTER 53. FINANCE

### SUBCHAPTER A. FEES

### DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

**31 TAC §53.2**

The Texas Parks and Wildlife Commission in a duly noticed meeting on August 22, 2019, adopted an amendment to §53.2, concerning License Issuance Procedures, Fees, Possession, and Exemption Rules without changes to the proposed text as published in the July 19, 2019, issue of the *Texas Register* (44 TexReg 3614).

The amendment allows for the verification of purchase of a fishing, hunting, or combination fishing and hunting license via a wireless communication device.

Under current rule, a person engaged in a hunting or fishing activity must be in physical possession of the necessary license, except for persons who purchased a license electronically and are awaiting fulfilment by mail. In the most recent session of the Texas Legislature, House Bill 547 was enacted and has become law. The bill requires the department to adopt rules allowing persons to present "for the purpose of verification of possession a hunting, fishing, or combination hunting and fishing license an image displayed on a wireless communication device." The bill provides that the image may be from the department's website or a photograph of the license. The amendment effects the necessary changes and removes current language providing for exceptions to physical possession of a license that are no longer applicable.

The amendment requires images of licenses to be of sufficient resolution, contrast, and size to allow verification of licensure, which is necessary to prevent misunderstandings, as a photograph taken of a license taken at great distance, out of focus, or under poor lighting would frustrate the department's ability to ascertain legal compliance with licensing requirements.

The department received no comments opposing adoption of the proposed amendment.

The department received eight comments supporting adoption of the proposed amendment.

The amendment is adopted under the authority of Parks and Wildlife Code, §§42.006, 46.0085, and 50.004, which require the department by rule to allow for a person to present for the purpose of verification of possession of a hunting, fishing, or combination hunting and fishing license an image displayed on a wireless communication device.

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

Filed with the Office of the Secretary of State on August 30, 2019.

TRD-201903049
Robert D. Sweeney, Jr.
General Counsel
Texas Parks and Wildlife Department
Effective date: September 19, 2019
Proposal publication date: July 19, 2019
For further information, please call: (512) 389-4329

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## CHAPTER 65. WILDLIFE

The Texas Parks and Wildlife Commission in a duly noticed meeting on August 22, 2019, adopted amendments to §65.329, concerning Permit Application, and §65.376, concerning Possession of Live Fur-bearing Animals. The amendments are adopted without changes to the proposed text as published in the July 12, 2019, issue of the *Texas Register* (44 TexTeg 3533), and will not be republished.

The amendment to §65.329 allows the department to refuse permit issuance or renewal to any person who has been finally convicted of, pleaded *nolo contendere* to, received deferred adjudication, or been assessed an administrative penalty for a violation of: Parks and Wildlife Code, Chapter 43, Subchapter C, E, L, R, or R-1; Parks and Wildlife Code, Chapter 67; a provision of the Parks and Wildlife Code other than Chapter 43, Subchapter C, E, L, R, or R-1, or Chapter 67 that is a Parks and Wildlife Code Class A or B misdemeanor, state jail felony, or felony; Parks and Wildlife Code, §63.002; or the Lacey Act (16 U.S.C. §§3371-3378). In addition, the amendment allows the department to prevent a person from acting on behalf of or as a surrogate for a person prevented from obtaining a permit under the new provisions and provides for a review process for agency decisions to refuse permit issuance or renewal.

The amendment to §65.376 allows the department to refuse permit issuance or renewal to any person who has been finally convicted of, pleaded *nolo contendere* to, received deferred adjudication, or been assessed an administrative penalty for a violation of: Parks and Wildlife Code, Chapter 43, Subchapter C, E, L, R, or R-1; Parks and Wildlife Code, Chapter 71; a provision of the Parks and Wildlife Code other than Chapter 43, Subchapter C, E, L, R, or R-1, or Chapter 71 that is a Parks and Wildlife Code Class A or B misdemeanor, state jail felony, or felony; Parks and Wildlife Code, §63.002; or the Lacey Act (16 U.S.C. §§3371-3378). In addition, the amendment allows the department to prevent a person from acting on behalf of or as a surrogate for a person prevented from obtaining a permit under the new provisions and provides for a review process for agency decisions to refuse permit issuance or renewal.

The department has determined that the decision to issue a permit to hold protected live wildlife or to collect and possess wildlife for commercial purposes should take into account an applicant's history of violations involving the capture and possession of live animals, major violations of the Parks and Wildlife Code (Class B misdemeanors, Class A misdemeanors, and felonies), and Lacey Act violations. The department reasons that it is appropriate to deny the privilege of taking or allowing the take of wildlife resources to persons who exhibit a demonstrable disregard for the regulations governing wildlife. Similarly, it is appropriate to deny the privilege of holding wildlife to a person who has exhibited demonstrable disregard for wildlife law in general by committing more egregious (Class B misdemeanors, Class A misdemeanors, and felonies) violations of wildlife law.

The Lacey Act (16 U.S.C. §§3371-3378) is a federal law that, among other things, prohibits interstate trade in or movement of wildlife, fish, or plants taken, possessed, transported or sold in violation of state law. Lacey Act prosecutions are normally conducted by the United States Department of Justice in federal courts. Although a Lacey Act conviction or civil penalty is often predicated on a violation of state law, the federal government need only prove that a state law was violated; there is no requirement for there to be a record of conviction in a state jurisdiction. Rather than expending resources and time conducting concurrent state and federal prosecutions, the department believes that it is reasonable to use a Lacey Act conviction or civil penalty as the basis for refusing to issue or renew a permit. Because the elements of the underlying state criminal offense must be proven to establish a conviction or assessment of a civil penalty for a Lacey Act violation, the department reasons that such conviction or assessment constitutes legal proof that a violation of state law occurred and it is therefore redundant and wasteful to pursue a conviction in state jurisdiction to prove something that has already been proven in a federal court.

The denial of permit issuance or renewal as a result of an adjudicative status listed in the proposed amendment would not be automatic, but within the discretion of the department. Factors that may be considered by the department in determining whether to refuse permit issuance based on adjudicative status include, but are not limited to: the number of final convictions or administrative violations; the seriousness of the conduct on which the final conviction or administrative violation is based; the existence, number and seriousness of offenses or administrative violations other than offenses or violations that resulted in a final conviction; the length of time between the most recent final conviction or administrative violation and the application for enrollment or renewal; whether the final conviction, administrative violation, or other offenses or violations were the result of negligence or intentional conduct; whether the final conviction or administrative violations resulted from the conduct committed or omitted by the applicant, an agent of the applicant, or both; the accuracy of information provided by the applicant; for renewal, whether the applicant agreed to any special provisions recom-

mended by the department as conditions; and other aggravating or mitigating factors.

The amendment retains current subsection (c), which allows the department to refuse permit issuance or renewal to any person who is not in compliance with applicable recordkeeping or reporting requirements, but relocates that provision in the body of the amendment.

The amendment also provides for department review of a decision to refuse permit issuance or renewal. The amendment requires the department to notify an applicant not later than the 10th day following a decision to refuse permit issuance or denial and to set a time and date for conducting a review of an agency decision to refuse permit issuance or renewal within 10 days of receiving a request for a review. The amendment stipulates that a review panel consist of three department managers with appropriate expertise in the activities conducted under the permit in question. The new provision is intended to help ensure that decisions affecting permit issuance and renewal are correct.

The department received one comment opposing adoption of the proposed rules. To the extent that the agency is able to determine the meaning of the comment, the commenter is opposed in principle to permits of any kind. The department disagrees with the comment and responds that the subject of the rules as proposed was the administrative process of permit refusal or denial, not the existence of the permit programs themselves; therefore, the comment is not germane to the rulemaking. No changes were made as a result of the comment.

The department received one comment supporting adoption of the proposed rules.

## SUBCHAPTER O. COMMERCIAL NONGAME PERMITS

### 31 TAC §65.329

The amendment is adopted under the authority of Parks and Wildlife Code, Chapter 67, which authorizes the department to issue permits for the taking, possession, propagation, transportation, sale, importation, or exportation of a nongame species of fish or wildlife if necessary to properly manage that species.

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

Filed with the Office of the Secretary of State on August 30, 2019.

TRD-201903050
Robert D. Sweeney, Jr.
General Counsel
Texas Parks and Wildlife Department
Effective date: September 19, 2019
Proposal publication date: July 12, 2019
For further information, please call: (512) 389-4329

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## SUBCHAPTER Q. STATEWIDE FUR-BEARING ANIMAL PROCLAMATION

### 31 TAC §65.376

The amendment is adopted under the authority of Parks and Wildlife Code, Chapter 71, which authorizes the department to regulate permit application procedures and hearing procedures for permits to take, possess, propagate, transport, export, import, or sell fur-bearing animals.

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

Filed with the Office of the Secretary of State on August 30, 2019.

TRD-201903051
Robert D. Sweeney, Jr.
General Counsel
Texas Parks and Wildlife Department
Effective date: September 19, 2019
Proposal publication date: July 12, 2019
For further information, please call: (512) 389-4329

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## CHAPTER 69. RESOURCE PROTECTION

The Texas Parks and Wildlife Commission in a duly noticed meeting on August 22, 2019, adopted amendments to §§69.4, concerning Renewal; 69.47, concerning Qualifications; and 69.303, concerning Application for Permit and Permit Issuance, and new §69.6, concerning Refusal of Issuance or Renewal of Permit; Review of Agency Decision, without changes to the proposed text as published in the July 12, 2019, issue of the *Texas Register* (44 TexReg 3536). The amendments, collectively, eliminate provisions governing the issuance or renewal of various permits on the basis of convictions for previous criminal conduct involving activities regulated by the department or failure to comply with reporting and recordkeeping requirements and replace them with a single standard governing such refusals, similar to current standards in effect for other permit programs administered by the department. New §69.6, concerning Refusal of Issuance or Renewal of Permit; Review of Agency Decision, establishes a similar regulation applicable to plant permits.

The amendments to §69.4 alter the provisions of the section to replace "shall" with "may" with respect to the renewal of scientific and commercial plant permits and eliminate a provision allowing the department to refuse permit issuance to any person finally convicted of any violation of Parks and Wildlife Code during the five-year period immediately prior to an application for a commercial plant permit. The changing of "may" to "shall" is necessary to emphasize that permit privileges are not automatic, but dependent upon a number of factors that the department evaluates prior to deciding whether to issue a permit or not. The removal of paragraph (4) is necessary, as has been mentioned previously in this preamble, because the department is implementing a standardized set of provisions regarding refusal of permit issuance or renewal.

New §69.6 allows the department to refuse permit issuance or renewal to any person who has been finally convicted of, pleaded *nolo contendere* to, received deferred adjudication, or been assessed an administrative penalty for a violation of: Parks and Wildlife Code, Chapter 88; a provision other than Parks and Wildlife Code Chapter 88 that is a Parks and Wildlife Code Class A or B misdemeanor, state jail felony, or felony; or a violation of the Lacey Act (16 U.S.C. §§3371-3378). In addition, the new section allows the department to prevent a person from acting on behalf of or as a surrogate for a person prevented from obtaining a permit under the proposed new provision and provides

for a review process for agency decisions to refuse permit issuance or renewal.

The department has determined that the decision to issue or renew a permit should take into account an applicant's history of violations involving plant permits, serious violations of the Parks and Wildlife Code (Class B misdemeanors, Class A misdemeanors, and felonies), and Lacey Act violations. The department reasons that it is appropriate to deny the privilege of collecting plant resources to persons who exhibit a demonstrable disregard for the regulations governing plant resources. Similarly, it is appropriate to deny permit privileges to a person who has exhibited demonstrable disregard for natural resource law in general by committing more egregious (Class B misdemeanors, Class A misdemeanors, and felonies) violations of natural resource law.

The Lacey Act (16 U.S.C. §§3371-3378) is a federal law that, among other things, prohibits interstate trade in or movement of wildlife, fish, or plants taken, possessed, transported or sold in violation of state law. Lacey Act prosecutions are normally conducted by the United States Department of Justice in federal courts. Although a Lacey Act conviction or civil penalty is often predicated on a violation of state law, the federal government need only prove that a state law was violated; there is no requirement for there to be a record of conviction in a state jurisdiction. Rather than expending resources and time conducting concurrent state and federal prosecutions, the department believes that it is reasonable to use a Lacey Act conviction or civil penalty as the basis for refusing to issue or renew a permit. Because the elements of the underlying state criminal offense must be proven to establish a conviction or assessment of a civil penalty for a Lacey Act violation, the department reasons that such conviction or assessment constitutes legal proof that a violation of state law occurred and it is therefore redundant and wasteful to pursue a conviction in state jurisdiction to prove something that has already been proven in a federal court.

The denial of a permit or permit renewal as a result of an adjudicative status listed in the new rule would not be automatic, but within the discretion of the department. Factors that may be considered by the department in determining whether to refuse permit issuance or renewal based on adjudicative status include, but are not limited to: the number of final convictions or administrative violations; the seriousness of the conduct on which the final conviction or administrative violation is based; the existence, number and seriousness of offenses or administrative violations other than offenses or violations that resulted in a final conviction; the length of time between the most recent final conviction or administrative violation and the application for enrollment or renewal; whether the final conviction, administrative violation, or other offenses or violations was the result of negligence or intentional conduct; whether the final conviction or administrative violations resulted from the conduct committed or omitted by the applicant, an agent of the applicant, or both; the accuracy of information provided by the applicant; for renewal, whether the applicant agreed to any special provisions recommended by the department as conditions; and other aggravating or mitigating factors.

The new rule also includes a provision allowing the department to refuse permit issuance or renewal to any person who is not in compliance with applicable recordkeeping or reporting requirements. The provision is necessary because the department believes that a person who is unable to comply with regulatory requirements that allow the department to monitor the performance of permit activities should not be entrusted with the privilege of permit issuance or renewal.

The new rule also provides for department review of a decision to refuse permit issuance or renewal. The new rule requires the department to notify an applicant not later than the 10th day following a decision to refuse permit issuance or denial and to set a time and date for conducting a review of an agency decision to refuse permit issuance or renewal within 10 days of receiving a request for a review. The new rule stipulates that a review panel consist of three department managers with appropriate expertise in the activities conducted under the permit in question. The new provision is intended to help ensure that decisions affecting permit issuance and renewal are correct.

The amendments to §69.47 and §69.303 eliminate a provision in each section authorizing the department to refuse issuance or renewal of wildlife rehabilitation permits for a person convicted of any violation of state or federal law applicable to fish or wildlife. The department has determined that the current provisions, in addition to allowing for permit issuance refusal for minor violations of fish and game law, are not as comprehensive as the template used for similar provisions in more recent rulemakings.

The amendments to §69.47 and §69.303 allow the department to refuse permit issuance or renewal to any person who has been finally convicted of, pleaded *nolo contendere* to, received deferred adjudication, or been assessed an administrative penalty for a violation of: Parks and Wildlife Code, Chapter 43, Subchapter C, E, L, R, or R-1; a provision of the Parks and Wildlife Code other than Chapter 43, Subchapter C, E, L, R, or R-1 that is a Parks and Wildlife Code Class A or B misdemeanor, state jail felony, or felony; Parks and Wildlife Code, §63.002; or the Lacey Act (16 U.S.C. §§3371-3378). In addition, the amendments would allow the department to prevent a person from acting on behalf of or as a surrogate for a person prevented from obtaining a permit and provide for a review process for agency decisions to refuse permit issuance or renewal.

The department has determined that the decision to issue a permit to hold protected live wildlife should take into account an applicant's history of violations involving the capture and possession of live animals, major violations of the Parks and Wildlife Code (Class B misdemeanors, Class A misdemeanors, and felonies), and Lacey Act violations. The department reasons that it is appropriate to deny the privilege of possession of wildlife resources to persons who exhibit a demonstrable disregard for the regulations governing wildlife. Similarly, it is appropriate to deny the privilege of holding wildlife to a person who has exhibited demonstrable disregard for wildlife law in general by committing more egregious (Class B misdemeanors, Class A misdemeanors, and felonies) violations of wildlife law.

The Lacey Act (16 U.S.C. §§3371-3378) is a federal law that, among other things, prohibits interstate trade in or movement of wildlife, fish, or plants taken, possessed, transported or sold in violation of state law. Lacey Act prosecutions are normally conducted by the United States Department of Justice in federal courts. Although a Lacey Act conviction or civil penalty is often predicated on a violation of state law, the federal government need only prove that a state law was violated; there is no requirement for there to be a record of conviction in a state jurisdiction. Rather than expending resources and time conducting concurrent state and federal prosecutions, the department believes that it is reasonable to use a Lacey Act conviction or civil penalty as the basis for refusing to issue or renew a permit. Because the elements of the underlying state criminal offense must be proven

to establish a conviction or assessment of a civil penalty for a Lacey Act violation, the department reasons that such conviction or assessment constitutes legal proof that a violation of state law occurred and it is therefore redundant and wasteful to pursue a conviction in state jurisdiction to prove something that has already been proven in a federal court.

The denial of permit issuance or renewal as a result of an adjudicative status listed in the proposed amendment would not be automatic, but within the discretion of the department. Factors that may be considered by the department in determining whether to refuse permit issuance based on adjudicative status include, but are not limited to: the number of final convictions or administrative violations; the seriousness of the conduct on which the final conviction or administrative violation is based; the existence, number and seriousness of offenses or administrative violations other than offenses or violations that resulted in a final conviction; the length of time between the most recent final conviction or administrative violation and the application for enrollment or renewal; whether the final conviction, administrative violation, or other offenses or violations was the result of negligence or intentional conduct; whether the final conviction or administrative violations resulted from the conduct committed or omitted by the applicant, an agent of the applicant, or both; the accuracy of information provided by the applicant; for renewal, whether the applicant agreed to any special provisions recommended by the department as conditions; and other aggravating or mitigating factors.

The amendments also would include a provision allowing the department to refuse permit issuance or renewal to any person who is not in compliance with applicable recordkeeping or reporting requirements. The provision is necessary because the department believes that a person who is unable to comply with regulatory requirements that allow the department to monitor the performance of permit activities should not be entrusted with the privilege of holding a permit, depending on the circumstances.

Additionally, the amendments provide for department review of a decision to refuse permit issuance or renewal. The new rule requires the department to notify an applicant not later than the 10th day following a decision to refuse permit issuance or denial and to set a time and date for conducting a review of an agency decision to refuse permit issuance or renewal within 10 days of receiving a request for a review. The amendments stipulate that a review panel consist of three department managers with appropriate expertise in the activities conducted under the permit in question. The amendments are intended to help ensure that decisions affecting permit issuance and renewal are correct.

The department received one comment opposing adoption of the proposed amendments. To the extent that the department is able to ascertain the commenter's intention, the commenter is concerned about toads. The department disagrees with the comment and responds that the rules as adopted do not affect toads. No changes were made as a result of the comment.

The department received one comment supporting adoption of the proposed rules.

## SUBCHAPTER A. ENDANGERED, THREATENED, AND PROTECTED NATIVE PLANTS

**31 TAC §69.4, §69.6**

The amendments and new section are adopted under the authority of Parks and Wildlife Code, Chapter 88, which requires the commission to adopt regulations, including regulations to provide for permit application, forms, fees, procedures, and hearing procedures.

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

Filed with the Office of the Secretary of State on August 30, 2019.

TRD-201903052
Robert D. Sweeney, Jr.
General Counsel
Texas Parks and Wildlife Department
Effective date: September 19, 2019
Proposal publication date: July 12, 2019
For further information, please call: (512) 389-4329

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## SUBCHAPTER C. WILDLIFE REHABILITATION PERMITS

**31 TAC §69.47**

The amendment is adopted under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter C, which requires the commission to adopt rules to govern the collecting, holding, possession, propagation, release, display, or transport of protected wildlife for scientific research, educational display, zoological collection, or rehabilitation.

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

Filed with the Office of the Secretary of State on August 30, 2019.

TRD-201903053
Robert D. Sweeney, Jr.
General Counsel
Texas Parks and Wildlife Department
Effective date: September 19, 2019
Proposal publication date: July 12, 2019
For further information, please call: (512) 389-4329

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## SUBCHAPTER J. SCIENTIFIC, EDUCATIONAL, AND ZOOLOGICAL PERMITS

**31 TAC §69.303**

The amendment is adopted under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter C, which requires the commission to adopt rules to govern the collecting, holding, possession, propagation, release, display, or transport of protected wildlife for scientific research, educational display, zoological collection, or rehabilitation.

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

Filed with the Office of the Secretary of State on August 30, 2019.

TRD-201903054
Robert D. Sweeney, Jr.
General Counsel
Texas Parks and Wildlife Department
Effective date: September 19, 2019
Proposal publication date: July 12, 2019
For further information, please call: (512) 389-4329

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# PART 21. TEXAS LOW-LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT COMMISSION

## CHAPTER 675. OPERATIONAL RULES SUBCHAPTER B. EXPORTATION AND IMPORTATION OF WASTE

**31 TAC §675.20, §675.25**

The Texas Low-Level Radioactive Waste Disposal Compact Commission (Commission) adopts the amendment to §675.20 and new §675.25. The amendment to §675.20 is adopted without change and new §675.25 is adopted with change to the text as published in the July 5, 2019, issue of the *Texas Register* (44 TexReg 3430).

Summary of the Factual Basis for the Adoption of the Rules

In enacting the Texas Low-Level Radioactive Waste Disposal Compact Consent Act (Act), the United States Congress acknowledged the public value of the party states' cooperation in the protection of the health, safety, and welfare of their citizens and the environment of the party states (Public Law 105-236, 112 Stat. 1542). In furtherance of this policy, the Congress provided for the economic management of low-level radioactive waste to distribute the costs, benefits, and obligations among the party states (Public Law 105-236, 112 Stat. 1542). By adopting the Act in Texas Health and Safety Code (THSC), Chapter 403, the Texas Legislature authorized the Commission to enter into agreements with any person for the importation of low-level radioactive waste into the compact for disposal (THSC, §403.006). The Commission recognizes a public benefit in making a reservation of capacity at the Andrews, Texas compact facility for certain generators of low-level radioactive waste.

The Texas Legislature has placed an annual limit on the total number of curies of low-level radioactive waste that may be imported from non-party states (THSC, §401.207(e)). The amendment of §675.20 and new §675.25 will better serve the public by ensuring that small quantity generators of low-level radioactive waste will have available capacity from the total annual allotment for the disposal of that waste. It is critical that all generators of low-level radioactive waste have a pathway for disposal, however, because of their size, small quantity generators may not have the same resources to arrange for disposal as their larger counterparts. Further, the disposal of small quantity generator waste is often coordinated through brokers. The amendment and new rule will give brokers regulatory certainty that disposal space will be available when they solicit agreements to dispose of small quantity generator waste on behalf of those entities. Accordingly, the amendment and new rule implement the policy directives of the Act. The Commission amends the term "small quantity generator" to align with adopted new §675.25, concerning capacity reservation for entities that meet the requirements of the defined term.

In this adoption, the Commission has made one technical, nonsubstantive change to new §675.25: in subsection (b), the Commission has inserted the word "of" between the words "disposal" and "compact."

Public Comment and Commission Response

The Commission received one comment in response to the July 5, 2019, publication of the proposed amendment and new rule from the Southwestern Low-Level Radioactive Waste Commission. The Southwestern Low-Level Radioactive Waste Commission did not recommend any changes to the proposed amendment or new rule, and was fully supportive of the proposed capacity reservation for small quantity generators. The Commission does not make any changes to the proposed amendment and new rule in response to this comment.

Statutory Authority

The Commission adopts the amendment and new rule under authority granted in THSC, §403.006, which includes specific rulemaking authority in the Act, Section 3.05. The Commission interprets this section as allowing for the implementation of rules regarding the management of low-level radioactive waste from non-party states.

*§675.25. Capacity Reservation for Small Quantity Generators.*

(a) This section applies to non-party compact waste imported into the host state.

(b) Of the annual statutory allotment for the disposal of compact waste established in Texas Health and Safety Code, §401.207, the Commission shall reserve 2,000 curies per fiscal year for the disposal of non-party compact waste at the compact facility by small quantity generators.

(c) By majority vote, the Commission may increase the reserved amount in subsection (b) of this section if the Commission determines that national demand for disposal of low-level radioactive waste warrants an increase in the capacity reservation for small quantity generators. A Commission decision to increase the reservation amount under this subsection only applies to the fiscal year in which the Commission approves the reservation increase. If the Commission decides to increase the reserved amount in subsection (b) of this section then it will post the increased reservation amount on its website for the duration of the fiscal year in which it applies.

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

Filed with the Office of the Secretary of State on September 3, 2019.

TRD-201903067
Leigh Ing
Director
Texas Low-Level Radioactive Waste Disposal Compact Commission
Effective date: September 23, 2019
Proposal publication date: July 5, 2019
For further information, please call: (512) 239-6087

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# TITLE 37. PUBLIC SAFETY AND CORRECTIONS

# PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

## CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

## SUBCHAPTER B. REGULATIONS GOVERNING TRANSPORTATION SAFETY

### 37 TAC §4.13

The Texas Department of Public Safety (the department) adopts amendments to §4.13, concerning Authority to Enforce, Training and Certificate Requirements. This rule is adopted without changes to the proposed text as published in the August 2, 2019, issue of the *Texas Register* (44 TexReg 4032) and will not be republished.

The amendments are necessary to ensure this section is consistent with Texas Transportation Code, §644.101, which establishes which peace officers are eligible to enforce Chapter 644 of the Texas Transportation Code.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

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

Filed with the Office of the Secretary of State on September 4, 2019.

TRD-201903092
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: September 24, 2019
Proposal publication date: August 2, 2019
For further information, please call: (512) 424-5848

# REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

## Proposed Rule Reviews

Texas Workforce Commission

**Title 40, Part 20**

**CHAPTER 802. INTEGRITY OF THE TEXAS WORKFORCE SYSTEM**

The Texas Workforce Commission (TWC) files this notice of its intent to review Chapter 802, Integrity of the Texas Workforce System, in accordance with Texas Government Code §2001.039.

An assessment will be made by TWC as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of TWC.

Comments on the review may be submitted to TWC Policy Comments, Workforce Program Policy, attn.: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. TWC must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

**CHAPTER 809. CHILD CARE SERVICES**

The Texas Workforce Commission (TWC) files this notice of its intent to review Chapter 809, Child Care Services, in accordance with Texas Government Code §2001.039.

An assessment will be made by TWC as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of TWC.

Comments on the review may be submitted to TWC Policy Comments, Workforce Program Policy, attn.: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. TWC must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

**CHAPTER 823. INTEGRATED COMPLAINTS, HEARINGS, AND APPEALS**

The Texas Workforce Commission (TWC) files this notice of its intent to review Chapter 823, Integrated Complaints, Hearings, and Appeals, in accordance with Texas Government Code §2001.039.

An assessment will be made by TWC as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of TWC.

Comments on the review may be submitted to TWC Policy Comments, Workforce Program Policy, attn.: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. TWC must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

**CHAPTER 845. TEXAS WORK AND FAMILY CLEARINGHOUSE**

The Texas Workforce Commission (TWC) files this notice of its intent to review Chapter 845, Texas Work and Family Clearinghouse, in accordance with Texas Government Code §2001.039.

An assessment will be made by TWC as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of TWC.

Comments on the review may be submitted to TWC Policy Comments, Workforce Program Policy, attn.: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. TWC must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

TRD-201903195
Jason Vaden
Director, Workforce Program Policy
Texas Workforce Commission
Filed: September 10, 2019

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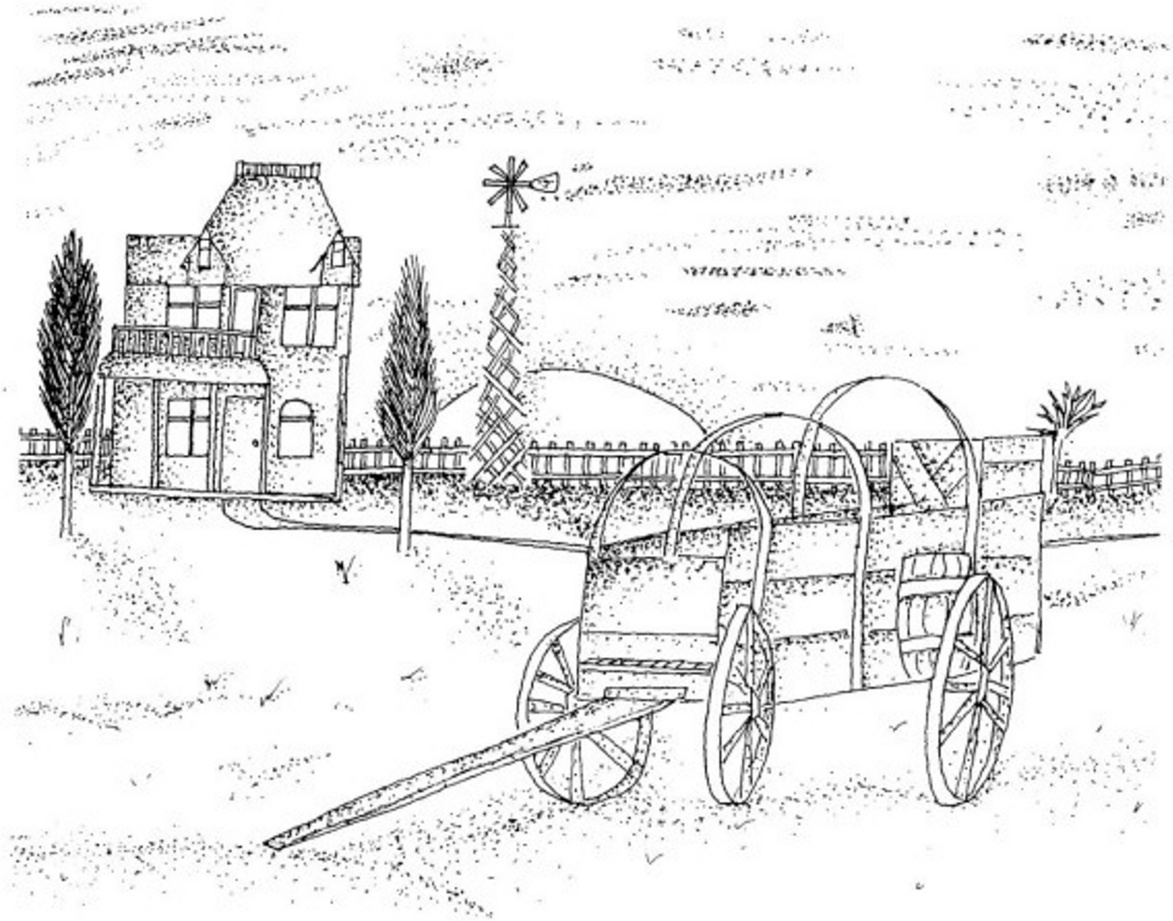

# TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 25 TAC §157.125(y)

**BASIC (LEVEL IV) TRAUMA FACILITY CRITERIA**

**Basic Trauma Facility (Level IV)** - provides resuscitation, stabilization, and arranges for appropriate transfer of major and severe trauma patients to a higher level trauma facility when medically necessary; provides ongoing educational opportunities in trauma related topics for health care professionals and the public, and implements targeted injury prevention programs (see attached standards). The administrative commitment of a Level IV trauma facility includes developing processes that define the trauma patient population evaluated by the facility and track them throughout the course of their stay in order to maximize funding opportunities.

| **A. TRAUMA PROGRAM** | |
|---|---|
| 1. An identified Trauma Medical Director (TMD) who:<br><br>▪ is currently credentialed in Advanced Trauma Life Support (ATLS) or an equivalent course approved by the Department of State Health Services (DSHS).<br>▪ is charged with overall management of trauma services provided by the hospital.<br>▪ shall have the authority and responsibility for the clinical oversight of the trauma program. This is accomplished through mechanisms that may include: credentialing of medical staff who provide trauma care; providing trauma care; developing treatment protocols; cooperating with the nursing administration to support the nursing needs of the trauma patients; coordinating the performance improvement (PI) peer review; and correcting deficiencies in trauma care.<br><br>a. There shall be a defined job description and organizational chart delineating the TMD's role and responsibilities.<br><br>b. The TMD shall be credentialed by the hospital to participate in the resuscitation and treatment of trauma patients using criteria to include such things as board-certification/board-eligibility, trauma continuing medical education, compliance with trauma protocols, and participation in the trauma PI program.<br><br>c. The TMD shall participate in a leadership role in the hospital, community, and emergency management (disaster) response committee.<br><br>d. The TMD should participate in the development of the regional trauma system plan. | E |
| 2. An identified Trauma Nurse Coordinator/Trauma Program Manager (TNC/TPM) who: | E |

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| ▪ is a registered nurse.<br><br>▪ has successfully completed and is current in the Trauma Nurse Core Course (TNCC) or Advanced Trauma Course for Nurses (ATCN) or a DSHS-approved equivalent.<br><br>▪ has successfully completed and is current in a nationally recognized pediatric advanced life support course ((e.g. Pediatric Advanced Life Support (PALS) or the Emergency Nurse Pediatric Course (ENPC)).<br><br>▪ has the authority and responsibility to monitor trauma patient care from emergency <u>department</u> [deparment] (ED) admission through operative intervention(s), ICU care, stabilization, rehabilitation care, and discharge, including the trauma PI program.<br><br>a. There shall be a defined job description and organizational chart delineating the TNC/TPM's role and responsibilities.<br><br>b. The TNC/TPM shall participate in a leadership role in the hospital, community, and regional emergency management (disaster) response committee.<br><br>c. Trauma programs should have a minimum of .8 FTE dedicated to the TNC/TPM position.<br><br>d. The TNC/TPM should complete a course designed for his/her role which provides essential information on the structure, process, organization and administrative responsibilities of a PI program to include a trauma outcomes and performance improvement course ((e.g. Trauma Outcomes Performance Improvement Course (TOPIC) or Trauma Coordinators Core Course (TCCC)). | |
| 3. An identified Trauma Registrar who has appropriate training ((e.g. the Association for the Advancement of Automotive Medicine (AAAM) course, American Trauma Society (ATS) Trauma Registrar Course)) in injury severity scaling. Typically, one full-time equivalent (FTE) employee dedicated to the registry shall be required to process approximately 500 patients annually. | D |
| 4. Written protocols, developed with approval by the hospital's medical staff, for:<br><br>a. Trauma team activation<br><br>b. Identification of trauma team responsibilities during a resuscitation<br><br>c. Resuscitation and Treatment of trauma patients | E |

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| d. Triage, admission and transfer of trauma patients | |
| **B. PHYSICIAN SERVICES** | |
| 1. **Emergency Medicine** - this requirement may be fulfilled by a physician credentialed by the hospital to provide emergency medical services.<br><br>Any emergency physician who is providing trauma coverage shall be credentialed by the TMD to participate in the resuscitation and treatment of trauma patients of all ages to include requirements such as current board certification/eligibility, an average of 9 hours of trauma-related continuing medical education per year, compliance with trauma protocols, and participation in the trauma PI program.<br><br>An Emergency Medicine board-certified physician who is providing trauma coverage shall have successfully completed an ATLS Student Course or a DSHS-approved ATLS equivalent course.<br><br>Current ATLS verification is required for all physicians who work in the ED and are not board certified in Emergency Medicine.<br><br>The emergency physician representative to the multidisciplinary committee that provides trauma coverage to the facility shall attend 50% or greater of multidisciplinary and peer review trauma committee meetings. | E |
| 2. **Radiology** | D |
| 3. **Anesthesiology** - requirements may be fulfilled by a member of the anesthesia care team credentialed in assessing emergent situations in trauma patients and providing any indicated treatment. | D |
| 4. **Primary Care Physician** - The patient's primary care physician should be notified at an appropriate time. | D |
| **C. NURSING SERVICES (for all Critical Care and Patient Care Areas)** | |
| 1. All nurses caring for trauma patients throughout the continuum of care have ongoing documented knowledge and skill in trauma nursing for patients of all ages to include trauma specific orientation, annual clinical competencies, and continuing education. | E |
| 2. Written standards on nursing care for trauma patients for all units (i.e. ED, ICU, OR, PACU, general wards) in the trauma facility shall be implemented. | E |
| 3. A written plan, developed by the hospital, for acquisition of additional staff on a 24 hour basis to support units with increased patient acuity, multiple emergency procedures and admissions (i.e. written disaster plan.) | E |
| 4. 50% of nurses caring for trauma patients should be certified in their area of specialty (e.g. CEN, CCRN, CNRN, etc.) | D |
| **D. EMERGENCY DEPARTMENT** | |

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| 1. Physician on-call schedule must be published. | E |
| 2. Physician with special competence in the care of critically injured patients, who is a designated member of the trauma team and who is on-call (if not in-house 24/7) and promptly available within 30 minutes of request from inside or outside the hospital.[~~*~~] [~~*~~]Neither a hospital's telemedicine medical service [~~telemedical~~] capabilities nor the physical presence of physician assistants (PAs) or clinical nurse specialists/nurse practitioners (CNSs/NPs) shall satisfy this requirement with the exception of the following:<br><br>a. A health care facility located in a county with a population of less than 30,000 may satisfy a Level IV trauma facility designation requirement relating to physicians through the use of telemedicine medical service in which an on-call physician who has special competence in the care of critically injured patients provides patient assessment, diagnosis, consultation, or treatment, or transfers medical data to a physician, advanced practice registered nurse, or physician assistants located at the facility.<br><br>b. Additionally, PAs/NPs and telemedicine-support physicians who participate in the care of major/severe trauma patients shall be credentialed by the hospital to participate in the resuscitation and treatment of said trauma patients, to include requirements such as board certification/eligibility, an average of 9 hours of trauma-related continuing medical education per year, compliance with trauma protocols, and participation in the trauma PI program. | E |
| 3. The physician on duty or on-call to the emergency department (ED) shall be activated on EMS communication with the ED or after a primary assessment of patients who arrive to the ED by private vehicle for the major or severe trauma patient. Response time shall not exceed thirty minutes from notification (this criterion shall be monitored in the trauma PI program.) | E |
| 4. A minimum of one and preferably two registered nurses who have trauma nursing training shall participate in initial major trauma resuscitations. | E |
| 5. Nurse staffing in initial resuscitation area is based on patient acuity and trauma team composition based on historical census and acuity data. | E |
| 6. At least one member of the registered nursing staff responding to the trauma team activation for a major or severe trauma resuscitation has successfully completed and holds current credentials in an advanced cardiac life support course (e.g. ACLS or hospital equivalent), a nationally recognized pediatric advanced life support course (e.g. PALS or ENPC) and TNCC or ATCN or a DSHS-approved equivalent. | E |
| 7. 100% of nursing staff have successfully completed and hold current credentials in an advanced cardiac life support course (e.g. ACLS or hospital equivalent), a nationally recognized pediatric advanced life support course (e.g. PALS or ENPC) and TNCC or ATCN or a DSHS-approved equivalent, within 18 months of date of employment in the ED or date of designation. | E |

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| 8. Nursing documentation for trauma patients is systematic and meets the trauma registry guidelines. | E |
| 9. Two-way communication with all pre-hospital emergency medical services vehicles. | E |
| 10. Equipment and services for the evaluation and resuscitation of, and to provide life support for, critically or seriously injured patients of all ages shall include but not be limited to: | E |
| a. Airway control and ventilation equipment including laryngoscope and endotracheal tubes of all sizes, bag-valve-mask devices (BVMs), pocket masks, and oxygen | E |
| b. Mechanical ventilator | E |
| c. Pulse oximetry | E |
| d. Suction devices | E |
| e. Electrocardiograph - oscilloscope - defibrillator | E |
| f. Supraglottic airway management device (e.g. LMA) | D |
| g. Apparatus to establish central venous pressure monitoring equipment | D |
| h. All standard intravenous fluids and administration devices, including large-bore intravenous catheters and a rapid infuser system | E |
| i. Sterile surgical sets for procedures standard for the emergency room such as thoracostomy, venous cutdown, central line insertion, thoracotomy, airway control/cricothyrotomy, etc. | E |
| j. Drugs and supplies necessary for emergency care | E |
| k. Cervical spine stabilization device | E |
| l. Length-based body weight & tracheal tube size evaluation system (such as Broselow tape) and resuscitation medications and equipment that are dose-appropriate for all ages | E |
| m. Long bone stabilization device | E |
| n. Pelvic stabilization device | E |
| o. Thermal control equipment for patients and a rapid warming device for blood and fluids | E |
| p. Non-invasive continuous blood pressure monitoring devices | E |
| q. Qualitative end tidal $CO_2$ monitor | E |
| 11. X-ray capability. | E |
| **E. CLINICAL LABORATORY SERVICE (available 24 hours per day)** | |
| 1. Call-back process for trauma activations available within 30 minutes. This system shall be continuously monitored in the trauma PI program. | E |
| 2. Standard analyses of blood, urine, and other body fluids, including microsampling. | E |

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| 3. Blood typing and cross-matching. | D |
| 4. Capability for immediate release of blood for a transfusion and a protocol to obtain additional blood supply. | E |
| 5. Coagulation studies. | E |
| 6. Blood gases and pH determinations. | E |
| 7. Drug and alcohol screening - toxicology screens need not be immediately available but are desirable (if available, results should be included in all trauma PI reviews.) | D |
| **F. RADIOLOGICAL CAPABILITIES (available 24 hours per day)** | |
| 1. Call-back process for trauma activations available within 30 minutes. This system shall be continuously monitored in the trauma PI program. | E |
| 2. 24-hour coverage by in-house technician. | D |
| 3. Computerized tomography. | D |
| **G. PERFORMANCE IMPROVEMENT** | |
| 1. Track record:<br><br>On Initial Designation: a facility must have completed at least six months of audits on all qualifying trauma records with evidence of "loop closure" on identified issues. Compliance with internal trauma policies must be evident.<br><br>On Re-designation: a facility must show continuous PI activities throughout its designation and a rolling current three year period must be available for review at all times. | E |
| 2. Minimum inclusion criteria: All trauma team activations (including those discharged from the ED), all trauma deaths or dead on arrivals (DOAs), all major and severe trauma admissions; transfers-in and transfers-out; and readmissions within 48 hours after discharge. | E |
| 3. An organized trauma PI program established by the hospital, to include a pediatric-specific component and trauma audit filters (see "Basic Trauma Facility Audit Filters" list.) | E |
| a. Audit of trauma charts for appropriateness and quality of care. | E |
| b. Documented evidence of identification of all deviations from trauma standards of care, with in-depth critical review. | E |
| c. Documentation of actions taken to address all identified issues. | E |
| d. Documented evidence of participation by the TMD. | E |
| e. Morbidity and mortality review including decisions by the TMD as to whether or not standard of care was met. | E |
| f. Documented resolutions "loop closure" of all identified issues to prevent future recurrences. | E |

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| g. Special audit for all trauma deaths and other specified cases, including complications, utilizing age-specific criteria. | E |
| h. Multidisciplinary hospital trauma PI committee structure in place. | E |
| 4. Multidisciplinary trauma conferences, continuing education and problem solving to include documented nursing and pre-hospital participation | D |
| 5. Feedback regarding major/severe trauma patient transfers-out from the ED and in-patient units shall be obtained from receiving facilities. | E |
| 6. Trauma registry - data shall be forwarded to the state trauma registry on at least a quarterly basis. | E |
| 7. Documentation of severity of injury (by Glasgow Coma Scale, revised trauma score, age, injury severity score) and outcome (survival, length of stay, ICU length of stay) with monthly review of statistics. | E |
| 8. Participation with the regional advisory council's (RAC) PI program, including adherence to regional protocols, review of pre-hospital trauma care, submitting data to the RAC as requested including such things as summaries of transfer denials and transfers to hospitals outside of the RAC. | E |
| 9. Times of and reasons for diversion must be documented and reviewed by the trauma PI program. | E |
| **H. REGIONAL TRAUMA SYSTEM** | |
| 1. Must participate in the regional trauma system per RAC requirements. | E |
| **I. TRANSFERS** | |
| 1. A process to expedite the transfer of major and severe trauma patients to include such things as written protocols, written transfer agreements, and a regional trauma system transfer plan for patients needing higher level of care or specialty services (i.e. surgery, burns, etc.) | E |
| 2. A system for establishing an appropriate landing zone in close proximity to the hospital (if rotor wing services are available.) | E |
| **J. PUBLIC EDUCATION/INJURY PREVENTION** | |
| 1. A public education program to address the major injury problems within the hospital's service area. Documented participation in a RAC injury prevention program is acceptable. | E |
| 2. Coordination and/or participation in community/RAC injury prevention activities. | E |
| **K. TRAINING PROGRAMS** | |
| 1. Formal programs in trauma continuing education provided by hospital for staff based on needs identified from the trauma PI program for: | E |
| a. Staff physicians | E |
| b. Nurses | E |
| c. Allied health personnel, including mid-level providers such as physician assistants and nurse practitioners | E |

Figure: 31 TAC §65.175

State-Listed Threatened Species in Texas

**MAMMALS**

Louisiana Black Bear (*Ursus americanus luteolus*)
Black Bear (*Ursus americanus*)
White-nosed Coati (*Nasua narica*)
Spotted bat (*Euderma maculatum*)
Rafinesque's Big-eared Bat (*Corynorhinus rafinesquii*)
Texas Kangaroo Rat (*Dipodomys elator*)
Coues' Rice Rat (*Oryzomys couesi*)
Palo Duro Mouse (*Peromyscus truei comanche*)
Tawny-bellied Cotton Rat (*Sigmodon fulviventer*)
Gervais' Beaked Whale (*Mesoplodon europaeus)*
Goose-beaked Whale (*Ziphius cavirostris*)
Pygmy Sperm Whale (*Kogia breviceps*)
Dwarf Sperm Whale (*Kogia simus*)
Killer Whale (*Orcinus orca*)
False Killer Whale (*Pseudorca crassidens*)
Short-finned Pilot Whale (*Globicephala macrorhynchus*)
Pygmy Killer Whale (*Feresa attenuata*)
Atlantic Spotted Dolphin (*Stenella frontalis*)
Rough-toothed Dolphin (*Steno bredanensis*)
West Indian Manatee (*Trichecus manatus*)

**BIRDS**

Common Black-hawk (*Buteogallus anthracinus*)
Gray Hawk (*Buteo plagiatus*)
White-tailed Hawk (*Buteo albicaudatus*)
Zone-tailed Hawk (*Buteo albonotatus*)
Peregrine Falcon (*Falco peregrinus anatum*)
Cactus Ferruginous Pygmy-owl (*Glaucidium brasilianum cactorum*)
Mexican Spotted Owl (*Strix occidentalis lucida*)
Piping Plover (*Charadrius melodus*)
Reddish Egret (*Egretta rufescens*)
White-faced Ibis (*Plegadis chihi*)
Wood Stork (*Mycteria americana*)
Swallow-tailed Kite (*Elanoides forficatus*)
Sooty Tern (*Onychoprion fuscatus)*
Northern Beardless-tyrannulet(*Camptostoma imberbe*)
Rose-throated Becard (*Pachyramphus aglaiae*)
Tropical Parula *Setophaga pitiayumi*

Bachman's Sparrow (*Peucaea aestivalis)*
Texas Botteri's Sparrow (*Peucaea botterii texana)*
Arizona Botteri's Sparrow (*Peucaea botterii arizonae)*
Black Rail (*Laterallus jamaicensis*)
Red-crowned Parrot (*Amazona viridigenalis*)
Rufa Red Knot (*Calidris canutus rufa*)

**REPTILES**
Green Sea Turtle (*Chelonia mydas*)
Loggerhead Sea Turtle (*Caretta caretta*)
Alligator Snapping Turtle (*Macrochelys temminckii*)
Cagle's Map Turtle (*Graptemys caglei*)
Chihuahuan Mud Turtle (*Kinosternon hirtipes murrayi*)
Texas Tortoise (*Gopherus berlandieri*)
Texas Horned Lizard (*Phrynosoma cornutum*)
Mountain Short-horned Lizard (*Phrynosoma hernandesi*)
Dunes Sagebrush Lizard (*Secloporus arenicolus*)
Scarlet Snake (*Cemophora coccinea copei, C. c. lineri*)
Black-striped Snake (*Coniophanes imperialis*)
Speckled Racer *Drymobius margaritiferus*)
Northern Cat-eyed Snake (*Leptodeira septentrionalis septentrionalis*)
Louisiana Pine Snake (*Pituophis ruthveni)*
Brazos Water Snake (*Nerodia harteri*)
Concho Water Snake (*Nerodia paucimaculata*)
Trans-Pecos Black-headed Snake (*Tantilla cucullata*)

**AMPHIBIANS**
Salado Springs Salamander (*Eurycea chisholmensis*)
San Marcos Salamander (*Eurycea nana*)
Georgetown Salamander (*Eurycea naufragia*)
Texas Salamander (*Eurycea neotenes*)
Blanco Blind Salamander (*Eurycea robusta*)
Cascade Caverns Salamander (*Eurycea latitans*)
Jollyville Plateau Salamander (*Eurycea tonkawae*)
Comal Blind Salamander (*Eurycea tridentifera*)
Black-spotted Newt (*Notophthalmus meridionalis*)
South Texas Siren (large form) (*Siren* sp.1)
Mexican Tree Frog (*Smilisca baudinii*)
White-lipped Frog (*Leptodactylus fragilis*)
Sheep Frog (*Hypopachus variolosus*)
Mexican Burrowing Toad (*Rhinophrynus dorsalis*)

FISHES
Shovelnose Sturgeon (*Scaphirhynchus platorynchus*)
Paddlefish (*Polyodon spathula*)
Oceanic Whitetip (*Carcharhinus longimanus*)
Great Hammerhead (*Sphyrna mokarran*)
Shortfin Mako (*Isurus oxyrinchus*)
Mexican Stoneroller (*Campostoma ornatum*)
Rio Grande Chub (*Gila pandora*)
Blue Sucker (*Cycleptus elongatus*)
Creek Chubsucker (*Erimyzon oblongus*)
Toothless Blindcat (*Trogloglanis pattersoni*)
Widemouth Blindcat (*Satan eurystomus*)
Conchos Pupfish (*Cyprinodon eximius*)
Pecos Pupfish (*Cyprinodon pecosensis*)
Rio Grande Darter (*Etheostoma grahami*)
Blackside Darter (*Percina maculata*)
River Goby (*Awaous banana*)
Mexican Goby (*Ctenogobius claytonii*)
San Felipe Gambusia (*Gambusia clarkhubbsi*)
Blotched Gambusia (*Gambusia senilis*)
Devils River Minnow (*Dionda diaboli*)
Arkansas River Shiner (*Notropis girardi)*
Bluehead Shiner (*Pteronotropis hubbsi*)
Chihuahua Shiner (*Notropis chihuahua*)
Bluntnose Shiner (*Notropis simus*)
Proserpine Shiner (*Cyprinella proserpina*)
Tamaulipas Shiner (*Notropis braytoni*)
Rio Grande Shiner (*Notropis jemezanus*)
Headwater Catfish (*Ictalurus lupus*)
Speckled Chub (*Macrohybopsis aestivalis*)
Prairie Chub (*Macrohybopsis autralis*)
Arkansas River Speckled Chub (*Macrohybopsis tetranema*)
Chub Shiner (*Notropis potteri*)
Red River Pupfish (*Cyprinodon rubrofluviatilis*)
Plateau Shiner (*Cyprinella lepida*)
Roundnose Minnow *(Dionda episcopa*)
Medina Roundnose Minnow (*Dionda nigrotaeniata*)
Nueces Roundnose Minnow (*Dionda serena*)
Guadalupe Darter (*Percina apristis*)

AQUATIC INVERTEBRATES
False spike (*Quadrula mitchelli*)
Louisiana Pigtoe (*Pleurobema ridellii*)

Mexican fawnsfoot (*Truncilla cognata*)
Salina mucket (*Potamilus metnecktayi*)
Sandbank pocketbook (*Lampsilis satura*)
Southern hickorynut (*Obovaria jacksoniana*)
Texas fatmucket (*Lampsilis bracteata*)
Texas fawnsfoot (*Truncilla macrodon*)
Texas heelsplitter (*Potamilus amphichaenus*)
Texas pigtoe (*Fusconaia askewi*)
Texas pimpleback (*Quadrula petrina*)
A cave snail (*Phreatodrobia coronae*)
Carolinae Tryonia (*Tryonia oasiensis*)
Caroline's Springs Pyrg *(Pyrgulopsis ignota*)
Clear Creek Amphipod (*Hyalella texana*)
Limpia Creek Spring Snail (*Pyrgulopsis davisi*)
Metcalf's Tryonia (*Tryonia metcalfi*)
Presidio County Spring Snail (*Pyrgulopsis metcalfi)*
Texas Troglobitic Water Slater (*Lirceolus smithii*)
Trinity Pigtoe (*Fusconaia chunii*)
Guadalupe Orb (*Cyclonaias necki*)
Guadalupe Fatmucket (*Lampsilis bergmanii*
Brazos Heelsplitter (*Potamilus streckersoni*)

Figure: 31 TAC §65.176

**Endangered Species**

MAMMALS
Mexican long-nosed Bat (*Leptonycteris nivalis*)
Jaguar (*Panthera onca*)
Jaguarundi (*Herpailurus* (=*Felis*) *yagouaroundi cacomii*)
Ocelot (*Leopardus* (=*Felis*) *pardalis*)
Finback Whale (*Balaenoptera physalus*)
Gray Wolf (*Canis lupus*)
Red Wolf (*Canis rufus*)
Blue Whale (*Balaenoptera musculus*)
Gulf of Mexico Bryde's Whale (*Balaenoptera edeni*)
N Atlantic Right Whale (*Eubalaena glacialis*)
Sei Whale (*Balaenoptera borealis*)
Sperm Whale (*Physeter macrocephalus*)

BIRDS
Whooping Crane (*Grus americana*)
Eskimo Curlew (*Numenius borealis*)
Northern Aplomado Falcon (*Falco femoralis septentrionalis*)
Southwestern Willow Flycatcher (*Empidonax traillii extimus*)
Attwater's Prairie-chicken (*Tympanuchus cupido attwateri*)
Interior Least Tern (*Sternula antillarum athalassos)*
Golden-cheeked Warbler (*Setophaga chrysoparia*)
Red-cockaded Woodpecker (*Picoides borealis*)

REPTILES
Hawksbill Sea turtle (*Eretmochelys imbricata*)
Kemp's Ridley Sea turtle (*Lepidochelys kempii*)
Leatherback Sea turtle (*Dermochelys coriacea*)

AMPHIBIANS
Austin blind salamander (Eurycea waterlooensis)
Barton Springs Salamander (*Eurycea sosorum*)
Texas blind Salamander (*Typhlomolge rathbuni*)
Houston Toad (*Anaxyrus houstonensis*)

**FISHES**
Fountain Darter (*Etheostoma fonticola*)
Big Bend Gambusia (*Gambusia gaigei*)
Clear Creek Gambusia (*Gambusia heterochir*)
Pecos Gambusia (*Gambusia nobilis*)
San Marcos Gambusia (*Gambusia georgei*)
Rio Grande Silvery Minnow (*Hybognathus amarus*)
Comanche Springs Pupfish (*Cyprinodon elegans*)
Leon Springs Pupfish (*Cyprinodon bovinus*)
Smalltooth Sawfish (*Pristis pectinata*)
Mexican Blindcat (*Prietella phreatophila*)
Sharpnose Shiner (*Notropis oxyrhynchus*)
Smalleye Shiner (*Notropis buccula*)

**AQUATIC INVERTEBRATES**
Pecos Assiminea Snail (*Assiminea pecos*)
Diamond tryonia (*Pseudotryonia adamantina*)
Phantom springsnail (*Pyrgulopsis texana*)
Phantom tryonia (*Tryonia cheatumi*)
Gonzales tryonia (*Tryonia circumstriata*)
Texas Hornshell (*Popenaias popeii*)

**CRUSTACEA**
Peck's Cave Amphipod (*Stygobromus* (=*Stygonectes*) *pecki*)

**AQUATIC ANIMALS**
Comal Springs riffle beetle (*Heterelmis comalensis*)
Comal Springs dryopid beetle (*Stygoparnus comalensis*)
Diminutive amphipod (*Gammarus hyalleloides*)
Pecos amphipod (*Gammarus pecos*)

Figure: 31 TAC §69.8(a)

star cactus (*Astrophytum asterias*)

Nellie cory cactus (*Escobaria minima*)

Sneed pincushion cactus (*Escobaria sneedii* var. *sneedii*)

black lace cactus (*Echinocereus reichenbachii* var. *albertii*)

Davis' green pitaya (*Echinocereus davisii*)

Tobusch fishhook cactus (*Sclerocactus brevihamatus* ssp. *tobuschii*)

Walker's manioc (*Manihot walkerae*)

Texas snowbells (*Styrax platanifolius* ssp. *texanus*)

large-fruited sand verbena (*Abronia macrocarpa*)

South Texas ambrosia (*Ambrosia cheiranthifolia*)

Texas ayenia (*Ayenia limitaris*)

Texas poppy mallow (*Callirhoe scabriuscula*)

Terlingua Creek cat's-eye (*Cryptantha crassipes*)

slender rush-pea (*Hoffmannseggia tenella*)

Texas prairie dawn (*Hymenoxys texana*)

white bladderpod (*Physaria pallida*)

Texas trailing phlox (*Phlox nivalis* ssp. *texensis*)

Texas golden gladecress (*Leavenworthia texana*)

ashy dogweed (*Thymophylla tephroleuca*)

Zapata bladderpod (*Physaria thamnophila*)

Navasota ladies'-tresses (*Spiranthes parksii*)

Little Aguja pondweed (*Potamogeton clystocarpus*)

Texas wild-rice (*Zizania texana*)

Guadalupe Fescue (*Festuca ligulata*)

Figure: 31 TAC §69.8(b)

Bunched cory cactus (*Coryphantha ramillosa* ssp. *ramillosa*)

Chisos Mountains hedgehog cactus (*Echinocereus chisoensis* var. *chisoensis*)

Lloyd's mariposa cactus (*Sclerocactus mariposensis*)

Dune umbrella-sedge (*Cyperus onerosus*)

Gypsum scalebroom (*Lepidospartum burgessi*)

Rock quillwort (*Isoetes lithophila*)

Small-headed pipewort (*Eriocaulon koernickiahum*)

Hinckley's oak (*Quercus hinckleyi*)

Neches River rose-mallow (*Hibiscus dasycalyx*)

Brush-pea (*Genistidium dumosum*)

Houston daisy (*Rayjacksonia aurea*)

Leoncita false foxglove (*Agalinis calycina*)

Livermore sweet-cicely (*Osmorhiza bipatriata*)

Pecos Sunflower (*Helianthus paradoxus*)

Tinytim (*Geocarpon minimum*)

# IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Office of the Attorney General

Texas Health and Safety Code and Texas Water Code
Settlement Notice

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Water Code and the Texas Health and Safety Code. Before the State may enter into such a voluntary settlement agreement, pursuant to Section 7.110 of the Texas Water Code the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the law.

Case Title and Court: *Texas Commission on Environmental Quality v. All Phase Electrical Service, Inc., et al.;* Cause No. D-1-GN-18-007696; in the 419th Judicial District Court, Travis County, Texas.

Background: This suit seeks to recover from responsible parties the cleanup costs incurred by the Texas Commission on Environmental Quality ("TCEQ") at the San Angelo Electric Service Company ("SESCO") State Superfund Site in San Angelo, Tom Green County, Texas (the "Site"). During SESCO's evolution from an electric engine repair shop to a facility building, repairing, and servicing electrical transformers, contaminants were spilled onto the soil and groundwater on and adjacent to the Site. Defendants in this suit were persons who arranged for disposal of waste at the Site. A total of 13 defendants have agreed to reimburse TCEQ for part of the response costs expended.

Proposed Settlement: The parties propose an Agreed Final Judgment, which provides for a monetary contribution of $2,500 to $100,000 from each of the 13 defendants, awarding the TCEQ a total of $148,912.96 as reimbursement for its response costs and $44,480.49 as attorney's fees.

For a complete description of the proposed settlement, the Agreed Final Judgment should be reviewed in its entirety. The proposed judgment may be examined at the Office of the Attorney General, 300 W. 15th Street, 10th Floor, Austin, Texas 78701, and copies may be obtained in person or by mail for the cost of copying. Requests for copies of the proposed judgment and settlement, and written comments on the same, should be directed to Thomas Edwards, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, MC 066, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201903107
Ryan L. Bangert
Deputy Attorney General for Legal Counsel
Office of the Attorney General
Filed: September 6, 2019

♦ ♦ ♦

## Comptroller of Public Accounts

Local Sales Tax Rate Changes Effective October 2019

A 2 percent local sales and use tax will become effective October 1, 2019 in the city listed below.

| CITY NAME | LOCAL CODE | LOCAL RATE | TOTAL RATE |
|---|---|---|---|
| Cross Timber (Johnson Co) | 2126116 | .020000 | .082500 |

The 1/2 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 504 of the Texas Local Government Code, Type A Corporations (4A) will be abolished September 30, 2019 in the city listed below.

| CITY NAME | LOCAL CODE | LOCAL RATE | TOTAL RATE |
|---|---|---|---|
| Elsa (Hidalgo Co) | 2108074 | .020000 | .082500 |

The 1/2 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Type B Corporations (4B) will be abolished September 30, 2019 in the city listed below.

| CITY NAME | LOCAL CODE | LOCAL RATE | TOTAL RATE |
|---|---|---|---|
| Grapeland (Houston Co) | 2113022 | .020000 | .082500 |

The 1/4 percent city sales and use tax for Municipal Street Maintenance and Repair will be abolished September 30, 2019 in the cities listed below.

| CITY NAME | LOCAL CODE | LOCAL RATE | TOTAL RATE |
|---|---|---|---|
| Hawley (Jones Co) | 2127044 | .015000 | .077500 |
| Yorktown (DeWitt Co) | 2062014 | .017500 | .080000 |

The city sales and use tax will be increased to 1 1/4 percent as permitted under Chapter 321 of the Texas Tax Code, effective October 1, 2019 in the city listed below.

| CITY NAME | LOCAL CODE | LOCAL RATE | TOTAL RATE |
|---|---|---|---|
| League City (Galveston Co) | 2084063 | .020000 | .082500 |

The city sales and use tax will be increased to 1 1/2 percent as permitted under Chapter 321 of the Texas Tax Code, effective October 1, 2019 in the cities listed below.

| CITY NAME | LOCAL CODE | LOCAL RATE | TOTAL RATE |
|---|---|---|---|
| Post Oak Bend (Kaufman Co) | 2129104 | .020000 | .082500 |
| Three Rivers (Live Oak Co) | 2149020 | .020000 | .082500 |

An additional 1/4 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective October 1, 2019 in the city listed below.

| CITY NAME | LOCAL CODE | LOCAL RATE | TOTAL RATE |
|---|---|---|---|
| Murphy (Collin Co) | 2043161 | .020000 | .082500 |

An additional 1/2 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective October 1, 2019 in the city listed below.

| CITY NAME | LOCAL CODE | LOCAL RATE | TOTAL RATE |
|---|---|---|---|
| Sudan (Lamb Co) | 2140056 | .020000 | .082500 |

The additional 1/4 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will be increased to 1 percent effective October 1, 2019 in the city listed below.

| CITY NAME | LOCAL CODE | LOCAL RATE | TOTAL RATE |
|---|---|---|---|
| Blanket (Brown Co) | 2025047 | .020000 | .082500 |

The additional 1/2 percent sales and use tax for Property Tax Relief as permitted under Chapter 321 of the Texas Tax Code will be abolished effective September 30, 2019 and an additional 1/4 percent sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code and the 1 percent city sales and use tax will be increased to 1 1/4 percent as permitted under Chapter 321 of the Texas Tax Code effective October 1, 2019 in the city listed below. There will be no change in the local rate or total rate.

| CITY NAME | LOCAL CODE | LOCAL RATE | TOTAL RATE |
|---|---|---|---|
| Clarendon (Donley Co) | 2065011 | .020000 | .082500 |

The additional 1/2 percent sales and use tax for Property Tax Relief as permitted under Chapter 321 of the Texas Tax Code will be reduced to 3/8 percent effective September 30, 2019 and an additional 1/8 percent sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Type B Corporations (4B) will become effective October 1, 2019 in the cities listed below. There will be no change in the local rate or total rate.

| CITY NAME | LOCAL CODE | LOCAL RATE | TOTAL RATE |
|---|---|---|---|
| Colorado City (Mitchell Co) | 2168017 | .020000 | .082500 |
| Dimmitt (Castro Co) | 2035018 | .020000 | .082500 |
| Whitehouse (Smith Co) | 2212040 | .020000 | .082500 |

The additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Type B Corporations (4B) will be abolished effective September 30, 2019 and the 1 percent city sales and use tax will be increased to 1 1/2 percent as permitted under Chapter 321 of the Texas Tax Code effective October 1, 2019 in the city listed below. There will be no change in the local rate or total rate.

| CITY NAME | LOCAL CODE | LOCAL RATE | TOTAL RATE |
|---|---|---|---|
| Glen Rose (Somervell Co) | 2213012 | .020000 | .082500 |

The additional 1/4 percent sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will be increased to 3/8 percent and the additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 504 of the Texas Local Government Code, Type A Corporations (4A) will be increased to 5/8 percent effective October 1, 2019 in the city listed below.

| CITY NAME | LOCAL CODE | LOCAL RATE | TOTAL RATE |
|---|---|---|---|
| Kosse (Limestone Co) | 2147059 | .020000 | .082500 |

The additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 504 of the Texas Local Government Code, Type A Corporations (4A) will be reduced to 1/4 percent effective September 30, 2019 and an additional 1/4 percent sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective October 1, 2019 in the city listed below. There will be no change in the local rate or total rate.

| CITY NAME | LOCAL CODE | LOCAL RATE | TOTAL RATE |
|---|---|---|---|
| Kaufman (Kaufman Co) | 2129024 | .020000 | .082500 |

The additional 3/8 percent sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 504 of the Texas Local Government Code, Type A Corporations (4A) and the additional 1/4 percent sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will be abolished effective September 30, 2019 and the 1 percent city sales and use tax as permitted under Chapter 321 of the Texas Tax Code will be increased to 1 5/8 percent effective October 1, 2019 in the city listed below. There will be no change in the local rate or total rate.

| CITY NAME | LOCAL CODE | LOCAL RATE | TOTAL RATE |
|---|---|---|---|
| Willis (Montgomery Co) | 2170031 | .020000 | .082500 |

The additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 504 of the Texas Local Government Code, Type A Corporations (4A) will be abolished effective September 30, 2019 and an additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Type B Corporations (4B) will become effective October 1, 2019 in the city listed below. There will be no change in the local rate or total rate.

| CITY NAME | LOCAL CODE | LOCAL RATE | TOTAL RATE |
|---|---|---|---|
| Lakeport (Gregg Co) | 2092072 | .020000 | .082500 |

The 1/2 percent special purpose district sales and use tax will be reduced to 1/4 percent effective October 1, 2019 in the special purpose district listed below. There will be no change in the total rate.

| SPD NAME | LOCAL CODE | NEW RATE | TOTAL RATE |
|---|---|---|---|
| Murphy Municipal Development District | 5043508 | .002500 | .082500 |

A 1/2 percent special purpose district sales and use tax will become effective October 1, 2019 in the special purpose districts listed below.

| SPD NAME | LOCAL CODE | NEW RATE | DESCRIPTION |
|---|---|---|---|
| Elsa Municipal Development District | 5108555 | .005000 | SEE NOTE 1 |
| Grapeland Municipal Development District | 5113503 | .005000 | SEE NOTE 2 |

A 1 percent special purpose district sales and use tax will become effective October 1, 2019 in the special purpose districts listed below.

| SPD NAME | LOCAL CODE | NEW RATE | DESCRIPTION |
|---|---|---|---|
| Harris County Emergency Services District No. 13 | 5101963 | .010000 | SEE NOTE 3 |
| Liberty County Emergency Services District No. 3 | 5146522 | .010000 | SEE NOTE 4 |

A 1 1/2 percent special purpose district sales and use tax will become effective October 1, 2019 in the special purpose district listed below.

| SPD NAME | LOCAL CODE | NEW RATE | DESCRIPTION |
|---|---|---|---|
| Bexar County Emergency Services District No. 8 | 5015673 | .015000 | SEE NOTE 5 |

A 2 percent special purpose district sales and use tax will become effective October 1, 2019 in the special purpose district listed below.

| SPD NAME | LOCAL CODE | NEW RATE | DESCRIPTION |
|---|---|---|---|
| Montgomery County Emergency Services District No. 14-A | 5170825 | .020000 | SEE NOTE 6 |

NOTE 1: The boundaries of the Elsa Municipal Development District are the same as the boundaries for the city of Elsa.

NOTE 2: The Grapeland Municipal Development District has the same boundaries as the Grapeland Extra-Territorial Jurisdiction, which includes the city of Grapeland. Contact the district representative at 936-687-2115 for additional boundary information.

NOTE 3: The Harris County Emergency Services District No. 13 is located in the central northwestern portion of Harris County. The district is located entirely within the Houston MTA, which has a transit sales and use tax. The district's boundaries exclude any areas of the district that are also responsible for collecting and remitting sales and use tax to the city of Houston due to a strategic partnership agreement between a utility district and the city of Houston. The unincorporated areas of Harris County in ZIP Codes 77064, 77070, 77377 and 77429 are partially located within the Harris County Emergency Services District No. 13. Contact the district representative at 713-984-8222 for additional boundary information.

NOTE 4: The Liberty County Emergency Services District No. 3 is located in the southwestern portion of Liberty County, which has a county sales and use tax. The unincorporated areas of Liberty County in ZIP Code 77535 are partially located within the Liberty County Emergency Services District No. 3. Contact the district representative at 936-258-0937 for additional boundary information.

NOTE 5: The Bexar County Emergency Services District No. 8 is located in the northwestern portion of Bexar County. The district is located entirely within the San Antonio MTA, which has a transit sales and use tax. The district excludes any areas within the cities of San Antonio, Helotes and Grey Forest. The unincorporated areas of Bexar County in ZIP Codes 78006, 78023 and 78255 are partially located within the Bexar County Emergency Services District No. 8. Contact the district representative at 210-695-5033 for additional boundary information.

NOTE 6: The Montgomery County Emergency Services District No. 14-A is located in the southern portion of Montgomery County. The district boundaries exclude any area known as The Woodlands Township, which imposes a special purpose district sales tax, and areas of the district that are also responsible for collecting and remitting sales and use tax to the city of Houston due to a strategic partnership agreement between a utility district and the city of Houston. The district does not include any area within the Houston MTA. The unincorporated areas of Montgomery County in ZIP Codes 77380 and 77381 are partially located within the Montgomery County Emergency Services District No. 14-A. Contact the district representative at 713-984-8222 for additional boundary information.

TRD-201903173

William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Filed: September 9, 2019

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### Notice of Contract Award

Notice of Award: The Texas Comptroller of Public Accounts announces the award of an investment consulting services contract under Request for Proposals No. 223a ("RFP") to Aon Hewitt Investment Consulting, Inc., 200 E. Randolph St., Chicago, Illinois 60601. The total amount of the contract is not to exceed $300,000.00 per annum. The term of the contract is September 5, 2019, through August 31, 2021, with option to renew for two (2) additional one (1) year periods, one (1) year at a time.

The RFP was published in the February 22, 2019, issue of the *Texas Register* (44 TexReg 891).

TRD-201903106
Vicki Rees
Contracts Attorney
Comptroller of Public Accounts
Filed: September 6, 2019

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## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/16/19 - 09/22/19 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/16/19 - 09/22/19 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-201903194
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: September 10, 2019

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## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 21, 2019.** TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **October 21, 2019.** Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Agrium U.S. Incorporated; DOCKET NUMBER: 2019-0359-AIR-E; IDENTIFIER: RN101865715; LOCATION: Borger, Hutchinson County; TYPE OF FACILITY: fertilizer manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review Permit Numbers 19778 and PSDTX1326, Special Conditions Number 1, Federal Operating Permit Number O1689, General Terms and Conditions and Special Terms and Conditions Number 8, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $7,875; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(2) COMPANY: Brant Brantley dba Skinner's Grocery & Market; DOCKET NUMBER: 2019-0994-PST-E; IDENTIFIER: RN101432730; LOCATION: Longview, Gregg County; TYPE OF FACILITY: store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: $2,438; ENFORCEMENT COORDINATOR: Soraya Bun, (713) 422-8912; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(3) COMPANY: Buckeye Texas Processing LLC; DOCKET NUMBER: 2018-1310-AIR-E; IDENTIFIER: RN106620438; LOCATION: Corpus Cristi, Nueces County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §§101.20(1), 116.115(b)(2) and (c), and 122.143(4), 40 Code of Federal Regulations (CFR) §60.692-2(c)(1), New Source Review (NSR) Permit Number 109923, General Conditions (GC) Number 14 and Special Conditions (SC) Numbers 3.G and 24, Federal Operating Permit (FOP) Number O3869, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Numbers 1 and 13, and Texas Health and Safety Code (THSC), §382.085(b), by failing to immediately direct process wastewater to a covered system; 30 TAC §§101.20(1), 116.115(b)(2) and (c), and 122.143(4), 40 CFR §60.695(a)(3)(ii), NSR Permit Number 109923, GC Number 14 and SC Numbers 3.G and 39.A(4), FOP Number O3869, GTC and STC Number 13, and THSC, §382.085(b), by failing to comply with the volatile organic compounds (VOC) breakthrough definition; 30 TAC §§101.20(1), 116.115(b)(2)(H) and (c), and 122.143(4), 40 CFR §60.698(b)(1), NSR Permit Number 109923, GC Number 10 and SC Number 3.G, FOP Number O3869, GTC and STC Numbers 8 and 13, and THSC, §382.085(b), by failing

to submit a 40 CFR Part 60, Subpart QQQ certification within 60 days after startup; 30 TAC §§101.20(1), 116.115(b) and (c), and 122.143(4), 40 CFR §60.18(c)(1), NSR Permit Number 109923, GC Numbers 1 and 14 and SC Numbers 3.A and 15.C, FOP Number O3869, GTC and STC Numbers 1 and 13, and THSC, §382.085(b), by failing to operate the flare with no visible emissions except for periods not to exceed a total of five minutes during any two consecutive hours as ensured by the use of steam assist to the flare; 30 TAC §116.115(b)(2) and (c) and §122.143(4), NSR Permit Number 109923, GC Number 14 and SC Number 13, FOP Number O3869, GTC and STC Number 13, and THSC, §382.085(b), by failing to include a high-high level alarm for the fill level of the aqueous ammonia storage tanks; 30 TAC §116.115(b)(2) and (c) and §122.143(4), NSR Permit Number 109923, GC Number 14 and SC Number 14.G, FOP Number O3869, GTC and STC Number 13, and THSC, §382.085(b), by failing to prevent the loss of valid data from a continuous emissions monitoring system due to periods of monitor break down, out-of-control operations, repair, maintenance, or calibration that exceeds 5.0% of the time (in minutes) that the heater operated over the previous rolling 12-month period; 30 TAC §116.115(b)(2) and (c) and §122.143(4), NSR Permit Number 109923, GC Number 14 and SC Number 26, FOP Number O3869, GTC and STC Number 13, and THSC, §382.085(b), by failing to comply with the total VOC loading limit; 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), NSR Permit Number 109923, GC Numbers 8 and 14 and SC Number 1, FOP Number O3869, GTC and STC Number 13, and THSC, §382.085(b), by failing to comply with the maximum allowable emissions rates; 30 TAC §§116.115(b)(2)(G), 116.116(a)(1), and 122.143(4), NSR Permit Number 109923, GC Numbers 1 and 9, FOP Number O3869, GTC and STC Number 13, and THSC, §382.085(b), by failing to comply with the representations with regard to construction plans and operation procedures in a permit application; 30 TAC §116.160(a), 40 CFR §52.21(a)(2)(iii), and THSC, §382.085(b), by failing to comply with the prevention of significant deterioration requirements; 30 TAC §122.121 and THSC, §382.054 and §382.085(b), by failing to obtain a FOP; and 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O3869, GTC, and THSC, §382.085(b), by failing to report all instances of deviations; PENALTY: $774,379; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $309,752; ENFORCEMENT COORDINATOR: Richard Garza, (512) 239-2697; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(4 ) COMPANY: City of Nocona; DOCKET NUMBER: 2019-0196-MWD-E; IDENTIFIERS: RN101609287 and RN102181591; LOCATION: Nocona, Montague County; TYPE OF FACILITY: wastewater treatment facilities; RULES VIOLATED: 30 TAC §30.350(d) and §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Numbers WQ0010355002 and WQ0010355003, Operational Requirements Number 9 and Other Requirements Number 1, by failing to employ or contract with one or more licensed wastewater treatment facility operators holding the appropriate level of license or wastewater system operations companies holding a valid license or registration; 30 TAC §210.36(2) and §305.125(1) and TCEQ Authorization for Reclaimed Water Number R10355-003, Record Keeping and Reporting (b), by failing to timely submit monthly reports regarding the volume and quality of reclaimed water delivered to a user to the TCEQ Abilene Regional Office and the Enforcement Division no later than the 20th day of the month following the monthly reporting period; 30 TAC §305.125(1) and (9) and TPDES Permit Numbers WQ0010355002 and WQ0010355003, Monitoring and Reporting Requirements Number 7(c), by failing to timely report in writing any effluent violation which deviates from the permitted effluent limitations by more than 40% to the TCEQ Abilene Regional Office and the Enforcement Division within five working days of becoming aware of the noncompliance; 30 TAC §305.125(1) and (19) and TPDES Permit Numbers WQ0010355002 and WQ0010355003, Permit Conditions Number 1(a) and Sludge Provisions, Section III, Reporting Requirements, by failing to timely submit a complete and accurate annual sludge report to the TCEQ Abilene Regional Office and the Enforcement Division by no later than September 30th of each year; and 30 TAC §305.125(1), TWC, §26.121(a)(1), and TPDES Permit Numbers WQ0010355002 and WQ0010355003, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limitations; PENALTY: $43,525; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $43,525; ENFORCEMENT COORDINATOR: Caleb Olson, (817) 588-5856; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(5) COMPANY: City of Nome; DOCKET NUMBER: 2018-1727-PWS-E; IDENTIFIER: RN101387843; LOCATION: Nome, Jefferson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.060 milligrams per liter (mg/L) for haloacetic acids based on the locational running annual average, and failing to comply with the MCL of 0.080 mg/L for total trihalomethanes based on the locational running annual average; PENALTY: $3,100; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (512) 239-1437; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(6) COMPANY: David Knight dba DK Recycling; DOCKET NUMBER: 2019-0743-WQ-E; IDENTIFIER: RN110487006; LOCATION: Port Lavaca, Calhoun County; TYPE OF FACILITY: automotive salvage yard; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Multi-Sector General Permit Number TXR05EE29, Part V, Sector M, Number 2(d), by failing to prevent the discharge of industrial waste into or adjacent to any water in the state; PENALTY: $1,312; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(7) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2019-0147-AIR-E; IDENTIFIER: RN100542281; LOCATION: Channelview, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review Permit Numbers 1768, PSDTX1272, and N142, Special Conditions Number 1, Federal Operating Permit Number O1426, General Terms and Conditions and Special Terms and Conditions Number 37, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $15,000; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $6,000; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: Frey, Incorporated; DOCKET NUMBER: 2019-0458-MLM-E; IDENTIFIER: RN105526479; LOCATION: Montgomery, Montgomery County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §281.25(a)(4), TWC, §26.121, and 40 Code of Federal Regulations §122.26(c), by failing to maintain authorization to discharge stormwater associated with construction activities; and 30 TAC §297.11 and TWC, §11.121, by failing to obtain authorization to divert, store, impound, take or use water; PENALTY: $93,712; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: Gravity Oilfield Services LLC; DOCKET NUMBER: 2019-0786-MSW-E; IDENTIFIER: RN107009854; LOCATION: San Angelo, Tom Green County; TYPE OF FACILITY: oilfield services trucking company; RULES VIOLATED: 30 TAC §330.15(a) and (c), by failing to not cause, suffer, allow, or permit the unauthorized disposal of municipal solid waste; PENALTY: $1,128; ENFORCEMENT COORDINATOR: Ken Moller, (512) 239-6111; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(10) COMPANY: KARMAN DHILLON INC dba Nu Way; DOCKET NUMBER: 2019-0643-PST-E; IDENTIFIER: RN102345451; LOCATION: Cooper, Delta County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every 30 days; 30 TAC §334.50(d)(9)(A)(v) and §334.72, by failing to report a suspected release to the agency within 72 hours of discovery; and 30 TAC §334.74, by failing to investigate a suspected release of a regulated substance within 30 days of discovery; PENALTY: $10,525; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(11) COMPANY: Lake Texoma Highport, L.L.C. dba Highport Resort & Marina; DOCKET NUMBER: 2019-0647-PWS-E; IDENTIFIER: RN101549228; LOCATION: Pottsboro, Grayson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes based on the locational running annual average; PENALTY: $157; ENFORCEMENT COORDINATOR: James Knittel, (512) 239-2518; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Midkiff Holdings, LLC; DOCKET NUMBER: 2019-0778-WQ-E; IDENTIFIER: RN110739695; LOCATION: Denton, Denton County; TYPE OF FACILITY: construction site; RULE VIOLATED: TWC, §26.121(a)(2), by failing to prevent the unauthorized discharge of other waste into or adjacent to any water in the state; PENALTY: $5,625; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: Patiya Inc dba Bogata Food Mart; DOCKET NUMBER: 2019-0606-PST-E; IDENTIFIER: RN104449558; LOCATION: Bogata, Red River County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $3,609; ENFORCEMENT COORDINATOR: Ken Moller, (512) 239-6111; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(14) COMPANY: S & S CABINET SHOP, INCORPORATED; DOCKET NUMBER: 2019-0747-WQ-E; IDENTIFIER: RN103992186; LOCATION: San Angelo, Tom Green County; TYPE OF FACILITY: cabinet manufacturing facility; RULES VIOLATED: 30 TAC §281.25(a)(4), TWC, §26.121, 40 Code of Federal Regulations §122.26(c), and Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXRNES074, by failing to properly obtain authorization to discharge stormwater associated with industrial activities under TPDES General Permit Number TXR050000; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(15) COMPANY: TEDA TPCO America Corporation; DOCKET NUMBER: 2019-0873-AIR-E; IDENTIFIER: RN106224447; LOCATION: Gregory, San Patricio County; TYPE OF FACILITY: pipe manufacturing plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.145(2)(C), Federal Operating Permit (FOP) Number O3660, General Terms and Conditions (GTC), and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit a deviation report no later than 30 days after the end of each reporting period; 30 TAC §122.143(4) and (15) and §122.165(a)(7), FOP Number O3660, GTC, and THSC, §382.085(b), by failing to include a signed certification of accuracy and completeness; and 30 TAC §122.143(4) and §122.146(2), FOP Number O3660, GTC and Special Terms and Conditions Number 14, and THSC, §382.085(b), by failing to submit a permit compliance certification within 30 days of any certification period; PENALTY: $10,500; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(16) COMPANY: WOODLAKE-JOSSERAND WATER SUPPLY CORPORATION; DOCKET NUMBER: 2019-0836-PWS-E; IDENTIFIER: RN101452621; LOCATION: Groveton, Trinity County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1), Texas Health and Safety Code (THSC), §341.0315(c), and TCEQ Agreed Order Docket Number 2016-1302-PWS-E, Ordering Provision Number 2.d, by failing to comply with the maximum contaminant level (MCL) of 0.080 milligrams per litter for total trihalomethanes (TTHM) based on the locational running annual average; 30 TAC §290.117(i)(6) and (j), by failing to provide a consumer notification of lead tap water monitoring results to persons served at the sites (taps) that were tested, and failing to mail a copy of the consumer notification of tap results to the executive director (ED) along with certification that the consumer notification was distributed in a manner consistent with TCEQ requirements for the January 1, 2015 - December 31, 2017, monitoring period; 30 TAC §290.122(b)(3)(A) and (f), by failing to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the ED regarding the failure to comply with the MCL for TTHM based on the locational running annual average during the second quarter of 2017 through the fourth quarter of 2018; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the ED regarding the failure to submit a written operation evaluation report to the ED within 90 days after being notified of analytical results that caused an exceedance of the operational evaluation level for TTHM for Disinfection Byproducts at Site 1 and Site 2 during the fourth quarter of 2017; and 30 TAC §291.76 and TWC, §5.702, by failing to pay timely and in full regulatory assessment fees for the TCEQ Public Utility Account regarding Certificate of Convenience and Necessity Number 10936 for the calendar years 2016 and 2018; PENALTY: $1,995; ENFORCEMENT COORDINATOR: James Knittel, (512) 239-2518; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-201903191
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 10, 2019

## Enforcement Orders

An agreed order was adopted regarding Nirmal Thind dba Trinity Quikstop, Docket No. 2018-0596-PWS-E on September 10, 2019,

assessing $378 in administrative penalties with $75 deferred. Information concerning any aspect of this order may be obtained by contacting Marla Waters, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TRUE SA ENTERPRISES LLC dba Quick Way Food Store, Docket No. 2018-0999-PST-E on September 10, 2019, assessing $4,800 in administrative penalties with $960 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding PROPERTY OWNERS' ASSOCIATION OF TERLINGUA RANCH, INC., Docket No. 2018-1187-PWS-E on September 10, 2019, assessing $210 in administrative penalties with $42 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding JNH Holding, INC. dba Artic Beer & Wine, Docket No. 2018-1253-PST-E on September 10, 2019, assessing $6,000 in administrative penalties with $1,200 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MURPHY OIL USA, INC. dba Murphy USA 5708, Docket No. 2018-1298-PST-E on September 10, 2019, assessing $2,188 in administrative penalties with $437 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Shady Grove No. 2 Water Supply Corporation, Docket No. 2018-1402-PWS-E on September 10, 2019, assessing $225 in administrative penalties with $45 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Jerry Bransom, Docket No. 2018-1438-WR-E on September 10, 2019, assessing $2,000 in administrative penalties with $400 deferred. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TX Energy Services, LLC, Docket No. 2018-1508-PWS-E on September 10, 2019, assessing $595 in administrative penalties with $119 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Blake Truax dba The Barn and Merri Truax dba The Barn, Docket No. 2018-1532-PWS-E on September 10, 2019, assessing $550 in administrative penalties with $110 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SI Group, Inc., Docket No. 2018-1549-IWD-E on September 10, 2019, assessing $5,050 in administrative penalties with $1,010 deferred. Information concerning any aspect of this order may be obtained by contacting Chase Davenport, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Ladonia, Docket No. 2018-1551-PWS-E on September 10, 2019, assessing $240 in administrative penalties with $48 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Matthew Road Water Supply Corporation, Docket No. 2018-1566-PWS-E on September 10, 2019, assessing $412 in administrative penalties with $82 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Splendora, Docket No. 2018-1571-MWD-E on September 10, 2019, assessing $3,000 in administrative penalties with $600 deferred. Information concerning any aspect of this order may be obtained by contacting Christopher Moreno, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding BLESSINGS ENTERPRISES, INC. dba Kountry Food Store 2, Docket No. 2018-1584-PST-E on September 10, 2019, assessing $3,375 in administrative penalties with $675 deferred. Information concerning any aspect of this order may be obtained by contacting Marla Waters, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding East Newton Water Supply Corporation, Docket No. 2018-1590-MLM-E on September 10, 2019, assessing $2,130 in administrative penalties with $426 deferred. Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Richard C. Sanders, Jr. dba Sanders Motor, Docket No. 2018-1596-AIR-E on September 10, 2019, assessing $2,750 in administrative penalties with $550 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Premont, Docket No. 2018-1600-PWS-E on September 10, 2019, assessing $493 in administrative penalties with $98 deferred. Information concerning any aspect of this order may be obtained by contacting James Knittel, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Jamil Alam, Docket No. 2018-1601-EAQ-E on September 10, 2019, assessing $1,875 in administrative penalties with $375 deferred. Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Hereford, Docket No. 2018-1608-PST-E on September 10, 2019, assessing $2,750 in admin-

istrative penalties with $550 deferred. Information concerning any aspect of this order may be obtained by contacting Marla Waters, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding R.D. WALLACE OIL CO., INC., Docket No. 2018-1615-PST-E on September 10, 2019, assessing $3,476 in administrative penalties with $695 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Lhoist North America of Texas, Ltd., Docket No. 2018-1621-AIR-E on September 10, 2019, assessing $3,375 in administrative penalties with $675 deferred. Information concerning any aspect of this order may be obtained by contacting Soraya Bun, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Callahan County Water Supply Corporation, Docket No. 2018-1644-PWS-E on September 10, 2019, assessing $72 in administrative penalties with $14 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding PALO ALTO SILICA SAND, INC., Docket No. 2018-1651-WQ-E on September 10, 2019, assessing $2,000 in administrative penalties with $400 deferred. Information concerning any aspect of this order may be obtained by contacting Austin Henck, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SORAHIM INVESTMENT, INC. dba Shop N Go, Docket No. 2018-1653-PST-E on September 10, 2019, assessing $6,713 in administrative penalties with $1,342 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding N-Tex Sand & Gravel Operating, LLC, Docket No. 2018-1660-AIR-E on September 10, 2019, assessing $1,312 in administrative penalties with $262 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Eden, Docket No. 2018-1671-PWS-E on September 10, 2019, assessing $465 in administrative penalties with $93 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Los Fresnos, Docket No. 2018-1712-PWS-E on September 10, 2019, assessing $1,775 in administrative penalties with $355 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Raul A. Moran dba Morans Used Auto Parts and Claudia Moran dba Morans Used Auto Parts, Docket No. 2018-1745-AIR-E on September 10, 2019, assessing $1,312 in administrative penalties with $262 deferred. Information concerning any aspect of this order may be obtained by contacting Soraya Bun, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Nadija Sulyukmanov dba Balaban Apartments 1, Docket No. 2018-1761-PWS-E on September 10, 2019, assessing $1,000 in administrative penalties with $200 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding S.L.C. Water Supply Corporation, Docket No. 2019-0081-PWS-E on September 10, 2019, assessing $140 in administrative penalties with $28 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City Mart Energy, LLC dba Gardendale Grocery, Docket No. 2019-0093-PST-E on September 10, 2019, assessing $6,750 in administrative penalties with $1,350 deferred. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding CECI-BATES COMMERCIAL, LLC, Docket No. 2019-0123-WQ-E on September 10, 2019, assessing $875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding FARMERS COOPERATIVE ASSOCIATION, STANTON, TEXAS, Docket No. 2019-0334-PST-E on September 10, 2019, assessing $2,438 in administrative penalties with $487 deferred. Information concerning any aspect of this order may be obtained by contacting Alain Elegbe, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Club Corp Bear Creek Golf Course, Docket No. 2019-0431-PST-E on September 10, 2019, assessing $2,625 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding R&J Gas & Grocery Inc, Docket No. 2019-0810-PST-E on September 10, 2019, assessing $1,750 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding SOCIA, JIMMY KEITH, Docket No. 2019-0829-OSI-E on September 10, 2019, assessing $175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding ALLEN KELLER CO I LLC, Docket No. 2019-0910-WQ-E on September 10, 2019, assessing $875

in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding ALLEN KELLER CO I LLC, Docket No. 2019-0911-WQ-E on September 10, 2019, assessing $875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding The Riverside Group, Inc., Docket No. 2019-0917-WQ-E on September 10, 2019, assessing $875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Chase Davenport, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201903212
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 11, 2019

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## Enforcement Orders

An agreed order was adopted regarding Rigsby Ventures, Inc. dba Neighborhood Food Mart, Docket No. 2016-1076-PST-E on September 11, 2019, assessing $24,861 in administrative penalties with $4,972 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Richardson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding DLUBAK GLASS COMPANY, Docket No. 2016-1479-IHW-E on September 11, 2019, assessing $175,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Audrey Liter, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Sabinal, Docket No. 2017-1005-MLM-E on September 11, 2019, assessing $10,975 in administrative penalties with $2,195 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Scott, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Dario Jaime Gonzalez, Docket No. 2018-0075-MSW-E on September 11, 2019, assessing $15,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ian Groetsch, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SPENCER & SPENCER LLC, Docket No. 2018-0078-PST-E on September 11, 2019, assessing $10,075 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Logan Harrell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Kashmira Investments, Inc. dba Copperas Cove Food Mart, Docket No. 2018-0090-PST-E on September 11, 2019, assessing $24,654 in administrative penalties with $4,930 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the Town of Ponder, Docket No. 2018-0369-MWD-E on September 11, 2019, assessing $29,250 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Christopher Moreno, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ANITRIO, INC. dba Mr. Discount, Docket No. 2018-0415-PST-E on September 11, 2019, assessing $27,668 in administrative penalties with $5,533 deferred. Information concerning any aspect of this order may be obtained by contacting Hailey Johnson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding United States Department of the Navy, Docket No. 2018-0697-PST-E on September 11, 2019, assessing $7,875 in administrative penalties with $1,575 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Dupre Logistics LLC, Docket No. 2018-0765-PST-E on September 11, 2019, assessing $5,101 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Alain Elegbe, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Hutchins, Docket No. 2018-0824-WQ-E on September 11, 2019, assessing $5,625 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Chase Davenport, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding PHILLIPS 66 COMPANY, Docket No. 2018-0923-IWD-E on September 11, 2019, assessing $30,000 in administrative penalties with $6,000 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Gainesville, Docket No. 2018-1044-MWD-E on September 11, 2019, assessing $37,375 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SIMPLY AQUATICS, INC., Docket No. 2018-1096-PWS-E on September 11, 2019, assessing $157 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Toni Red, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Roma, Docket No. 2018-1270-MWD-E on September 11, 2019, assessing $17,013 in administrative penalties with $3,402 deferred. Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SterMaster Properties, LLC, Docket No. 2018-1435-EAQ-E on September 11, 2019, assessing $12,650 in administrative penalties with $2,530 deferred. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Emory, Docket No. 2018-1466-MWD-E on September 11, 2019, assessing $10,062 in administrative penalties with $2,012 deferred. Information concerning any aspect of this order may be obtained by contacting Chase Davenport, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Baytown, Docket No. 2018-1556-MWD-E on September 11, 2019, assessing $19,050 in administrative penalties with $3,810 deferred. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201903213
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 11, 2019

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## Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility: Registration Application No. 40304

Application. Inmar Rx Solutions, Inc., 635 Vine Street, Winston-Salem, North Carolina 27101, has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 40304, to construct and operate a medical waste transfer station. The proposed facility, Inmar Rx Solutions will be located between Walton Walker Boulevard (State Loop 12) and MacArthur Boulevard, approximately 0.2 miles south of Interstate Highway 30, along Grand Lakes Way (Gifford Street), 75050, in Dallas County. The Applicant is requesting authorization to transfer medical waste, trace chemotherapy waste, non-hazardous pharmaceuticals, and unused medical supplies within an enclosed building. The registration application is available for viewing and copying at the Tony Shotwell Library, 2750 Graham Street, Grand Prairie, Texas 75050 and may be viewed online at https://www.wh-m.com/project/wm-submits-a-medical-waste-transfer-station-registration-applications/. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice:

https://www.tceq.texas.gov/assets/public/hb610/index.html?lat=30.170222&lng=-97.653000&zoom=12&type=r. For exact location, refer to application.

Public Comment/Public Meeting. Written public comments or written requests for a public meeting must be submitted to the Office of Chief Clerk at the address included in the information section below. If a public meeting is held, comments may be made orally at the meeting or submitted in writing by the close of the public meeting. A public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the development is to be located, or if there is a substantial public interest in the proposed development. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The executive director will review and consider public comments and written requests for a public meeting submitted during the comment period. The comment period shall begin on the date this notice is published and end 60 calendar days after this notice is published. The comment period shall be extended to the close of any public meeting. The executive director is not required to file a response to comments.

Executive Director Action. The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to overturn the executive director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment in response to public notice. Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at <www.tceq.texas.gov/goto/cid>. Once you have access to the CID using the above link, enter the registration number for this application, which is provided at the top of this notice.

Agency Contacts and Information. All public comments and requests must be submitted either electronically at <www14.tceq.texas.gov/epic/eComment/> or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record. For more information about this registration application or the registration process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their website <www.tceq.texas.gov/goto/pep>. General information regarding the TCEQ can be found at our web site at <www.tceq.texas.gov>. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Inmar Rx Solutions, Inc. at the address stated above or by calling Ashley Schmidt at (336) 631-2883.

TRD-201903208
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 10, 2019

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## Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Order (AO) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 21, 2019.** TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts

or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of the proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 21, 2019.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: Gas Town Inc dba Mobil Gas Town; DOCKET NUMBER: 2018-0338-PST-E; TCEQ ID NUMBER: RN102389020; LOCATION: 100 east Highway 199, Springtown, Parker County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); TWC, §26.3475(d) and 30 TAC §334.49(a)(4), by failing to maintain corrosion protection on all underground metal components of the UST system; and Texas Health and Safety Code, §382.085(b) and 30 TAC §115.225, by failing to comply with annual Stage I vapor recovery testing requirements; PENALTY: $8,387; STAFF ATTORNEY: John S. Merculief II, Litigation Division, MC 175, (512) 239-6944; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201903189
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 10, 2019

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## Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 21, 2019.** The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 21, 2019.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: 7 STAR PETROLEUM INC dba 7 Star Food; DOCKET NUMBER: 2018-0209-PST-E; TCEQ ID NUMBER: RN102966504; LOCATION: 902 Main Street, Hooks, Bowie County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; TWC, §26.3475(d) and 30 TAC §334.49(c)(4)(C), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.10(b)(2), by failing to assure that all UST record keeping requirements are met; PENALTY: $11,642; STAFF ATTORNEY: Taylor Pearson, Litigation Division, MC 175, (512) 239-5937; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: Mohammad Sultan; DOCKET NUMBER: 2018-1502-PWS-E; TCEQ ID NUMBER: RN101444081; LOCATION: 2745 Evangeline Drive, Vidor, Orange County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.42(b)(1) and (e)(3), by failing to provide disinfection facilities for the groundwater supply for the purpose of microbiological control and distribution protection; 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; 30 TAC §290.46(n)(1), by failing to maintain accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank at the public water system until the facility is decommissioned; and 30 TAC §290.46(q)(1), by failing to submit a copy of the boil water notice (BWN) to the executive director (ED) within 24 hours after issuance by the facility and a signed Certificate of Delivery to the ED within ten days after issuance of the BWN; PENALTY: $710; STAFF ATTORNEY: Logan Harrell, Litigation Division, MC 175, (512) 239-1439; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-201903190

Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 10, 2019

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## Notice of Opportunity to Comment on Shutdown/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Orders (S/DOs). Texas Water Code (TWC), §26.3475, authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations, the proposed penalty, the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 21, 2019.** The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 21, 2019.** Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the S/DOs and/or the comment procedure at the listed phone numbers; however, comments on the S/DOs shall be submitted to the commission in **writing.**

(1) COMPANY: NEW DELTA BUSINESS LLC dba Delta Food Mart 2; DOCKET NUMBER: 2018-0884-PST-E; TCEQ ID NUMBER: RN101887891; LOCATION: 705 Texas Avenue, Bridge City, Orange County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements are met; PENALTY: $4,924; STAFF ATTORNEY: John S. Merculief II, Litigation Division, MC 175, (512) 239-6944; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: NIDA & KIRAN, INC. dba Speedy Express 6; DOCKET NUMBER: 2019-0253-PST-E; TCEQ ID NUMBER: RN101431682; LOCATION: 4109 Manvel Road, Suite 1, Pearland, Brazoria County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(2), by failing to ensure the UST corrosion protection system was operated and maintained in a manner that would ensure continuous protection; PENALTY: $3,750; STAFF ATTORNEY: John S. Merculief II, Litigation Division, MC 175, (512) 239-6944; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: PETROL PLUS INC dba 235 Travel Stop; DOCKET NUMBER: 2018-0576-PST-E; TCEQ ID NUMBER: RN102795598; LOCATION: 12849 Interstate Highway 20, Roscoe, Nolan County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1) and (e)(2), by failing to provide corrosion protection for the UST system; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $7,624; STAFF ATTORNEY: John S. Merculief II, Litigation Division, MC 175, (512) 239-6944; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(4) COMPANY: SAA Enterprises Inc dba TL Mart; DOCKET NUMBER: 2018-0432-PST-E; TCEQ ID NUMBER: RN104459466; LOCATION: 3227 east Lancaster Avenue, Fort Worth, Tarrant County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements are met; and TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $4,200; STAFF ATTORNEY: John S. Merculief II, Litigation Division, MC 175, (512) 239-6944; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201903188
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 10, 2019

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## Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Rewari Investments Inc dba Haltom Corner: SOAH Docket No. 582-19-7014; TCEQ Docket No. 2018-1536-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

**10:00 a.m. - October 10, 2019**

**William P. Clements Building**

**300 West 15th Street, 4th Floor**

**Austin, Texas 78701**

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed June 27, 2019, concerning assessing administrative penalties against and requiring certain actions of REWARI INVESTMENTS INC dba Haltom Corner, for violations in Tarrant County, Texas, of: Tex. Health and Safety Code §382.085(b), Tex. Water Code §26.3475(a), 30 Texas Administrative Code §§115.225, 334.48(a), and 334.50(b)(2).

The hearing will allow REWARI INVESTMENTS INC dba Haltom Corner, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford REWARI INVESTMENTS INC dba Haltom Corner, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of REWARI INVESTMENTS INC dba Haltom Corner to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** REWARI INVESTMENTS INC dba Haltom Corner, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054 and chs. 7 and 26, Tex. Health and Safety Code ch. 382, and 30 Texas Administrative Code chs. 70, 115, and 334; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Kevin R. Bartz, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

**Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at *www.tceq.texas.gov/goto/efilings* or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.**

**In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at *www.soah.texas.gov,* or in printed format upon request to SOAH."**

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: September 10, 2019

TRD-201903209
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 10, 2019

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## Notice of Public Meeting for Air Quality Permits: Proposed Air Quality Permit Numbers 6056, 8404, PSDTX1062M3, GHGPSDTX156, and GHGPSDTX121M1

**APPLICATION.** Motiva Enterprises LLC, PO Box 712, Port Arthur, Texas 77641-0712, has applied to the Texas Commission on Environmental Quality (TCEQ) for an amendment to State Air Quality Permit Numbers 6056 and 8404, modification to Prevention of Significant Deterioration (PSD) Air Quality Permit Number PSDTX1062M3, issuance of Greenhouse Gas (GHG) Prevention of Significant Deterioration (PSD) Air Quality Permit Number GHGPSDTX156, and modification to Greenhouse Gas (GHG) Prevention of Significant Deterioration (PSD) Air Quality Permit Number GHGPSDTX121M1, which would authorize modifications to the Port Arthur Refinery located at 2555 Savannah Ave, Port Arthur, Jefferson County, Texas 77640.

This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-93.959166%2C29.865833&level=12.

This application was processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code, Chapter 101, Subchapter J. The existing facility will emit the following air contaminants in a significant amount: carbon monoxide, nitrogen oxides, organic compounds, particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less, sulfur dioxide and greenhouse gases. In addition, the facility will emit the following air contaminants: hydrogen sulfide, sulfuric acid mist, ammonia and hazardous air pollutants.

The degree of PSD increment predicted to be consumed by the existing facility and other increment-consuming sources in the area is as follows:

Sulfur Dioxide

| Maximum Averaging Time | Maximum Increment Consumed (µg/m$^3$) | Allowable Increment (µg/m$^3$) |
|---|---|---|
| 3-hour | 230 | 512 |
| 24-hour | 90.4 | 91 |
| Annual | 12 | 20 |

$PM_{10}$

| Maximum Averaging Time | Maximum Increment Consumed (µg/m$^3$) | Allowable Increment (µg/m$^3$) |
|---|---|---|
| 24-hour | 4.5 | 30 |
| Annual | 0.7 | 17 |

Nitrogen Dioxide

| Maximum Averaging Time | Maximum Increment Consumed (µg/m$^3$) | Allowable Increment (µg/m$^3$) |
|---|---|---|
| Annual | 19 | 25 |

$PM_{2.5}$

| Maximum Averaging Time | Maximum Increment Consumed (µg/m$^3$) | Allowable Increment (µg/m$^3$) |
|---|---|---|
| 24-hour | 8.5 | 9 |
| Annual | 3.2 | 4 |

This application was submitted to the TCEQ on February 11, 2016. The executive director has determined that the emissions of air contaminants from the existing facility which are subject to PSD review will not violate any state or federal air quality regulations and will not have any significant adverse impact on soils, vegetation, or visibility. All air contaminants have been evaluated, and "best available control technology" will be used for the control of these contaminants.

The executive director has completed the technical review of the application and prepared a draft permit which, if approved, would establish the conditions under which the facility must operate.

**PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments to the Office of the Chief Clerk at the address below.** The TCEQ will consider all public comments in developing a final decision on the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. At the conclusion of the comment period, all formal comments will be considered before a decision is reached on the permit application. A written response to all formal comments will be prepared by the executive director and will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

**The Public Meeting is to be held:**

**Tuesday, September 24 at 7:00 p.m.**

**YMCA Westside Development Center 601 W. Rev Dr. Ransom Howard Street**

**Port Arthur, Texas 77640**

**INFORMATION.** Citizens are encouraged to submit written comments anytime during the public meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at https://www14.tceq.texas.gov/epic/eComment/. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information can be found at our Web site at www.tceq.texas.gov. *Si desea información en español, puede llamar al (800) 687-4040.*

The permit application, executive director's preliminary decision, draft permit, and the executive director's preliminary determination summary and executive director's air quality analysis, will be available for viewing and copying at the TCEQ central office, the TCEQ Beaumont regional office, and at Port Arthur Public Library, 4615 9th Avenue, Port Arthur, Jefferson County, Texas. The facility's compliance file, if any exists, is available for public review at the TCEQ Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas. Further information may also be obtained from Motiva Enterprises LLC at the address stated above or by calling Mr. Blake Yarbrough, Environmental Manager at (409) 205-5992.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least one week prior to the meeting.

Notice Issuance Date: September 9, 2019

TRD-201903210
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 10, 2019

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Notice of Water Quality Application

The following notice was issued on August 22, 2019.

The following does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087 WITHIN (30) DAYS OF THE ISSUED DATE OF THE NOTICE.

INFORMATION SECTION

Gulbrandsen Technologies, Inc., which operates Gulbrandsen Technologies La Porte Facility, an inorganic chemical compounds manufacturing and distribution facility, has applied a minor amendment to Texas Pollutant Discharge Elimination System Permit No. WQ0005214000 to authorize the relocation of Outfall 001 from the current location to a few feet to the south along the same property line as the existing permit and to update the plant's boundary lines. The draft permit authorizes the permittee to discharge stormwater on intermittent and flow-variable basis via Outfall 001. The facility is located at 9401 Strang Road, near the City of La Porte, in Harris County, Texas 77571.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

TRD-201903207
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 10, 2019

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## Texas Facilities Commission

Renewal of Financial Consulting Services Contracts

Original RFP Number 303-7-00741

Award was made at the meeting of the Texas Facilities Commission on May 17, 2017, for a bench of financial advisory consultants to assist the Texas Facilities Commission for possible Public-Private Partnership projects brought to the Commission per Chapters 2267 and 2268 of Texas Government Code. The award included an option to renew for one (1) additional two (2) year period from September 1, 2019, through August 31, 2021. On July 31, 2019, per Section 2254.031 Texas Government Code, TFC obtained a finding of fact from the Governor's Planning and Budget Office authorizing renewal of the consultant contracts. The bench selected is composed of the following Financial Advisory Consultants.

Alvarez & Marsal Public Sector Services, LLC

1001 G Street, Suite 1100 West

Washington, DC 20001

Arup Advisory, Inc.

77 Water Street, Floor 5

New York City, New York 10005

Jones Lang LaSalle Americas, Inc.

1800 K Street NW, Suite 1000

Washington, D.C., 20006

p3point Corporation

1523 Kingston Way

San Jose, California 95130

PFM Financial Advisors

222 North LaSalle Street, Suite 910

Chicago, IL 60601

Each contract renewal is issued for $0 with a not-to-exceed amount of $400,000 for this final renewal period. Designated projects shall be delegated to the bench of advisors, as per agency policies, to assist with financial feasibility studies and related services within the designated limits.

TRD-201903091
A. J. Wilson Salazar
General Counsel
Texas Facilities Commission
Filed: September 4, 2019

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## Texas Health and Human Services Commission

Correction of Error

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) published a proposal for new 26 TAC §745.8914, concerning How Does Licensing Determine Whether Another State's Licensing Requirements are Substantially Equivalent to the Requirements for an Administrator's License under this subchapter; and 26 TAC §745.9030, concerning When May a Military Spouse that has a Substantially Equivalent License in Another State Act as an Administrator Without Obtaining a License in the September 6, 2019, issue of the *Texas Register* (44 TexReg 4844).

The email address for receiving public comments was incorrectly published. The correct email address for receiving public comments is CCLrules@hhsc.state.tx.us.

TRD-201903117
Karen Ray
Chief Counsel
Health and Human Services Commission
Filed: September 9, 2019

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Revised Notice of Public Hearing on Proxy Rates

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on September 23, 2019, at 9:00 a.m., to receive comments on proposed proxy rates for the following managed care attendant services:

STAR Kids services, specifically:

Adult Day Care;

Personal Care Services (PCS) Habilitation Community First Choice (CFC) Service Responsibility Option (SRO);

PCS Attendant Care CFC SRO;

PCS SRO;

PCS Behavioral Health (BH) Condition SRO;

In Home Respite Attendant CDS and SRO;

In Home Respite Attendant with Registered Nurse (RN) Delegation CDS and SRO;

Flexible Family Support Attendant SRO; and

Flexible Family Support Attendant with RN Delegation CDS and SRO.

STAR+PLUS services, specifically:

Day Activities and Health Services (DAHS) Home and Community-based Services (HCBS) and Non-HCBS;

In-Home Respite CDS and SRO HCBS;

Personal Assistance Services (PAS) Agency Model HCBS, CDS HCBS, and SRO HCBS;

PAS Agency Model HCBS CFC, CDS HCBS CFC and SRO HCBS CFC;

PAS Agency model Non-HCBS, CDS Non-HCBS and SRO Non-HCBS;

PAS Agency model Non-HCBS CFC, CDS Non-HCBS and SRO Non-HCBS;

CFC PAS Protective Supervision Agency Model HCBS, CDS HCBS and SRO HCBS;

Habilitation (HAB) services Agency Model HCBS CFC, CDS HCBS CFC and SRO HCBS CFC; and

HAB services Agency Model Non-HCBS CFC, CDS Non-HCBS CFC, and SRO Non-HCBS CFC.

The public hearing will be held in HHSC's Public Hearing Room at the Brown-Heatly Building, located at 4900 North Lamar Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Lamar Boulevard. HHSC will broadcast the public hearing. Persons watching remotely can submit written comments. The broadcast can be accessed at https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings, and it will be archived for access on demand at the same website. The public hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

**Proposal.** HHSC proposes to increase the attendant base wage to $8.11 for the attendant cost component for the attendant services listed above in accordance with the 2020-21 GAA (Article II, HHSC, Rider 45). These proxy rates are proposed to be effective September 1, 2019.

**Methodology and Justification.** The proposed proxy rates were calculated in accordance with Title 1 of the Texas Administrative Code:

§355.112, concerning Attendant Compensation Rate Enhancement;

§355.9090, concerning Community First Choice; and

§355.507, concerning the Reimbursement Methodology for the Medically Dependent Children Program.

**Briefing Package.** A briefing package describing the proposed proxy rates will be available at http://rad.hhs.texas.gov/rate-packets on September 13, 2019. Interested parties may obtain a copy of the briefing package before the hearing by contacting the HHSC Rate Analysis Department by telephone at (512) 424-6637; by fax at (512) 730-7475; or by e-mail at RAD-LTSS@hhsc.state.tx.us. The briefing package will also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed proxy rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to RAD-LTSS@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Blvd., Austin, Texas 78751.

*Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 424-6637 at least 72 hours prior to the hearing so appropriate arrangements can be made.*

TRD-201903215
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: September 11, 2019

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## Texas Department of Housing and Community Affairs

### Fourth Amendment to 2019-1 Multifamily Direct Loan Annual Notice of Funding Availability

I. Sources of Multifamily Direct Loan Funds.

Multifamily Direct Loan funds are made available through program income generated from prior year HOME allocations, de-obligated funds from prior year HOME allocations, the 2018 Grant Year HOME allocation, the 2017, 2018, and 2019 Grant Year National Housing Trust Fund (NHTF) allocations, loan repayments from the Tax Credit Assistance Program (TCAP Repayment Funds or TCAP RF), and program income generated by Neighborhood Stabilization Program Round 1 (NSP1) loan repayments. The Department may amend this NOFA or the Department may release a new NOFA upon receiving additional TCAP or NSP1 loan repayments. These funds have been programmed for multifamily activities including acquisition, refinance, and preservation of affordable housing involving new construction and/or rehabilitation.

II. Notice of Funding Availability (NOFA).

The Texas Department of Housing and Community Affairs (the Department) announces the availability of up to $67,603,832.50 in Multifamily Direct Loan funding for the development of affordable multifamily rental housing for low-income Texans.

Of that amount, at least $500,000 will be available for eligible Community Housing Development Organizations (CHDO) meeting the requirements of the definition of Community Housing Development Organization found in 24 CFR §92.2 and the requirements of this NOFA; up to $21,498,832.50 will be available for applications proposing Supportive Housing in accordance with 10 TAC §11.1(d)(121) and §11.302(g)(3) of the 2019 Qualified Allocation Plan (QAP) or applications that commit to setting aside units for extremely low-income households as required by 10 TAC §13.4(a)(1)(A)(ii). Additionally, at least $2,000,000 will be available in a Preservation set-aside for applications proposing rehabilitation to assist developments at risk of

losing their affordability and/or to ensure an extended affordability period with an investment of Direct Loan Funds. The remaining funds will be available under the General set-aside for applications proposing eligible activities, including those mentioned in the Preservation set-aside as well as New Construction.

At the Board meeting on September 5, 2019, the Department approved the Fourth Amendment to 2019-1 Multifamily Direct Loan Annual NOFA, whereby $9,860,791.50 in Program Year 2019 NHTF became available in the Supportive Housing/Soft Repayment set-aside. From September 20, 2019, through October 21, 2019, all Program Year 2019 NHTF funds will be subject to the Regional Allocation Formula (RAF) amounts in Attachment B to the Fourth Amendment to the 2019-1 NOFA. The RAF identifies maximum amounts available on a regional basis, and then funds are available statewide through November 26, 2019. An Applicant that submits a complete application for NHTF funds from September 20, 2019, through October 21, 2019, requesting greater amount than is available in the Region, will have an Application date of receipt of October 22, 2019.

The Multifamily Direct Loan program provides loans to for-profit and nonprofit entities to develop affordable housing for low-income Texans qualified as earning 80 percent or less of the applicable Area Median Family Income. All funding is currently available on a statewide basis within each set-aside until November 26, 2019.

III. Application Deadline and Availability.

Based on the availability of funds, Applications may be accepted until 5:00 p.m. Austin local time on November 26, 2019. The "Amended 2019-1 Multifamily Direct Loan Annual NOFA" is posted on the Department's website: *http://www.tdhca.state.tx.us/multifamily/nofas-rules.htm.* Subscribers to the Department's LISTSERV will receive notification that the finalized Second Amendment and Fourth Amendment to the NOFA are posted. Subscription to the Department's LISTSERV is available at *http://maillist.tdhca.state.tx.us/list/subscribe.html?lui=f9mu0g2g&mContainer=2&mOwner=G382s2w2r2p.*

Questions regarding the 2019-1 Multifamily Direct Loan Annual NOFA may be addressed to Andrew Sinnott at (512) 475-0538 or *andrew.sinnott@tdhca.state.tx.us.*

TRD-201903169
Robert Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: September 9, 2019

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## Notice of Funding Availability

The Texas Department of Housing and Community Affairs (the Department) is making available 2019 HOME Investment Partnerships Program (HOME) funding for single family activities for Homebuyer Assistance with New Construction or Rehabilitation (HANC) set-asides.

Funds will be available through the 2019 HOME Single Family Programs Notice of Funding Availability (NOFA). The NOFA is for approximately $1,000,000 to be funded through participation in the Reservation System. Funding made available through the Reservation System may be increased from time to time as funds become available. Approval to receive a Reservation System Participant (RSP) agreement is not a guarantee of funding availability.

The availability and use of these funds are subject to the Department's Administrative Rule at 10 TAC Chapter 1, Enforcement Rule at 10 TAC Chapter 2, Single Family Umbrella Rules at 10 TAC Chapter 20, the Minimum Energy Efficiency Requirements for Single Family Construction Activities at 10 TAC Chapter 21, the Department's HOME Program Rule at 10 TAC Chapter 23, and the federal regulation governing the HOME Program at 24 CFR Part 92.

The NOFA is available on the Department's website at *http://www.tdhca.state.tx.us/nofa.htm.*

All Application materials including manuals, NOFA, program guidelines, and applicable HOME rules and regulations are available on the Department's website at *http://www.tdhca.state.tx.us/home-division/applications.htm.*

Applications submitted in response to the NOFA will be accepted in accordance with deadlines based on an open application cycle.

TRD-201903216
Robert Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: September 11, 2019

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## Notice of Funding Availability

The Texas Department of Housing and Community Affairs (the Department) is making available 2019 HOME Investment Partnerships Program (HOME) funding for single family activities for Contract for Deed (CFD) set-asides.

Funds will be available through the 2019 HOME Single Family Programs Notice of Funding Availability (NOFA). The NOFA is for approximately $1,000,000 to be funded through participation in the Reservation System. Funding made available through the Reservation System may be increased from time to time as funds become available. Approval to receive a Reservation System Participant (RSP) agreement is not a guarantee of funding availability.

The availability and use of these funds are subject to the Department's Administrative Rule at 10 TAC Chapter 1, Enforcement Rule at 10 TAC Chapter 2, Single Family Umbrella Rules at 10 TAC Chapter 20, the Minimum Energy Efficiency Requirements for Single Family Construction Activities at 10 TAC Chapter 21, the Department's HOME Program Rule at 10 TAC Chapter 23, and the federal regulation governing the HOME Program at 24 CFR Part 92.

The NOFA is available on the Department's website at *http://www.tdhca.state.tx.us/nofa.htm.*

All Application materials including manuals, NOFA, program guidelines, and applicable HOME rules and regulations are available on the Department's website at *http://www.tdhca.state.tx.us/home-division/applications.htm.*

Applications submitted in response to the NOFA will be accepted in accordance with deadlines based on an open application cycle.

TRD-201903217
Robert Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: September 11, 2019

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## Notice of Funding Availability

The Texas Department of Housing and Community Affairs (the Department) is making available 2019 HOME Investment Partnerships

Program (HOME) funding for single family activities for Persons with Disabilities (PWD) set-asides.

Funds will be available through the 2019 HOME Single Family Programs Notice of Funding Availability (NOFA). The NOFA is for approximately $1,577,813 to be funded through participation in the Reservation System. Funding made available through the Reservation System may be increased from time to time as funds become available. Approval to receive a Reservation System Participant (RSP) agreement is not a guarantee of funding availability.

The availability and use of these funds are subject to the Department's Administrative Rule at 10 TAC Chapter 1, Enforcement Rule at 10 TAC Chapter 2, Single Family Umbrella Rules at 10 TAC Chapter 20, the Minimum Energy Efficiency Requirements for Single Family Construction Activities at 10 TAC Chapter 21, the Department's HOME Program Rule at 10 TAC Chapter 23, and the federal regulation governing the HOME Program at 24 CFR Part 92.

The NOFA is available on the Department's website at *http://www.tdhca.state.tx.us/nofa.htm.*

All Application materials including manuals, NOFA, program guidelines, and applicable HOME rules and regulations are available on the Department's website at *http://www.tdhca.state.tx.us/home-division/applications.htm.*

Applications submitted in response to the NOFA will be accepted in accordance with deadlines based on an open application cycle.

TRD-201903218
Robert Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: September 11, 2019

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## Texas Department of Insurance

### Company Licensing

Application to do business in the state of Texas for Bright Health Insurance Company, a foreign life, accident and/or health company. The home office is in Englewood, Colorado.

Application to do business in the state of Texas for Atlantic States Insurance Company, a foreign fire and/or casualty company. The home office is in Marietta, Pennsylvania.

Application for Imperial Insurance Company of Texas, Inc., a domestic life, accident and/or health company, to change its name to Imperial Insurance Companies, Inc. The home office is in Farmers Branch, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Robert Rudnai, 333 Guadalupe Street, MC 103-CL, Austin, Texas 78701.

TRD-201903214
James Person
General Counsel
Texas Department of Insurance
Filed: September 11, 2019

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## Public Utility Commission of Texas

### Notice of Public Hearing on Proposed Ercot Budget for 2020-2021 and Request for Comments

The staff of the Public Utility Commission of Texas (commission) will hold a public hearing regarding the proposed budget and System Administrative Fee (Fee) for 2020 through 2021 for the Electric Reliability Council of Texas (ERCOT) on Wednesday, October 2, 2019, at 2:00 p.m. in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 38533, *PUC Review of ERCOT Budget,* has been established for this proceeding. Pursuant to 16 Texas Administrative Code §25.363(d) (relating to ERCOT Budget and Fees), ERCOT is required to submit for commission review its board-approved budget, budget strategies, and staffing needs, with a justification for all expenses, capital outlays, additional debt, and staffing requirements. The commission may approve, modify, or reject ERCOT's proposed budget and budget strategies. Under Public Utility Regulatory Act section 39.151, the proceeding to consider changes to ERCOT's proposed budget or to authorize or set the range for the Fee is not a contested case. Additionally, under section 39.151, the commission can require ERCOT to prepare an annual or biennial budget. When the commission approved ERCOT's 2018 through 2019 biennial budget and Fee, it instructed ERCOT to file its proposed 2020 through 2021 biennial budget and Fee request no later than September 1, 2019, and to provide specific information to facilitate the commission's consideration of the 2020 through 2021 request. On July 19, 2019, ERCOT filed in Project No. 38533 its proposed budget for 2020 through 2021. As part of its 2020 through 2021 budget, ERCOT proposes to keep the Fee set at $0.555 per MWh, which is the same Fee granted for 2018 through 2019.

Questions concerning the public hearing or this notice should be referred to Kasey Feldman-Thomason, General Counsel, (512) 936-7144. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1.

TRD-201903211
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: September 11, 2019

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### Public Notice of Strawman to Implement House Bill 4150, and New Form Related to Line Inspection and Safety Rulemaking, and Request for Comments

The staff of the Public Utility Commission of Texas (commission) requests comments on a strawman rule to implement House Bill 4150, relating to reporting requirements, line inspection, and safety. The strawman proposes new 16 Texas Administrative Code §25.97, outlining the reporting process and requirements.

The proposed strawman rule and accompanying reporting form will be filed with the commission by September 19, 2019, and can be accessed through the commission's website homepage under "Filings," using Control Number 49827. Written initial comments on the strawman rule and form may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 by September 30, 2019. Written reply comments may be filed in the same manner by October 7, 2019. Comments should be organized in a manner consistent with the organization of the new rule and the form. All responses should reference Project Number 49827.

TRD-201903187

Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: September 9, 2019

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## Texas Department of Transportation

### Aviation Division - Request for Qualifications (RFQ) for Professional Engineering Services

The City of Denver City and Yoakum County, through their agent, the Texas Department of Transportation (TxDOT), intend to engage a qualified firm for professional services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT Aviation Division will solicit and receive qualification statements for the current aviation project as described below.

**Current Project:** City of Denver City and Yoakum County; TxDOT CSJ No.: 1905DENVR. The TxDOT Project Manager is Ed Mayle.

Scope: Provide engineering and design services, including construction administration, to:

Rehabilitate and mark runway 4-22;

Rehabiltiate and mark and runway 8-26;

Rehabilitate terminal apron; and

Rehabilitate hangar access taxiways.

In accordance with Texas Government Code §2161.252, qualifications that do not contain an up-to-date "HUB Subcontracting Plan (HSP)" are non-responsive and will be rejected without further evaluation. In addition, if TxDOT determines that the HSP was not developed in good faith, it will reject the qualifications for failing to comply with material specifications based on the RFQ.

The City of Denver City and Yoakum County reserve the right to determine which of the services listed above may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services listed above.

To assist in your qualification statement preparation, the criteria, 5010 drawing, project diagram, and most recent Airport Layout Plan are available online at *http://www.txdot.gov/inside-txdot/division/aviation/projects.htm* by selecting "Denver City Airport." The qualification statement should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

**AVN-550 Preparation Instructions:**

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, (800) 68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT website at *http://www.txdot.gov/inside-txdot/division/aviation/projects.html*. The form may not be altered in any way. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-550 template. The AVN-550 consists of eight pages of data plus one optional illustration page. A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, or submits a cover page with the AVN-550, that provider will be disqualified. Responses to this solicitation WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

The completed Form AVN-550 must be received in the TxDOT Aviation eGrants system no later than October 15, 2019, 11:59 p.m. (CDST). Electronic facsimiles or forms sent by email or regular/overnight mail will not be accepted.

Firms that wish to submit a response to this solicitation must be a user in the TxDOT Aviation eGrants system no later than one business day before the solicitation due date. To request access to eGrants, please complete the Contact Us web form located at *http://txdot.gov/government/funding/egrants-2016/aviation.html.*

An instructional video on how to respond to a solicitation in eGrants is available at *http://txdot.gov/government/funding/egrants-2016/aviation.html.*

Step by step instructions on how to respond to a solicitation in eGrants will also be posted in the RFQ packet at *http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm.*

The consultant selection committee will be composed of local government representatives. The final selection by the committee will generally be made following the completion of review of AVN-550s. The committee will review all AVN-550s and rate and rank each. The Evaluation Criteria for Engineering Qualifications can be found at *http://www.txdot.gov/inside-txdot/division/aviation/projects.html* under Information for Consultants. All firms will be notified and the top rated firm will be contacted to begin fee negotiations for the design and bidding phases. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at (800) 68-PILOT (74568). For procedural questions, please contact Kelle Chancey, Grant Manager. For technical questions, please contact Ed Mayle, Project Manager.

For questions regarding responding to this solicitation in eGrants, please contact the

TxDOT Aviation help desk at (800) 687-4568 or avn-egrantshelp@txdot.gov.

TRD-201903171
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Filed: September 9, 2019

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## Texas Water Development Board

### Applications for June and July 2019

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following applications:

Project ID #73845, a request from Palo Pinto County, 520 Oak Street, Palo Pinto, Texas 76484-0190, received on June 4, 2019, for $500,000 in financial assistance from the Clean Water State Revolving Fund, for the replacement of the existing Wastewater Treatment Plant.

Project ID #62857, a request from Shady Grove Special Utility District, 3516 Farm-to-Market Road 499, received on June 26, 2019, for

$880,000 in financial assistance from the Drinking Water State Revolving Fund, for a 100,000-gallon single pedestal elevated water storage tank.

Project ID #73847, a request from the Greater Texoma Utility Authority on behalf of City of Kaufman, 5100 Airport Drive, Denison, Texas 75020-8448, received on June 26, 2019, for $4,500,000 in financial assistance from the Clean Water State Revolving Fund, for the rehabilitation of their wastewater treatment plant.

Project ID #73846, a request from the Greater Texoma Utility Authority on behalf of the City of Sherman, 5100 Airport Drive, Denison, Texas 75020-8448, received on June 28, 2019, for $13,595,000 in financial assistance from the Clean Water State Revolving Fund, for a wastewater system improvements project, including improvements to wastewater treatment plant and brine line construction, engineering, and right of way.

Project ID #73848, a request from the City of Brownsville, 404 E. Washington Street, received on July 3, 2019, for $7,000,000 in financial assistance from the Clean Water State Revolving Fund, for multi-component project as means to mitigate the flooding and drainage risks facing the City and residents. These components are described as Preservation-Type Projects and Mitigation-type projects regarding Stormwater.

TRD-201903156
Todd Chenoweth
General Counsel
Texas Water Development Board
Filed: September 9, 2019

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## Workforce Solutions Deep East Texas

### Request for Offers

The Deep East Texas Local Workforce Development Board, Inc. dba Workforce Solutions Deep East Texas is seeking offers for Phone Services for the DETWDB at 415 S. First Street, Lufkin, Texas 75901.

Anyone interested in submitting a proposal should obtain a copy of the Request for Offers #19-383.2 Revised at www.detwork.org or you can request a copy by contacting:

Joshua Laskoskie

415 S. First Street, Suite 110 B

Lufkin, Texas 75901

(936) 639-8898

(936) 633-7491 Fax

Email: jlaskoskie@detwork.org

Web: www.detwork.org

Deadline for submission of proposal: 09/27/19

TRD-201903093
Kim Moulder
Staff Service Specialist
Workforce Solutions Deep East Texas
Filed: September 4, 2019

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### Request for Offers

The Deep East Texas Local Workforce Development Board, Inc. dba Workforce Solutions Deep East Texas is seeking offers for Internet Services for the DETWDB Board Office at 415 S. First Street, Lufkin, Texas 75901.

Anyone interested in submitting a proposal should obtain a copy of the Request for Offers #19-384.2 revised at *www.detwork.org* or you can request a copy by contacting:

Joshua Laskoskie

415 S. First Street, Suite 110 B

Lufkin, Texas 75901

(936) 639-8898

(936) 633-7491 Fax

Email: jlaskoskie@detwork.org

Web: *www.detwork.org*

Deadline for submission of proposal: 09/27/2019

TRD-201903094
Kim Moulder
Staff Service Specialist
Workforce Solutions Deep East Texas
Filed: September 5, 2019

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### Request for Offers

The Deep East Texas Local Workforce Development Board, Inc. dba Workforce Solutions Deep East Texas is seeking offers for Internet Services for the Crockett Workforce Center at 1505 S. 4th Street, Crockett, Texas 75835.

Anyone interested in submitting a proposal should obtain a copy of the Request for Offers #19-385.2 revised at *www.detwork.org* or you can request a copy by contacting:

Joshua Laskoskie

415 S. First Street, Suite 110 B

Lufkin, Texas 75901

(936) 639-8898

(936) 633-7491 Fax

Email: jlaskoskie@detwork.org

Web: *www.detwork.org*

Deadline for submission of proposal: 09/27/2019

TRD-201903095
Kim Moulder
Staff Service Specialist
Workforce Solutions Deep East Texas
Filed: September 5, 2019

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### Request for Offers

The Deep East Texas Local Workforce Development Board, Inc. dba Workforce Solutions Deep East Texas is seeking offers for Internet Services for the Lufkin Workforce Center at 210 N. John Redditt, Lufkin, Texas 75904.

Anyone interested in submitting a proposal should obtain a copy of the Request for Offers #19-386.2 revised at *www.detwork.org* or you can request a copy by contacting:

Joshua Laskoskie

415 S. First Street, Suite 110 B

Lufkin, Texas 75901

(936) 639-8898

(936) 633-7491 Fax

Email: jlaskoskie@detwork.org

Web: *www.detwork.org*

Deadline for submission of proposal: 09/27/2019

TRD-201903096
Kim Moulder
Staff Service Specialist
Workforce Solutions Deep East Texas
Filed: September 5, 2019

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Request for Offers

The Deep East Texas Local Workforce Development Board, Inc. dba Workforce Solutions Deep East Texas is seeking offers for Internet Services for the Center Workforce Center at 145 Catco Drive, Center, Texas 75935.

Anyone interested in submitting a proposal should obtain a copy of the Request for Offers #19-387.2 at *www.detwork.org* or you can request a copy by contacting:

Joshua Laskoskie

415 S. First Street, Suite 110 B

Lufkin, Texas 75901

(936) 639-8898

(936) 633-7491 Fax

Email: jlaskoskie@detwork.org

Web: *www.detwork.org*

Deadline for submission of proposal: 09/27/2019

TRD-201903097
Kim Moulder
Staff Service Specialist
Workforce Solutions Deep East Texas
Filed: September 5, 2019

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Request for Offers

The Deep East Texas Local Workforce Development Board, Inc. dba Workforce Solutions Deep East Texas is seeking offers for Internet Services for the Jasper Workforce Center at 799 West Gibson, Jasper, Texas 75951.

Anyone interested in submitting a proposal should obtain a copy of the Request for Offers #19-388.2 revised at *www.detwork.org* or you can request a copy by contacting:

Joshua Laskoskie

415 S. First Street, Suite 110 B

Lufkin, Texas 75901

(936) 639-8898

(936) 633-7491 Fax

Email: jlaskoskie@detwork.org

Web: *www.detwork.org*

Deadline for submission of proposal: 09/27/2019

TRD-201903098
Kim Moulder
Staff Service Specialist
Workforce Solutions Deep East Texas
Filed: September 5, 2019

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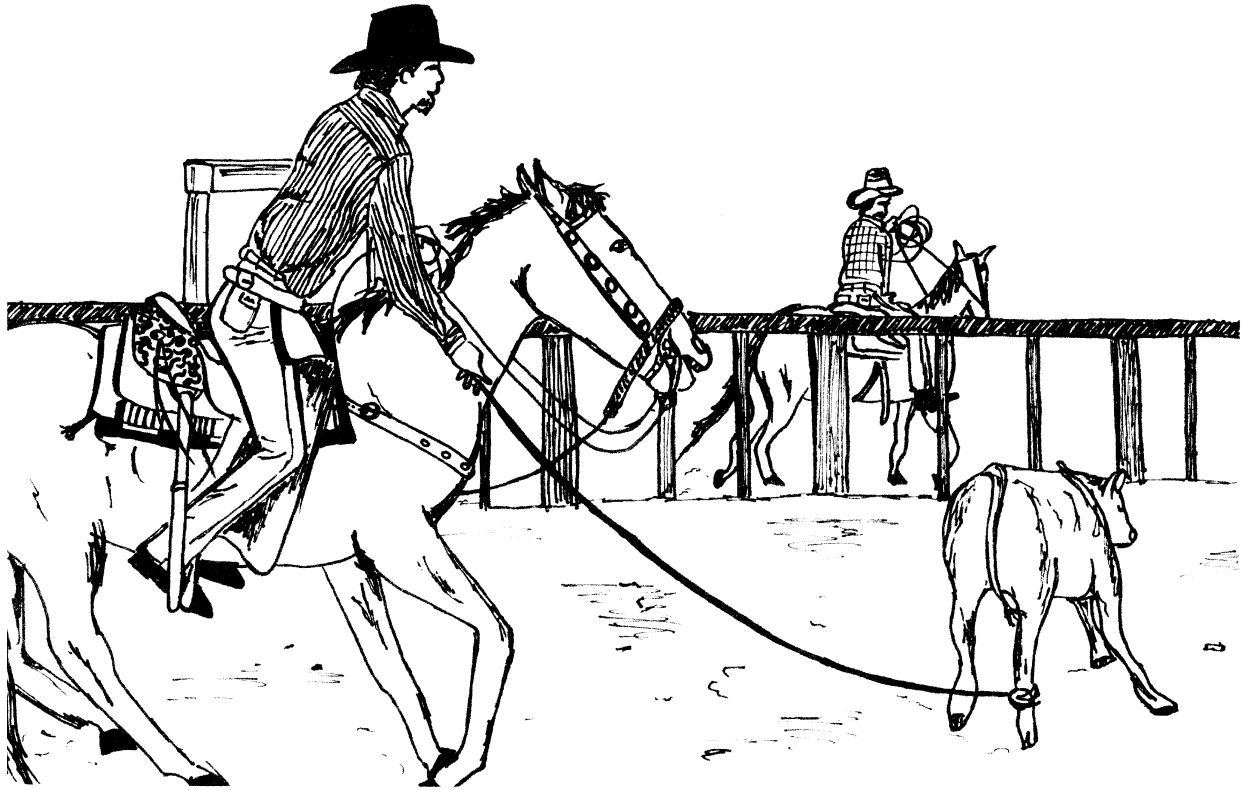

## How to Use the Texas Register

**Information Available:** The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules** - sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Review of Agency Rules** - notices of state agency rules review.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules** - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 43 (2018) is cited as follows: 43 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "43 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 43 TexReg 3."

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: http://www.sos.state.tx.us. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

## Texas Administrative Code

The *Texas Administrative Code (TAC*) is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite**: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to Update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

**TITLE 1. ADMINISTRATION**
***Part 4. Office of the Secretary of State***
**Chapter 91. Texas Register**
1 TAC §91.1…….....950 *(P)*

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